

03/05/2024

By: A. Turner Deputy

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6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 MAURECE MARTIN, individually and on
12 behalf of all other similarly situated
employees,
13 Plaintiff,
14 vs.
15 WESTERN ENGINEERING
16 CONTRACTORS, INC., a California
17 Corporation; and DOES 1 to 100, inclusive,
18 Defendants.

Case No. 34-2023-00334816

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

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024
Time: 9:00 a.m.
Dept.: 23
Judge: Hon. Jill Talley

Filed: February 15,2023
FAC Filed: May 25,2023
Trial Date: None set

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<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Proposed Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Apex Declaration & Class Action Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: March 5, 2024

Shimoda & Rodriguez Law, PC

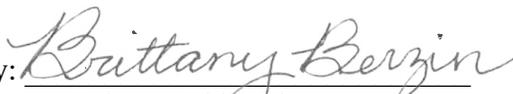
By: 
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EXHIBIT A

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11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**
13

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

17 Plaintiff,

18 vs.

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

Case No.: 34-2023-00334816

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Maurece Martin (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant Western
4 Engineering Contractors, Inc. (“Defendant”). This Agreement is subject to the terms and conditions set
5 forth below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Martin v. Western Engineering Contractors, Inc.*,
9 Sacramento County Superior Court, Case No. 34-2023-00334816, filed February 15, 2023.

10 1.2 “Aggrieved Employee(s)” means all non-exempt, hourly employees who have, or continue
11 to, work for Defendant in California during the PAGA Claim Period.

12 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
13 Regarding Class Action and PAGA Settlement and Release.

14 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
15 Shimoda & Rodriguez Law, PC.

16 1.5 “Class Member(s)” means all non-exempt, hourly employees who have, or continue to,
17 work for Defendant in California, and who did not sign an arbitration agreement with a class action waiver,
18 during the Class Period.

19 1.6 “Class Period” means February 15, 2019, up to October 8, 2023.

20 1.7 “Class Representative” means Plaintiff Maurece Martin .

21 1.8 “Class Representative’s Released Claims” means all claims arising from, could have been
22 asserted, or related in any way to the Class Representative's employment with Defendant, under federal,
23 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
24 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common
25 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,
26 unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, equitable
27 relief or other similar relief or claims. Without limiting the foregoing, this release shall include, but not be
28 limited to, any and all claims under the Americans With Disabilities Act, as amended; Title VII of the Civil

1 Rights Act of 1964, as amended; the Civil Rights Act of 1991; 42 U.S.C. § 1981, as amended; the Age
2 Discrimination in Employment Act, as amended; the Fair Labor Standards Act, as amended; the Equal Pay
3 Act; the Employee Retirement Income Security Act, as amended; the Consolidated Omnibus Budget
4 Reconciliation Act; the Rehabilitation Act of 1973; the Family and Medical Leave Act; the Civil Rights
5 Act of 1966; the California Fair Employment and Housing Act; the California Constitution; the California
6 Labor Code; the California Government Code; the IWC Wage Orders, and any and all other federal, state
7 and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on
8 constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories
9 of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation,
10 promissory estoppel, defamation, or intentional and/or negligent infliction of emotional distress, or
11 damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release
12 is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay,
13 vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages,
14 damages for pain and suffering, and attorney fees and costs. The Class Representative's Released Claims
15 exclude claims for workers' compensation, unemployment insurance benefits, or other claims that cannot
16 be released as a matter of law.

17 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

18 1.10 "Court" means the Sacramento County Superior Court.

19 1.11 "Defendant" means Western Engineering Contractors, Inc..

20 1.12 "Defendant's Counsel" means Cook Brown LLP.

21 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
22 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
23 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
24 Representative as a Participating Class Member.

25 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged
26 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
27 after a signed order approving this settlement has been filed provided no appellate proceeding having been
28 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been

1 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
2 further remedies or relief, whichever is later.

3 1.15 “Final Approval Date” means the date a signed order granting final approval of this
4 Agreement is filed with the Court.

5 1.16 “Gross Settlement Amount” is the sum of Four Hundred Seventeen Thousand Five Hundred
6 Dollars and No Cents (\$417,500.00).

7 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
8 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
9 Sections 1.19, 1.23, 5.5, and 5.8.

10 1.18 “LWDA” means the California Labor and Workforce Development Agency.

11 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
12 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
13 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
14 Payment to the Class Representative.

15 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
16 Exhibit 1.

17 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
18 Settlement to Class Members and Aggrieved Employees.

19 1.22 “PAGA” means Private Attorneys General Act.

20 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
21 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

22 1.24 “PAGA Claim Period” means February 14, 2022, up to October 8, 2023.

23 1.25 “Parties” mean Defendant and Plaintiff.

24 1.26 “Participating Class Member” means any and all Class Members who have not made any
25 timely request to opt-out of the Agreement.

26 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
27 of this Agreement is filed with the Court.

28

1 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
2 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
3 under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
4 remain the property of Defendant until the payments required under the Agreement are made.

5 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
6 Employees wherein they worked at least one (1) shift, during the Class Period and/or PAGA Claim Period,
7 respectively, in California. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks
8 and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in
9 California in a particular workweek shall be construed from Defendant's records.

10 1.30 “Released Class Claims” means any and all claims that are alleged in the operative
11 Complaint, and any additional wage and hour claims that could have been brought based on the facts
12 alleged in the operative Complaint, through the Class Period. This release includes but is not limited to
13 claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage
14 Order 16, § 3; (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order
15 16 § 4; (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B)); (4) rest
16 period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A)); (5) wage statement penalties (CA
17 Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A)); (6) waiting time penalties (CA
18 Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5,
19 248.5); (8) unfair competition (CA B & P Code § 17200, et seq.); (9) Private Attorneys General Act, (10)
20 Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued
21 Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This
22 release will cover all Class Members who do not opt out.

23 1.31 “Released PAGA Claims” means any and all claims for civil penalties that were brought
24 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff’s operative
25 Complaint, Plaintiff’s PAGA letter to the Labor Workforce Development Agency and any additional wage
26 and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint
27 and PAGA letter during the PAGA Claim Period. This release includes but is not limited to claims for (1)
28 Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure

1 to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, §4); (3) Failure to Provide
2 Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, §
3 11(A), (B)); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7
4 and IWC Wage Order 16, § 12(A)); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§
5 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions
6 Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§
7 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174,
8 1815, 1198 and IWC Wage Order 16, § 6(A)); (9) Failure to Provide Paid Sick Leave (CA Labor Code §§
9 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11)
10 Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this
11 waiver of claims.

12 1.32 “Released Parties” means Defendant, as well as Defendant’s current and former officers,
13 shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J.
14 Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz.

15 1.33 “Settlement Administrator” means and refers to Apex Class Action, the third-party entity
16 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
17 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
18 Parties each represent that they do not have any financial interest in the Settlement Administrator.

