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FILED
Superior Court of California
County of Sacramento
08/20/2024
T. Shaddix, Deputy

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

WESTERN ENGINEERING
CONTRACTORS, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: August 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

SAC Filed: March 6, 2024

Trial Date: None set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on August 9, 2024, at 9:00 a.m., in Department 23 before the
4 Honorable Jill Talley, presiding. Named Plaintiff Maurece Martin (“Plaintiff”) filed this putative class
5 action on February 15, 2023. The operative Complaint alleges that Defendant Western Engineering
6 Contractors, Inc. (“Defendant”), failed to pay overtime, failed to pay minimum wages, failed to
7 accurately record and pay for all hours worked, failed to incorporate the value of prevailing wage
8 rates into employees’ paid sick leave and regular rates of pay for purposes of calculating overtime
9 wages on non-prevailing wage jobs, failed to provide meal and rest periods or pay premiums in lieu
10 thereof, failed to provide accurate wage statements, failed to timely pay final wages, failed to
11 reimburse expenses, failed to pay accrued vacation, and unfairly competed against other businesses.
12 Plaintiff has also alleged Defendant is liable for civil penalties under the Private Attorney’s General
13 Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs as part of this
14 Action. Defendant denied all of Plaintiff’s claims and denied that this case was appropriate for class
15 treatment. No class has been certified. The class settlement was preliminarily approved by this Court
16 on April 11, 2024.

17 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
18 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
19 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
20 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
21 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of
22 Class Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of
23 Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
24 FOLLOWS:

25 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
26 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

27 The Court finds that certification of the following class for settlement purposes only is
28 appropriate under the California Code of Civil Procedure and related case law:

1 All non-exempt, hourly employees who have, or continue to, work for
2 Defendant in California, and who did not sign an arbitration agreement
with a class action waiver, from February 15, 2019, up to October 8, 2023.

3 The Court recognizes that the foregoing definition is for Class Member identification purposes
4 only and is not intended to capture the claims at issue or limit or alter the released claims under the
5 Agreement. A Class Member shall not include the one (1) individual who timely opted out of the class
6 settlement: Geraldo Ponce Mercado. This individual shall not be bound by the Agreement or any of the
7 releases or obligations therein except for the releases and covenants regarding to the PAGA claims as
8 there is no ability to opt out of a PAGA settlement for Aggrieved Employees.

9 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
10 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
11 records, individuals who fall within the definition and the number of Class Members would make
12 joinder impractical. The commonality and predominance requirements are met for settlement purposes
13 since there are questions of law and fact common to Class Members. The common questions of law or
14 fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above
15 by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours
16 worked, including travel time, overtime and minimum wages; 3) failing to authorize and permit putative
17 class members to take all meal and rest periods; 4) failing to include the inclusive dates of the pay period
18 and employees' last 4 digits of their social security number or employee identification number on wage
19 statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates
20 into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages
21 on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7)
22 failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the
23 time of separation. The PAGA, waiting time penalty, and unfair competition claims also derive from
24 these violations. Additionally, Class Members seek the same remedies under state law. The typicality
25 requirement for settlement purposes is also satisfied since the claims of the Class Representative are
26 based on the same facts and legal theories as those applicable to the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiff Maurece Martin and Plaintiff's counsel, Galen T. Shimoda
5 Justin P. Rodriguez Shimoda & Rodriguez Law, PC, to be adequate representatives of the settlement
6 class. The Court appoints them as Class Representative and Class Counsel, respectively.

7 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

8 The Court has again reviewed the Agreement, which was submitted with Plaintiff's Motion as
9 Exhibit A. The Court finds, that final approval is warranted as the Agreement falls within the range of
10 reasonableness and is fair, reasonable, and adequate for the class. The Court also finds the Settlement
11 was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel
12 experienced in complex litigation, who took reasonable steps and measures to weigh the potential value
13 of the disputed claims against the risks of continued litigation. Class Members were able to object to the
14 Agreement and its terms through the administration process and at a fairness hearing or opt-out of being
15 bound by the preliminarily approved Agreement.

