

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**

Gordon D. Schaber Superior Court, Department 23

JUDICIAL OFFICER: HONORABLE JILL H. TALLEY

Courtroom Clerk: J. Zraggen  
Court Attendant: C. Carrillo

CSR: None

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**34-2023-00334816-CU-OE-GDS**

March 29, 2024  
9:00 AM

**Maurece Martin vs. Western Engineering Contractors,  
Inc**

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**MINUTES**

**APPEARANCES:**

No Appearances

**NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement**

**NO APPEARANCE REQUIRED**

Plaintiff Maurece Martin’s (“Plaintiff”) motion for preliminary approval of Class Action and Private Attorneys General Act (“PAGA”) settlement is UNOPPOSED and GRANTED as follows.

**Overview**

On February 15, 2023, Plaintiff filed a class action complaint against Defendant Western Engineering Contractors, Inc. (“Defendant”). Plaintiff filed a First Amended Complaint that added a representative claim pursuant to PAGA. The operative Second Amended Complaint alleges causes of action for: (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) penalties pursuant to PAGA; (9) failure to reimburse expenses; and (10) failure to pay accrued vacation.

The Parties engaged in informal discovery and exchanged documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the applicable statement of limitations. (Berzin Decl. ¶ 7.) On October 9, 2023, the Parties participated in a mediation with Russ J. Wunderli, Esq. (*Id.* at ¶ 8.) The Parties reached a settlement at mediation and subsequently entered into a written settlement agreement. (*Id.* at ¶ 8; Ex. A (“Agreement”).) Plaintiff now seeks preliminary settlement approval. This ruling incorporates by reference the definitions in the Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth in the Agreement.

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## **Settlement Class Certification**

Plaintiff seeks certification of the following Settlement Class: All non-exempt, hourly 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. (Agreement ¶¶ 1.5-1.6.) There are approximately 92 Class Members. (Berzin Decl. ¶ 10.) The Parties have stipulated to certification of the Settlement Class. (Agreement ¶ 5.12.) The Court finds the requirements for class certification have been met. Accordingly, the Court preliminarily certifies the proposed Class for settlement purposes only.

## **Aggrieved Employees**

Aggrieved Employees are defined in the Agreement 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. (Agreement ¶¶ 1.2 & 1.23.) Counsel submitted a copy of this motion and the Agreement to the Labor and Workforce Development Agency (“LWDA”). (Berzin Decl. ¶ 22; Ex. G.) Aggrieved Employees will receive their share of the PAGA penalty regardless of whether they opt out of the Class portion of the settlement. (Agreement ¶ 7.5 & Ex. 1 (“Class Notice”).)

## **Class Representative**

The Court preliminarily appoints Plaintiff Maurece Martin as Class Representative for settlement purposes only.

## **Class Counsel**

The Court preliminarily appoints Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC as Class Counsel for settlement purposes only.

## **Settlement Administrator**

The Court appoints Apex Class Action as the Settlement Administrator.

## **Fair, Adequate and Reasonable Settlement**

The Court must find a settlement is “fair, adequate, and reasonable” before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Id.* at 1802.) In making its fairness determination, the Court considers the strength of

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the Plaintiffs' case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, and the experience and views of counsel. (*Id.* at 1801.) In approving a class action settlement, the Court must "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

This is a non-reversionary, opt-out settlement. Defendant will pay the Gross Settlement Amount ("GSA") of \$417,500.00. (Agreement ¶ 5.1.) Defendant will pay employer-side payroll taxes in addition to the GSA. (*Ibid.*) The following will be paid out of the GSA: (1) attorneys' fees to Class Counsel in an amount not to exceed 35% of the GSA (\$146,125) and costs not to exceed \$10,000; (2) settlement administration costs not to exceed \$10,000; (3) an enhancement payment to Plaintiff not to exceed \$10,000; (4) a PAGA Payment in the amount of \$41,750 (75% of which will be paid to the LWDA and 25% of which will be paid to Aggrieved Employees); and (5) individual payments. (*Id.* at ¶¶ 5.2-5.5.)

For tax purposes, individual settlement payments will be allocated as: one-third wages, two-thirds penalties and interest. (Agreement ¶¶ 5.9.1-5.9.2.) PAGA Payments will be treated entirely as penalties. (*Id.* at ¶ 5.9.3.) Class Members have 60 days to opt-out, object, or submit a workweek dispute. (*Id.* at ¶ 1.21.) The funds from any settlement checks that remain uncashed after 180 days will be paid to Sacramento Food Bank and Family Services under the doctrine of *cy pres*. (*Id.* at ¶¶ 5.6 & 7.9.)

### **Disposition**

The Court preliminarily finds that the settlement is entitled to a presumption of fairness and that all relevant factors support preliminary approval. (*Dunk*, supra, 48 Cal.App.4th at 1802.) The moving papers demonstrate the settlement was reached after arms-length bargaining between the parties and was reached after sufficient discovery and negotiations, which allowed the parties, and therefore, this Court, to act intelligently with respect to the settlement. Class Counsel conducted a thorough investigation into the facts and law and issue in this case, including the exchange of discovery and the review of extensive information. Therefore, the motion is granted. The Court also approves the Proposed Class Notice. **However, the Notice sent to Class Members and Aggrieved Employees must be updated to state that the correct department for this matter is Department 23.** The Notice shall be disseminated as provided in the Agreement.

**The Court sets the final approval hearing for August 9, 2024 at 9:00 a.m. in this Department.** The Court will sign the proposed order submitted with the moving papers.

*To request oral argument on this matter, you must call Department 23 at 916-874-5754 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court.*

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*(Local Rule 1.06.)*

**Please check your tentative ruling prior to the next Court date at [www.saccourt.ca.gov](http://www.saccourt.ca.gov) prior to the above referenced hearing date.**

***If oral argument is requested, the parties may and are encouraged to appear by Zoom with the links below:***

To join by Zoom Link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>

To join by phone dial (833) 568-8864 ID 16108301121

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code section 68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list. Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.

**Counsel for Plaintiff is directed to notice all parties of this order.**

Hearing on Motion for Final Approval of Settlement is scheduled for 08/09/2024 at 09:00 AM in Department 23 at Gordon D. Schaber Superior Court.

## **COURT RULING:**

There being no request for oral argument, the Court affirmed the tentative ruling.

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*/s/ J. Zraggen*

By: J. Zraggen, Deputy Clerk

Minutes of: 03/29/2024  
Entered on: 03/29/2024

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

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

5 I, Miriam Tapia, declare that:

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

8 On March 29, 2024, I served the following documents on the party below:

9 • **MINUTE ORDER**

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

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

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

23 [ ] [By Overnight Courier] By causing a true copy and/or original thereof to be  
24 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 March 29, 2024, at Salt Lake City,  
27 Utah.

28   
\_\_\_\_\_  
Miriam Tapia