19 1.34 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
20 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
21 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
22 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
23 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
24 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
25 Members and/or Aggrieved Employees, Class Counsel, and Defendant’s Counsel; all costs and fees
26 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
27 resolving disputes; all costs and fees associated with calculating employer taxes, tax withholdings and
28 payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax

1 forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax
2 returns and any other filings required by any governmental taxing authority or agency; all costs and fees
3 associated with preparing any other notices, reports, or filings to be prepared in the course of administering
4 Individual Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement
5 Administrator in connection with the execution of its duties under this Agreement.

6 **2. DESCRIPTION OF THE LITIGATION**

7 2.1 On February 14, 2023, Plaintiff sent notice to the LWDA to exhaust administrative remedies
8 under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal
9 periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof,
10 failure to provide accurate wage statements, failure to pay final wages, violation of Labor Code section
11 558, failure to maintain accurate records, and failure to provide paid sick leave. On November 29, 2023
12 Plaintiff sent an amended notice to the LWDA to exhaust administrative remedies under the PAGA for
13 failure to pay travel time, failure to reimburse expenses, and failure to pay accrued vacation at separation.
14 On December 5, 2023, Plaintiff sent a second amended notice to the LWDA to clarify the scope of the
15 PAGA Claim Period Plaintiff was seeking exhaustion for. The LWDA did not respond to the notices within
16 the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys
17 General on all alleged PAGA claims.

18 2.2 On February 15, 2023, Plaintiff filed a class action Complaint in Sacramento County
19 Superior Court on behalf of himself and Class Members. Plaintiff filed a First Amended Complaint on
20 approximately May 25, 2023 to add a PAGA cause of action based on the violations alleged in the February
21 14, 2023 notice to the LWDA on behalf of himself and Aggrieved Employees. Plaintiff intends to file a
22 Second Amended Complaint to match the scope of the resolution reached by the Parties, adding claims for
23 unpaid travel time, failure to reimburse expenses and failure to pay accrued vacation.

24 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
25 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
26 Class Members including, but not limited to, Class Members' workweeks, dates of employment, total
27 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports
28 for a randomly selected sample of Class Members.

1 2.4 On October 9, 2023, the Parties participated in a lengthy mediation with private mediator
2 Russ J. Wunderli. At the conclusion of the mediation, the Parties were able to come to a resolution. At all
3 times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

4 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
5 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
6 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
7 merits of the claims and the defenses to those claims.

8 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to
9 accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including
10 travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4)
11 failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security
12 number or employee identification number on wage statements issued to putative class members; 5) failing
13 to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay
14 for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use
15 of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an
16 employee's final regular rate of pay at the time of separation. Defendant has denied each of Plaintiff's
17 claims and Defendant has denied that this Action is appropriate for class certification for anything other
18 than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the
19 Parties' theories of potential exposure for the underlying claims and the class data supporting these claims.
20 The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
21 based on Defendant's factual and legal contentions and defenses.

22 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
23 and the information exchanged to date, are more than sufficient to assess the merits of the respective
24 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
25 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
26 manner and upon such terms and conditions set forth herein in order to avoid further expense,
27 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
28 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.

1 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
2 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
3 circumstances.

4 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

5 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
6 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
7 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
8 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
9 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
10 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
11 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
12 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
13 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
14 evidence that may be applicable.

15 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
16 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
17 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
18 the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to
19 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
20 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
21 any and all other potential defenses or privileges.

22 **4. SCOPE OF THE CLASS**

23 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
24 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
25 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
26 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
27 Section 7.5.1.

1 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
2 this Agreement.

3 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
4 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
5 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
6 data request to the Settlement Administrator. The data request must contain all of the following
7 information: (a) the full name and, if applicable, Social Security Number of the individual making the
8 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
9 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
10 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
11 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
12 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
13 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
14 review their records.

15 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
16 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
17 person who submitted the data request, at the address designated for that purpose in the data request. All
18 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
19 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
20 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
21 Employee for all other purposes.

22 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
23 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
24 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
25 dispute, with any identifying information other than an employee identification number redacted.
26 Defendant's records shall control unless the individual submitting the data request provides persuasive
27 evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and
28 Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement

1 Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the
2 dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar
3 days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The
4 decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5 **5. TERMS OF THE SETTLEMENT**

6 The Parties agree as follows:

7 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
8 Section 6, Defendant shall pay the Gross Settlement Amount (\$417,500.00). Funding of the Gross
9 Settlement Amount shall occur within 30 calendar days after the Effective Date to be held in trust in a QSF
10 by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
11 Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action
12 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
13 the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement,
14 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to
15 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
16 on any wage payments distributed to Participating Class Members will be paid in addition to the Gross
17 Settlement Amount.

18 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
19 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
20 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
21 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
22 exceed \$10,000.00, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
23 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
24 exceed the \$10,000.00 threshold. The Settlement Administrator will issue Class Counsel an IRS Form
25 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less
26 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
27 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
28 a pro rata basis.

1 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
2 Gross Settlement Amount and shall not exceed \$10,000.00. The difference between any actual costs and
3 the allocated \$10,000.00 shall be added to the Net Settlement Amount to be distributed to Participating
4 Class Members on a pro rata basis.

5 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
6 an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
7 and No Cents (\$10,000.00) to compensate for the risks, time, and expense of his involvement in the Action
8 and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition
9 to the Individual Settlement Amount Plaintiff would otherwise be due under the Agreement as a
10 Participating Class Member. Defendant has agreed to not oppose Class Counsel's request for an
11 Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The
12 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
13 MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any
14 portion of the requested amount not awarded to the Class Representative shall be added to the Net
15 Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

16 5.5 PAGA Payment: Forty-one Thousand Seven Hundred Fifty Dollars and No Cents
17 (\$41,750.00) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA.
18 Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent
19 (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any
20 amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement
21 Amount to be distributed to Participating Class Members on a pro rata basis.

22 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
23 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
24 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be paid
25 to Sacramento Food Bank and Family Services under the doctrine of *cy pres*. No portion of the Gross
26 Settlement Amount will revert to Defendant for any reason.

27 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
28 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in

1 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
2 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
3 any new or additional compensation or benefits under any company bonus or other compensation or benefit
4 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
5 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
6 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
7 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
8 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
9 contrary language or agreement in any benefit or compensation plan document that might have been in
10 effect during the period covered by this Agreement).

11 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
12 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
13 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
14 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
15 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
16 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
17 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
18 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
19 under this formula who timely opt out of the Settlement will be redistributed to Participating Class
20 Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing
21 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all
22 Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to
23 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved
24 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total
25 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all
26 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%
27 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

1 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
2 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed
3 penalties and wages. The Settlement Administrator shall calculate the employer’s share of payroll taxes
4 on the amounts paid to Participating Class Members as wages as well as calculating all required
5 withholdings and deductions from said wage payments. The characterization of Individual Settlement
6 Amounts to Participating Class Members and Aggrieved Employees are as follows:

7 5.9.1 One third (1/3) of each Participating Class Members’ Individual Settlement Amount
8 shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
9 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
10 Settlement Amount.