16 No objections were made by Class Members and only one (1) Class Member opted out of the
17 settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an
18 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs.
19 The Court gives final approval to the Agreement and all terms therein as if stated here in full, including
20 the \$417,500 Gross Settlement Amount.

21 The Court approves of the Forty-One Thousand Seven Hundred Fifty Dollars \$41,750 PAGA
22 Payment, which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement
23 Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will
24 be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-Five percent (25%)
25 will be paid to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also
26 finds that, based on the facts of this case and the disputed issues, the PAGA Payment provides a
27 recovery that creates an effective, substantial deterrent to any potential future non-compliance,
28 furthering the purpose of the Labor Code and LWDA.

1 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
2 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
3 deadline to do so shall be donated to Sacramento Food Bank and Family Services. *See In re Microsoft I-*
4 *V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to
5 Defendant or its owners for any reason.

6 The releases and waivers for Class Members who did not opt out of being bound by the
7 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
8 also approved by the Court as set forth in the Agreement.

9 Class Counsel sought an award of attorney's fees of \$146,125, attorney's costs of \$6,976.71, an
10 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
11 Administrator Costs in the amount of \$5,900. Defendant does not oppose these requests. The Notice of
12 Settlement sent to Class Members included information regarding these amounts and that they would be
13 requested in connection with final approval of the Agreement. Class Members have been given the
14 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.
15 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including
16 prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time
17 expended in litigation for the benefit of Class Members. The Court finds that the rates requested and
18 hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by
19 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens
20 undertaken for the benefit of the class, and the cost information provided by the Settlement
21 Administrator. The Court finds that these amounts are fair, reasonable, and supported by the evidence
22 submitted by Class Counsel. The requested amounts are approved and awarded as requested, which will
23 be deducted from the Gross Settlement Amount. This finding is further supported by the lack of
24 objections by Class Members to these amounts. The difference between the actual attorney's costs and
25 Settlement Administrator Costs awarded and the originally allocated \$10,000 for each payment will be
26 added to the Net Settlement Amount pursuant to the terms of the Agreement.

27 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
28 **INCLUDING THE NOTICE OF SETTLEMENT**

The Court finds that the preliminarily approved Notice of Settlement and procedures used to notify Class Members as set forth in the Declaration of Madely Nava fairly and adequately advised Class Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

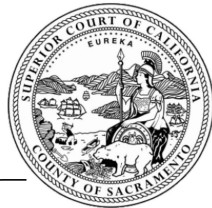
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement

Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date: 08/20/2024



By: _____

Jill Talley
Judge of the Superior Court
Jill Talley

1 *Martin v. Western Engineering Contractors, Inc.*
2 *Sacramento County Superior Court of California 34-2023-00334816*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Deanna Morgensen, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On August 20, 2024, I served the following documents on the party below:

- 9 • **ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF**
10 **CLASS ACTION AND PAGA SETTLEMENT**

11 Carrie Bushman (SBN: 186130) 12 Cook Brown LLP 13 2407 J Street, Second Floor 14 Sacramento, California 95816 15 Phone: (916) 442-3100 16 Email: cbushman@cookbrown.com 17 ljohnston@cookbrown.com	
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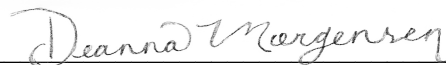
18 [] [By Certified Mail] I am familiar with my employer's practice for the collection
19 and processing of correspondence for mailing with the United States Postal
20 Service and that each day's mail is deposited with the United States Postal
21 Service that same day in the ordinary course of business. On the date set forth
22 above, I served the aforementioned document(s) on the parties in said action by
23 placing a true copy thereof enclosed in a sealed envelope with postage thereon
24 fully prepaid, for collection and mailing on this date, following ordinary business
25 practices, at Salt Lake City, Utah, addressed as set forth above.

26 [] [By Personal Service] By personally delivering a true copy thereof to the office
27 of the addressee above.

28 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on August 20, 2024, at Salt Lake City,
Utah.



Deanna Morgensen