11 5.9.2 Two thirds (2/3) of each Participating Class Members’ Individual Settlement
12 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted
13 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
14 which the Participating Class Members shall receive an IRS Form 1099-MISC.

15 5.9.3 The entirety (100%) of each Aggrieved Employee’s share of the 25% portion of the
16 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
17 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
18 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

19 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
20 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
21 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
22 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
23 including the treatment of such payments as not subject to withholding or deduction for payroll and
24 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
25 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
26 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
27 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
28

1 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
2 implications of any provision of this Agreement.

3 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
4 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
5 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
6 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
7 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
8 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
9 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
10 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
11 the date of such event.

12 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
13 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
14 establishing class certification have been met and are met.

15 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
16 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
17 Aggrieved Employees.

18 **6. RELEASE**

19 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
20 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
21 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
22 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
23 Class Claims against any of the Released Parties.

24 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
25 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
26 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
27 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
28 Claims against any of the Released Parties.

1 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
 2 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
 3 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
 4 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
 5 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.
 6 Plaintiff has read Section 1542 of the Civil Code of the State of California, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
 8 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
 9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY
 10 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
 11 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

12 Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now
 13 aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff
 14 nevertheless voluntarily waives the rights described in Section 1542, and elects to assume all risks for
 15 claims that now exist in his favor, known or unknown.

16 **7. SETTLEMENT ADMINISTRATION**

17 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
 18 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
 19 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
 20 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
 21 any individual Class Members and Aggrieved Employee whose address or contact information as provided
 22 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
 23 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
 24 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
 25 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
 26 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
 27 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
 28 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests

1 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
2 determining and paying the final amounts due to be paid under the Agreement after resolution of all
3 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
4 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
5 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
6 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
7 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
8 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
9 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
10 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
11 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
12 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
13 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
14 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
15 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
16 Participating Class Members and Aggrieved Employees; 15) calculating and transmitting employer tax
17 payments to the appropriate taxing authorities and all associated reporting; 16) translating the Notice of
18 Settlement into Spanish and 17) carrying out other related tasks as necessary to effectuate the terms of this
19 Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and
20 need to perform its duties shall be referred to the Court, if necessary, which will have continuing
21 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
22 contemplated by the Agreement have been fully executed.

23 7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants
24 that Class Members and Aggrieved Employees are able to read and write in English and/or Spanish such
25 that no translation of the Notice of Settlement into a language other than Spanish is necessary. The Notice
26 of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and
27 conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to
28 dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of

1 Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount,
2 Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement
3 Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the
4 scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing
5 on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
6 regarding Class Member's and Aggrieved Employee's estimated Individual Settlement Amount. The
7 Notice of Settlement will provide information on how to access electronic copies online of the Notice of
8 Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and
9 costs, and any other documents as the Court directs.

10 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
11 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the name, last
12 known mailing address, last known telephone number, Social Security Number, weeks Class Members
13 worked during the Class Period, weeks Aggrieved Employees worked during the PAGA Claim Period and
14 any other information the Settlement Administrator needs to effectuate notice to Class Members and
15 Aggrieved Employees as outlined herein. The Settlement Administrator shall review the data to determine
16 the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than
17 fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will
18 perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA
19 search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class
20 Member and Aggrieved Employee by first-class mail, postage prepaid. The Settlement Administrator shall
21 maintain all information received from Defendant confidential to itself, and Defendant's Counsel.
22 However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated
23 Individual Settlement Amounts for Class Members and Aggrieved Employees prior to mailing for quality
24 assurance provided the personal identifying information is redacted and/or omitted.

25 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
26 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
27 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
28 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly

1 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
2 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
3 five (5) calendar days to any more recent address found as a result of the search. Following each search
4 that does not result in a corrected address, for those Class Members who appear to be current employees
5 of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
6 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement
7 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
8 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address
9 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
10 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
11 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
12 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
13 be bound by all terms of the Agreement, including the releases contained in Section 6.

14 7.5 Responses to Notice of Settlement:

15 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
16 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
17 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
18 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
19 excluded from the settlement; (c) identify the case name and number (i.e. Martin v. Western Engineering
20 Contractors, Inc. , Case No. 34-2023-00334816); (d) be signed; and (e) be post-marked no later than the
21 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must
22 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class
23 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to
24 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to
25 opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they
26 have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid
27 and timely opt out request will be specifically identified in any proposed order granting final approval.
28 Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the

1 Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts
2 out of being a Class Member, they will still receive their share of the PAGA Payment as Aggrieved
3 Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

4 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
5 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
6 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
7 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
8 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
9 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
10 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
11 number (*i.e.* Martin v. Western Engineering Contractors, Inc. , Case No. 34-2023-00334816) (e) be signed;
12 and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated
13 in Section 7.4. The Notice of Settlement will inform the Class Member that they should also file a notice
14 of intent to appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they
15 intend to appear at the final approval hearing.

16 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
17 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
18 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
19 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
20 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
21 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
22 dispute. Defendant's records shall presumptively control unless the Class Member can produce
23 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
24 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
25 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
26 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
27 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
28 documentation submitted by the Class Member, with any identifying information other than an employee

1 identification number redacted, as part of the dispute. Defendant's Counsel and Class Counsel shall attempt
2 in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of
3 the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be
4 resolved by the Settlement Administrator, subject to Court review.

5 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
6 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
7 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
8 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
9 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
10 letter, whichever is later.

11 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
12 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
13 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
14 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

15 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
16 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
17 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
18 and detailed report regarding the statistics and responses of settlement administration to date and all the
19 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

20 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
21 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
22 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
23 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
24 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
25 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
26 calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount
27 and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
28 Administrator within thirty (30) calendar days after the Effective Date to be to be held in trust in a QSF.

1 Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator shall
2 deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
3 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
4 and payment to Participating Class Members and/or Aggrieved Employees as required under this
5 Agreement and approved by Court.

6 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
7 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
8 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
9 after the Final Approval Date.

10 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
11 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
12 requested by Class Counsel.

13 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
14 Individual Settlement Amount.

15 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
16 payroll tax payment and employer tax payment to the appropriate taxing authorities on a timely basis
17 pursuant to its duties under this Agreement. Defendant agrees to reasonably cooperate with the Settlement
18 Administrator to the extent necessary to determine the amount of the payroll tax payment required.

19 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
20 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
21 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
22 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
23 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
24 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
25 cashing deadline.

26 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
27 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
28 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class

1 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
 2 and detailed report regarding the settlement administration documenting that all payments under the
 3 Agreement have been made, that the Court's final approval order has been complied with, and that all the
 4 obligations of the Settlement Administrator have been completed.

5 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

6 8.1 The schedule may be modified depending on whether and when the Court grants necessary
 7 approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The
 8 schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as
 9 described above. In the event of such modification, the Parties shall cooperate to complete the settlement
 10 procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and
 11 payment procedures carrying out the Agreement is as follows:

12 Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
13 Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
14 Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
15 Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
16 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

1 2 3	Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
4 5 6 7	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
8 9	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
10 11 12	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
13 14	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

15 **9. DUTIES OF THE PARTIES**

16 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
17 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
18 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
19 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
20 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
21 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
22 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
23 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
24 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
25 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
26 Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or
27 proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class
28 Counsel. With regard to the final approval documents, a similar one-week maximum review and response

1 time shall be observed by the Parties. The Parties will request that the Court’s preliminary approval of this
2 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
3 Settlement.

4 9.1.1 Plaintiff’s motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
5 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
6 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
7 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
8 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
9 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
10 reasonable attorneys’ fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
11 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
12 approved as fair, reasonable and adequate as to the Class Members.

13 9.1.2 Defendant shall not oppose Plaintiff’s motion for approval of the proposed
14 Agreement.

15 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
16 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
17 appropriate to assure effective communication to individual Class Members of information about their
18 rights and obligations under this Agreement.

19 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
20 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
21 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
22 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
23 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
24 of the Settlement Administrator’s mailings including tracing and re-mailing efforts. The Settlement
25 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
26 request to opt out during the Notice Period.

27 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
28 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The

1 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
2 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
3 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
4 Enhancement Payment to the Class Representative; 3) Approving Class Counsel’s application for an award
5 of attorneys’ fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
6 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
7 enforcement of the terms of the Agreement and the Court’s orders.

8 9.2.2 Following entry of the Court’s order granting final approval of the Agreement, the
9 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
10 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
11 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
12 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
13 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
14 of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
15 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
16 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
17 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

18 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
19 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
20 PAGA Settlement and Final Judgment.

21 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
22 Agency (“LWDA”) of this settlement in accordance with Labor Code § 2699(1)(2).

23 **10. MISCELLANEOUS TERMS**

24 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
25 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
26 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
27 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
28 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the

1 total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs
2 shall be paid by Defendant. Defendant has represented that there are no more than 3,861 workweeks by
3 Class Members during the Class Period and 5,188 workweeks by Aggrieved Employees during the PAGA
4 Claim Period. In the event the combined number of workweeks by Class Members and Aggrieved
5 Employees during the respective periods is more than 9,954 collectively (*i.e.*, greater than 10% more than
6 9,049), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of
7 9,954, multiplied by the workweek value. For example, if there are actually 10,049 workweeks in the Class
8 Period, and the actual workweek value is \$ \$41.94 per workweek, Defendant would have to increase the
9 Gross Settlement Amount by \$3,984.30 (10,049 workweeks – 9,954 workweeks = 95 workweeks x
10 \$41.94/workweek).

11 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
12 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
13 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
14 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
15 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
16 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
17 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
18 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
19 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
20 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
21 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
22 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
23 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
24 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
25 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
26 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
27 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
28 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX

1 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
2 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
3 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
4 THIS AGREEMENT.

5 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
6 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
7 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
8 and discharged in this Agreement.

9 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
10 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
11 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
12 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

13 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
14 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
15 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

16 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
17 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
18 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
19 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
20 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

21 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
22 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
23 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
24 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
25 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
26 otherwise, to effectuate this Agreement and the terms set forth herein.

27 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
28 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to

1 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
2 Complaint, the representative character of the Action, the validity of any of the claims that were or could
3 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
4 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant
5 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
6 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
7 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
8 the intention to avoid further disputes and litigation.

9 10.9 Confidentiality: The Parties agree to maintain the confidentiality of this settlement other
10 than as necessary to obtain Court approval and effectuate the terms of the settlement.

11 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
12 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
13 third business day after mailing by United States certified mail, return receipt requested, addressed as
14 follows:

15 To Plaintiff and the Class:

16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Brittany V. Berzin
19 Shimoda & Rodriguez Law, PC
20 9401 East Stockton Blvd., Suite 120
21 Elk Grove, CA 95624

22 To Defendant:

23 Carrie Bushman
24 Cook Brown LLP
25 2407 J Street Second Floor
26 Sacramento, California 95816

27 10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
28 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

1 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
2 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
3 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
4 as expressly provided in this Agreement.

5 10.13 No Modifications: This Agreement may be amended or modified only by a written
6 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
7 discharged except by performance in accordance with its terms.

8 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
10 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
11 to effectuate its terms and to execute any other documents required to effectuate the terms of this
12 Agreement.

13 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
14 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
15 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
16 may be executed on behalf of all Class Members by the Class Representative.

17 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
18 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in
19 counterparts, and execution of counterparts shall have the same force and effect as if each had signed the
20 same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and
21 effect of originals.

22 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
23 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
24 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
25 and governed by, the substantive laws of the State of California without giving effect to that State's choice
26 of law principles.

1 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
24 attorneys, as of the day and year herein set forth.

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For Plaintiff:

Date: 3/4/2024

DocuSigned by:


Maurece Martin
1E665F92F7E74CB...

For Defendant:

Date: 3-4-24

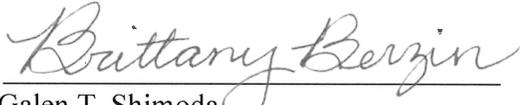


By:
For Western Engineering Contractors, Inc.

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 3/4/2024

By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

COOK BROWN LLP

Dated: 3.4.24

By: 

Carrie Bushman
Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
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

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023 (the “Class Members”) and all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California from February 14, 2022 up to October 8, 2023 (“Aggrieved Employees”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION AND PAGA LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Maurece Martin (“Plaintiff” or “Class Representative”), and Defendant Western Engineering Contractors, Inc. (“Defendant”) on behalf of Class Members and Aggrieved Employees as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member” and/or Aggrieved Employee. Defendant’s records also indicate that you worked [redacted] weeks during the applicable Class Period and/or PAGA period (as defined below), which means your total share of the settlement proceeds is estimated to be [redacted]. Your actual share of the settlement proceeds may vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On February 15, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00334816. The Class Period is from February 15, 2019 up to October 8, 2023 (the “Class Period”). On February 14, 2023, Plaintiff filed a Private Attorneys General Act (“PAGA”) notice with the Labor Workforce Development Agency and, on May 25, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act on behalf of himself and Aggrieved Employees. The PAGA Claim Period is from February 14, 2022 up to October 8, 2023 (the “PAGA Claim Period”). Plaintiff filed an amended PAGA notice on December 5, 2023 and filed a Second Amended Complaint on [date].

In the Action, Plaintiff sought to obtain unpaid wages, interest, unpaid expenses, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees by alleging claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to provide paid sick leave, unfair competition, violations of the Private Attorneys General Act, failure to reimburse business expenses, and failure

to pay accrued vacation. Plaintiff alleged that Defendant violated California law by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods or to pay premiums in lieu thereof; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred. The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit.

Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have, or continue to, work for 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. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendant in California from February 14, 2022 up to October 8, 2023. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred and Seventeen Thousand Five Hundred (\$417,500) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$10,000, and \$41,750 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$41,750 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees based on the number of workweeks worked during the PAGA Claim Period.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-

wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as from February 14, 2022 up to October 8, 2023. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member or do not meet the definition of Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or Aggrieved Employee. If a Class Member / Aggrieved Employee disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class Members who do not opt out will be deemed to have released any and all claims that are alleged in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release includes but is not limited to claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage Order 16, § 3); (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order 16 § 4); (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B)); (4) rest period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A)); (5) wage statement penalties (CA Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A)); (6) waiting time penalties (CA Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5, 248.5); (8) unfair competition (CA Business & Professions Code § 17200, et seq.); (9) Private Attorneys General Act, (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint, Plaintiff's PAGA letters to the Labor Workforce Development Agency and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint and PAGA letters during the PAGA Claim Period. This release includes but is not limited to claims for (1) Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, §4); (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, § 11(A), (B)); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7 and IWC Wage Order 16, § 12(A)); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§ 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§ 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174, 1815, 1198 and IWC Wage Order 16, § 6(A)); (9) Failure to Provide Paid Sick

Leave (CA Labor Code §§ 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released (“Released Parties”) include Defendant, as well as Defendant’s current and former officers, shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J. Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz

Class Members and/or Aggrieved Employees can talk to the Court-approved Settlement Administrator, Apex Class Action, if they have any questions..

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or want to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816) (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

You may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 27, 720 9th Street Sacramento, California 95814, on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca.gov.zoomgov.com/my/ssdept27>. To join by phone: (833) 568-8864 / ID: 16120204632. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. SETTLEMENT CHECKS

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. Any check not negotiated within 180 days of issuance shall be distributed to Sacramento Food Bank and Family Services. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

VII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: [admin web address]. If final approval is granted, a notice of entry of order and copy of the order will be available on the Court's Public Case Access website: <https://services.saccourt.ca.gov/PublicCaseAccess/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Carrie E. Bushman
Cook Brown LLP
2407 J Street Second Floor
Sacramento, CA 95816
Telephone: 916-442-3100
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
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5 Attorneys for Plaintiff MAURECE MARTIN

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7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

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

12 Plaintiff,

13 vs.

14
15 WESTERN ENGINEERING
CONTRACTORS, INC., a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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19
20
21
22

Case No. 34-2023-00334816

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. Private Attorneys General Act
9. Failure to Reimburse Expenses
10. Failure to Pay Accrued Vacation

DEMAND FOR JURY TRIAL

1 Plaintiff MAURECE MARTIN (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees, hereby files this Complaint against WESTERN ENGINEERING
3 CONTRACTORS, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as “Defendants”). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action and representative Private Attorneys General Act (“PAGA”) lawsuit
7 brought by Plaintiff for failure to pay overtime wages, failure to pay minimum wages, meal and rest
8 period violations, wage statement violations, waiting time penalties, failure to maintain accurate records,
9 failure to pay sick leave, failure to reimburse expenses, failure to pay accrued vacation at termination,
10 and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 16.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5 in that some of
16 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
17 Defendant’s obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
18 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
20 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
21 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
22 notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on
23 approximately February 14, 2023 and December 6, 2023. Plaintiff provided facts and legal bases for his
24 claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act
25 cause of action. Plaintiff submitted the \$75.00 filing fee. The notices were also sent via certified mail to
26 Defendants. Plaintiff is informed and believes, that to date, the LWDA has not provided any response to
27 Plaintiff’s notice correspondences. Accordingly, Plaintiff is informed and believes that he has exhausted
28 all administrative remedied pursuant to the Private Attorneys General Act and may bring this action on

1 behalf of himself and all Aggrieved Employees. See Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
2 *Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
3 includes all non-exempt, hourly employees who have, or continue to, work for Defendants in California
4 from February 14, 2022 to the present.

5 **PARTIES**

6 5. MAURECE MARTIN is an individual over the age of eighteen (18) and is a resident
7 of the State of California.

8 6. On information and belief, Plaintiff alleges, WESTERN ENGINEERING
9 CONTRACTORS, INC., is now and/or at all times mentioned in this Complaint was a California
10 Corporation and the owner and operator of an industry, business and/or facility doing business in the
11 State of California.

12 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
13 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
14 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
15 names and capacities of these DOE Defendants when they are ascertained.

16 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
17 other Defendants and was acting within the course and scope of such agency or employment. The
18 Defendants are jointly and severally liable to Plaintiff.

19 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
20 were members of and/or engaged in a joint employment, joint venture, partnership and common
21 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
22 joint venture, partnership and common enterprise.

23 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
24 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

25 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
26 wrongs, complaints, injuries and/or damages alleged in this Complaint.

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1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Seventh and Ninth through Tenth Causes of Action
3 on behalf of himself, and all others similarly situated as a class action pursuant to California Code of
4 Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and
5 defined, as follows:

6 All non-exempt employees who have, or continue to, work for Defendants
7 in California from February 15, 2019 to the present.

8 13. This action has been brought and may be properly maintained as a class action,
9 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
10 defined community of interests in the litigation and the proposed class is easily ascertainable.

11 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
12 is impracticable under the circumstances of this case. While the exact number of class
13 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
14 Defendants have employed as many as fifty (50) individuals falling within the above
15 stated class definition throughout the State of California during the applicable statute of
16 limitations, who were subjected to the policies and practices outlined in this Complaint.
17 As such, joinder of all members of the putative class is not practicable.

18 (b) Common Questions Predominate: Common questions of law and fact exist as to all
19 members of the putative class and predominate over questions that affect only individual
20 members of the class. These common questions of law and fact include, without
21 limitation, the following:

- 22 (1) Whether Defendants had policies and practices resulting in unpaid minimum
23 wages;
- 24 (2) Whether Defendants had policies and practices resulting in unpaid overtime
25 wages;
- 26 (3) Whether Defendants accurately tracked class members' hours worked;
- 27 (4) Whether Defendants paid class members all minimum wages;
- 28 (5) Whether Defendants paid class members all overtime wages;

- (6) Whether Defendants failed to correctly calculate class members regular rates of pay;
- (7) Whether Defendants failed to authorize and permit meal periods;
- (8) Whether Defendants failed to authorize and permit rest periods;
- (9) Whether Defendants required class members to take on duty meal periods;
- (10) Whether Defendants' on duty meal period policy was lawful;
- (11) Whether as a result of Defendants' policies and practices class members received all wages, due and owing, at the time of their termination or separation;
- (12) Whether Defendants provided class members with wage statements that complied with Labor Code section 226;
- (13) Whether Defendants paid class members all vacation wages; and
- (14) Whether Defendants reimbursed class members for all business expenses.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt, hourly employees who were not paid for all hours worked, did not receive all meal and rest periods, were not paid the correct regular rates of pay, did not timely receive all final wages owed to them, and did not receive wage statements with accurate information, the inclusive dates of the pay period or class members' employee ID or the last four of their social resulting in failure to pay overtime wages, failure to pay minimum wages, meal and rest period violations, wage statement violations, waiting time penalties, failure to pay prevailing wages, and unfair competition. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

16 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 GENERAL ALLEGATIONS

19 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
20 set forth herein.

21 16. Plaintiff Maurece Martin worked for Defendants from approximately April 1, 2021 to
22 April 16, 2021, February 11, 2022 to March 1, 2022, and March 4, 2022 to to May 16, 2022 as an
23 hourly, non-exempt employee. Similarly situated employees also worked for Defendants during the
24 claim period as hourly, non-exempt employees.

25 17. Defendants failed to accurately record Plaintiff's and similarly situated employees' hours
26 worked. Defendants did not accurately record employees' precise start and end times or the precise start
27 and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of
28 Plaintiff's and similarly situated employees' hours worked. Defendants also deducted time for meal

1 periods Plaintiff and similarly situated employees did not receive. These practices resulted in unpaid
2 minimum and overtime wages.

3 18. Plaintiff and Aggrieved Employees worked on prevailing wage jobs and non-prevailing
4 wage jobs. Plaintiff and Aggrieved Employees also performed worked over eight (8) hours in a day
5 and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and
6 non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly
7 incorporate the value of the prevailing wage rates into Plaintiff's and Aggrieved Employees' regular
8 rates of pay for the purpose of calculating overtime wages and paid sick time for non-prevailing wage
9 overtime hours and/or the prevailing wage rate in effect for overtime on prevailing wage projects.

10 19. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all
11 meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work
12 for periods of more than five hours without providing them an off-duty meal period of at least 30
13 minutes. Defendants did not have a policy or practice to provide off-duty meal periods before the end of
14 the fifth hour of work. Defendants employed Plaintiff and Aggrieved Employees for periods of more
15 than 3.5 hours without providing them 10 minute rest periods. Defendants did not pay Plaintiff and
16 Aggrieved Employees all missed meal and rest period premiums they were owed.

17 20. Defendants required Plaintiff and similarly situated employees to travel to various job
18 sites throughout their employment using their personal vehicles. At times the locations required
19 Plaintiff and similarly situated employees to drive more than one (1) hour to or from work. Defendants
20 did not compensate Plaintiff and similarly situated employees for this travel time or pay them
21 reimbursement for mileage. Defendants also required Plaintiff and similarly situated employees to use
22 their personal cellphones to communicate for work without paying them any reimbursement.

23 21. At the time of Plaintiff's and similarly situated employees' separation from employment
24 they have accrued but unused vacation owing to them that Defendants failed to pay.

25 22. Due to the practices and policies outline above, Defendants did not provide Plaintiff and
26 similarly situated employees with accurate wage statements. For example, the wage statements did not
27 include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of
28 the period for which the employee is paid, the last four digits of the employee's social security number

1 or an employee identification number, and all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the employee, including but not
3 limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick
4 time, and meal and rest period premiums.

5 23. At the time of Plaintiff's and similarly situated employees' termination or separation they
6 had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not
7 fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO PAY OVERTIME WAGES**
11 **(As to all Defendants)**

12 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
13 set forth herein.

14 25. During the period Plaintiff was employed by Defendants, Defendants were required to
15 compensate employees at one and one-half (1½) times the regular rate of pay for hours worked in excess
16 of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
17 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 16, section*
18 *(3)(A); Cal. Lab. Code §§ 510, 1194.* Defendants were also required to compensate employees on
19 public works jobs one and one-half (1½) times the basic rate of pay for hours worked in excess of eight
20 (8) hours per day and/or forty (40) hours per week. *See Cal. Labor Code § 1815.*

21 26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
22 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
23 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
24 worked at the correct rate of pay.

25 27. Plaintiff and similarly situated employees were not exempt from overtime protections
26 employees under the California Wage Orders and Labor Code.

27 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
28 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
the extent pertinent as if set forth here in full.

1 employee, including but not limited to rates and corresponding hours for prevailing wages, minimum
2 and overtime wages, paid sick time, and meal and rest period premiums. Plaintiff and similarly
3 situated employees were not able to promptly and easily determine their total hours worked from
4 their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion
5 over whether they received all wages owed and were prevented from effectively challenging
6 information on their wage statements.

7 49. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10 **SIXTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**
12 **(As to all Defendants)**

13 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully
14 set forth herein.

15 51. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. *See* Cal. Lab. Code § 201.

17 52. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

19 53. Plaintiff and similarly situated employees did not receive all wages, including minimum
20 wages, overtime wages, prevailing wages, used but not fully paid sick leave, and meal and rest period
21 premiums at their termination or within the required time after their separation from employment.

22 54. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. *See* Cal. Lab. Code § 203.

25 55. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Indeed, Defendants had knowledge that it failed to
27 accurately track putative class members' hours worked resulting in unpaid wages, failed to provide
28 legally compliant meal and rest periods, failed to pay the correct prevailing wage rates, and failed to pay

1 the correct regular rates of pay. Such conduct shows Defendants had knowledge of earned, but unpaid
2 wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

3 56. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
5 thirty (30) days for Defendants' failure to pay all wages due.

6 **SEVENTH CAUSE OF ACTION**
7 **UNFAIR COMPETITION**
8 **(As to WESTERN ENGINEERING CONTRACTORS, INC. and DOES 1 to 100)**

9 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully
10 set forth herein.

11 58. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
12 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
13 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
14 California Business and Professions ("B&P") Code § 17200.

15 59. Plaintiff and similarly situated employees were not paid all wages owed, including
16 minimum and overtime wages, prevailing wages, and pad sick time during their employment or any time
17 thereafter. Moreover, through Defendants conduct Plaintiff and similarly situated employees were
18 denied statutory protections regarding meal and rest periods.

19 60. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
20 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
21 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

22 61. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
23 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
24 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
25 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
26 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1815, 1198; IWC Wage Order 16 § 6(A) (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 2802 (Failure to Reimburse Expenses)
- Violation of Labor Code § 227.3 (Failure to Pay Accrued Vacation)

64. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

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1 6. As to the Fifth Cause of Action:

- 2 a. Penalties as provided for in Labor Code section 226, including the greater of all
3 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
4 violation occurred and one hundred dollars (\$100.00) per employee for each
5 violation in the subsequent pay periods, but not to exceed four thousand dollars
6 (\$4,000.00);
- 7 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
8 226(e);

9 7. As to the Eighth Cause of Action:

- 10 a. For civil penalties as provided for in the Labor Code for each enumerated
11 violation;
- 12 b. For those Labor Code sections, the violation of which there is no civil penalty
13 provided, the default penalty provided in Labor Code section 2699(f): for any
14 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
15 period; For any subsequent violation, two hundred dollars (\$200) for each
16 aggrieved employee per pay period;
- 17 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 18 d. For any other remedies as allowed by law and/or deemed appropriate by the
19 Court;

20 8. As to the Ninth Cause of Action:

- 21 a. An amount to be proven at trial;
- 22 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

23 9. As to the Tenth Cause of Action:

- 24 a. An amount to be proven at trial;

25 10. For such other and further relief as this Court may deem just and proper,
26 including, but not limited to:

- 27 a. Wages as proved at trial;
- 28 b. Injunctive and Declaratory relief;

- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

Dated: February 12, 2024

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
Galen T. Shimoda
Justin P. Rodrigues
Brittany V. Berzin
Attorneys for Plaintiff

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EXHIBIT C



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December 5, 2023

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Martin v. Western Engineering Contractors, Inc.*

Dear Labor Commissioner,

As counsel for Maurece Martin (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3. Plaintiff is submitting this second amended PAGA notice to clarify the claim period.

Western Engineering Contractors, Inc.
3171 Rippey Road
Loomis, CA 95650

Don J. Carroll
3171 Rippey Road
Loomis, CA 95650

Theresa W. Carroll
3171 Rippey Road
Loomis, CA 95650

Lyndsey C. Gregory
3171 Rippey Road
Loomis, CA 95650

Josh Wertz
3171 Rippey Road
Loomis, CA 95650

We are setting forth the “facts and theories” to support each of the counts found within this letter. Please notify us of your intent to investigate any or all of the claims alleged herein against Western Engineering Contractors, Inc., Don J. Carroll, Lyndsey C. Gregory and Josh Wertz (“Defendants”). Should you decide not to investigate, we request that you allow us to bring an action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code



section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt, hourly employees who have, or continue to, work for Defendants in California from February 14, 2022 to the present. Plaintiff may bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff Maurece Martin worked for Defendants from approximately April 1, 2021 to April 16, 2021, February 11, 2022 to March 1, 2022, and March 4, 2022 to to May 16, 2022 as an hourly, non-exempt employee. Aggrieved Employees also worked for Defendants during the claim period as hourly, non-exempt employees.

Defendants failed to accurately record Plaintiff’s and Aggrieved Employees hours worked. Defendants did not accurately record employees’ precise start and end times or the precise start and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of Plaintiff’s and Aggrieved Employees’ hours worked. Defendants also deducted time for meal periods Plaintiff and Aggrieved Employees did not receive. These practices resulted in unpaid minimum and overtime wages.

Plaintiff and Aggrieved Employees worked on prevailing wage jobs and non-prevailing wage jobs. Plaintiff and Aggrieved Employees also performed worked over eight (8) hours in a day and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly incorporate the value of the prevailing wage rates into Plaintiff’s and Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime wages and paid sick time for non-prevailing wage overtime hours and/or the prevailing wage rate in effect for overtime on prevailing wage projects.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide off-duty meal periods before the end of the fifth hour of work. Defendants employed Plaintiff and Aggrieved Employees for periods of more than 3.5 hours without providing them 10 minute rest periods. Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums they were owed.

Defendants required Plaintiff and Aggrieved Employees to travel to various job sites throughout their employment using their personal vehicles. At times the locations required



Plaintiff and Aggrieved Employees to drive more than one (1) hour to or from work. Defendants did not compensate Plaintiff and Aggrieved Employees for this travel time or pay them reimbursement for mileage. Defendants also required Plaintiff and Aggrieved Employees to use their personal cellphones to communicate for work without paying them any reimbursement.

At the time of Plaintiff's and Aggrieved Employees' separation from employment they have accrued but unused vacation owing to them that Defendants failed to pay and/or did not pay at their final rate of pay.

Due to the practices and policies outline above, Defendants did not provide Plaintiff and Aggrieved Employees with accurate wage statements. For example, the wage statements did not include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of the period for which the employee is paid, the last four digits of the employee's social security number or an employee identification number, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, including but not limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick time, and meal and rest period premiums.

At the time of Plaintiff's and Aggrieved Employees' termination or separation they had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. Labor Code section 1815 requires contractors to pay employees on public works jobs 1 ½ times the basic rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.



Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State’s minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the



employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages, prevailing wages, sick time, and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Don J. Carroll, Lyndsey C. Gregory and Josh Wertz were officers, directors, shareholders, and/or managing agents of Western Engineering Contractors, Inc. responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Eight – Violation of Labor Code §§ 226.3, 1174, 1815, 1198 and Wage Order No. 16, § 6(A) (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject



shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 16, § 6(A) is a "standard condition of labor fixed by the commission." *See* Cal. Labor Code § 1198. It provides, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." *See* Wage Order No. 16, § 6(A)(1)-(3). Defendants failed to keep accurate records in compliance with Wage Order No. 16, § 6(A) and Labor Code § 1198. This was against the law.

Labor Code section 1812 requires every contractor and subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. Defendants failed to maintain accurate records of Plaintiff's and Aggrieved Employees' actual hours worked. This was against the law.

Count Nine – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick



leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave and/or sick leave wages meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count Ten – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for personal cellphone use and personal vehicle use by Plaintiff and Aggrieved Employees. This was in violation of the law.

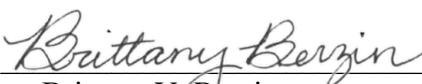
Count Elevent – Violation of Labor Code § 227.3 (Failure to Pay Accrued Vacation)

Labor Code section 227.3 provides, “[u]nless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.” Defendants failed to pay Aggrieved Employees all of their accrued but unused vacation and/or failed to pay it at their final rate of pay. This was against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Brittany V. Berzin

BVB:sb
cc: Client via e-mail

1 *Martin v. Western Engineering Contractors, Inc.*

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

4 I, Shaniya Baird, declare that:

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

7 On December 6, 2023, I served the following documents on the party below:

- 8 • **AMENDED PRIVATE ATTORNEY GENERAL ACT LETTER**

9 10 11	Western Engineering Contractors, Inc. 3171 Rippey Road Loomis, CA 95650	Don J. Carroll 3171 Rippey Road Loomis, CA 95650
12 13 14	Theresa W. Carroll 3171 Rippey Road Loomis, Ca 95650	Lyndsey C. Gregory 3171 Rippey Road Loomis, Ca 95650
15 16 17	Josh Wertz 3171 Rippey Road Loomis, Ca 95650	

18 [XXX] [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
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

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

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

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct, and that this declaration was executed on December 6, 2023, at Salt Lake City,
27 Utah.

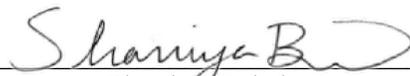
28 
Shaniya Baird

EXHIBIT D



Quotation Request:

Brittany Berzin
 Shimoda & Rodriguez Law, PC
 bberzin@shimodalaw.com
 833.201.0213

Case Name:

Martin v. Western Engineering Contractors Inc.
 Date: Monday, October 9, 2023
 RFP Number: 02130005

Prepared By:

Sean Hartranft
 Apex Class Action LLC
 Sean@apexclassaction.com
 949.878.3676

Settlement Specifications	
Estimated Class Size:	92
Certified Language Translation:	Optional
Static Settlement Website	Yes
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.				
			Sub Total:	\$275.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$2.00	92	\$184.00
USPS First Class Postage	Per Piece	\$0.87	92	\$80.04
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$3.00	18	\$55.20
Receive and Process Undeliverable Mail	Per Hour	\$75.00	0	\$0.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$20.00	1	\$20.00
Certified Language Translation: Spanish	Static Rate	\$1,200.00	Optional	\$1,200.00
			Sub Total:	\$1,734.24

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
			Sub Total:	\$530.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$18.64	1	\$18.64
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$518.64

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	92	\$138.00
USPS First Class Postage	Per Piece	\$0.66	92	\$60.72
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	9	\$18.40
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	5	\$500.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$2,487.12

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	1	\$120.00
			Sub Total:	\$355.00

TOTAL ESTIMATED ADMINISTRATION COST:				\$4,700.00
TOTAL ESTIMATED ADMINISTRATION COST WITH CERTIFIED SPANISH TRANSLATION:				\$5,900.00

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. **Apex warrants** that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's re-running, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.
9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.
11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.
12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**
13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**
14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.
15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**
16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.
17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**
18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.
19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

Martin v. Western Engineering Contractors - Shimoda & Rodriguez Law, PC Costs

Date	Description	Amount
2/13/23	PAGA Filing Fee	\$75.00
2/13/23	Certified Mail - PAGA Letter	\$47.40
2/27/23	One Legal Fee - File Complaint and pay Complex Fee	\$1,556.09
3/9/23	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
5/26/23	Mediator Fees	\$3,375.00
6/1/23	One Legal Fee - Amended Complaint	\$78.76
10/17/23	Mediator Remaining Fees	\$960.00
11/29/23	Certified Mail - Amended PAGA Letter	\$43.85
12/6/23	Certified Mail - Second Amended PAGA Letter	\$43.85
1/22/24	One Legal Fee - Joint CMC	\$16.88
2/13/24	One Legal Fee - Stip and Order to file Second Amended Complaint	\$37.47
Anticipated	One Legal Fee - Joint CMC	\$16.88
Anticipated	One Legal Fee - File PAM	\$300.00
Anticipated	Court Fee - PAM	\$60.00
Anticipated	One Legal Fee - File FAM	\$300.00
Anticipated	Court Fee - FAM	\$60.00
Anticipated	One Legal Fee - Compliance Declarations	\$30.00
		TOTAL: \$7,501.18

EXHIBIT F

CALIFORNIA SUPERIOR COURT
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

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023 (the “Class Members”) and all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California from February 14, 2022 up to October 8, 2023 (“Aggrieved Employees”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION AND PAGA LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Maurece Martin (“Plaintiff” or “Class Representative”), and Defendant Western Engineering Contractors, Inc. (“Defendant”) on behalf of Class Members and Aggrieved Employees as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member” and/or Aggrieved Employee. Defendant’s records also indicate that you worked [redacted] weeks during the applicable Class Period and/or PAGA period (as defined below), which means your total share of the settlement proceeds is estimated to be [redacted]. Your actual share of the settlement proceeds may vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On February 15, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00334816. The Class Period is from February 15, 2019 up to October 8, 2023 (the “Class Period”). On February 14, 2023, Plaintiff filed a Private Attorneys General Act (“PAGA”) notice with the Labor Workforce Development Agency and, on May 25, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act on behalf of himself and Aggrieved Employees. The PAGA Claim Period is from February 14, 2022 up to October 8, 2023 (the “PAGA Claim Period”). Plaintiff filed an amended PAGA notice on December 5, 2023 and filed a Second Amended Complaint on [redacted date].

In the Action, Plaintiff sought to obtain unpaid wages, interest, unpaid expenses, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees by alleging claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to provide paid sick leave, unfair competition, violations of the Private Attorneys General Act, failure to reimburse business expenses, and failure

to pay accrued vacation. Plaintiff alleged that Defendant violated California law by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods or to pay premiums in lieu thereof; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred. The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit.

Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have, or continue to, work for 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. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendant in California from February 14, 2022 up to October 8, 2023. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred and Seventeen Thousand Five Hundred (\$417,500) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$10,000, and \$41,750 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$41,750 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees based on the number of workweeks worked during the PAGA Claim Period.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-

wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as from February 14, 2022 up to October 8, 2023. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member or do not meet the definition of Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or Aggrieved Employee. If a Class Member / Aggrieved Employee disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class Members who do not opt out will be deemed to have released any and all claims that are alleged in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release includes but is not limited to claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage Order 16, § 3); (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order 16 § 4); (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B)); (4) rest period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A)); (5) wage statement penalties (CA Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A)); (6) waiting time penalties (CA Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5, 248.5); (8) unfair competition (CA Business & Professions Code § 17200, et seq.); (9) Private Attorneys General Act, (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint, Plaintiff's PAGA letters to the Labor Workforce Development Agency and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint and PAGA letters during the PAGA Claim Period. This release includes but is not limited to claims for (1) Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, §4); (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, § 11(A), (B)); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7 and IWC Wage Order 16, § 12(A)); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§ 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§ 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174, 1815, 1198 and IWC Wage Order 16, § 6(A)); (9) Failure to Provide Paid Sick

Leave (CA Labor Code §§ 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released (“Released Parties”) include Defendant, as well as Defendant’s current and former officers, shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J. Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz

Class Members and/or Aggrieved Employees can talk to the Court-approved Settlement Administrator, Apex Class Action, if they have any questions..

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or want to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816) (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

You may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 27, 720 9th Street Sacramento, California 95814, on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca.gov.zoomgov.com/my/sscdept27>. To join by phone: (833) 568-8864 / ID: 16120204632. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. SETTLEMENT CHECKS

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. Any check not negotiated within 180 days of issuance shall be distributed to Sacramento Food Bank and Family Services. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

VII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel’s motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator’s website: [admin web address]. If final approval is granted, a notice of entry of order and copy of the order will be available on the Court’s Public Case Access website: <https://services.saccourt.ca.gov/PublicCaseAccess/>. You can also contact Class Counsel or Defendant’s Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Carrie E. Bushman
Cook Brown LLP
2407 J Street Second Floor
Sacramento, CA 95816
Telephone: 916-442-3100
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

Deanna Morgensen

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, March 5, 2024 1:57 PM
To: Deanna Morgensen
Subject: Thank you for your Proposed Settlement Submission



IRONSCALES couldn't recognize this email as this is the first time you received an email from this sender
lwdadonotreply@dir.ca.gov

[You don't often get email from lwdadonotreply@dir.ca.gov. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

03/05/2024 01:56:11 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm