

RESOLUTION NO. 2023-35

A RESOLUTION OF THE CITY OF MARINA AWARDING THE IMJIN PARKWAY WIDENING PROJECT TO MONTEREY PENINSULA ENGINEERING OF MARINA, CALIFORNIA FOR THE AMOUNT OF \$27,782,058.47, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS AND ALL CHANGE ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, at the regular meeting of October 4, 2016, the City Council adopted Resolution No. 2016-142, Approving agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services for the widening of Imjin Parkway in the amount of \$2,173,520. The contract agreement has received two amendment approvals through Council Resolution No. 2019-14 and No. 2019-115, and;

WHEREAS, at the regular meeting of June 15, 2017, the Public Works Commission adopted Resolution No. 2017-05(PW), receiving information on the City's Imjin Parkway Widening Project 30% Design, and;

WHEREAS, at the regular meeting of September 18, 2018, the City Council adopted Resolution No. 2018-111, approving a Senate Bill 1 Local Partnership Program Baseline Agreement (SB1 LPP) to receive grant funding amounting to \$19 million for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of November 19, 2019, the City Council approved Resolution 2019-124, approving a Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor-Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of the California Transportation Commission of October 13-14, 2021, the Commission approved the allocation for locally administered Senate Bill 1 Local Partnership Program funds for the construction of the project, and;

WHEREAS, at the regular meeting of November 2, 2021, the City Council approved Resolution No. 2021-116, approving advertising and call for bids for the Imjin Pkwy Widening Project, and;

WHEREAS, at the regular meeting of November 15, 2022, the City Council approved Resolution 2022-136, approve Amendment No.1 to the Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of March 23-24, 2023, the California Transportation Commission approved the TAMC allocation of \$1.25 million of Senate Bill 1 Local Partnership Program funding to the Imjin Parkway Widening Project, and;

WHEREAS, on December 15, 2022, City staff advertised the Project with an Engineer's construction contract estimate of \$29-34 million. On January 31, 2023, sealed bids were received, opened and publicly read for the Imjin Parkway Widening Project, and;

WHEREAS, five (5) bids were received, opened and publicly read for the Imjin Pkwy Widening Project, and;

WHEREAS, the lowest bid total is \$27,782,058.47 from Monterey Peninsula Engineering (MPE) of Marina, California. The cost estimate for City staff construction management, inspection, material testing, biological surveying, construction design support, administration, contingency and project closeout is \$11,960,000. Therefore, the total project cost amounts to \$39,742,058.47, and;

WHEREAS, on February 8, 2023, staff received a bid advisory notice via email from the Foundation for Fair Contracting organization (FFC) requesting that the City reject MPE's bid proposal ("Exhibit A"). Per the City's Municipal code and project contract documents, FFC as a non-profit does not meet the requirements to submit an official bid protest. The allegations of non-responsiveness were reviewed by the City Attorney who found no validation to reject MPE's bid proposal. The contractor also provided the City with a response to the bid advisory notice ("Exhibit B"). After consideration of the information provided, staff has found the bid to be responsive and find no issues concerning MPE's responsibility to perform the work of the contract ("Exhibit C"). The construction contract for the project requires that state prevailing wages be paid for the work performed. City's Construction Management consultant, Harris and Associates, will monitor compliance with prevailing wage laws for the duration of the project as part of their scope of work, and;

WHEREAS, consistent with SB1 and Measure X grant procedures, these grants will be reimbursed for project expenditures to the City. The City previously allocated \$2 million in Public Facility Impact Fees (PFIF, Roadway) as part of the Fiscal Year 21/22 budget. These PFIF funds will be utilized to advance the payment of project costs prior to reimbursement. This project timeline is approximately two and a half years, and PFIF will be restored by the grant funds. It is currently estimated that \$500,000 in project costs will be expended in Fiscal Year 22/23, with the remainder to be expended in Fiscal Years 23/24 and 24/25. Administering reimbursement with the grantor will be done on a quarterly basis or more frequently as deemed cost effective, and;

WHEREAS, the total construction budget for the project is \$40.5 million, funded with \$20.25 million from the Local Partnership Program competitive grant; \$18.25 million from Measure X; and \$2 million from Public Facility Impact Fees (PFIF, Roadway), and;

WHEREAS, should the City Council approve this request, the City Finance Director will make all necessary accounting and budgetary entries to facilitate a short-term intrafund loan to the Capital Improvement Program Project EDR1808 – Imjin Pkwy Widening, and;

WHEREAS, at the regular meeting of February 5, 2019, the City Council adopted Resolution No. 2019-11, adopting a mitigated negative declaration and mitigation monitoring program for the Imjin Parkway Widening Project. The Notice of Determination was filed with the State Office of Planning and Research and recorded with the Monterey County Records Office, and;

WHEREAS, in reviewing and approving projects under NEPA, Caltrans is the lead Agency in complying with all applicable federal environmental laws and with Federal Highway Administration's (FHWA) NEPA regulations, policies, and guidance, and is legally responsible and liable for the environmental decisions made on projects under NEPA Assignment. Caltrans has determined that this project is a Categorical Exclusion under 23 USC 327, and;

WHEREAS, the California Endangered Species Act (CESA) incidental take permit (ITP) has been issued by the California Department of Fish and Wildlife (CDFW) on December 12, 2022. All requirements set by the Permit and its Mitigation Monitoring and Reporting Program (MMRP) are currently underway, and staff are working with CDFW to finalize all protection measures and conditions prior to start of construction. The anticipated construction start date is June 2023.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that:

1. Award the Imjin Parkway Widening Project to Monterey Peninsula Engineering of Marina, California for the amount of \$27,782,058.47, and;
2. Authorize the City Manager to execute contract documents and all change orders on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 4th day of April 2023, by the following vote:

AYES: COUNCIL MEMBERS: Visscher, McCarthy, Biala, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Medina Dirksen

ABSTAIN: COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



VIA EMAIL – bmcminn@cityofmarina.org

February 9, 2023

Brian McMinn
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

RE: BID ADVISORY	
Bidder:	Monterey Peninsula Engineering
Awarding Agency:	City of Marina
Project:	Imjin Parkway Widening Project (RSTPL-5416(011))
FFC Case No.:	1089SJ

Dear Mr. McMinn:

The Foundation for Fair Contracting (FFC) is a nonprofit organization which has been serving the public interest since 1985. The objective of the FFC is to monitor compliance with prevailing wage laws pertaining to the construction industry, including informing and educating industry stakeholders. Unbalanced bids raise questions in regard to performance and compliance with the rules and regulations for the payment of prevailing wages, and the safety and well-being of the workforce. It further opens the question of excessive future change orders, the fairness to and rights of other bidders in the bidding process, and the intent of the bidding process in general.

In deference to all bidders and in order for the public interest to best be served, please enter this formal bid advisory against the above-noted contractor as a matter of public record. We respectfully request that Monterey Peninsula Engineering (MPE) bid be rejected for the following reasons:

- **ONGOING VIOLATIONS OF PREVAILING WAGE LAWS RESULTING IN WAGE THEFT**

MPE has numerous infractions/violations which have resulted in willful circumvention of the Laws and Regulations Governing the Payment of Prevailing Wages, including, but not limited to, violations resulting in wage theft and non-compliance with apprenticeship laws. MPE has engaged in this pattern of unlawful activity on various public works prevailing wage projects. Civil Wage and Penalty Assessments have been issued to MPE by the State of California, Division of Labor Standards Enforcement (DLSE), Labor Commissioner's office. We have provided supporting documentation for your review.

Furthermore, MPE is currently under investigation by our offices and the State of California, Division of Labor Standards Enforcement (DLSE), Labor Commissioner's office in connection with issues provided below. We have provided supporting documentation for your review.

- Misclassifications resulting in underpayments.
- Failure to comply with overtime requirements.

Brian McMinn
City of Marina
February 9, 2023
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- Failure to comply with apprenticeship requirements.
- Failing to report all workers on certified payrolls.
- **FAILURE TO COMPLY WITH WORKFORCE DEVELOPMENT AND FORMAL APPRENTICESHIP PROGRAMS**
MPE has not made a good faith effort to participate and invest in Local Workforce Development, nor have they participated in local hiring of workers in the community through formal and recognized pre-apprenticeship programs and formal apprenticeship programs for specific apprenticeable crafts. They have failed to request, employ, train, and pay the proper prevailing wages to apprentices.
- **LITIGATION AND PRIVATE ATTORNEY GENERAL ACT (PAGA) LAWSUITS**
MPE has history of litigation and PAGA related lawsuits filed with the State of California, brought forth from workers who have been victims of wage theft. Private litigation and PAGA supporting documentation are attached for your review.

Please contact our office with questions, comments, or clarifications.

Sincerely,



Jesse Jimenez
Executive Director

Case: 1089SJ

cc: City of Marina – Mayor and Councilmembers
Bruce Carlos Delgado – Email: bdelgado62@gmail.com
Cristina Medina Dirksen – Email: cmedinadirksen@cityofmarina.org
Brian McCarthy – Email: bmccarthy@cityofmarina.org
Kathy Y. Biala – Email: kybiala@icoud.com
Liesbeth Visscher – Email: councilmember_visscher@cityofmarina.org

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
Bureau of Field Enforcement- Public Works

6305J
Gavin Newsom, Governor



RECEIVED

DATE:
November 27, 2019

In Reply Refer to Case No:
40-56394/148

CIVIL WAGE AND PENALTY ASSESSMENT

DEC - 2 2019

Foundation for
Fair Contracting

Awarding Body City of Marina	Work Performed in County of Monterey
Project Name Del Monte Blvd & Beach Blvd Rd Improvement Project	Project No. T129
Prime Contractor Monterey Peninsula Engineering A Partnership, a general partnership; MONTEREY PENINSULA ENGINEERING and MPE MANAGEMENT GROUP, each individually and as general partners of Monterey Peninsula Engineering A Partnership, a general partnership	
Subcontractor	

After an investigation concerning either the payment of wages to workers employed in the execution of the contract for the above-named public works project or compliance with the apprenticeship standards found in Labor Code section 1777.5, or both, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations:

Violation of Labor Code §1771, 1774: Failure to report all hours worked on the certified payroll records; Failure to correctly classify and pay workers pursuant to the scope of work performed; Failure to pay Saturday worked at the required Saturday rate. Violation of Labor Code §1815: Failure to pay overtime worked at the required overtime rates. Violation of Labor Code §1777.5: Failure to make training fund contributions for the unreported/misclassified hours.

Apprenticeship Violations:

Violation of Labor Code §1777: Failure to provide contract award information in a timely manner.

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$15,898.00

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$20,815.00

The Division has determined that the amount of penalties assessed under Labor Code section 1777.7 is: \$160.00

The Division has determined that the amount of penalties assessed under Labor Code section 1776 against Monterey Peninsula Engineering A Partnership is: \$0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By Dina Morsi
Dina Morsi
Deputy Labor Commissioner II

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

State of California - Labor Commissioner
Civil Wage and Penalty Assessment Review Office
PO Box 255809
2801 Arden Way
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Dina Morsi
at the following address:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Public Works Unit
7718 Meany Avenue
Bakersfield, CA 93308

Payment of Civil Wage and Penalty Assessment

Payment of the assessed wages and/or penalties must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Cashiering Unit
2031 Howe Avenue, Suite #100
Sacramento, CA 95825

(continued on next page)

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Accounting - Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is:

\$15,898.00

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Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	\$15,898.00
Penalties Due Under Labor Code sections 1775 and 1813:	\$20,815.00
Penalties Due Under Labor Code section 1777.7:	\$160.00
Penalties Due Under Labor Code sections 1776:	\$0.00
Total Withholding Amount:	\$36,873.00

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☐ **If this box is checked**, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	\$15,898.00
Penalties Due Under Labor Code sections 1775 and 1813:	\$20,815.00
Penalties Due Under Labor Code section 1777.7:	\$160.00
Penalties Due Under Labor Code sections 1776:	\$0.00
Total Withholding Amount:	\$36,873.00

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL**

I, Dina Morsi, do hereby certify that I am a resident of or employed in the County of
Kern, over 18 years of age, and not a party to the within action, and that I am employed at
and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement- Public Works Unit
7718 Meany Avenue
Bakersfield, CA 93308

On November 27, 2019, I served the within: (1) Civil Wage and Penalty Assessment
by placing a true copy thereof in an envelope addressed as follows:

City of Marina 211 Hillcrest Ave. Marina, CA 93933 Daniel Paolini	Monterey Peninsula Engineering A Partnership 192 Healy Ave. Marina, CA 93933 Bartolo James Bruno	The Continental Insurance Company Care of: C T Corporation System 818 West Seventh St. Ste. 930 Los Angeles, CA 90017
Foundation for Fair Contracting 3807 Pasadena Ave., Suite 150 Sacramento, CA 95821 Arturo Sainz		

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,
and then depositing it in the United States mail in Bakersfield by:

- ☒ Ordinary first class mail
☒ Certified mail
☐ Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on November 27, 2019, at Bakersfield, County of Kern, California

Dina Morsi
SIGNATURE

STATE CASE NO.
40-56394/148

From: Rivera, Lori@DIR <LRivera@dir.ca.gov>

To: 'eva4ffc@aol.com' <eva4ffc@aol.com>

Subject: 40-38903 CWPA

Date: Mon, Mar 9, 2015 9:09 am

Attachments: 40-38903 CWPA.pdf (4367K)

50855

Lori R Rivera
Deputy Labor Commissioner I
Public Works Compliance Monitoring & Enforcement Unit

STATE OF CALIFORNIA
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT
7718 Meany Ave
Bakersfield, CA 93308
Phone 661-587-3071 Fax 661-587-3081
Lrivera@dir.ca.gov

RECEIVED

MAR 09 2015

Foundation for
Fair Contracting

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works 7718 Meany Ave Bakersfield, CA 93308 TEL: 661-587-3071 FAX: 661-587-5081, lriviera@dir.ca.gov	Edmund G. Brown Jr., Governor 
DATE: March 9, 2015	In Reply Refer to Case No: 40-38903-522

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of Pacific Grove	Work Performed in County of Monterey
PROJECT NAME Reconst of Wastewater Pump Station II & Force Main Replacement Include, Ocean View Blvd St. Overlay &	Project No.
Prime Contractor Monterey Peninsula Engineering, a general partnership dba Monterey Peninsula Engineering; MPE Management Group a general Partner of Monterey Peninsula Engine	
Subcontractor Monterey Peninsula Engineering, a general partnership dba Monterey Peninsula Engineering; MPE Management Group a general Partner of Monterey Peninsula Engine	

After an investigation concerning either the payment of wages to workers employed in the execution of the contract for the above-named public works project or compliance with the apprenticeship standards found in Labor Code section 1777.5, or both, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations: The contractor violated LC §1771 and §1774 wherein they failed to pay the required prevailing wage rate to workers employed in the execution of this public works contract. The contractor also failed to pay the required amount into the appropriate training fund pursuant to LC §1777.5.

Apprenticeship Violations: _____

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$68,156.31

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$16,015.00

The Division has determined that the amount of penalties assessed under Labor Code section 1777.7 is: \$0.00

The Division has determined that the amount of penalties assessed under Labor Code section 1776 against Monterey Peninsula Engineering, a general partnership dba Monte is: \$0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By Lori Rivera
 Lori Rivera
 Deputy Labor Commissioner I

PW 33 (Revised - 7/2015)

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner - State of California
Civil Wage and Penalty Assessment Review Office
PO Box 255809
2801 Arden Way
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

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Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Lori Rivera at the following address:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Public Works Unit
7718 Meany Ave
Bakersfield, CA 93308

Payment of Civil Wage and Penalty Assessment

Payment of the assessed wages and/or penalties must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Cashiering Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825-0196

(continued on next page)

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is: \$68,156.31

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	\$68,156.31
Penalties Due Under Labor Code sections 1775 and 1813:	\$16,015.00
Penalties Due Under Labor Code section 1777.7:	\$0.00
Penalties Due Under Labor Code sections 1776:	\$0.00
Total Withholding Amount:	\$84,171.31

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☐ If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	\$68,156.31
Penalties Due Under Labor Code sections 1775 and 1813:	\$16,015.00
Penalties Due Under Labor Code section 1777.7:	\$0.00
Penalties Due Under Labor Code sections 1776:	\$0.00
Total Withholding Amount:	\$84,171.31

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL**

I, Linda Rodriguez, do hereby certify that I am a resident of or employed in the County of
Kern, over 18 years of age, and not a party to the within action, and that I am employed at
and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
7718 Meany Avenue
Bakersfield, CA 93308

On March 9, 2015, I served the within: (1) Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

City of Pacific Grove
300 Forest Ave., 2nd Floor
Pacific Grove, CA 93950
Daniel Gho - PW Superintendent

Monterey Peninsula Engineering, a general p
192 Healy Ave
Marina, CA 93933
Bartolo James Bruno

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,
and then depositing it in the United States mail in Bakersfield by:

- ☒ Ordinary first class mail
☒ Certified mail
☐ Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on March 9, 2015, at Bakersfield, County of Kern, California

SIGNATURE

STATE CASE NO.
40-38903-522

PW 34 (Revised - 4/2012)

EMPLOYER / FIRM				DEPUTY				OFFICE				\$84,171.30			
Monterey Peninsula Engineering A Partnership				Lori Rivera				Bakersfield				WAGES DUE AND OWING			
ADDRESS				CITY				TRANSCRIBER				\$67,122.48			
192 Healy Ave				Marina, CA 93933				PRIME				PENALTIES DUE AND OWING			
PROJECT				AWARDING BODY				AUDIT NUMBER/CASE NUMBER				\$16,015.00			
Reconst of Wastewater F City of Pacific Grove				Monterey Peninsula En				40-38903-522				TRAINING FUND DUE/OWING			
												\$1,033.83			
EMPLOYEE	CLASSIFICATION	PERIOD WORKED	ST.	OT.	D.T.	HOURS WORKED	OTHER WAGES PAID	TOTAL WAGES PAID	PREVAILING WAGE REQUIREMENTS * OTHER	AMOUNT OWING AND UNPAID	PENALTIES NO.1	PENALTIES NO. 2	TRNG. FUND	TOTAL AMOUNT DUE	
ALVAREZ, JOSE A.	Laborer Grp 1	10/05/13 - 10/05/13	8	0	0	8	0.00	172.00	0.00	366.32	40.00	0.00	3.12	237.44	
AYALA, JOSE LUIS	Laborer Grp 1	07/18/14 - 04/12/14	48	0	0	48	0.00	1056.00	0.00	2197.92	240.00	0.00	18.72	1400.64	
BALLAGH, MICHAEL T.	Laborer Grp 1	12/07/13 - 03/08/14	75.5	13.25	0	88.75	0.00	1812.14	0.00	4242.01	560.00	75.00	34.61	3099.48	
BELTRAN, EDUARDO	Laborer Grp 1	09/28/13 - 04/12/14	102	13	0	115	0.00	2264.50	0.00	5655.68	680.00	125.00	48.53	4244.71	
BRUNO, BART N.	Laborer Grp 1	08/17/13 - 08/24/13	12	0	0	12	0.00	144.00	0.00	549.48	120.00	0.00	4.68	530.16	
CHAVARIN, RAUL	Laborer Grp 1	08/17/13 - 04/12/14	631.5	27.25	0	658.75	0.00	11766.59	0.00	30584.30	3960.00	325.00	257.83	23360.54	
CORONA, TOMAS	Laborer Grp 1	11/30/13 - 03/08/14	32	3	0	35	0.00	730.00	0.00	1642.99	200.00	25.00	13.65	1151.64	
DE LA TORRE, LUIS E.	Laborer Grp 1	12/07/13 - 04/05/14	12	4	0	16	0.00	306.00	0.00	786.42	80.00	25.00	6.24	591.66	
FERNANDEZ, ANTONIO	Laborer Grp 1	07/11/14 - 04/12/14	40	1	0	41	0.00	830.00	0.00	1890.84	240.00	0.00	15.99	1316.83	
FLAGOR, NEIL G.	Laborer Grp1, Oper. Engr	10/12/13 - 10/26/13	16	0	0	16	0.00	320.00	0.00	840.16	80.00	0.00	8.08	608.24	
GARCIA, DAVID Z.	Laborer Grp 1	10/12/13 - 02/08/14	95.5	0.5	0	96	0.00	1814.50	0.00	4402.56	520.00	25.00	37.44	3170.50	
GOMEZ, JOSE O.	Laborer Grp 1	09/28/13 - 01/25/14	213.5	15.25	0	228.75	0.00	4491.13	0.00	10679.50	1400.00	100.00	89.21	7777.59	
GUIDOTTI, STEPHEN D.	Laborer Grp 1	01/11/14 - 01/18/14	36	2	0	38	0.00	663.00	0.00	1766.91	200.00	25.00	14.82	1343.73	
JUAREZ, JOSE	Laborer Grp 1	08/17/13 - 02/15/14	185	17	1	202	0.00	4664.00	0.00	9527.93	1080.00	175.00	78.98	6197.91	
KIM, SONIL	Laborer Grp 1	10/19/13 - 03/08/14	148	14	1	162	0.00	3460.75	0.00	7626.38	960.00	100.00	63.18	5288.81	
LAUDERDALE, JR., FRED	Laborer Grp 1	11/30/13 - 04/12/14	41	6	0	47	0.00	1218.75	0.00	2395.33	280.00	50.00	21.62	1528.20	
MARTINEZ, JOSE	Op. Engr. Grp 4	08/17/13 - 02/15/14	62	1	0	63	0.00	1254.50	0.00	3748.18	320.00	0.00	39.06	2852.74	
OLMOS, BRYAN J.	Laborer Grp 1	11/30/13 - 04/05/14	16	1	0	17	0.00	243.75	0.00	739.36	120.00	0.00	6.24	621.85	
PULIDO, JUAN	Laborer Grp 1, Teamster	06/24/13 - 04/12/14	50	1	0	51	0.00	639.00	0.00	2409.22	280.00	50.00	28.17	2128.39	
SANDOVAL, HERMENEGILDO	Laborer Grp 1	11/30/13 - 12/07/13	8	2	0	10	0.00	225.50	0.00	455.17	80.00	0.00	3.71	313.38	
SANDOVAL, JR., MANUEL	Laborer Grp 1	11/04/14 - 02/22/14	28	1	0	29	0.00	678.50	0.00	1341.36	160.00	0.00	11.31	834.17	
SANDOVAL, MANUEL J.	Laborer Grp 1	07/04/14 - 02/22/14	56	1	0	57	0.00	1276.88	0.00	2593.86	280.00	25.00	22.04	1644.01	
SANDOVAL, PORFIRIO	Laborer Grp 1	03/24/13 - 08/24/13	8	0	0	8	0.00	144.00	0.00	366.32	40.00	0.00	3.12	265.44	
Balance Brought forward from audit3 Summary															
							0.00	11477.75	0.00	21967.54	2720.00	250.00	203.49	13663.27	
							0.00	51653.23	0.00	118775.71	14640.00	1375.00	1033.83	\$84,171.30	

The following entries represent the amounts relied upon for calculating Labor Code 1775 and 1813 penalties.

The following entries represent the amounts relied upon for calculating Labor Code 1775 and 1813 penalties.

1775	40.00	Per Day
1813	25.00	Per Day

Labor Commissioner, State of CaliforniaDepartment of Industrial Relations
Division of Labor Standards Enforcement**DIVISION USE ONLY:**TAKEN BY: _____ CASE # _____
DATE TAKEN: _____ ASSIGNED TO: _____
OFFICE: _____ DATE RECEIVED: _____
DATE ASSIGNED: _____**PUBLIC WORKS – PUBLIC COMPLAINT**

The following information is important and must be provided.

Complainant Information			
1. FIRST NAME Arturo	2. LAST NAME Sainz	3. COMPANY NAME Foundation for Fair Contracting	4. WORK/CELLULAR NO (916) 487-7871/ (916) 549-6378
5. CONTACT ADDRESS 3807 Pasadena Avenue, Suite 150 - Fax: (916) 487-0306		6. CITY Sacramento	7. STATE / ZIP CODE CA 95821
		8. EMAIL ADDRESS sainz@ffccalifornia.com	
Project Information			
Note: A separate form must be completed for each project in which you are alleging a violation of prevailing wages.			
9. PROJECT NAME (If known) Downtown Complete Streets Project			
10. LIST ADDRESS(ES) OF PROJECT WHERE WORK WAS PERFORMED: West Alisal at Main Street and East Gabilan and Main Street - Salinas, California			
Monterey County			
Complaint Against			
11. NAME OF BUSINESS/CONTRACTOR/EMPLOYER Monterey Peninsula Engineering A Partnership			12. CONTRACTOR'S STATE LIC. NO 972425
13. ADDRESS OF BUSINESS/CONTRACTOR/EMPLOYER (Include Zip Code) 192 Healy Avenue Marina, CA 93933			14. BUSINESS TEL. NO 559-994-6025
15. EMAIL ADDRESS paul@mpe2000.com	16. NAME OF PERSON IN CHARGE Bartolo James Bruno	17. TITLE RME	
Awarding Body			
18. NAME OF PUBLIC AGENCY/AWARDED CONTRACT ENTITY City of Salinas			
19. ADDRESS OF AWARDING BODY 200 Lincoln Avenue Salinas, CA 93901			20. BUSINESS TEL. NO/ (831) 758-7241
21. EMAIL ADDRESS eda@ci.salinas.ca.us	22. NAME OF PERSON IN CHARGE / TITLE Eda Herrera	23. AMOUNT OF CONTRACT \$8,552,484.00	
24. FIRST BID AD DATE 07/10/2019	25. DATE PROJECT BEGAN 04/06/2020	26. PROPOSED FINISH DATE 01/31/2021	27. DATE OF NOTICE OF COMPLETION TBD
General Contractor (Prime Contractor)			
28. NAME OF GENERAL CONTRACTOR Same as Above			29. CONTRACTOR'S STATE LIC.
30. ADDRESS			31. BUSINESS TEL. NO
32. EMAIL ADDRESS			34. TITLE
33. NAME OF PERSON IN CHARGE			
Prevailing Wage Issues (Attach statements substantiating the allegation)			
35. BRIEF EXPLANATION OF ISSUES: (Check all applicable boxes)			
☒ Non-payment /Underpayment of wages ☐ Not paid travel and subsistence ☒ Under reporting of hours			
☒ Unpaid overtime/Sat/Sun/Holiday rate ☒ Misclassification of worker ☐ Insufficient fund check			
☐ Fringe benefits not paid ☐ Other			
See attached sheet for additional details			
FFC Case No.: 895SJ			
Apprentice Violations 1777.5 proceed to the next page			

Apprentice Occupation
36. Trades and Classifications: <u>Laborer, Operating Engineer</u>
Apprentice Violations 1777.5
37. If the contractor is approved to train- Name of the Apprenticeship Committee: _____
38. Was there a LABOR COMPLIANCE PROGRAM on this project? ☐ Yes ☒ No If Yes, Name of the LCP: _____ LCP Telephone Number: _____
Apprentice Issues (List any documentation attached substantiating the allegation)
39. BRIEF EXPLANATION OF ISSUES: (Check all applicable boxes)
☐ Failed to provide Contract award information (DAS 140). California Code of Regulations 230
☐ Failed to request dispatch of apprentices (DAS 142). California Code of Regulations 230.1
☐ Failed to employ registered apprentices in the correct ratio or not at all. California Code of Regulations 230.1
☐ Failed to make apprenticeship training fund contributions. California Code of Regulations 230.2
☐ Other (give clear concise statement of the facts constituting the basis of your complaint) _____ _____
Proof of Service

40. ☐ Check the box if Proof of Service upon affected contractor and the General Contractor is attached.

I hereby certify that this is a true statement to the best of my knowledge and belief.

MY NAME MAY BE USED IN THIS INVESTIGATION.

Antonio Sainz
Signature

☒ Yes ☐ No

April 20, 2021

Date

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works 7718 Meany Avenue Bakersfield, CA 93308 TEL: (661) 587-3071 FAX: (661) 587-3081	Gavin Newsom, Governor  895SJ RECEIVED JUN 28 2021
Foundation for Fair Contracting 3807 Pasadena Avenue, Suite 150 Sacramento, CA 95821 Arturo Sainz	
DATE: June 23, 2021	In Reply Refer to Case No: 40-72626-522

CASE ASSIGNMENT LETTER

Foundation for Fair
Contracting

Project Name Downtown Complete Street Project - DIR ID #311021	Project No. 0
Prime Contractor Monterey Peninsula Engineering	
Subcontractor Monterey Peninsula Engineering	

Please be advised that I have been assigned to investigate your complaint against the above named contractor.

Any additional information should be directed to my attention, in writing. Please reference the case number on all correspondence.

You will be kept advised of the progress of this investigation as needed and of the final disposition in this matter.

STATE LABOR COMMISSIONER

By Lori Rivera
 Lori Rivera
 Deputy Labor Commissioner I



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1 William L. Marder, Cal Bar No. 170131
2 POLARIS LAW GROUP, LLP
3 501 San Benito Street, Suite 200
4 Hollister, California 95023
5 Telephone: 831.531.4214
6 Facsimile: 831.634.0333

7 Dennis S. Hyun (State Bar No. 224240)
8 HYUN LEGAL, APC
9 515 S. Figueroa St., Suite 1250
10 Los Angeles, CA 90071
11 (213) 488-6555
12 (213) 488-6554 facsimile

13 Attorneys for Plaintiff and the Class

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF MONTEREY

16 DANIEL MUNOZ, as an individual and on
17 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 MONTEREY PENINSULA
21 ENGINEERING, a California corporation;
22 and DOES 1 through 50, inclusive,

23 Defendants.

CASE NO. 17CV001603

**CLASS ACTION AND INDIVIDUAL
COMPLAINT FOR DAMAGES FOR:**

- 24 (1) VIOLATION OF CAL. LABOR CODE §
25 226(a);
- 26 (2) VIOLATION OF CAL. LABOR CODE §§
27 510 AND 1194;
- 28 (3) VIOLATION OF CAL. BUS. & PROF.
CODE § 17200;
- (4) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.*
- (5) VIOLATION OF CAL. LABOR CODE §
1102.5 [INDIVIDUAL CLAIM];
- (6) VIOLATION OF CAL. LABOR CODE §
6310 [INDIVIDUAL CLAIM];
- (7) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
[INDIVIDUAL CLAIM]; AND
- (8) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS [INDIVIDUAL
CLAIM]

DEMAND FOR JURY TRIAL

DEMAND EXCEEDS \$25,000.00

1 Plaintiff Daniel Munoz (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Monterey Peninsula Engineering (the “Company” or
3 “Defendant”), a California corporation, and DOES 1-50 (hereinafter collectively referred to as
4 “Defendants”), on behalf of himself and the Class of all other similarly situated current and
5 former employees of Defendants for penalties and/or damages for violations of the California
6 Labor Code, including without limitation, failure to provide employees with accurate itemized
7 wage statements, failure to pay all overtime wages, waiting-time penalties, and individually for
8 retaliation as follows:

9 **INTRODUCTION**

10 1. This action is within the Court’s jurisdiction under California Labor Code §§ 201-
11 203, 226, 510, 1102.5, 1194, 2698, *et seq.*, and 6310, the California Industrial Welfare
12 Commission’s (“IWC”) Wage Orders and California Business & Professions Code § 17200 (the
13 “Unfair Competition Law” or “UCL”).

14 2. This Complaint challenges systemic illegal employment practices resulting in
15 violations of the California Labor Code against employees of Defendants.

16 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 jointly and severally have acted intentionally and with deliberate indifference and conscious
18 disregard to the rights of all employees by failing to keep accurate records and failing to provide
19 accurate itemized wage statements identifying all required information, and failing to pay all
20 overtime due.

21 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
22 engaged in, among other things a system of willful violations of the California Labor Code and
23 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
24 knowingly deny employees the above stated rights and benefits.

25 **JURISDICTION AND VENUE**

26 5. The Court has jurisdiction over the violations of the California Labor Code §§
27 201-203, 226, 510, 1102.5, 1194, 2698, *et seq.*, and 6310, the IWC’s Wage Orders and the UCL.
28 As alleged below, Plaintiff has met all of the jurisdictional requirements to proceed under the

1 Private Attorney General's Act (the "PAGA"), Labor Code § 2698, *et seq.*

2 6. Venue is proper in Monterey County because Defendants maintain business
3 locations in this County and Plaintiff performed work for Defendants in this County.

4 **PARTIES**

5 7. Plaintiff began working for Defendant in or around October 2016, as a non-exempt
6 employee. On or about January 31, 2017, Plaintiff was terminated by Defendant in retaliation for
7 complaining about potentially unlawful and unsafe working conditions.

8 8. Defendant is a California corporation engaged in construction services. The
9 Company is headquartered in Monterey, California.

10 9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
11 complained of in this action in ways that have deprived him of the rights guaranteed by California
12 Labor Code §§ 201-203, 226, 510, 1102.5, 1194, 2698, 6310, the applicable IWC Wage Orders
13 and the UCL.

14 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
15 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,
16 and partnerships, licensed to do business and actually doing business in the State of California.

17 11. As such, and based upon all the facts and circumstances incident to Defendants'
18 business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 510,
19 1102.5, 1194, 2698, 6310, the applicable IWC Wage Orders and the UCL.

20 12. Plaintiff does not know the true names or capacities, whether individual, partner or
21 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
22 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
23 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
24 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
25 matters alleged herein and proximately caused Plaintiff and members of the general public and
26 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

27 13. At all times herein mentioned, each of said Defendants participated in the doing of
28 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
Defendants, and each of them, were the agents, servants and employees of each of the other

1 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
2 within the course and scope of said agency and employment.

3 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
4 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
5 joint venturer of, or working in concert with each of the other co- Defendants and was acting
6 within the course and scope of such agency, employment, joint venture, or concerted activity. To
7 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
8 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
9 Defendants.

10 15. At all times herein mentioned, Defendants, and each of them, were members of,
11 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
12 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

13 16. At all times herein mentioned, the acts and omissions of various Defendants, and
14 each of them, concurred and contributed to the various acts and omissions of each and all of the
15 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
16 herein mentioned, Defendants, and each of them, ratified each and every act or omission
17 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
18 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
19 the damages as herein alleged.

20 CLASS ACTION ALLEGATIONS

21 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
22 California Code of Civil Procedure § 382, of the following classes and subclass:

- 23 a. All current and former non-exempt California employees who worked over
24 8 hours in a day and/or over 40 hours in a workweek at any time from May
25 3, 2013, through the present (the "Overtime Class");
- 26 b. All current and former non-exempt California employees who received a
27 wage statement from Defendant at any time during the period of time from
28 May 3, 2016, through the present (the "Wage Statement Class"); and
- c. All current and former non-exempt California employees who received a

1 wage statement from Defendant which listed overtime pay at any time from
2 May 3, 2016, through the present ("Overtime Wage Statement Sub-Class").

3 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
4 that joinder of all members would be impractical, if not impossible. The identity of the members
5 of the Class is readily ascertainable by review of the Company's records, including payroll
6 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to
7 provide accurate itemized wage statements to employees in violation of Labor Code § 226 and
8 failed to pay all overtime to its non-exempt employees in violation of Labor Code §§ 510 and
9 1194.

10 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the class defined above.
12 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
13 named Plaintiffs. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
14 the past and currently have a number of wage-and-hour class actions pending in California courts.

15 20. The Company uniformly administered a corporate policy, practice of failing to
16 provide accurate itemized wage statements to employees in violation of Labor Code § 226 and
17 failing to pay all overtime to its non-exempt employees in violation of Labor Code §§ 510 and
18 1194.

19 21. **Common Question of Law and Fact:** There are predominant common questions
20 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
21 concerning the Company's failure to provide accurate itemized wage statements to employees in
22 violation of Labor Code § 226 and failure to pay all overtime to its non-exempt employees in
23 violation of Labor Code §§ 510 and 1194

24 22. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
25 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
26 and typical manner as the Class members. Plaintiff was not provided proper and accurate payroll
27 records identifying all information required by Labor Code § 226(a). Specifically, the Company
28 violated Labor Code § 226(a) by, among other things, failing to identify the rate at which
overtime was paid. This is a violation of Labor Code § 226(a)(9). Further, the pay statements

1 identified an inaccurate straight time rate. The regular rate was identified as \$21.50 when the true
2 rate was typically a different amount. For example, for the pay period ending November 26, 2016,
3 Plaintiff's pay statements identified a regular rate of \$21.50. However, the true regular pay rate
4 was \$31.040. This is a violation of Labor Code § 226(a)(9). Defendant also failed to pay all
5 overtime owed. For example, for the pay period ending on November 26, 2016, Plaintiff's regular
6 rate was \$31.040. Plaintiff worked two hours of overtime, paid at \$45.060 per hour. Defendant
7 should have paid the overtime at \$46.56 per hour (1.5 multiplied by \$31.040). This is a violation
8 of Labor Code §§ 201-204, 510 and 1194. Thus, Plaintiff is a member of the Class and has
9 suffered the alleged violations of California Labor Code §§ 201-204, 226, 510, 1194 and 2698, *et*
10 *seq.*, the applicable IWC Wage Orders and the UCL.

11 23. The California Labor Code and upon which Plaintiff bases these claims is broadly
12 remedial in nature. These laws and labor standards serve an important public interest in
13 establishing minimum working conditions and standards in California. These laws and labor
14 standards protect the average working employee from exploitation by employers who may seek to
15 take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment.

17 24. The nature of this action and the format of laws available to Plaintiff and members
18 of the Class identified herein make the class action format a particularly efficient and appropriate
19 procedure to redress the wrongs alleged herein. If each employee were required to file an
20 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
21 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
22 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
23 pursue an individual remedy would also discourage the assertion of lawful claims by employees
24 who would be disinclined to file an action against their former and/or current employer for real
25 and justifiable fear of retaliation and permanent damage to their careers at subsequent
26 employment.

27 25. The prosecution of separate actions by the individual class members, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
to individual Class members against the Company and which would establish potentially

1 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
2 individual Class members which would, as a practical matter, be dispositive of the interest of the
3 other Class members not parties to the adjudications or which would substantially impair or
4 impede the ability of the Class members to protect their interests. Further, the claims of the
5 individual members of the Class are not sufficiently large to warrant vigorous individual
6 prosecution considering all of the concomitant costs and expenses.

7 26. Such a pattern, practice and uniform administration of corporate policy regarding
8 illegal employee compensation described herein is unlawful and creates an entitlement to
9 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
10 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
11 of California Labor Code §§ 201-204, 226, 510, 558, 1194, and 2698, *et seq.*, the applicable IWC
12 Wage Orders, and Code of Civil Procedure § 1021.5.

13 27. Proof of a common business practice or factual pattern, which the named Plaintiffs
14 experienced and are representative of, will establish the right of each of the members of the Class
15 to recovery on the causes of action alleged herein.

16 28. The Class is commonly entitled to a specific fund with respect to the compensation
17 illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of
18 those funds being improperly withheld by the Company. This action is brought for the benefit of
19 the entire class and will result in the creation of a common fund.

20 **INDIVIDUAL ALLEGATIONS**

21 29. On January 31, 2017, Plaintiff was directed to help his co-workers cut an asbestos
22 pipe. Plaintiff was not provided any safety gear or any training. None of the employees were
23 certified to work with asbestos. Plaintiff told the foreman who was in charge of the pipe, Rudy,
24 that it was unsafe to cut the pipe. Plaintiff told Rudy the workers needed safety gear and training
25 to work with asbestos. In retaliation for Plaintiff's complaints about unsafe and potentially illegal
26 working conditions, Defendant terminated Plaintiff's employment by no longer providing him
any work assignments. Thus, on or about January 31, 2017, Plaintiff was unlawfully terminated.

27 30. As an actual and proximate result of the illegal employment actions of Defendants,
28 Plaintiff has suffered and continues to suffer pain, humiliation, severe emotional distress, trauma,

1 and sleeplessness. Also, as an actual and proximate result of Defendants' illegal employment
2 actions, Plaintiff has suffered lost wages and benefits. Plaintiff also has suffered a loss in earning
3 capacity. Thus, Plaintiff has suffered economic and non-economic losses in an amount greater
4 than this Court's jurisdictional minimum of \$25,000. Plaintiff seeks lost wages and loss in
5 earning capacity, as well as compensatory damages for pain and suffering, inconvenience, and
6 mental anguish. Plaintiff also seeks punitive damages, interest, attorneys' fees, and costs, as
7 permitted by law.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 226(a)**

10 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)**

11 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
12 though fully set for herein.

13 32. The Company failed in its affirmative obligation to provide accurate itemized
14 wage statements in violation of Labor Code § 226(a). Specifically, the Company violated Labor
15 Code § 226(a) by, among other things, failing to identify the rate at which overtime was paid.
16 This is a violation of Labor Code § 226(a)(9). Further, the pay statements identified an inaccurate
17 straight time rate. The regular rate was identified as \$21.50 when the true rate was typically a
18 different amount. For example, for the pay period ending November 26, 2016, Plaintiff's pay
19 statements identified a regular rate of \$21.50. However, the true regular pay rate was \$31.040.
20 This is a violation of Labor Code § 226(a)(9). Accordingly, the wage statements provided to
21 Plaintiffs and the Class violated Labor Code § 226(a).

22 33. Such a pattern, practice and uniform administration of corporate policy as
23 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class
24 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
25 including interest thereon, attorneys' fees, and costs of suit according to the mandate of California
26 Labor Code § 226.

27 **SECOND CAUSE OF ACTION**

28 **VIOLATION OF LABOR CODE §§ 510 AND 1194**

1 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)**

2 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as
3 though fully set for herein.

4 35. This cause of action is brought pursuant to Labor Code §§ 510 and 1194, which
5 require an employer to pay employees overtime at a rate of one and one-half the employee's
6 regular rate of pay for any work in excess of eight hours in a workday or 40 hours in a workweek.

7 36. As a pattern and practice, Defendants suffered and permitted employees to work in
8 excess of eight hours in a workday and/or over 40 hours in a workweek without overtime pay.
9 For example, for the pay period ending on November 26, 2016, Plaintiff's regular rate was
10 \$31.040. Plaintiff worked two hours of overtime, paid at \$45.060 per hour. Defendant should
11 have paid the overtime at \$46.56 per hour (1.5 multiplied by \$31.040). Plaintiff is informed and
12 believes and based thereon alleges that Defendants had a uniform corporate pattern and practice
13 and procedure regarding the above practices in violation of Labor Code §§ 510 and 1194.

14 37. Such a pattern, practice and uniform administration of corporate policy regarding
15 illegal employee compensation as described herein is unlawful and creates an entitlement to
16 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
17 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
18 the mandate of California Labor Code §§ 510, 558, and 1194.

19 38. Based on the foregoing, Plaintiff and Class Members whose employment ended
20 are also entitled waiting-time penalties pursuant to Labor Code §§ 201-203. Labor Code § 201
21 provides that all wages earned and unpaid at the time of an employee's discharge are due and
22 payable immediately. Labor Code § 202 provides that, in the case of an employee who resigns or
23 quits, such wages must be paid not later than 72 hours thereafter, unless the employee has given
24 72 hours previous notice, in which case the employee must be paid all wages due and earned at
25 the time of quitting. Labor Code § 203 provides that an employer who willfully fails to pay such
26 wages due to an employee who is discharged or quits must pay that employee waiting-time
27 penalties in the form of a day's wages up to 30 days until all of the wages owed are paid. As a
28 pattern and practice, Defendants regularly and willfully failed and refused to pay all wages due
and earned to discharged employees at the time of their termination, or within 72 hours of

1 employees who quit and/or have resigned, or at the time of termination for those employees who
2 gave 72 hours' notice.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

5 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

6 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as
7 though fully set for herein.

8 40. Defendants, and each of them, have engaged and continue to engage in unfair and
9 unlawful business practices in California by practicing, employing and utilizing the employment
10 practices outlined above, include, to wit, by failing to pay employees overtime wages for all hours
11 worked in excess of 8 hours in a workday and/or 40 hours in a workweek in violation of Labor
12 Code §§ 510 and 1194.

13 41. Defendants' utilization of such unfair and unlawful business practices constitutes
14 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

15 42. Plaintiff seeks, on behalf of himself and other members of the Class similarly
16 situated, full restitution of monies, as necessary and according to proof, to restore any and all
17 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
18 complained of herein. Pursuant to Business & Professions Code § 17203, Plaintiff also seeks
19 injunctive relief to enjoin Defendants from engaging in the violations of the UCL and the Labor
20 Code.

21 43. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
23 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
24 forth herein above thereby depriving Plaintiff and other members of the class the minimum
25 working condition standards and conditions due to them under the California laws as specifically
26 described therein.

27 **FOURTH CAUSE OF ACTION**

VIOLATION OF LABOR CODE § 2698, ET SEQ.
(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF)

44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43 as though fully set for herein.

45. Plaintiff seeks penalties on behalf of the State of California for violations of Labor Code §§ 201-204, 226(a) and 510 committed against the following employees:

- a. All current and former non-exempt California employees who worked over 8 hours in a day and/or over 40 hours in a workweek at any time from February 23, 2016, through the present;
- b. All current and former California employees who received a wage statement from Defendant at any time during the period of time from February 23, 2016, through the present; and
- c. All current and former non-exempt California employees who received a wage statement from Defendant which listed overtime pay at any time from February 23, 2016, through the present.

46. Additionally, Plaintiff seeks penalties for Defendant's violation of Labor Code § 1102.5, as alleged above.

47. On or about February 23, 2017, Plaintiff sent notice to the Labor Workforce Development Agency (the "LWDA") of the violations of Labor Code § 201-204, 226(a), 510, and 1102.5. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiffs whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties under the PAGA.

48. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code § 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate of PAGA for Defendant's violations of the aforementioned Labor Code statutes, as well as attorneys' fees and costs.

FIFTH CAUSE OF ACTION

1 **VIOLATION OF LABOR CODE § 1102.5**

2 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

3 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 as
4 though fully set for herein.

5 50. California Labor Code § 1102.5(c) provides that “[a]n employer, or any person
6 acting on behalf of the employer, shall not retaliate against an employee for refusing to participate
7 in an activity that would result in a violation of state or federal statute, or a violation of or
8 noncompliance with a local, state, or federal rule or regulation.”

9 51. As alleged above, the Company retaliated against Plaintiff for engaging in
10 protected activities. On January 31, 2017, Plaintiff was directed to help his co-workers cut an
11 asbestos pipe. Plaintiff was not provided any safety gear or any training. None of the employees
12 were certified to work with asbestos. Plaintiff told the foreman who was in charge of the pipe,
13 Rudy, that it was unsafe to cut the pipe. Plaintiff told Rudy the workers needed safety gear and
14 training to work with asbestos. In retaliation for Plaintiff’s complaints about unsafe and
15 potentially illegal working conditions, Defendant terminated Plaintiff’s employment by no longer
16 providing him any work assignments. Thus, on or about January 31, 2017, Plaintiff was
17 unlawfully terminated.

18 52. As a proximate result of the Company’s retaliation against Plaintiff, he has
19 suffered and continues to suffer compensatory damages, including without limitation, severe
20 emotional distress, lost wages, benefits, and compensation, and loss of future earnings and
21 earning capacity in the amount of at least \$25,000.00, according to proof at the time of trial,
22 which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil
23 action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing
24 from the date of the filing of this action pursuant to California Civil Code Sections 3281 and/or
25 3288, and/or any other provision of law providing for prejudgment interest.

26 53. Further, because the wrongful acts against Plaintiff were carried out, authorized, or
27 ratified by the Company’s management, who acted with malice, oppression, or fraud, or were
28 deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, he
seeks punitive damages to deter Defendants from committing said illegal acts in the future.

1 Plaintiff also seeks all applicable remedies available under the Labor Code, including without
2 limitation, the penalties provided for under Section 1102.5(f), back-pay, and lost benefits.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 6310**

5 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

6 54. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53 as
7 though fully set for herein.

8 55. Labor Code § 6310(b) prohibits, among other unlawful acts, discharging and/or
9 suspending an employee because that employee has made a bona fide oral or written complaint to
10 his or her employer of unsafe working conditions or work practices. Here, Defendant violated
11 Labor Code § 6310(b) by retaliating against Plaintiff and ultimately terminating his employment
12 in direct response to his complaints of unsafe working conditions.

13 56. As alleged above, the Company retaliated against Plaintiff for engaging in
14 protected activities. On January 31, 2017, Plaintiff was directed to help his co-workers cut an
15 asbestos pipe. Plaintiff was not provided any safety gear or any training. None of the employees
16 were certified to work with asbestos. Plaintiff told the foreman who was in charge of the pipe,
17 Rudy, that it was unsafe to cut the pipe. Plaintiff told Rudy the workers needed safety gear and
18 training to work with asbestos. In retaliation for Plaintiff's complaints about unsafe and
19 potentially illegal working conditions, Defendant terminated Plaintiff's employment by no longer
20 providing him any work assignments. Thus, on or about January 31, 2017, Plaintiff was
unlawfully terminated.

21 57. Pursuant to Labor Code § 6310(b), Plaintiff seeks all applicable remedies,
22 including without limitation, reinstatement and reimbursement for lost wages and work benefits.

23 **SEVENTH CAUSE OF ACTION**

24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

25 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

26 58. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 as
27 though fully set for herein.

28 59. At all times mentioned herein, the public policy of the State of California, as

1 codified, expressed and mandated in Labor Code §§ 1102.5 and 6310, prohibit retaliation against
2 an employee who has refused to engage in potentially unlawful behavior and/or made a bona fide
3 complaint about health and/or safety issues at the workplace. Nevertheless, Defendant violated
4 these public policies by terminating Plaintiff on or about January 31, 2017, because of his
5 complaints regarding unsafe and potentially illegal working conditions.

6 60. As a proximate result of Defendant's wrongful termination of Plaintiff, he has
7 suffered and continues to suffer compensatory damages, including without limitation, severe
8 emotional distress, lost wages, benefits, and compensation, and loss of future earnings and
9 earning capacity in the amount of at least \$25,000.00, according to proof at the time of trial,
10 which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil
11 action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing
12 from the date of the filing of this action pursuant to California Civil Code Sections 3281 and/or
13 3288, and/or any other provision of law providing for prejudgment interest.

14 61. Further, because the wrongful acts against Plaintiff were carried out, authorized, or
15 ratified by Defendant's managing agents, acting with malice, oppression, or fraud, or were
16 deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, he
17 seeks punitive damages to deter Defendant from committing said illegal acts in the future.

18 **EIGHTH CAUSE OF ACTION**

19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

20 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

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

23 63. When Defendants, and the each of them, committed the acts described above, they
24 did so deliberately and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and
25 emotional distress. The outrageousness of the above-described conduct is amplified due to upper
26 management's abuse of their positions with actual and apparent authority over Plaintiff, such as is
27 commonly found in employment relationships. The Defendants, and each of them, were aware of
28 their unlawful acts would cause Plaintiff to suffer extreme emotional distress and other
consequential damages.

1 64. The above-said acts of the Defendants, and each of them, constituted intentional
2 infliction of emotional distress against Plaintiff and such conduct of the Defendants was a
3 substantial or determining factor in causing damage and injury to Plaintiff.

4 65. As a result of Defendants' intentional infliction of emotional distress, Plaintiff has
5 suffered and continues to suffer substantial loss and damages including, loss of salary, future
6 advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount to
7 be determined at trial.

8 66. Defendants, and each of them, committed said intentional infliction of emotional
9 distress alleged herein against Plaintiff, maliciously, fraudulently, and oppressively with the
10 wrongful intent of injuring Plaintiff for an improper and evil motive which constitutes a malicious
11 and conscious disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages
12 from the Defendants in an amount to be determined at trial.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
15 this suit is brought against Defendants, jointly and severally, as follows:

- 16 1. For an order certifying the proposed Class;
- 17 2. For an order appointing Plaintiff as the representative of the Class as described
18 herein;
- 19 3. For an order appointing counsel for Plaintiff as Class counsel;
- 20 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
21 California Labor Code § 226, and for costs and attorneys' fees;
- 22 5. Upon the Second Cause of Action, for all damages and/or penalties pursuant to
23 California Labor Code §§ 201-204, 510, and 1194, and for costs and attorneys' fees;
- 24 6. Upon the Third Cause of Action, for all restitutionary and injunctive relief
25 pursuant to California Business & Professions Code §§ 17200 and 17203;
- 26 7. Upon the Fourth Cause of Action, for civil penalties according to proof pursuant to
27 Labor Code § 2698, *et seq.*;
- 28 8. Upon the Fifth through Eighth Causes of Action, all general and special damages,
and all statutory damages pursuant to Labor Code §§ 1102.5 and 6310;

1 9. On all causes of action, for attorneys' fees and costs as provided by California
2 Labor Code §§ 201-204, 226, 510, 558, 1194, 2698, *et seq.*, and Code of Civil Procedure §
3 1021.5; and

4 10. For such other and further relief as the Court may deem just and proper.

5 DATED: May 2, 2017

POLARIS LAW GROUP, LLP

7 By: 
8 William L. Marder
Attorneys for PLAINTIFF and the CLASS

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff, as an individual and on behalf of the Class, hereby demands a jury trial as
11 provided by California law.

12 DATED: May 2, 2017

POLARIS LAW GROUP, LLP

14 By: 
15 William L. Marder
Attorneys for PLAINTIFF and the CLASS

COPY

FILED

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CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
DEPUTY

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CASE MANAGEMENT CONFERENCE

DATE: 3/23/2012

TIME: 9:00 AM

PLACE: Courtroom 15, 2nd Floor
1200 Aguajito Rd. Monterey CA 93940

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JUAN A. BENITEZ and JOSE I.
GARCIA, each as an individual, and on
behalf of all those similarly situated and on
behalf of the general public,

Plaintiffs,

v.

MONTEREY PENINSULA
ENGINEERING, a California Corporation,
SUNSET PACIFIC CONSTRUCTION
COMPANY, a California Corporation,
CONTINENTAL INSURANCE
COMPANY, a Pennsylvania Corporation,
CITY OF MONTEREY, a Political Sub-
division of the State of California, CITY
OF WATSONVILLE, a Political Sub-
division of the State of California,
MONTEREY PENINSULA
COMMUNITY COLLEGE DISTRICT, a
Public Community College, COUNTY OF
MONTEREY a Political Sub-division of
the State of California, COUNTY OF
SANTA CRUZ, a Political Sub-division of
the State of California, and DOES 1
through 250,

Defendants.

Case No.:

M114998

Judge:

Dept.:

**COMPLAINT FOR DAMAGES AND
PENALTIES FOR:**

1. Failure to Pay Overtime Wages [Lab. Code §§ 510, 1194, 1811 and 1815];
2. Nonpayment Of Prevailing Wages [Cal. Lab. Code §§ 1194, 1771 & 1774];
3. Failure to Pay Wages of Terminated Or Resigned Employees [Cal. Lab. Code §§201-203];
4. Failure To Provide Or Otherwise Compensate For Missed Breaks [Cal. Lab. Code §§ 226.7 and 512];
5. Recovery Under Public Works Payment Bonds [Cal. Civ. Code § 3250]
6. Enforcement of Stop Notices [Cal. Civ. Code §§ 3103, 3181-3214];
7. Recovery Under Stop Notice Release Bonds [Cal. Civ. Code § 3196]
8. Unfair Competition [Bus. & Prof. Code §§17200, et seq.]

JURY TRIAL DEMANDED

COME NOW JUAN A. BENITEZ and JOSE I. GARCIA (“Plaintiffs”), who demand trial by jury and complain and allege of Defendants MONTEREY PENINSULA ENGINEERING, a California Corporation (“MPE”), SUNSET PACIFIC CONSTRUCTION COMPANY, a California Corporation (“SUNSET”), CONTINENTAL INSURANCE COMPANY, a Pennsylvania Corporation, CITY OF MONTEREY, a Political Sub-division of the State of California, CITY OF WATSONVILLE, a Political Sub-division of the State of California, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, COUNTY OF MONTEREY, a Political Sub-division of the State of California, COUNTY OF SANTA CRUZ, a Political Sub-division of the State of California and DOES 1 through 250 (hereinafter collectively referred to as the “Defendants”) as follows:

I. INTRODUCTION

1. Plaintiffs bring this action against their former employers, MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 to 150, who failed to pay Plaintiffs the proper wages for each hour worked on public works projects in violation of the California Labor Code. Specifically, MPE and SUNSET failed to pay the proper minimum wages and overtime, including failure to pay prevailing wage for Plaintiffs work on public works projects in violation of the California Labor Code.

2. During his employment Plaintiff Juan Benitez performed the work of an Operating Engineer on public works projects, including, but not limited to the following public works projects: “Pacific Street Erosion Control”, in Monterey California, “Green Valley Road Rehabilitation”, in Watsonville California, “Parking Lot B Expansion” in Monterey California, “Storm Drain and Street Improvement” in the County of Monterey California, “Aptos Sewer Transmission Main Relocation” in Santa Cruz California, “County Service Area #5 Sand Dollar Force Main Replacement” in Santa Cruz California.

3. During his employment Plaintiff Jose I. Garcia worked as a Cement Mason, Laborer, Operator and Iron Worker on public works projects, including, but not limited to the following public works projects: "Parking Lot B Expansion" in Monterey California, "Hyland Drive – El Rancho Way Storm Drain & Street Improvement" in the County of Monterey

1 California, "Pacific Street Erosion Control", in Monterey California, "County Service Area #5
2 Sand Dollar Force Main Replacement" in Santa Cruz California, "Aptos Sewer Transmission
3 Main Relocation" in Santa Cruz California, "Graham Hill Road Improvement Project" in the
4 County of Santa Cruz , Morgan Hill Irrigation, and "Green Valley Road Rehabilitation", in
5 Watsonville California.

6 4. Plaintiff Juan A. Benitez was employed from on or about August, 2010 through
7 on or about July, 2011. In 2010 the rate for Operating Engineer Group 4 was \$56.71. As an
8 Operating Engineer, Plaintiff Benitez was paid a straight, non-prevailing wage rate of \$18.75
9 per hour for work throughout the majority of his employment with MPE, despite requirements
10 that he be paid the appropriate prevailing wage rate for the type of work performed.

11 5. Plaintiff Jose I. Garcia was employed from on or about November, 1998 through
12 on or about August, 2011. During Plaintiff's employment, Plaintiff worked as a working
13 foreman in different classifications including but not limited to Laborer, Operator, Cement
14 Mason and Iron Worker. In 2010 the State of California rates of pay were as follows Laborer-
15 \$42.20, Operator-\$56.71, Cement Mason-\$45.41, Iron Worker-\$57.31. Plaintiff Garcia was
16 paid a straight, non-prevailing wage rate of \$27.50 per hour for work throughout the majority of
17 his employment despite requirements that he be paid the appropriate prevailing wage rate for
18 the type of work performed.

19 6. During Plaintiffs' employment Plaintiffs were routinely required to skip rest
20 breaks.

21 7. Plaintiffs seek back wages, penalties and interest for Defendants' willful failure
22 to pay Plaintiffs their statutory wages (Labor Code §§1194, 1771, 1774).

23 8. Plaintiffs seek recovery of wages penalties and interest against Defendants
24 CONTINENTAL INSURANCE COMPANY, a Pennsylvania Corporation and DOES
25 151 through 200 (hereinafter collectively referred to as the "Defendant Sureties") who issued
26 statutory payment bonds on public projects where Plaintiff worked. The statutory bonds
27 provided that if the contractor, or any of their subcontractors, failed to pay for any work or labor
28 performed in connection with a public works project, that the surety on the bond would pay the

1 same. Plaintiff is entitled to recover under these payment bonds, as Defendants have failed to
2 pay Plaintiff the earned wages on public works projects.

3 9. Plaintiffs seek enforcement of Stop Notices against the CITY OF MONTEREY,
4 CITY OF WATSONVILLE, MONTEREY PENNINSULA COMMUNITY COLLEGE
5 DISTRICT, COUNTY OF MONTEREY, COUNTY OF SANTA CRUZ, and Defendants
6 DOES 201 through 225.

7 10. Plaintiffs seek recovery under the stop notice release bonds against Defendant
8 MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION
9 COMPANY, Does 1 – 150, and Does 226-250.

10 11. Plaintiffs seek equitable relief for restitution and to enjoin Defendants
11 MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION
12 COMPANY and DOES 1 through 150 from engaging in the practices alleged in this Complaint
13 and to require Defendants all monies wrongfully withheld by Defendants' unfair business
14 practices and unlawful competition.

15 12. Plaintiffs seek restitution of all unpaid wages. In addition to restitution and
16 restoration of all wages owed to Plaintiffs, Plaintiffs seek to enforce any and all applicable
17 equitable remedies.

18 13. Plaintiffs seek attorneys' fees and costs pursuant to various statutes under the
19 Labor Code and Civil Code.

20 II. THE PARTIES

21 A. Plaintiffs

22 14. Plaintiff, JUAN A. BENITEZ is and at all relevant times herein was, an
23 individual over the age of eighteen and a resident of California. Plaintiff was employed by
24 Defendants SUNSET PACIFIC CONSTRUCTION COMPANY and MPE from on or about
25 August, 2010 through on or about July, 2011. Plaintiff performed work within the State of
26 California, including work on California "public works" projects as such term is defined by
27 California Labor Code § 1720, et seq.
28

1 15. Plaintiff, JOSE I. GARCIA is and at all relevant times herein was, an individual
2 over the age of eighteen and a resident of California. Plaintiff was employed by Defendant
3 SUNSET PACIFIC CONSTRUCTION COMPANY and MPE from on or about November,
4 1998 through on or about August 12, 2011. Plaintiff performed work within the State of
5 California, including work on California "public works" projects as such term is defined by
6 California Labor Code § 1720, et seq.

7
8 **B. Defendants**

9 16. Plaintiffs are informed and believe Defendant MONTEREY PENINSULA
10 ENGINEERING is and at all times mentioned herein is a California Corporation, duly
11 organized in the State of California and authorized to do business in the State of California, and
12 conducted business as a construction contractor in counties, including but not limited to
13 Monterey County.

14 17. Plaintiffs are informed and believe that Defendant MONTEREY PENINSULA
15 ENGINEERING is a licensed contractor in the State of California, license number 791700,
16 including a A classification as a General Engineering Contrator with a Hazardous Substances
17 Removal certification. MPE's address is P.O. Box 2317, Monterey, CA 93942. MPE was
18 engaged under and by virtue of the laws of the State of California in the business of engineering
19 and contracting services, including underground utilities, grading, paving and general site work.

20 18. Plaintiffs are informed and believe that Defendant SUNSET PACIFIC
21 CONSTRUCTION COMPANY is and at all times mentioned herein is a California
22 Corporation, duly organized in the State of California and authorized to do business in the State
23 of California, and conducted business as a construction contractor in counties, including but not
24 limited to Monterey County.

25 19. Plaintiffs are informed and believe that Defendant SUNSET PACIFIC
26 CONSTRUCTION COMPANY'S contractors license for the State of California, expired
27 12/31/1996, this was license number 466538, and included a type A classification as a General
28 Engineering Contrator. SUNSET PACIFIC CONSTRUCTION COMPANY'S address is P.O.

1 Box 2317, Monterey, CA 93942. SUNSET PACIFIC CONSTRUCTION COMPANY was
2 engaged in the business of engineering and contracting services, including underground utilities,
3 grading, paving and general site work.

4 20. **Joint Employer** Plaintiffs are informed and believe and based thereon allege
5 that SUNSET and MPE jointly controlled the daily activities of the Plaintiffs; and both
6 SUNSET and MPE suffered and permitted Plaintiffs to work, such that SUNSET and MPE
7 should be considered a joint employer of the Plaintiffs.

8 21. **Alter Ego-** There exists such a unity of interest and ownership between
9 Defendant SUNSET and Defendant MPE, that the individuality and separateness of Defendants
10 has ceased to exist. Plaintiffs are informed and allege that the business affairs of SUNSET and
11 MPE are so mixed and intermingled that the same cannot be reasonably segregated. SUNSET,
12 and at all times relevant hereto, was and has been used by MPE as a shell and conduit for the
13 conduct of MPE's affairs. The recognition of the separate existence of SUNSET would not
14 promote justice in that it would permit Defendant MPE to insulate itself from the liability to
15 Plaintiffs. MPE exerted, and continues to exert, control over SUNSET and undertook to
16 commit systemic wage fraud and was aware of the practice of doing so. The wage fraud
17 exposes SUNSET and MPE to liability. There is a unity of interest between MPE and
18 SUNSET. Accordingly, SUNSET and MPE are the alter-ego of one another, and the fiction of
19 their separate existence must be disregarded.

20 22. Plaintiffs are informed and believe and based thereon alleges that Defendant The
21 CONTINENTAL INSURANCE COMPANY a Pennsylvania and DOES 151-200 acted as
22 sureties for payment bonds on public works projects alleged herein and each was a corporation
23 authorized to do business in the State of California, engaged under and by virtue of the laws of
24 the State of California in making, guaranteeing, and becoming a surety on bonds and
25 undertakings as required or authorized by law.

26 23. Plaintiffs are informed and believe and thereon allege that Defendant, CITY OF
27 MONTEREY is at all times relevant to this action was, a political sub-division of the State of
28

1 California, and is withholding money pursuant to a Stop Notice for the "Pacific Street Erosion
2 Control" project in Monterey, California.

3 24. Plaintiffs are informed and believe and thereon allege that Defendant, CITY OF
4 WATSONVILLE is at all times relevant to this action was, a political sub-division of the State
5 of California, and is withholding money pursuant to a Stop Notice for the "Green Valley
6 Rehabilitation" project in Watsonville, California.

7 25. Plaintiffs are informed and believe and thereon allege that Defendant,
8 MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, a public community
9 college, is at all times relevant to this action was, and is withholding money pursuant to a Stop
10 Notice for the "Parking Lot B Expansion" project in Monterey, California.

11 26. Plaintiffs are informed and believe and thereon allege that Defendant, COUNTY
12 OF MONTEREY a political sub-division of the State of California, is at all times relevant to
13 this action was, and is withholding money pursuant to a Stop Notice for the "Hyland Drive – El
14 Rancho Way Storm Drain & Street Improvement" project in Salinas, California.

15 27. Plaintiffs are informed and believe and thereon allege that Defendant, COUNTY
16 OF SANTA CRUZ a political sub-division of the State of California, is at all times relevant to
17 this action was, and is withholding money pursuant to a Stop Notice for the "APTOS Sewer
18 Transmission Main Relocation" project in Santa Cruz, California

19 28. Plaintiffs are informed and believes and based thereon allege that at all times
20 mentioned herein Defendants and DOES 1 through 150 were authorized to conduct business in
21 the State of California, doing business as contractors, subcontractors, or their agents, performing
22 work on construction projects throughout the State of California, including public works
23 projects.

24 29. Plaintiffs are further informed and believe and based thereon alleges that
25 Defendant DOES 151-200 acted as sureties for payment bonds on public works projects alleged
26 herein and each was a corporation authorized to do business in the State of California, engaged
27 under and by virtue of the laws of the State of California in making, guaranteeing, and
28 becoming a surety on bonds and undertakings as required or authorized by law.

1 “public works” projects as defined by California Labor Code § 1720 et seq., for which MPE,
2 and Does 1-150 were required to pay prevailing wages.

3 36. Plaintiffs are informed and believe that some of the formal names and/or identity
4 of some of the public projects where Plaintiffs worked include but are not limited to: “*Pacific*
5 *Street Erosion Control*”, in Monterey California, “*Green Valley Road Rehabilitation*”, in
6 Watsonville California, “*Parking Lot B Expansion*” in Monterey California, “*Storm Drain and*
7 *Street Improvement*” in the County of Monterey California, “*Aptos Sewer Transmission Main*
8 *Relocation*” in Santa Cruz California, “*County Service Area #5 Sand Dollar Force Main*
9 *Replacement*” in Santa Cruz California.

10 37. Plaintiffs may have worked on other public works projects, the identity of which
11 are yet unknown. The formal name and/or identity of the additional public works projects are
12 unknown to Plaintiff upon the filing of the herein Complaint. Plaintiff seeks to recover for all
13 work on all public works construction projects and reserve the right to amend this complaint
14 when the names of these additional private and public work projects are ascertained.

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18 IV. GENERAL ALLEGATIONS

19 38. Plaintiffs are former employees of Defendant MPE and SUNSET and were
20 employed on public works construction projects throughout the State of California.

21 39. Defendant MPE and SUNSET were engaged as contractors or subcontractors as
22 defined under Labor Code § 1722.1.

23 40. The legal minimum wage rate for workers employed on California public works
24 is the “general prevailing rate of per diem wages” (Labor Code §§ 1771, 1774) or more
25 commonly referred to as the “prevailing wage” rate.

26 41. For their work on the Projects, Plaintiffs were required to be paid the minimum
27 prevailing wage rate assigned per the labor classification set forth in semi-annual and annual
28 bulletins published by the Director of Industrial Relations (“DIR”). The proper prevailing wage

1 rate for the work performed in the state of California is considered the minimum wage. It is the
2 only legal wage that may be paid for work in execution of a public work contract. In addition to
3 the required straight-time hourly rate of pay, the term "prevailing wage" includes a designated
4 rate for overtime and holiday work, travel time and subsistence pay. (Cal. Code of Regulations
5 § 16000). All such rates are published semi-annually by the California Department of Industrial
6 Relations ("DIR") pursuant to pertinent California regulations.

7 42. Plaintiffs were not paid the required prevailing rate for their work performed on
8 public works projects during their employment with MPE and SUNSET.

9 43. MPE and SUNSET were required to submit to the Awarding Bodies payroll
10 records certified under penalty of perjury with the name and address of each worker, the
11 classification of work performed, and the rate of pay for each hour worked. Plaintiffs are
12 informed and believe that MPE and SUNSET did not submit accurate payroll records to all
13 Awarding Bodies reflective the proper classification for Plaintiffs work.

14 44. Rather than being paid the required rate for their worker classifications, Plaintiffs
15 were paid an hourly rate significantly less than the prevailing wage rate during their
16 employment with MPE and SUNSET.

17 45. Plaintiffs are informed and believe that the required prevailing wage rates
18 published by the State of California and applicable to Plaintiffs' work. The entire hourly
19 prevailing wage rate for the each of the workers providing work on a public works project is
20 determined by combining an hourly wage rate, plus a wage component entitled "employer
21 payments" designed to benefit the employee, their families and dependants or retirees. The
22 standard hourly wage must be paid directly to the employee. However, at the discretion of the
23 employer, "employer payments" can either be paid directly to the employee or contributed by
24 the employer into an approved employee benefit fund, plan or program on behalf of the
25 employee.

26 46. In addition to the wage fraud and abuse, MPE and SUNSET engaged in other
27 Labor Code violations, including but not limited to:
28

1 employee is entitled to recover in a civil action the unpaid balance of the full amount of this
2 minimum wage or overtime compensation, including interest thereon, reasonable attorney's
3 fees, and costs of suit."

4 51. Labor Code §1198 provides in relevant part, "the employment for longer hours
5 that those fixed by the order or under conditions of labor prohibited by the order is unlawful."

6 IWC Order No. 16-2001(3)(A)(1) provides in relevant part:

7
8 Employees shall not be employed more than eight (8) hours in any
9 workday or more than 40 hours in any workweek unless the employee receives
10 one and one-half (1 ½) times such employee's regular rate of pay for all hours
11 worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a
12 day's work. Employment beyond eight (8) hours in any workday or more than six
13 (6) days in any workweek is permissible provided the employee is compensated
14 for such overtime at not less than:

15 (a) One and one-half (1 ½) times the employee's regular rate of pay
16 for all hours worked in excess of eight (8) hours up to and including 12 hours in
17 any workday, and for the first (8) hours worked on the seventh (7th) consecutive
18 day of work in a workweek; and

19 (b) Double the employee's regular rate of pay for all hours worked in
20 excess of 12 hours in any workday and for all hours worked in excess of eight (8)
21 hours on the seventh (7th) consecutive day of work in a workweek.

22 52. Labor Code §1811 provides, "The time of service of any workman employed
23 upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours
24 during any one calendar week, except as hereinafter provided for under Section 1815." Section
25 1815 provides in relevant part that "work performed by employees of contractors in excess of 8
26 hours per day, and 40 hours during any one week, shall be permitted upon public work upon
27 compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the
28 basic rate of pay."

53. As alleged herein, Defendants failed to properly compensate Plaintiffs for
working off-the-clock, overtime and during meal and/or rest breaks. Plaintiffs and did not
receive compensation for all hours worked over eight per day or forty per week.

54. In addition, California Labor Code § 226(a) provides in relevant part that:
"Every employer shall . . . furnish each of his or her employees . . . an itemized statement in
writing showing . . . total hours worked by the employee . . . and all applicable hourly rates in

1 effect during the pay period and the corresponding number of hours worked at each hourly rate
2 by the employee.”

3 55. California Labor Code §226(b) then provides in relevant part: “Any employee
4 suffering injury as a result of a knowing and intentional failure by an employer to comply with
5 subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50)
6 for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
7 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of
8 four thousand dollars (\$4,000) and shall be entitled to an award of costs and reasonable
9 attorney’s fees.”

10 56. By their actions alleged above, Defendants violated the provisions of California
11 Labor Code §§ 226, 510, 1194, et seq., 1198, and 1815 and are therefore liable to Plaintiffs for
12 the damages caused.

13 57. As a result of the unlawful acts of Defendants, Plaintiffs have been deprived of
14 overtime compensation in amounts to be determined at trial, and are entitled to injunctive relief
15 and recovery of such amounts, including interest thereon, attorney’s fees, costs, and penalties.

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19 **VI. SECOND CAUSE OF ACTION**
20 **FOR NONPAYMENT OF PREVAILING WAGES**
21 **CALIFORNIA LABOR CODE §§ 1194, 1771 & 1774**

22 **On Behalf of Plaintiffs**

23 **(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC**
24 **CONSTRUCTION COMPANY and Does 1 - 150)**

25 58. Plaintiff re-alleges and incorporate by reference as though fully set forth herein
26 each of the allegations of the preceding paragraphs.

27 59. At all times mentioned herein, MPE, SUNSET and DOES 1 through 150 were
28 subject to the minimum wage requirements of the State of California pursuant to Labor Code

§1194 and prevailing wage laws of the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public construction projects, including work undertaken on one or more of the Projects. Pursuant to Labor Code §1194, MPE, SUNSET and DOES 1 through 150 had a duty to pay Plaintiffs on the Projects not less than the minimum required hourly rate of pay and legal overtime wage. Pursuant to Labor Code §§ 1771 and 1774, MPE, SUNSET and DOES 1 through 150 had a duty to pay Plaintiffs on such Projects not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work.

60. The per diem wages and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774 are set forth in annual and semi-annual bulletins published by the California Department of Industrial Relations.

61. Plaintiffs were paid less than the minimum required general prevailing rate of per diem wages for work and less than the minimum required prevailing rate of per diem wages for holiday and overtime work for his work on one or more of the Projects as required by Labor Code §§ 1194, 1771 and 1774. Plaintiffs were paid a fraction of the required pay rates in a scheme to avoid paying the minimum required prevailing rate of per diem wages.

62. As a result of MPE, SUNSET and DOES 1 through 150 violation of statutory duties, as more fully set forth above, Plaintiffs were damaged in an amount above the jurisdictional limits of this court. Pursuant to Labor Code section 1194.2, Plaintiffs seek liquidated damages for failure to pay minimum wage.

63. Additionally, Plaintiffs seek as damages the difference between the amount actually paid and the prevailing wage rate. Plaintiff's audits and investigations are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according to proof at the time of trial.

64. Plaintiffs are entitled to and therefore requests an award of pre-judgment interest on the unpaid wages set forth herein.

1 65. Plaintiffs have incurred, and will continue to incur attorneys' fees in the
2 prosecution of this action and therefore demands such reasonable attorneys' fees as set by the
3 court. WHEREFORE, Plaintiffs seek damages from Defendants, and each of them, as
4 hereinafter set forth.

5 **VII. THIRD CAUSE OF ACTION**

6 **Failure to Timely Pay Wages Due At Separation**

7 **California Labor Code §§ 201-203**

8 **On Behalf of Plaintiffs**

9 **(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC**

10 **CONSTRUCTION COMPANY and Does 1 - 150)**

11 66. Plaintiffs re-allege and incorporate by reference each and every allegation set
12 forth in the preceding paragraphs.

13 67. Section 201 and 202 of the California Labor Code require Defendants to pay
14 their employees all wages due within 72 hours of termination of employment. Section 203 of
15 the Labor Code provides that if an employer willfully fails to timely pay such wages the
16 employer must, as a penalty, continue to pay the subject employees' wages until the back wages
17 are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

18 68. Plaintiffs are entitled to compensation for all forms of wages earned, including,
19 but not limited to, wages earned but not paid, compensation for unprovided meal periods, and/or
20 compensation for unlawful deductions, but to date have not received such compensation,
21 therefore entitled them Labor Code, Section 203 penalties.

22 69. More than 30 days have passed since Plaintiffs have left Defendants' employ,
23 and on information and belief, they have not received payment for all wages due pursuant to
24 Labor Code, Sections 201-203.

25 70. As a consequence of Defendant's willful conduct in not paying all earned wages
26 when due, Plaintiffs are also entitled to an additional 30 days' wages as a penalty under Labor
27 Code, Section 203, together with interest thereon and attorneys' fees and costs.

1 **IX. FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY FOR MISSED MEAL AND REST BREAKS**

3 **On Behalf of Plaintiffs**

4 **(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC**
5 **CONSTRUCTION COMPANY and Does 1 - 150)**

6 71. Plaintiffs incorporate by reference each of the allegations of the preceding
7 paragraphs as though fully set forth herein.

8 72. At all times during their employment, Plaintiffs were covered under the
9 California Labor Code, the California Code of Regulations, and by the provisions of the
10 Industrial Welfare Commission Wage Orders, including IWC orders 4-2000 and 4-2001.

11 73. California Labor Code §§ 512 and 11070 of Title 8 of the California Code of
12 Regulations, Subdiv. 11(A)-(B) require that an employer provide its employees with a 30-
13 minute meal break for every five-hour increment of time worked. California Labor Code §
14 512(a) states:

15 (a) An employer may not employ an employee for a work period of more than five
16 hours per day without providing the employee with a meal period of not less than 30 minutes,
17 except that if the total work period per day of the employee is no more than six hours, the meal
18 period may be waived by mutual consent of both the employer and the employee. An employer
19 may not employ an employee for a work period of more than 10 hours per day without
20 providing the employee with a second meal period of not less than 30 minutes, except that if the
21 total hours worked is no more than 12 hours, the second meal period may be waived by mutual
22 consent of the employer and the employee only if the first meal period was not waived.

23 74. Subdivision 12(A) of 8 Cal. Code Regs. § 11070 and IWC Wage Orders require
24 mandatory rest periods for non-exempt employees in the State of California. 8 Cal. Code Regs.
25 § 11070, Subdiv. 12(A) states:

26 (b) Every employer shall authorize and permit all employees to take rest periods,
27 which insofar as practicable shall be in the middle of each work period. The authorized rest
28 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest

1 time per four (4) hours or major fraction thereof. However, a rest period need not be authorized
2 for employees whose total daily work time is less than three and one-half (3½) hours.
3 Authorized rest period time shall be counted as hours worked for which there shall be no
4 deduction from wages.

5 75. California Labor Code § 226.7(b), 8 Cal. Code Regs. § 11070, Subdiv. 11(A)-(B)
6 and 8 Cal. Code Regs. § 11070, Subdiv. 12(B) require that if an employer fails to provide an
7 employee a meal or rest period, the employer shall pay the employee one (1) hour of pay at the
8 employee's regular rate of compensation for each workday that the meal or rest period is not
9 provided.

10 76. Defendants routinely failed to provide Plaintiffs with a 10 minute paid rest
11 period every 4 hours of work in compliance with California Labor Code §§ 512(a) and 226.7,
12 California Code Regs. § 11070 and IWC Wage Orders. As a result of Defendants' failure,
13 Plaintiff is entitled to recover an amount to be proved at trial, of not less than one additional
14 hour of pay at Plaintiffs regular rate of compensation for each workday that the rest periods
15 were not provided.

16 77. Plaintiffs were not provided rest breaks during his shifts in accordance with
17 California Law and IWC Wage Orders.

18 78. In doing the acts as alleged herein, in deliberately acting to take Plaintiffs
19 labor without pay and in deliberately acting to take Plaintiffs wages, Defendants, and each of
20 them, acted with malice, oppression, and with an intent to deny Plaintiff his wages, all in a
21 willful and conscious disregard for the rights of the Plaintiff. Plaintiff is entitled to, and
22 therefore seeks, punitive and exemplary damages in an amount to be proven at the time of trial.

23 79. Plaintiffs are entitled to and therefore requests an award of pre-judgment interest
24 on the unpaid wages set forth herein. Plaintiff has incurred, and will continue to incur,
25 attorneys' fees and costs in the prosecution of this action. Plaintiff seeks attorneys' fees under
26 all applicable provisions of law including Labor Code § 1194. Wherefore, Plaintiff prays for
27 judgment as set forth herein.
28

**IX. FIFTH CAUSE OF ACTION
RECOVERY OF WAGES AND PENALTIES
UNDER PUBLIC WORKS PAYMENT BONDS**

On Behalf of Plaintiffs

**(As Against Defendant Sureties identified as CONTINENTAL INSURANCE COMPANY
and DOES 151 through 200)**

80. Plaintiffs incorporate by reference as though fully set forth herein each of the allegations of the preceding paragraphs.

81. Plaintiffs are informed and believe that contemporaneously with the execution of the contract for the Projects, the Defendant Sureties issued payment bond(s) for the purpose of complying with Civil Code Sections 3096 and 3247 through 3252, which were thereafter filed with and approved by the Awarding Body and/or its agents. The bonds provided that if the contractor, or any of their subcontractors, failed to pay for any work or labor performed on one or more of the respective public works projects, or for skill or services provided to one or more of the respective public works projects, that the surety on the bond would pay the same.

82. Plaintiffs are informed and believe that CONTINENTAL INSURANCE COMPANY issued payment bond #929510246 for the Pacific Street Erosion Control project in the amount of Two Hundred Four Thousand, Nine Hundred and Twelve Dollars.

83. Plaintiff is unaware of the surety and bond number for every payment bond for the public works projects at issue and will amend the complaint to ascertain the same. Plaintiffs seek recovery against any and all payment bonds as allowed by law, whether known or unknown, within the applicable statutes of limitations.

84. As a further condition of the payment bonds, the sureties and each of them, promised and agreed to pay for all unpaid labor, skill or services on the respective public works projects at issue, for all laborers of every class on the respective public works projects at issue, and for reasonable attorneys' fees to be fixed by the court in case suit was brought on the bond.

85. Plaintiffs are informed and believe and thereon allege that Defendant Sureties

1 have intentionally failed or refused to pay the verified claims for wages found to be due and
2 payable to Plaintiffs. Defendant Sureties' failure or refusal to pay was "willful" under Labor
3 Code § 203.5.

4 86. Pursuant to Labor Code §203.5 the claims for wages continues as a penalty
5 against the bonding company or surety from the date on which demand for payment was made at
6 the same rate until paid for up to 30 days.

7 87. There is now due, owing and unpaid wages for labor performed on one or more of
8 the respective public works projects at issue by the Plaintiffs. Plaintiffs seek as damages the
9 difference between the amount paid and the legal minimum wage, wages for missed meal and
10 rest breaks, and wait time penalties for the Plaintiffs under Labor Codes §§203, and 203.5.
11 Plaintiff's audit and investigation are continuing, however, the amounts claimed are above the
12 jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend
13 this Complaint according to proof at the time of trial. Plaintiffs claim said damages, together
14 with interest thereon at the maximum legal rate, according to proof.

15 88. Plaintiffs have and will incur attorneys' fees and costs in the prosecution of this
16 action and therefore demand such reasonable attorneys' fees and costs as set by the court.

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20 **X. SIXTH CAUSE OF ACTION**

21 **ENFORCEMENT OF STOP NOTICES**

22 **California Civil Code §§ 3103, 3181-3214**

23 **(Brought by Plaintiffs Against Awarding Body Defendants CITY OF MONTEREY, CITY**
24 **OF WATSONVILLE, MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT,**
25 **COUNTY OF MONTEREY, COUNTY OF SANTA CRUZ and Does 201-225)**

26 89. Plaintiffs re-allege and incorporate by reference each of the allegations of the
27 preceding paragraphs as though fully set forth herein.

28 90. Within applicable statutes of limitation Plaintiffs filed Stop Notices pursuant to

Civil Code §§ 3103, 3181-3214, seeking payment for work performed on the Project(s). The stop notice(s) were timely filed with the Awarding Body Defendants CITY OF MONTEREY, CITY OF WATSONVILLE, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, COUNTY OF MONTEREY, COUNTY OF SANTA CRUZ and Does 201 through 225. At this time, Plaintiff is unaware of the status of the stop notices and will amend the complaint to ascertain the same. Plaintiff seeks recovery against any and all stop notices as allowed by law, whether known or unknown. A copy of Plaintiffs Stop Notices are attached to this complaint.

91. Under information and belief Plaintiffs alleges that as a consequence of the stop notices, the Awarding Body Defendants have withheld funds for payment to Plaintiffs for work performed.

92. There is now due, owing and unpaid wages for labor performed on one or more of the respective public works projects at issue by the Plaintiffs. Plaintiffs audit and investigation are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according to proof at the time of trial. Plaintiffs claim said damages, together with interest thereon at the maximum legal rate, according to proof.

93. Plaintiffs have, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demands such reasonable attorneys' fees as set by the court. WHEREFORE, Plaintiff seeks damages from Defendants, and each of them, as herein set forth.

XI. SEVENTH CAUSE OF ACTION

RECOVERY UNDER STOP NOTICE RELEASE BONDS

California Civil Code § 3196

On Behalf of Plaintiffs

(Brought by Plaintiffs Against Defendants MONTEREY PENINSULA ENGINEERING,

SUNSET PACIFIC CONSTRUCTION COMPANY and

Does 1 – 150, and Does 226-250)

1 94. Plaintiffs re-allege and incorporate by reference each of the allegations of the
2 preceding paragraphs as though fully set forth herein.

3 95. Within applicable statutes of limitation Plaintiffs filed Stop Notices pursuant to
4 Civil Code §§ 3103, 3181-3214, seeking payment for work performed on the Project(s). The
5 stop notice(s) were timely filed with the Awarding Bodies. At this time, Plaintiffs are unaware
6 of the status of the stop notices and will amend the complaint to ascertain the same. Plaintiffs
7 seek recovery against any and all stop notices as allowed by law, whether known or unknown.

8 96. Under information and belief Plaintiffs alleges that as a consequence of the stop
9 notices, the Awarding Bodies have withheld funds for payment to Plaintiffs for work
10 performed.

11 97. Plaintiffs allege that the Awarding Bodies accepted stop notice release bond(s)
12 from an admitted surety to cover the obligations for payment to the Plaintiff on the Stop
13 Notices.

14 98. Based on the stop notice release bonds, the Awarding Bodies have released the
15 funds withheld pursuant to Plaintiff's stop notices. Plaintiff seeks recovery under the stop notice
16 release bonds against Defendants **MONTEREY PENINSULA ENGINEERING** and
17 **SUNSET PACIFIC CONSTRUCTION COMPANY**, Does 1 – 150, and Does 226-250.

18 99. There is now due, owing and unpaid wages for labor performed on one or more of
19 the respective public works projects at issue by the Plaintiffs. Plaintiffs audit and investigation
20 are continuing, however, the amounts claimed are above the jurisdictional minimum
21 requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according
22 to proof at the time of trial. Plaintiffs claim said damages, together with interest thereon at the
23 maximum.

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1 **XII. EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **On Behalf of Plaintiffs, all Similarly Situated Workers and the General Public**

4 **(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC**

5 **CONSTRUCTION COMPANY and Does 1 – 150)**

6 100. Plaintiffs re-allege and incorporate by reference each and every allegation set
7 forth in the preceding paragraphs.

8 101. Plaintiffs seek equitable relief for restitution on behalf of themselves and all
9 Similarly Situated Workers and the General Public and to enjoin Defendants from engaging in
10 the practices alleged in this Complaint and to require Defendants all monies wrongfully
11 withheld by Defendants' unfair business practices and unlawful competition.

12 102. At all times relevant hereto, California Business and Professions Code §17200 et
13 seq. were in full force and effect. Section 17200 of the Business and Professions Code
14 provides, in relevant part, that "unfair competition shall mean and include any unlawful, unfair,
15 or fraudulent business act or practice. . . ."

16 103. Defendants, and each of them, are "persons" as defined under Business and
17 Professions Code §17021. Each of the directors, officers, and/or agents of Defendants, and each
18 of them, are equally responsible for the acts of the other directors, officers, employees and/or
19 agents as set forth in the Business and Professions Code §17095.

20 104. Plaintiffs, and all similarly situated workers, have suffered injury in fact and has
21 lost money as a result of the unfair competition of Defendants.

22 105. Plaintiffs bring this action within the four year statute of limitations under
23 §17208 of the California Business and Professions Code.

24 106. Defendants, and each of them, engaged in unlawful and unfair business
25 practices under California Business and Professions Code §17203. Defendants failed to pay
26 required wages on public works projects which manifested as a pattern and practice whereby the
27 Defendants engaged in unfair competition and unfair business practices Defendants gained a
28 competitive advantage in the marketplace by failing to pay lawful wages that were required of

any other legitimate businesses as a requirement to engage in public works in the State of California.

107. At all times material to this action, Defendants' conduct described above is an unfair, unlawful and/or fraudulent business practice in violation of California Business & Professions Code §17200, et seq.

108. As set forth below, Plaintiffs allege, that by the wrongful conduct as alleged, Defendants have engaged in business within the State of California, as set forth and defined in Business and Professions Code §§17026, 17029, and 17073, in a manner that injures workers on public works projects; leads to misrepresentations to the public about the manner in which Defendants engaged in business, and/or destroys competition in violation of Business and Professions Code §17043.

109. Upon information and belief, Plaintiffs allege that Defendants engaged in the acts and omissions heretofore alleged for the purpose of profiting from lower labor costs and obtaining an unlawful or unfair advantage in the California public works construction market, all in a scheme to engage in unfair competition, at the expense of the Plaintiffs and similarly situated workers and to the detriment of public policy for the lawful employment of workers on construction projects, including public works projects.

110. As a direct and proximate result of these acts and omissions, the Defendants, and each of them, were able to unfairly compete in the State of California as contractor or subcontractor in violation of the Labor Code and the Business and Professions Code. Plaintiffs seek restitution of all unpaid wages. In addition to restitution and restoration of all wages owed to the Plaintiffs and to all affected workers, Plaintiffs seek to enforce any and all applicable equitable remedies.

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1 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of
2 them, as follows:

3 **A. FOR THE FIRST AND SECOND CAUSES OF ACTION:**

4 1. For damages for unpaid wages, including overtime, measured as the difference
5 between accrued wages at the proper prevailing wage and the actual wages paid to Plaintiff and
6 for such damages as may be recoverable under law, according to proof at trial;

7 2. For liquidated damages per to Labor Code § 1194.2 for failure to pay minimum
8 wage.

9 3. Damages per Labor Code § 226(a), up to \$4,000, for false itemized wage
10 statements pursuant to California law;

11 4. Pursuant to California law, an award of all accrued interest from the date that the
12 wages were due and payable at the lawful rate specified in subdivision; and

13 5. An award to Plaintiff for all reasonable attorneys' fees and costs pursuant to
14 California Labor Code § 1194 and/or other applicable state laws.

15 **B. FOR THE THIRD CAUSE OF ACTION**

16 1. Waiting time penalties of thirty days of pay at the Plaintiffs regular rate of pay,
17 for interest thereon at the maximum legal rate, and for reasonable attorneys' fees and costs.

18 **C. FOR THE FOURTH CAUSE OF ACTION:**

19 1. For damages for unpaid wages for missed rest periods pursuant to Labor Code §
20 226.7(b) in the amount of one additional hour of pay at the worker's rate of compensation for
21 each work day that a rest period was not provided, according to proof at trial;

22 2. For statutory penalties as may be recoverable under law;

23 3. For pre-judgment interest;

24 4. For attorneys fees and costs pursuant to Labor Code §§ 226.7(b), 1194 and/or
25 other applicable state laws.

26 **D. FOR THE FIFTH, SIXTH and SEVENTH CAUSES OF ACTION:**

27 1. Damages for unpaid wages, including overtime and wages for unprovided meal
28 and rest breaks, measured as the difference between accrued wages at the proper wage and the

1 actual wages paid to Plaintiff and for such damages as may be recoverable under law, according
2 to proof at trial;;

3 2. For statutory penalties under Labor Code §§ 203 and 203.5 and others as may be
4 recoverable under law;

5 3. For prejudgment interest; and

6 4. For attorneys fees and costs pursuant to *Labor Code* § 1194 and/or other
7 applicable state laws.

8 **E. FOR THE EIGHTH CAUSE OF ACTION:**

9 1. An order certifying Plaintiffs as representatives of a class of similarly situated
10 workers under Code of Civil Procedure §382 and Plaintiffs' counsel as class counsel.

11 2. An order imposing a constructive trust upon Defendants to compel them to
12 transfer Plaintiff's wages that have been wrongfully obtained and withheld by Defendants to the
13 detriment of Plaintiffs;

14 3. An award of restitution to Plaintiffs in the amount equal to all unpaid wages,
15 including overtime wages owed, in a total amount to be proven at trial, plus interest as provided
16 by statute;

17 4. A declaration that Defendants have engaged in unlawful and unfair business
18 practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. and notice to relevant
19 governmental agencies and departments as determined by the Court;

20 5 A preliminary and/or permanent and mandatory injunction as provided under
21 California Business and Professions Code §§ 17200 et seq. enjoining Defendants and their
22 respective successors, agents, servants, officers, directors, employees and all persons acting in
23 concert with them from pursuing the policies, acts and practices complained of herein and
24 prohibiting Defendants from continuing such acts of unfair and illegal business acts and
25 practices;

26 6. Equitable remedies, including but not limited to an equitable accounting, as the
27 Court deems just and proper under the circumstances.

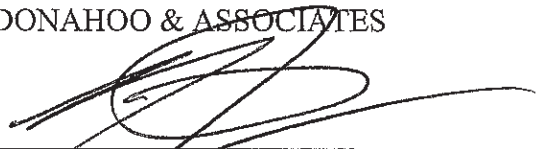
28 **F. FOR ALL CAUSES OF ACTION:**

1. For reasonable attorneys' fees and costs as permitted by California law;
2. For expenses and costs of suit;
3. For pre-judgment interest; and
4. Such other relief as the court deems just and proper under the circumstances.

Dated: November 11, 2011

DONAHOO & ASSOCIATES

By:


Richard E. Donahoo
Sarah L. Kokonas
Joseph K. Johnson
Attorneys for Plaintiffs

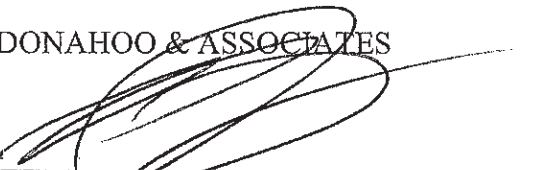
JURY TRIAL DEMAND

PLAINTIFFS hereby demand their constitutional right to trial by jury for all triable issues in the above-entitled action.

Dated: November 11, 2011

DONAHOO & ASSOCIATES

By:


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FILED
MAR 08 2007
LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
C. WILLIAMS DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

UNLIMITED JURISDICTION

ANTHONY IRIARTE on his own behalf and
in the interest of the general public,

Plaintiff,

MONTEREY PENINSULA ENGINEERING,
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No.

M83497

COMPLAINT FOR STATUTORY
VIOLATIONS, UNPAID WAGES,
PENALTIES AND INJUNCTIVE
RELIEF FOR:

1. VIOLATION OF STATUTORY DUTY
FOR BREACH OF LABOR CODE §§ 1194, 1771
& 1774;
2. BREACH OF CONTRACT-THIRD
PARTY BENEFICIARY;
3. LABOR CODE § 203 PENALTY;
4. LABOR CODE § 1194.2 PENALTY
(failure to pay Prevailing Wage/Minimum Wage);
5. WAGE STUB VIOLATION PENALTIES
AND ATTORNEYS' FEES LABOR CODE §
226;
6. LABOR CODE § 203.5 PENALTY;
7. RECOVERY UNDER PUBLIC WORKS
PAYMENT BONDS, CIVIL CODE §§ 3096 and
3247 through 3252;
8. UNFAIR BUSINESS PRACTICES [Bus. &
Prof. Code § 17200 et seq. on Behalf of the
General Public]; and
9. UNJUST ENRICHMENT

COMPLAINT FOR STATUTORY VIOLATIONS,
UNPAID WAGES, PENALTIES AND INJUNCTIVE RELIEF

BY FAX

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I. NATURE OF THE CASE

1. Now come Plaintiff ANTHONY IRIARTE (hereinafter referred to as "Plaintiff"), individually, and in the interest of the General Public, and alleges against Defendants MONTEREY PENINSULA ENGINEERING, INC.; and DOES 1 through 50, inclusive, violations of the California Labor Code, Civil Code, breach of contract, unjust enrichment and Business and Professions Code.

2. This case involves a worker who performed labor on works of public improvement, or public works construction projects (hereinafter "PROJECTS"), who was not paid the correct prevailing rate of pay ("prevailing wage violation"), was not paid for all hours worked, and was not paid overtime wages. Moreover, he received wage stubs which were not compliant with state law to mask the rate of pay actually received and to mask the fact he was not paid as an Operating Engineer on Public Works Construction Projects.

3. This lawsuit has two distinct disputes. The first involves Plaintiff who was paid either \$13.00 an hour or the rate of pay of a Laborer on PROJECTS subject to the payment of prevailing wages and actually discharged the work of an Operating Engineer and Laborer and earned and is owed the difference in wages which is a minimum wage violation. The second involves Plaintiff, and his co-workers who are members of the general public, and involves a construction project known as Urban Runoff Diversion Phase 2 for the City of Pacific Grove. This second dispute involves the fact that the Urban Runoff Diversion Phase 2 as described below was a Prevailing Wage Project and neither Plaintiff nor his co-workers, who are members of the general public, were paid prevailing wages.

4. Defendants MONTEREY PENINSULA ENGINEERING, INC., and DOES 1 through 25 are collectively identified and referred to as the MPE DEFENDANTS. As described below these individuals and entities hired, employed and benefited from the labor of PLAINTIFF such that they are responsible in whole or in part for the claims made.

5. Defendants Does 26 through 50, are collectively identified and referred to as SURETY BOND DEFENDANTS, are various entities that issued surety and/or construction bonds on jobs in which PLAINTIFF performed labor, was not paid correctly, and on which timely verified claims were made.

6. Plaintiff alleges that MPE DEFENDANTS failed to properly pay Plaintiff straight time, overtime and weekend and holiday pay on a work of public improvement subject to California's Prevailing Wage laws. This includes the show up pay; travel pay and the minimum shift pay which is part of MPE DEFENDANTS' prevailing wage obligations. Plaintiff seeks recovery of unpaid wages, accrued interest and penalties, attorneys' fees and costs.

7. Plaintiff seeks to enforce claims made against construction bonds issued by SURETY BOND DEFENDANTS and asserts claims for penalties based on the manner in which they processed his verified claims.

8. Finally, the employment practices plead as against MPE DEFENDANTS are unlawful, contrary to public policy of the State of California, and violate state statutes, including California's Unfair Competition Law (Cal. Business and Professions Code §§ 17200 et seq.), Civil Code §§ 3103 and 3181 through 3184, and California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 1194, 1194.2, 1174, 1174.7 and 1198, and as such are predicate acts for the 8th cause of action.

II. JURISDICTION

9. Plaintiff brings this action against Defendants pursuant to Civil Code §§ 3103 and 3181 through 3184, California Labor Code §§ 200, 201, 202, 203, 203.1, 203.5, 218, 226, 1194, 1194.2, and 1174; Industrial Welfare Commission (“IWC”) Wage Order 16-2001, and California Business and Professions Code §§ 17200 et seq.

1 16. Plaintiff is informed and believes and therefore alleges that certain MPE
2 DEFENDANTS, and each of them, were at all relevant times herein acting as agents, and/or
3 servants of MONTEREY PENINSULA ENGINEERING, INC., and in such a position influenced
4 and governed MONTEREY PENINSULA ENGINEERING, INC. such that such a unity of
5 interest between MONTEREY PENINSULA ENGINEERING, INC. and certain MPE
6 DEFENDANTS that the MPE DEFENDANTS were alter egos of MONTEREY PENINSULA
7 ENGINEERING, INC..

8 17. Plaintiff is informed and believes and therefore alleges that certain MPE
9 DEFENDANTS, and each of them, were entitled to and did receive a beneficial interest in the
10 proceeds of MONTEREY PENINSULA ENGINEERING, INC. by entering into the subcontracts
11 and/or contracts for the awarding bodies on the Pubic Works Construction Projects at issue.

12 18. Plaintiff is informed and believes and therefore alleges that certain MPE
13 DEFENDANTS, and each of them, operated a single construction company, wherein each was the
14 alter-ego of the other, that a unity of interest exists between them such that in equity any
15 separateness of form should be disregarded to prevent fraud and injustice.

16 19. Plaintiff is informed and believes and therefore alleges that adherence to the
17 separate existence of MONTEREY PENINSULA ENGINEERING, INC. an entity distinct from
18 certain MPE DEFENDANTS, and each of them, would permit an abuse of the corporate privilege
19 and would sanction a fraud in that said defendants, and each of them, while acting as principle
20 owners, shareholders, agents, and/or servants of MONTEREY PENINSULA ENGINEERING,
21 INC. knowing performed the following: (1) engaged in wage and hour fraud against employees
22 of MONTEREY PENINSULA ENGINEERING, INC., including Plaintiff; (2) acted to conceal
23 the fact that Plaintiff was not paid prevailing wages by submitting falsified payroll records to the
24 awarding agencies; (3) underbid the subcontracts and/or contracts for the PROJECTS with
25 knowledge that the bid was insufficient to pay Plaintiff's prevailing wages; and (4) underbid the
26 subcontracts and/or contracts for the PROJECTS in order to gain an unfair advantage over the
27 competition in being awarded the subcontract and/or contract for the PROJECTS. Said
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1 defendants' acts or omissions thereby subjected MPE DEFENDANTS to criminal and civil
2 liability for their failure to pay minimum prevailing wages, tax fraud, insurance fraud, and
3 numerous other wage and hour violations.

4 20. Plaintiff is informed and believes and therefore alleges that some MPE
5 DEFENDANTS, and each of them, acted in concert to violate wage and hour laws of the State of
6 California as delineated in the preceding paragraph, and as such operated a joint enterprise such
7 that each was the alter-ego of one another. Failure to disregard any separateness between these
8 defendants, and each of them, would promote fraud and injustice.

9 21. SURETY BOND DEFENDANTS are various entities that issued surety and/or
10 construction bonds on jobs in which PLAINTIFF performed labor, were not paid correctly, and on
11 which timely verified claims were made.

12 22. Plaintiff is informed and believes and therefore alleges that at all times herein
13 mentioned, defendants DOES 1 through 50, and each of them, were at all relevant times herein the
14 agents, servants and/or employees of each and every group of defendants, and that all acts and
15 omissions herein complained of were performed within the course and scope of said employment,
16 service and/or agency and with the consent of each of the defendants. All actions of each
17 defendant herein alleged were ratified and approved by the directors, officers or managing agents
18 of defendants.

19 23. The true names and capacities, whether individual, corporate, associate or otherwise
20 of defendant DOES 1 through 50, inclusive, are unknown to Plaintiff who therefore sues said
21 defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to
22 show their true names and capacities when the same have been ascertained pursuant to Code Civil
23 Procedure section 474.

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V. GENERAL ALLEGATIONS

24. MPE DEFENDANTS employed Plaintiff at various times within the statute of limitations in this action on Public Works Construction Projects, including but not limited to those identified above.

25. MPE DEFENDANTS compensated Plaintiff for his labor at a rate of pay below the prevailing wage rate of pay for the classification of labor he performed. Specifically, MPE DEFENDANTS paid Plaintiff either \$13.00 an hour or a rate of pay for the "Laborer" Craft when Plaintiff either worked as a "Laborer" or "Operating Engineer."

26. MPE DEFENDANTS did not compensate Plaintiff for his labor by making any fringe benefit contributions that could offset the prevailing wage rate of pay for the classification of his labor.

27. MPE DEFENDANTS did not compensate Plaintiff for his labor by paying overtime compensation when due and owing.

28. MPE DEFENDANTS did not compensate Plaintiff, and his co-workers who are members of the general public, the Prevailing Wage on the Urban Runoff Diversion Phase 2 for the City of Pacific Grove. Based on information and belief, this project is subject to the payment of prevailing wages because the City of Pacific Grove paid for the project in whole or in part from grant funds from the State of California Water Resources Control Board. Said funds subject the Urban Runoff Diversion Phase 2 for the City of Pacific Grove to the payment of prevailing wages to workers.

29. Based on the failure to pay all wages, Plaintiff will file verified claims against Surety or Bonding companies including SURETY BOND DEFENDANTS.

VI. FIRST CAUSE OF ACTION

VIOLATION OF STATUTORY DUTY FOR BREACH OF
LABOR CODE §§ 218.5, 1194, 1194.2, 1771 & 1774

On Behalf of Plaintiff

(As Against MPE DEFENDANTS)

1 30. Plaintiff incorporates by reference as though fully set forth herein each of the
2 allegations of Paragraphs 1 through 29.

3 31. At all times mentioned herein, MPE DEFENDANTS, and each of them, were
4 subject to the minimum wage requirements of the State of California pursuant to Labor Code §
5 1194 and prevailing wage laws of the State of California. Pursuant to Labor Code §1194
6 defendants had a duty to pay their employees, including Plaintiff, not less than the minimum
7 required hourly rate of pay and legal overtime wage.

8 32. The failure to pay the prevailing wage, which is a minimum wage, subjects, MPE
9 DEFENDANTS, and each of them, to an assessment of the unpaid wage difference pursuant to
10 Labor Code § 1194.2.

11 33. At all times mentioned herein, defendants were subject to the prevailing wage laws
12 of the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public
13 construction projects, including work undertaken on the projects listed above. Pursuant to Labor
14 Code §§ 1771 MPE DEFENDANTS had a duty to pay their employees on such projects,
15 including Plaintiff, not less than the general prevailing rate of per diem wages for work of a
16 similar character in the locality in which the public work is performed, and not less than the
17 general prevailing rate of per diem wages for holiday and overtime work.

18 34. At all times mentioned herein, MPE DEFENDANTS, and each of them, were
19 subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1774,
20 regarding work undertaken on public construction projects. Pursuant to Labor Code §§ 1774,
21 MPE DEFENDANTS, and each of them, had a duty to pay their employees on such projects,
22 including Plaintiff, not less than the specific prevailing rates of wages to all workmen employed
23 in the execution of the contract of the PROJECTS.

24 35. Plaintiff is informed and believes and based thereon contends that the per diem
25 wages and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774
26 are set forth in annual and semi-annual bulletins published by the California Department of
27 Industrial Relations.
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1 36. Plaintiff's employment period, hours worked, and trade classification is based on
2 his individual employment as described above and as will be proved at trial.

3 37. Plaintiff is informed and believes and based thereon alleges that Plaintiff was paid
4 less than the minimum required general prevailing rate of per diem wages for work and less than
5 the minimum required prevailing rate of per diem wages for holiday and overtime work for their
6 work on the PROJECTS as required by Labor Code §§ 1194, 1771 and 1774.

7 38. Plaintiff is informed and believes and based thereon contends that said defendants,
8 and each of them, violated Labor Code §§ 1194, 1194.2, 1771 and 1774, specifically by failing
9 and refusing to comply with the statutory duty to pay Plaintiff's prevailing wages as required by
10 the contracts and by statute, or ensure that Plaintiff was paid prevailing wages as required by the
11 contracts and by statute.

12 39. As a result of MPE DEFENDANTS' violation of statutory duties, as more fully set
13 forth above, Plaintiff earned but were not paid wages in an amount within the jurisdictional
14 minimum of this court.

15 40. Plaintiff seeks as earned but were not paid wages the difference between the amount
16 actually paid and the prevailing wage rate as determined by the Director of Industrial Relations.
17 Plaintiff's audits and investigations are continuing, however, the amounts claimed are above the
18 jurisdictional minimum requirements of this court. Plaintiff will seek leave of court to amend this
19 Complaint according to proof at the time of trial.

20 41. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on
21 the unpaid wages set forth herein.

22 42. Plaintiff seeks and is entitled to an assessment of the unpaid minimum wage under
23 Labor Code § 1194.2.

24 43. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution
25 of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

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1 VII. SECOND CAUSE OF ACTION

2 BREACH OF CONTRACT -THIRD PARTY BENEFICIARY
3 On Behalf of Plaintiff
(As Against MPE DEFENDANTS)

4 44. Plaintiff incorporates by reference as though fully set forth herein each of the
5 allegations of Paragraphs 1 through 43.

6 45. Plaintiff is informed and believes and based thereon alleges that during the relevant
7 time periods mentioned herein, MPE DEFENDANTS and AWARDING BODY DEFENDANTS
8 were parties to public works construction written contracts (hereinafter "the Contracts") for work
9 undertaken on the PROJECTS listed above.

10 46. Plaintiff is informed and believes and based thereon alleges that the Contracts
11 required MPE DEFENDANTS, and each of them, to comply with all applicable legal
12 requirements for work undertaken on public works projects and ensure its subcontractors
13 complied with all such laws, including payment of prevailing wages pursuant to Labor Code §§
14 1194 and 1770 et seq.

15 47. Except as excused by the wrongful conduct of defendants, Plaintiff has performed
16 all conditions required to be performed by Plaintiff under the Contracts and/or Subcontracts.

17 48. Plaintiff is informed and believes and based thereon alleges that MPE
18 DEFENDANTS, and each of them, breached the Contracts and Subcontracts by failing to pay
19 prevailing wages as required by the Contracts and Subcontracts, and as required by California
20 law, and by failing to submit truthful and accurate Certified Payroll Records to the public bodies
21 awarding the Contracts. Plaintiff was damaged by the failure of MPE DEFENDANTS, and each
22 of them, to pay prevailing wages.

23 49. Plaintiff has standing as an intended third-party beneficiary of the Contracts and
24 Subcontracts to assert said claims.

25 50. As a result of MPE DEFENDANTS', inclusive, breach of the Contracts and
26 Subcontracts, as more fully set forth herein, Plaintiff was damaged in an amount within the
27 jurisdictional minimum of this court.

51. Plaintiff seeks as contractual damages earned but unpaid wages being the difference between the amount paid and the prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's audits and investigations are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiff will seek leave of court to amend this Complaint according to proof at the time of trial.

52. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on the unpaid wages set forth herein.

53. Plaintiff has incurred, and will continue to incur attorney fees in the prosecution of this action and therefore demand such reasonable attorneys' fees as set by the court. Plaintiff is informed and believes and based thereon alleges that the contracts at issue provided that should a dispute arise in connection with the contract that attorneys fees would be awarded to the prevailing party.

54. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

VIII. THIRD CAUSE OF ACTION

LABOR CODE § 203 PENALTIES
On Behalf of Plaintiff
(As Against MPE DEFENDANTS)

55. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 54.

56. Plaintiff is a former employee of MPE DEFENDANTS, who was discharged or quit. Plaintiff is informed and believes and based thereon alleges that defendants owed unpaid wages at the conclusion of his employment.

57. Plaintiff is informed and believes and based thereon alleges that he submitted at least two verified claims for wages now due on the PROJECTS.

58. Plaintiff is informed and believes and based thereon alleges that within the last four years MPE DEFENDANTS, inclusive, and each of them, willfully failed to pay Plaintiff's claims for compensation due to them as set forth above, and as required by Labor Code §201 and §202.

1 Under Labor Code § 203, MPE DEFENDANTS, and each of them, are liable to Plaintiff for a
2 penalty of thirty-days wage at the legally required prevailing wage rate.

3 59. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution
4 of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.
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6 **IX. FOURTH CAUSE OF ACTION**

7 **LABOR CODE § 1194.2**
8 **On Behalf of Plaintiff**

9 **(As Against MPE DEFENDANTS)**

10 60. Plaintiff incorporates by reference as though fully set forth herein each of the
11 allegations of Paragraphs 1 through 59.

12 61. MPE DEFENDANTS failed to pay Plaintiff the prevailing wage which is a
13 minimum wage under Labor Code § 1194.

14 62. Plaintiff is entitled to liquidated damages for the failure to pay the minimum wage
15 under Labor Code § 1194.2 in the amount equal to the underpaid wage amount as MPE
16 DEFENDANTS cannot demonstrate that the failure to pay minimum wage resulted from an
17 omission made in good faith and that they had reasonable grounds for believing that the act or
18 omission was not a violation of any provision of the Labor Code relating to minimum wage, or an
19 order of the commission.

20 63. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution
21 of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

22 **X. FIFTH CAUSE OF ACTION**

23 **LABOR CODE § 226**
24 **On Behalf of Plaintiff**

25 **(As Against MPE DEFENDANTS)**

26 64. Plaintiff incorporates by reference as though fully set forth herein each of the
27 allegations of Paragraphs 1 through 63.

28 65. At all times relevant hereto, Defendants were subject to the provisions of IWC
Wage Order 16-2001, and Labor Code §§ 226 and 1174, which require Defendants to keep written

1 daily records of each of its employee's hours of work and meal breaks and to maintain such records
2 for at least three years; and to provide each employee with each periodic wage payment a writing
3 setting forth, among other things, the dates of labor for which payment of wages is made, the total
4 hours of work for the pay period, the gross and net wages paid, all deductions from those wages,
5 and the name and address of the employer.

6 66. Defendants knowingly and intentionally failed to provide Plaintiff with accurate,
7 itemized wage statements in compliance with Labor Code §226. Such failures in Defendants'
8 itemized wage statements included, among other things, not accurately showing the number of all
9 hours worked, including overtime hours, in each pay period and/or incorrectly reporting gross
10 wages earned.

11 67. As a direct result of each Defendants' failure, Plaintiff was injured and entitled to
12 recover an amount to be proved at trial, of not less than \$100.00 for each violation up to \$4,000.00.

13 68. Plaintiff on behalf of himself and the general public is entitled to and seek an
14 injunction ordering Defendants to comply now and in the future with the record keeping provisions
15 of IWC Wage Orders 1-98, the March 1, 2000-September 30, 2000 Interim Wage Order, 1-2000,
16 1-2001, and Labor Code §§ 226 and 1174, and with the pay stub provisions of Labor Code §§ 226
17 and 226.6; and statutory penalties and attorney fees pursuant to Labor Code § 226 and Civil Code
18 § 1021.5.

19 69. Defendants' practices as alleged as the failure to provide accurate wage statements
20 is an ongoing unlawful business practice by which Defendants profited, and which are proscribed
21 by Business and Professions Code § 17200. Plaintiff on behalf of himself and the general public
22 are entitled to and seek an injunction ordering Defendants to comply now and in the future with the
23 record keeping provisions of IWC Wage Order 1-98, the March 1, 2000-September 30, 2000
24 Interim Wage Order, 1-2000, 1-2001, and Labor Code §§ 226 and 1174, and with the pay stub
25 provisions of Labor Code § 226; and statutory penalties and attorney fees pursuant to Labor Code
26 §§ and 226, 1194 and Civil Code § 1021.5.

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2 **XI. SIXTH CAUSE OF ACTION**

3 **RECOVERY UNDER PUBLIC WORKS PAYMENT BOND**
4 **On Behalf of Plaintiff**
5 **(As Against MPE DEFENDANTS and SURETY DEFENDANTS)**

6 70. Plaintiff incorporates by reference as though fully set forth herein each of the
7 allegations of Paragraphs 1 through 69.

8 71. Plaintiff is informed and believes and based thereon alleges that contemporaneously
9 with the execution of the Contracts for the PROJECTS that MPE DEFENDANTS as principal,
10 and SURETY DEFENDANTS, as surety, executed a Payment Bond for Labor and Materials for
11 the purpose of complying with Civil Code §§ 3096 and 3247 through 3252, which was thereafter
12 filed with and approved by the respective awarding body. The bond was conditioned, and
13 provided that if MPE DEFENDANTS or any of their subcontractors, such as MPE
14 DEFENDANTS, and each of them, failed to pay for any work or labor performed on the
15 aforementioned projects of any kind, that the surety on the bond would pay the same. Plaintiff
16 alleges that the expiration of the stop notice period for each project or projects covered under the
17 payment bond(s) occurred less than six months prior to the filing of the herein action.

18 72. Plaintiff is informed and believes and based thereon alleges that as a further
19 condition of the payment bond on the PROJECTS, MPE DEFENDANTS and SURETY
20 DEFENDANTS, and each of them, promised and agreed to pay reasonable attorneys' fees to be
21 fixed by the court in case suit was brought on the bond and undertaking.

22 73. Under Civil Code § 3250, Plaintiff is entitled to an award of reasonable attorneys
23 fees in the sum to be fixed by the Court, for costs of suit, and for prejudgment interest as set by
24 law.

25 74. Plaintiff is informed and believes and based thereon alleges that there is now due,
26 owing and unpaid from MPE DEFENDANTS, and each of them, wages for labor performed on
27 the PROJECTS by Plaintiff. Plaintiff seeks as damages the difference between the amount paid
28 and the prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's

1 audits and investigation are continuing, however, the amounts claimed are above the jurisdictional
2 minimum requirements of this court. Plaintiff will seek leave of court to amend this Complaint
3 according to proof at the time of trial. Plaintiff claims said damages, together with interest
4 thereon at the maximum legal rate, according to proof.

5 75. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution
6 of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.
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8 XII. EIGHTH CAUSE OF ACTION

9 UNFAIR BUSINESS PRACTICES 10 (On Behalf of Plaintiff Individually and in the Interest of the General Public) 11 (As against MPE DEFENDANTS)

12 76. Plaintiff incorporates by reference as though fully set forth herein each of the
13 allegations of Paragraphs 1 through 75.

14 77. Plaintiff individually, and in the interest of the general public, is informed and
15 believes and based thereon alleges that MPE DEFENDANTS, and each of them, engaged in the
16 acts and omissions heretofore alleged for the purpose of depriving their employees of their weekly
17 pay at the minimum wage rate as set by law. Plaintiff, on behalf of the general public, is further
18 informed and believe and based thereon allege that defendants, and each of them have also
19 engaged in the acts and omissions heretofore alleged for the purpose of profiting from lower labor
20 costs, employer taxes, workers compensation insurance, employer related expenses, and obtaining
21 a deceitful, unlawful or unfair advantage in the competitive bidding for public works construction
22 contracts, all in a scheme to engage in unfair competition, at the expense of the general public and
23 to the detriment of public policy for the lawful construction of public works projects. Said
24 conduct deceived the general public into believing MPE DEFENDANTS were legitimate public
25 works contracts and constitutes an Unfair Trade Practice and violates the Unfair Practices Act of
26 the California Business and Professions Code, Section 17200 et seq.

27 78. Plaintiff, on behalf of the general public, is prosecuting this action in the interest of
28 the general public, to maintain the integrity of public works projects, compliance with public

1 works labor laws and to prevent and deter practices of MPE DEFENDANTS, and each of them,
2 which constitute an Unfair Trade Practice as required by California Business & Professions Code,
3 section 17200 et seq.

4 79. Plaintiff is an aggrieved worker and therefore has standing to maintain this action.
5 Moreover, based on information and belief Plaintiff satisfies the requirements of California
6 Business and Professions Code sections 17203 and 17204 and will be able to comply with
7 California Code of Civil Procedure section 382.

8 80. As a proximate result of the above mentioned acts and omissions of MPE
9 DEFENDANTS, and each of them, as previously alleged, the general public and employees of
10 MPE DEFENDANTS, and each of them, have been damaged in an amount above the
11 jurisdictional limits of this court.

12 81. Plaintiff is entitled to and therefore request an award of pre-judgment interest at the
13 maximum legal rate.

14 82. Plaintiff has incurred, and will continue to incur attorney fees in the prosecution of
15 this action.

16 XIII. NINTH CAUSE OF ACTION

17 UNJUST ENRICHMENT 18 On Behalf of Plaintiff 19 (As Against MPE DEFENDANTS)

20 83. Plaintiff incorporates by reference as though fully set forth herein each of the
21 allegations of Paragraphs 1 through 82.

22 84. MPE DEFENDANTS received funds from various public entities, and general
23 contractors and/or subcontractors to pay the prevailing rate of pay on public works construction.

24 85. Said funds were for the benefit of Plaintiff.

25 86. By failing to pay for all hours worked and overtime on public works construction
26 MPE DEFENDANTS unjustly enriched themselves of funds earmarked to Plaintiff.

27 87. Under equitable principles, MPE DEFENDANTS were and are unjustly enriched
28 and MPE DEFENDANTS should be required to pay said funds to Plaintiff.

88. Plaintiff has fulfilled all conditions precedent to receive said funds.

XV. ATTORNEY FEES AND COSTS

89. Enforcement of statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public interest in California. Consequently, Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated herein is necessary as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be against the interest of justice to require the payment of any attorney's fees and costs from any recovery that might be obtained herein. As prayed for below, Plaintiff and his counsel of The Law Office of Richard H. Wilson and The Law Offices of Tomas E. Margain are entitled to and seeks an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 1194, 1194.2 and other applicable laws.

XVI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages for unpaid compensation according to proof at trial measured as the difference between the prevailing wage rate and the wages paid to Plaintiff;
2. For General Damages and Special Damages as allowed by law;
3. For pre-judgment and post-judgment interest at the maximum legal rate;
4. For penalties pursuant to Labor Code § 203 in an amount equal to thirty days wages to Plaintiff measured at the applicable prevailing wage rate;
5. For liquidated damages or an assessment pursuant to Labor Code § 1194.2 in an amount equal to the unpaid prevailing wage amount;
6. For penalties pursuant to Labor Code § 203.5 in an amount equal to thirty days wages to Plaintiff measured at the applicable prevailing wage rate;

1 7. For an award of earned but unpaid wages to Plaintiff under the Unfair
2 Competition Act;

3 8. For equitable and injunctive relief under the Unfair Competition Act;

4 9. For an award of earned but unpaid wages to Plaintiff under theories of
5 Unjust enrichment;

6 10. Wage Stub Violation Penalties and an injunction to Plaintiff and his co-
7 workers who are members of the general public;

8 11. For a finding that various Doe Defendants are alter egos of the named
9 Defendants;

10 12. For a finding that various Doe Defendants are statutory employers of
11 Plaintiff;

12 13. For a finding that the corporate veil of certain named Defendants should be
13 disregarded as according to proof;

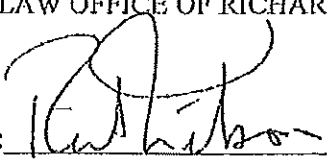
14 14. For an award of reasonable attorney fees and costs of suit;

15 15. For any and all penalties allowable by law for the alleged conduct; and

16 16. For such other and further relief as the court may deem proper.

17
18 Dated: March 8, 2007

LAW OFFICE OF RICHARD H. WILSON

19
20
21 By: 
22 RICHARD H. WILSON
23 Attorneys for Plaintiff

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

FRED HIRSHBACH, on behalf of the general
public; JIM HOMER, also on behalf of the
general public; and JUAN GALLO, on behalf
of themselves and on behalf of others similarly
situated,

Plaintiffs,

vs.

MONTEREY PENINSULA ENGINEERING,
INC.; SUNSET PACIFIC; and DOES 1
THROUGH 50, inclusive,

DEFENDANTS.

Case No. M63013

AMENDED NOTICE OF DEPOSITION
OF PAUL BRUNO

Deposition Date: March 11, 2004

Time: 10:00 a.m.

Location:

Pulone & Stromberg, Inc.

Certified Shorthand Reporters

1550 The Alameda, Suite 150

San Jose, California, 95126

Telephone: (888) 280-6628

Facsimile: (408) 288-1261

TO: EACH PARTY AND THEIR ATTORNEY OF RECORD

NOTICE IS HEREBY GIVEN that Plaintiffs will take the deposition of PAUL BRUNO,
on March 11, 2004 at 10:00 a.m., at Pulone & Stromberg, Inc., Certified Shorthand Reporters,
1550 The Alameda, Suite 150, San Jose, California, 95126, Telephone: (888) 280-6628. The
deposition shall be taken upon oral examination before a certified shorthand reporter, authorized to

////

////

1 administer oaths, and shall continue from day to day until completed or adjourned, Sundays and
2 holidays excepted.

3 DATED: February 19, 2004

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: 
ALAN G. CROWLEY
Attorneys for Plaintiffs

JOSEPH S. COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement 100 Paseo de San Antonio Rm 126 San Jose, CA 95113		
AWARDING BODY: City of Seaside 440 Harlowe Avenue Seaside, CA 93455		
DATE: January 26, 1988		IN REPLY, REFER TO CASE NUMBER: 28-7955SNJ051

NOTICE OF WAGES OWED

CONTRACT NUMBER
SUB-CONTRACTOR Monterey Peninsula Engineering
GENERAL CONTRACTOR Olympic Builders
PROJECT NAME AND ADDRESS Improvements on Kimball Avenue

Please Take Notice that the person(s) named on Exhibit "A", attached hereto and made a part hereof, have performed labor as stated on Exhibit "A" for the sub-contractor or general contractor, named above, or other person(s) acting by your authority on the work of improvement in progress or being completed at your property at the project shown above.

Total value of the labor so performed is the sum of \$ 17,813.07, and no payments have been made for the foregoing labor except as indicated on Exhibit "A", and there now remains due, owing and unpaid \$ 17,813.07 after deducting all just credits and offsets. The labor was performed for and furnished to the general contractor named above upon the project shown above.

This Notice is given pursuant to the provisions of Section 1727 of the Labor Code. You are hereby required, pursuant to said section to withhold any and all payments which are or hereafter may become due to the contractor hereinabove named to the extent of the total claim as hereinabove shown.

Executed on January 26, 19 88, at San Jose, California.

STATE LABOR COMMISSIONER

By Lucien Kubota
 Lucien Kubota
 Deputy Labor Commissioner

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NOTICE OF WAGES OWED

Richard K. Grosboll, State Bar #99729
Carolyn A. Anderson, State Bar #145628
NEYHART, ANDERSON, REILLY & FREITAS
600 Harrison Street, Suite 535
San Francisco, CA 94107
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Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEANNE NUNEZ, RAYMOND PEREZ, ROBERT
NUNEZ, RICHARD MORGAN, and JOHN
MACHADO,

Plaintiffs,

vs.

MONTEREY PENINSULA ENGINEERING,
INC., MONTEREY PENINSULA
ENGINEERING PROFIT SHARING PLAN,
and BART J. BRUNO,

Defendants.

No.

COMPLAINT FOR DAMAGES
AND INJUNCTIVE AND
DECLARATORY RELIEF

[Seeking Pension
Benefits and Documents
Under ERISA]

I. INTRODUCTION

1. Plaintiffs JEANNE NUNEZ, RAYMOND PEREZ, ROBERT NUNEZ,
RICHARD MORGAN, and JOHN MACHADO bring this action to recover
pension benefits due them under the MONTEREY PENINSULA
ENGINEERING, INC. PROFIT SHARING PLAN ("PLAN") and to force
defendants MONTEREY PENINSULA ENGINEERING, INC. ("MPE"), the PLAN,
and BART J. BRUNO to furnish plaintiffs with documents previously

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
DECLARATORY RELIEF

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1 requested pertaining to the plaintiffs' benefits under the PLAN.
2 Defendants have violated the Employee Retirement Income Security
3 Act, as amended, 29 U.S.C. 1001, et seq. ("ERISA") and infringed
4 on plaintiffs' rights under ERISA in several ways:

5 a. Elimination of the immediate lump sum payment benefit
6 option upon termination of employment and replacement of that
7 benefit option with an eighteen month waiting period;

8 b. Reduction in benefits through 1) the loss of earnings
9 during the 18 month waiting period, 2) loss of earnings for the
10 period since the 18 month period has lapsed, and 3) low-yielding
11 investments;

12 c. Establishment and implementation of a vesting and
13 benefit program that results in very few employees becoming vested
14 and resulting in certain employees, including defendant BART J.
15 BRUNO, reaping the forfeited benefits;

16 d. Failure to properly credit plaintiffs with all the
17 benefits to which they were due, including not contributing full
18 amounts due the employees on public works projects as required by
19 the Davis-Bacon Act;

20 e. Failure to furnish Plan documents.

21 Plaintiffs seek a Court order directing the defendants to
22 furnish the plaintiffs with the requested documents necessary for
23 the plaintiffs to determine the accuracy of their pensions and the
24 prudence of certain aspects of the administration, management and
25 funding of the PLAN.

26
27 COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
28 DECLARATORY RELIEF

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DRAFTII. JURISDICTION AND VENUE

2. Plaintiffs bring this action for injunctive, declaratory and monetary relief pursuant to ERISA Sections 404 and 502, 29 U.S.C. §§ 1104 and 1132. Jurisdiction is conferred by ERISA Sections 502(a)(1)-(3) and (c), 29 U.S.C. § 1132(a)(1)-(3) and (c). Venue is proper in the Northern District of California given that Defendants' principal place of business is in Monterey, California. Plaintiffs also reside in Monterey County, California.

III. PARTIES

3. Plaintiff JEANNE NUNEZ is a former employee of the defendant MPE, which established and administers the Defendant PLAN. Plaintiff J. NUNEZ is a participant of the defendant PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

4. Plaintiff RAY PEREZ is a former employee of the defendant MPE. Plaintiff PEREZ is a participant of the defendant PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

5. Plaintiff ROBERT NUNEZ is a former employee of the defendant MPE. Plaintiff R. NUNEZ is a participant of the defendant MPE PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

6. Plaintiff RICHARD MORGAN is a former employee of the defendant MPE. Plaintiff MORGAN is a participant of the defendant MPE PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

7. Plaintiff JOHN MACHADO is a former employee of the defendant MPE. Plaintiff MACHADO is a participant of the

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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defendant PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

8. Defendant MPE is a California corporation with its principal office and place of business in Monterey, California. Defendant MPE is an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5), a party in interest within the meaning of ERISA § 3(14), 29 U.S.C. § 1002(14), a plan sponsor within the meaning of ERISA § 16(B), 29 U.S.C. § 1002(16)(B), and a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

9. Defendant PLAN is an employee pension benefit plan within the meaning of ERISA § (3)(2), 29 U.S.C. § 1002(2). Defendant Plan maintains its principal office in Monterey, California.

10. Defendant BART J. BRUNO is the President of Defendant MPE, and has primary responsibility for administering the defendant PLAN. Defendant BRUNO is the Plan Administrator for the PLAN. Defendant BRUNO is a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

IV. STATEMENT OF FACTS

11. Plaintiffs were employed by defendant MPE for the following periods (on or about these dates):

Jeanne Nunez	July, 1985	February, 1991
Ray Perez	August, 1986	November, 1991
Robert Nunez	April, 1989	August, 1990
Richard Morgan	February, 1984	November, 1991
John Machado	June, 1991	August, 1992

As employees of MPE, plaintiffs participated in and began earning

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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benefits under the PLAN.

12. When the plaintiffs J. NUNEZ, PEREZ and MORGAN began participating in the PLAN, the PLAN provided that said plaintiffs had the option of selecting a lump sum distribution of their pension benefits upon termination of employment. At an unspecified time in the late 1980's, the defendants, and each of them, amended the PLAN by eliminating the lump sum option and replaced it with a requirement that the participants must wait five years from the date of termination of employment to be entitled to such benefits. Said plaintiffs learned later that that new rule may have been effective as of December 31, 1988.

Subsequently, effective of as of May 31, 1992, defendants, and each of them, amended the Plan again to provide that plaintiffs, and other similarly-situated plaintiffs, would have to wait eighteen (18) months after their termination of employment to be entitled to their benefits. Each of the Plaintiffs terminated his or her employment more than 18 months ago and have yet to receive a distribution of his or her profit sharing benefits. Defendants unilateral imposition of a more restrictive benefit option without any formal notice of such change violates ERISA Section 204(g), 29 U.S.C. 1054(g).

13. During the time in which the plaintiffs have participated in the Plan, they have been concerned that their retirement benefits were not being invested in a safe and prudent manner and that defendants MPE, MPE PLAN, and BART J. BRUNO were not properly investing the Plan's assets. Plaintiffs are informed

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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1 and believe that in at least one year, the Plan had a very low
2 yield (under 3%) and that in other years, the returns were less
3 than the investment yields for similar types of retirement plans.

4 Prior to filing this lawsuit, plaintiffs requested specific
5 information on the investments to verify their suspicions about
6 the low-yielding investments, but defendants refused to furnish
7 such information.

8 14. Plaintiffs are informed and believe and therefore allege
9 that very few employees of MPE have become more than marginally
10 vested, if at all, in their pension benefits under the PLAN, and
11 as a result, defendant BART J. BRUNO and other family members of
12 said defendant benefit unduly from the forfeitures in the Plan.
13 Accordingly, plaintiffs believe the Plan is operated and
14 administered in such a manner not in the best interests of the
15 Plan participants and beneficiaries.

16 15. Because much of the work performed by MPE is on public
17 works projects, MPE is required to comply with the federal Davis-
18 Bacon Act [29 U.S.C. 726a, et seq.] and the Anti-Kickback Act [41
19 U.S.C. 51, et seq.]. On such projects the law requires that any
20 pension or profit sharing contributions on behalf of the persons
21 employed on such public projects must be irrevocably made to such
22 pension or profit sharing fund on behalf of the employees.
23 Plaintiffs are informed and believe and therefore allege that the
24 retirement funds to which the plaintiffs are entitled on such
25 projects have not always been contributed solely on behalf of the
26 individual employees who labored on those projects, nor were such

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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1 amounts irrevocably contributed on their behalf. Rather only small
2 amounts far short of the prevailing rate for pension-type
3 contributions have been distributed to profit-sharing accounts of
4 the employees who were employed on these projects. Furthermore,
5 much of the money set aside for such retirement contributions
6 appears to have been distributed to the profit sharing accounts
7 of other employees who did not work on such public works projects,
8 including high-level management of MPE, including defendant BART
9 J. BRUNO. In failing to properly administer these government-
10 mandated benefits and not properly crediting the contributions for
11 these individuals, defendants MPE and BART BRUNO breached their
12 fiduciary duty under ERISA. To determine whether the appropriate
13 contributions were made irrevocably to the employees' profit
14 sharing accounts, plaintiffs requested of the defendants that they
15 be able to review the certified payroll records. Defendants, and
16 each of them, have refused to provide access to such records.

17 16. On or about October 26, 1992, plaintiffs JEANNE NUNEZ,
18 RAYMOND PEREZ, and JOHN MACHADO (among other individuals) wrote
19 to the defendants complaining about the elimination of the lump
20 sum benefit option, the potential poor investments, the
21 possibility of the Plan benefiting high level management,
22 including certain key employees of the company, and the potential
23 violation of the Davis-Bacon and Anti-Kickback Acts. Plaintiffs
24 also requested numerous documents and information. (A copy of the
25 letter is attached hereto as Exhibit A.)

26 17. Defendants did not respond specifically to the

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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1 complaints about the elimination of the lump sum benefit option
2 at termination, the poor investments and other issues raised in
3 the letter of October 26, 1992. Although defendants furnished
4 certain information, they failed to provide numerous documents
5 requested by plaintiffs. On or about March 8, 1992, plaintiffs
6 JEANNE NUNEZ and RAYMOND PEREZ, through their legal counsel, wrote
7 to the defendants again requesting the documents and information
8 that had not been previously furnished and reminded defendants
9 that they had not responded to the plaintiffs' complaints. (A
10 copy of the letter is attached hereto as Exhibit B.) Defendants
11 failed to furnish any additional information or documentation in
12 response to that letter.

13 18. Plaintiffs J. NUNEZ, RAYMOND PEREZ and JOHN MACHADO have
14 complied with the Plan's claims and appeal procedure to no avail.
15 Plaintiffs ROBERT NUNEZ and RICHARD MORGAN have claims very
16 similar to that of plaintiffs JEANNE NUNEZ and RAYMOND PEREZ.
17 Consequently, plaintiffs are informed and believe that the results
18 of engaging in the claims and appeal procedure would be the same
19 as that of plaintiffs JEANNE NUNEZ and RAYMOND PEREZ. Simply, it
20 would be futile for them to raise the same claims as plaintiffs
21 JEANNE NUNEZ and RAYMOND PEREZ.

V. FIRST CAUSE OF ACTION

(Immediate Payment of Benefits Pursuant to ERISA)

24 19. Plaintiffs reallege and incorporate Paragraphs 1 through
25 19 as though fully set forth herein.

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20. At an unspecified time in the late 1980's, defendants, without notice to the participants, amended the MPE Plan by eliminating the lump sum benefit option and replacing it with an 18 month waiting period (initially a 5 year wait period, which was subsequently changed to 18 months). Rather than receive their pension benefits immediately upon termination of employment from MPE, participants have been forced to wait 18 months to receive their distributions. Thus, their pension benefits were at the whim of the defendants during this 18 months period. In fact, plaintiffs have not received their pension benefits even though over 18 months has passed since their termination.

21. By eliminating the plaintiffs' entitlement to pension benefits immediately upon termination of employment or retirement, and by forcing them to wait 18 or more months for their benefits, Defendants have violated ERISA and the Department of Labor Regulations issued thereunder. The Plan's elimination of the lump sum option violates ERISA Section 204(g)(2), 29 U.S.C. 1054(g)(2), which prohibits the amendment of a pension plan to eliminate accrued benefits, including an optional form of benefit. The payment of benefits in a lump sum is one such optional form of benefit under Department of Labor Regulation 26 C.F.R. 1.411(d)-4, Q&A-1(b).

22. By eliminating the lump sum benefit option and by failing to timely pay said plaintiffs their pension benefits, the defendants MPE and BART J. BRUNO, fiduciaries of the Plan, have violated their duty to act solely in the interests of the Plan

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participants and beneficiaries and for the exclusive purpose of providing benefits for plan participants and beneficiaries pursuant to ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

23. ERISA Section 403(c)(1), 29 U.S.C. § 1103(c)(1), prohibits the defendants from using plan assets to inure to the benefit of MPE or BART J. BRUNO and requires that the defendants hold plan assets for the exclusive purpose of providing benefits to plaintiffs and the other plan participants and beneficiaries.

24. ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits the defendant fiduciaries from engaging in a transfer of plan assets to MPE or BART J. BRUNO or any other party-in-interest.

25. ERISA Section 405, 29 U.S.C. 1105, provides that each defendant fiduciary is jointly and severally liable for the violations of law and other breaches of duty committed by any other fiduciary, and imposes an affirmative duty upon the defendants, and each of them, to correct and remedy breaches of duty committed by co-fiduciaries.

26. By taking, approving, and/or acquiescing in the actions and omissions set forth herein, including without limitation, the failure to timely pay the specified plaintiffs' benefits, the defendants, and each of them, violated each of the foregoing provisions of ERISA.

VI. SECOND CAUSE OF ACTION (Loss of Benefits-Breach of Fiduciary Duty)

27. Plaintiffs reallege and incorporate paragraphs 1-26 as

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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though fully set forth herein.

28. Section 502(a) of ERISA, 29 U.S.C. 1132(a) authorizes the bringing of a civil action by a participant to recover benefits due under the Plan or to enforce his rights under the Plan, which may include the granting of injunctive or other equitable relief. Defendants, and each of them, have wrongfully denied plaintiffs benefits due them under the Plan, have structured the PLAN in a manner that is not solely in the interests of plan participants and beneficiaries, and have damaged plaintiffs in the following ways, each of which constitutes a separate and distinct violation of ERISA:

a. Defendants, and each of them, have wrongfully, and in an arbitrary, capricious, fundamentally unfair, and in a bad faith way, failed to timely pay plaintiffs the benefits due them under the Plan. Even though from 20 to 25 months have passed since the plaintiffs have terminated their employment with defendant MPE, defendants have failed to distribute to plaintiffs their benefits or to give them the option to apply for their benefits.

b. Plaintiffs are informed and believe and therefore allege that once they are notified that they may file for their pension benefits, their benefits will be based on the pension statements as of November 30, 1992, and as a result, plaintiffs will have forfeited interest and other earnings since that date to the date of the distribution;

c. Defendants calculation of plaintiffs' benefits results in plaintiffs receiving benefits less than those to which they would

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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1 be entitled if all contributions required by defendant MPE had
2 been made as required by the Davis-Bacon Act, 40 U.S.C. § 726, et
3 seq.

4 d. Defendants administration and operation of the Plan,
5 including the implementation of a restrictive vesting schedule,
6 results in only a few participants being fully vested and results
7 in the forfeiture of considerable benefits to the PLAN; and such
8 forfeiture has both the direct and indirect result of benefiting
9 defendant BART J. BRUNO. Plaintiffs are informed and believe and
10 therefore allege that other family members of defendant Bart. J.
11 Bruno also benefit from such high forfeiture rates;

12 e. Defendants have by other means not presently known
13 wrongfully denied plaintiffs their full pension benefits;

14 f. The minimal investment data furnished to plaintiffs
15 disclosed that the PLAN'S investments returns were lower than
16 investment returns of similarly situated pension plans for the
17 1987-1991 period. Plaintiffs are informed and believe, based on
18 the minimal information provided by defendants that the PLAN'S
19 assets have not been invested in a prudent manner.

20 29. By making investments that did not provide a reasonable
21 yield for the MPE PLAN, the defendants violated ERISA Section
22 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

23 30. In not properly investing the Plan's assets, defendants
24 have violated their duty to act solely in the interests of the
25 plaintiffs and other plan participants and for the exclusive
26 purpose of providing benefits for such participants, as required

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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by ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

VII. THIRD CAUSE OF ACTION
(Failure to Properly Credit Pension Contributions)

31. Plaintiffs reallege and reincorporate paragraphs 1-30 as though fully set forth herein.

32. As fiduciaries of the MPE Plan, Defendants MPE and BART J. BRUNO had a fiduciary obligation to administer the Plan in the best interests of the Plan participants and beneficiaries.

33. Plaintiffs RAYMOND PEREZ, ROBERT NUNEZ, RICHARD MORGAN and JOHN MACHADO are informed and believe and therefore allege that the retirement funds to which they and other MPE employees were entitled to on public works projects were not contributed solely on behalf of the individual employees who labored on those projects nor were they irrevocably contributed on their behalf.

Instead, small amounts far short of the prevailing rate for pension type contributions were distributed to profit-sharing accounts of the employees who were employed on these projects. Further, much of the funds set-side for such contributions appears to have been distributed to the profit sharing accounts of other employees, including MPE's high-level management.

34. Department of Labor ("DOL") Regulation 29 C.F.R. 5.26, which interprets and applies the Davis-Bacon Act, provides that under the fringe benefit provisions of the Act, the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The third person must be one who is not affiliated with the contractor or subcontractor. The

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1 regulation provides in pertinent part:

2 The trustee must assume the usual fiduciary
3 responsibilities imposed upon trustees by
4 applicable law. The trust or fund must be
5 set up in such a way that in no event will
6 the contractor or subcontractor be able to
7 recapture any of the contributions paid or in
8 any way divert the funds to his own use or
9 benefit.

10 35. Plaintiffs are informed and believe that the United
11 States Government has not, on behalf of the plaintiffs, withheld
12 from the defendants any funds for any of the jobs performed under
13 the Davis-Bacon Act.

14 36. By failing to enforce the prevailing wage laws requiring
15 that any pension or profit sharing contributions on behalf of
16 employees employed on such public projects must be irrevocably
17 made to such pension or profit sharing fund on behalf of the
18 employees, and by failing to enforce and implement the DOL
19 regulations set forth in paragraph 31 above, the defendants MPE
20 and BART J. BRUNO violated their fiduciary duty to said plaintiffs
21 under ERISA § 404(a), 29 U.S.C. § 1104(a) and engaged in a
22 prohibited transaction under ERISA § 406(a), 29 U.S.C. § 1106(a).

23 VII. FOURTH CAUSE OF ACTION
24 (Failure to Furnish Documents)

25 37. Plaintiffs reallege and incorporate by reference
26 paragraphs 1-36 as though fully set forth herein.

38. Prior to filing this lawsuit, plaintiffs requested
certain documents and information pertaining to their request for

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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greater benefits and concerns about the administration of the PLAN. Defendants refused to provide many of the requested documents, including but not limited to, investment reports and information, payroll records relating to the violations of the Davis-Bacon and Anti-Kickback Acts, the elimination of the lump sum distribution benefit option at termination of employment and other information.

39. Without the requested documents, plaintiffs have been and are unable to definitely determine their rights under the Plan and to determine whether defendants have acted improperly.

40. Pursuant to ERISA Section 404(a)(1), 29 U.S.C. 1104(a)(1), defendants were and are under a duty with respect to the Plan and the Plan participants to act solely in the interest s of the participants and for the exclusive purpose of providing benefits; they were and are under a duty to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

41. Department of Labor Regulation 2560.503-1(g)(1) promulgated pursuant to ERISA Section 503, 29 U.S.C. 1133, states:

Every plan shall establish and maintain a procedure ... under which a full and fair review of the claim and its denial may be obtained. Every such procedure shall include...provisions that a claimant or his authorized representative may:

(i) Request a review upon written application to the plan;

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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- (ii) Review pertinent documents; and
(iii) Submit issues and comments in writing.

[Emphasis added.]

42. ERISA § 502(c), 29 U.S.C. § 1132(c), provides that:

Any administrator...who fails or refuses to comply with a request for information...required by the title to (be) furnish(ed) to a participant or beneficiary...by mailing the material requested...within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

43. ERISA § 405, 29 U.S.C. § 1105, provides that each defendant fiduciary is jointly and severally liable for the violations of law committed by any other fiduciary, and imposes an affirmative duty upon the defendant-fiduciaries, and each of them, to correct and remedy breaches of duty committed by co-fiduciaries.

44. Defendants, and each of them, have failed to timely comply with plaintiffs' request for the pertinent documents and information as set forth herein. In so doing, defendants, and each of them, have violated ERISA §§ 102(a), 104(b)(1)-(4), 105(a), 404(a)(1), 405, 502(c), and 503, 29 U.S.C. 1022(a), 1024(b)(1)-(4), 1045(a), 1104(a)(1), 1105, 1132(c), and 1133, and Department of Labor Regulation 29 C.F.R. § 2560.503-1(g)(1)(ii).

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
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VIII: FIFTH CAUSE OF ACTION

45. Plaintiffs realize and incorporate by reference paragraphs 1-44 as though fully set forth herein.

46. ERISA § 104(b)(1)(A), 29 U.S.C. § 1024(b)(1)(A) requires each Plan Administrator to furnish Plan participants, including the plaintiffs, with a Summary Plan Description ("SPD") of the defendant Plan within 90 days after becoming a Plan participant.

47. Plaintiffs are informed and believe that defendants have had a practice, which still exists, of not routinely furnishing such SPD's to Plan participants in the manner and time period required by ERISA as set forth in paragraph 46 above.

48. Plaintiff JOHN MACHADO never received an SPD while employed by MPE.

49. Plaintiffs J. NUNEZ, PEREZ, R. NUNEZ and MORGAN did not receive SPD's within the 90 day period after becoming Plan participants.

50. By failing to furnish SPD's to the plaintiffs within 90 days after becoming Plan participants, defendants violated ERISA § 104(b)(1)(A), 29 U.S.C. § 1024(b)(1)(A).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs that the Court:

1. Declare that the amendment to the Plan eliminating the lump sum benefit option at termination of employment violates ERISA;

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND DECLARATORY RELIEF

W. J. J. J.

2. Order defendants to pay to plaintiffs their profit sharing benefits immediately, including interest and earnings that would have been made, since the plaintiffs' termination of employment.

3. Order defendants to pay plaintiffs greater profit sharing benefits based on the investment returns that the MPE Plan would have made if the investments had been handled in a prudent manner;

4. Order defendants to pay plaintiffs greater benefits based on their legal requirement to irrevocably contribute specified profit sharing benefits to the MPE Plan on the plaintiffs' behalf;

5. Order defendants to furnish plaintiffs with the requested documents and information originally requested on October 26, 1992;

6. Order defendants to establish a practice of furnishing Summary Plan Descriptions to new Plan participants within 90 days of becoming participants.

7. Invoke the provisions of Section 502(c) of ERISA, and require that defendants pay to plaintiffs, and each of them, \$100.00 per day for each day from the thirtieth day following receipt by defendant of the initial request for information;

8. Impose on defendants such other penalties as may be necessary to deter defendants from violating the rights of similarly situated participants and beneficiaries in the future;

9. Order defendants to reimburse plaintiffs for their

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND
DECLARATORY RELIEF

PAGE 18

NEYHART, ANDERSON, REILLY & FREITAS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

600 HARRISON STREET, SAN FRANCISCO 94107

TELEPHONE (415) 495-4949

00400002.501
15051930709
10003.500

1 attorneys fees and costs incurred pertaining to this dispute
2 pursuant to ERISA Section 502(g), 29 U.S.C. §1132(g);

3 10. Order such other and further relief as the court may
4 deem just and proper.

5 Dated: July 2, 1993

6
7 Respectfully submitted,

8
9 RICHARD K. GROSBOLL
CAROLYN A. ANDERSON
10 NEYHART, ANDERSON, REILLY & FREITAS

11 By: _____
12 Richard K. Grosboll

13
14 By: _____
15 Carolyn A. Anderson
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17
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MONTEREY PENINSULA ENGINEERING

CONTRACTORS & ENGINEERS
P.O. BOX 2317
MONTEREY, CA 93942
(831) 384-4081

March 9, 2023

Brian McMinn
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

Re: Imjin Parkway Widening Project

Mr. McMinn,

Thank you for bringing the February 9th Foundation for Fair Contracting (FFC) "Bid Advisory" letter to our attention. Suffice to say we take issue with it. Being maliciously attacked like this is beyond frustrating. To be maligned in your hometown makes it even more infuriating.

This is the fourth FFC letter like this that we know of that was sent over the past year. It is intentionally misleading, contains numerous falsehoods, and is defamatory. The FFC knows this. Only a bad actor knows the truth yet chooses to continue to repeat a lie. Enclosed is a letter we sent to the FFC after they issued the exact same "Bid Advisory" letter to the San Lorenzo Valley Water District (Attachment A). Like our other clients, the District saw through their charade and awarded MPE the project.

For background, while the FFC touts that it is a nonprofit serving the public interest, it is not an independent "agency" operating without an agenda. The fact is that the FFC is a union organization solely funded by the Operating Engineers and Laborers unions. It was created to target merit shop contractors. They have been monitoring MPE projects for nearly 40 years.

The FFC stepped up their attack on our company because we have been publicly providing opposing information about union sponsored Project Labor Agreements. They are trying to discourage us and others from publicly engaging with the city councils and other government entities on this subject.

The FFC knows their salacious storytelling causes reputational injury. They use exaggeration and innuendo as an effective ways to smear honest companies. It is shameful. The only bright spot is that no City, District, or agency has acted upon the FFC's lies to deny MPE an opportunity to provide its services.

The February 9th letter included approximately 100 pages of documents spanning across the last 35 years that supposedly support their allegations. The FFC added these pages hoping the City would be misled by volume over substance. The *Summary of the Attached Documents* that follows this letter shows how these pages are just fluff and do little to add credibility to the allegations made in the letter. We would be happy to further review any of these with the City.

In short, the 100 pages only include one MPE settlement with the DIR that resulted in a wage payment funded by MPE. That matter resulted in a wage assessment of \$710. The two wage matters listed that are of any substance were both fully funded by the City of Pacific Grove. Both were the result of the City misapplying its Charter City exemption from the prevailing wage law. The FFC knows the truth about each of these but chooses to spread its lies instead. To refer to this as wage theft by MPE is despicable.

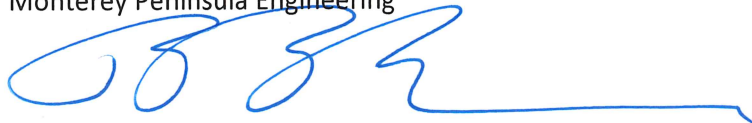
To put all this into perspective, MPE has successfully completed over 700 public works projects. It has employed well over 1,000 people and has paid over \$100M in compensation to its employees. For 38 years we have operated under the close scrutiny of the FFC. They can try to disparage us but it is without foundation.

As you know, MPE is a family owned and managed company. We are very proud of the long record of success that it has developed over the past four decades. It is unfortunate that the FFC chose to spread lies about MPE to you and the Council. The truth is that MPE has successfully completed many projects for the City of Marina. That is what should be remembered, not this smear.

Thank you in advance for your assistance in setting the record straight.

Sincerely,

Monterey Peninsula Engineering



Paul B. Bruno
CFO / Principal

Attachments:

Summary of Attached Documents
Exhibits A thru D

CC: Peter J. Taormina
Bart J. Bruno

PBB:mm

Summary of the Attached Documents

Pages 1 > 2 are the FFC letter.

Pages 2 > 9.

The document is a 2019 DIR Assessment totaling \$36,873. MPE was not found liable for this amount. That was an initial audit assessment that was subsequently amended twice. The actual final wage settlement was \$710 on a \$2M project. This settlement was without an admission of liability. We disagreed and truly believed that no wages were due. We chose to settle rather than incur additional time and expense pursuing absolute vindication. See Attachment B.

Pages 10 > 17.

The document is a 2015 DIR Assessment totaling \$84,171.31. What the FFC knows but fails to mention is the amount was entirely paid by the City of Pacific Grove. MPE did nothing wrong. The City put the project out to bid without a prevailing wage requirement believing it was governed by their Charter City Exemption. After it was completed, the DIR determined that the City had erred. The City issued a change order to MPE paying for the resulting wage underpayment. See Attachment C.

Pages 18 > 21.

This document is a 2021 Complaint filed by the FFC and a DIR Notice that the complaint had been assigned to an investigator. MPE denied any wrongdoing and fully cooperated with the DIR. No findings of any violations were issued. The City of Salinas had also done its own review found no violations. The project has since been closed out.

Pages 22 > 37.

The document is a 2017 union-sponsored private lawsuit brought by a former employee. There was no DIR action. The suit was dismissed with no findings of any PAGA violations and no payments were made related to the PAGA allegations. The remaining wrongful termination claim was disputed by MPE. MPE's insurance carrier chose to settle the remaining issue based upon its nuisance value.

Pages 38 > 63.

The document is a 2011 union-sponsored private lawsuit brought by two former employees. There was no DIR action. It was dismissed with no findings of any PAGA violations and no payments were made related to the PAGA allegations. The disputed wage settlements were less than \$1,500 for one employee and less than \$400 for the other.

Pages 64 > 80.

The document is a 2007 union-sponsored private lawsuit brought by a former employee. There was not DIR action. MPE did nothing wrong. The \$70,000 wage settlement was paid entirely by the City of Pacific Grove. The City had put the project out to bid without a prevailing wage requirement relying

upon their Charter City Exemption. Their position was challenged in this court case. The City chose to settle the matter and issue payment to MPE which was then remitted to the employees who worked on the project. See Attachment D.

Pages 81 & 82.

The document is a 2004 Notice of Deposition in connection with a union-sponsored suit. The lead plaintiffs, Mr. Hirshach and Mr. Homer, were both union business agents. There was no DIR action. This suit is best described as a fishing expedition that went nowhere. The attached document simply shows that I was deposed in connection with the matter.

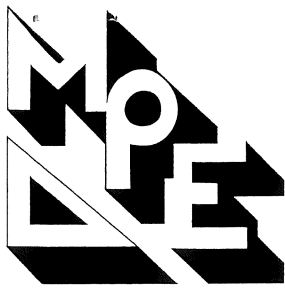
Page 83.

The document is a 1988 DIR Notice. We were unable to locate any records related to this 35 year old notice. We inquired of the Company founder and he had no recollection of it. The fact that no specific file was retained by the Company would lead us to believe that, like the others, the matter was resolved with little or no actual liability

Pages 84 > 102.

The document is a Draft copy of 1993 union-sponsored Federal suit brought several former employees. It made a broad range of accusations against the Company's retirement plan that were found to be meritless. The fact that FFC has a "DRAFT" copy of the suit highlights their decade's long involvement with the harassment campaign being waged by various unions against MPE. MPE was awarded Summary Judgment dismissing all but one claim. This one remaining claim could not be addressed by Summary Judgment because there was a dispute about fact, not just law. The remaining issue was whether an employee who worked on the "last workday" of the plan year would be entitled to a profit sharing distribution when the actual last day of the plan year ended on a weekend. The Plan Administrator had followed the wording of the plan which specifically stated "last day" of the plan year. MPE settled this one remaining claim directly with the claimant without an admission of liability for less than \$10,000. MPE chose to make this nuisance value payment rather than expend additional time and effort litigating the matter.

Attachment A



MONTEREY PENINSULA ENGINEERING

CONTRACTORS & ENGINEERS
P.O. BOX 2317
MONTEREY, CA 93942
(831) 384-4081

February 14, 2023

Foundation for Fair Contracting
3807 Pasadena Ave, Suite 150
Sacramento, CA 95821

Attn: Mr. Jesse Jimenez, Executive Director
Via Email

Re: FFC / San Lorenzo Valley Water District Allegations

Mr. Jimenez,

We are writing with regard to the Foundation for Fair Contracting's (FFC's) email containing a Bid Advisory letter dated 2/9/23. This correspondence was sent to the Mr. Josh Wolff of the San Lorenzo Valley Water District as well as the District's Board of Directors. The letter recommended the rejection of Monterey Peninsula Engineering's (MPE's) bid.

Your correspondence was sent to an awarding body with the express purpose of injuring MPE's reputation and interfering with a valuable business relationship. You sent the correspondence knowing that it was intentionally misleading, contained falsehoods, and was defamatory. It is obvious that the FFC is not concerned about the potential financial repercussions to MPE resulting from it making such statements. If it was, it wouldn't continue to make the false accusations. For example, the FFC knows that there has never been a single DAS complaint resulting in a final determination that there was a violation of DAS rules or an underpayment of wages to an apprentice by MPE. To continue to allege otherwise is incorrect and intentionally defamatory.

This "Bid Advisory" tactic is not an isolated occurrence. The current correspondence contains many of the same allegations that were included in your March 2022 correspondence to the City of Seaside and your May 2022 correspondence to the City of Soledad. We responded to you each time and incorporate our March 21, 2022, and our May 19, 2022, response letters by reference. Your continued spreading of this disinformation shows that the FCC does not care about being truthful, even when forewarned that its allegations are false and could cause harm to MPE.

Despite your repeated smears, both cities and the water district awarded their projects to MPE. Had they not, MPE would be seeking recovery of our damages from the FFC.

With regard to the documents attached to your recent letter, we offer the following examples of pertinent missing details and context, much of which is already known to you. These examples are not meant to be an all-inclusive chronicling of the falsehoods that the FCC knowingly spread in its Bid Advisory –

City of Marina / Del Monte & Beach Road Improvements – The document provided was a 2019 DIR Assessment totaling \$36,873. The FCC knows that MPE was not found liable for this initial audit assessment amount. MPE successfully disputed the findings and the assessment was subsequently amended twice. The actual final wage settlement was \$710. The settlement was without an admission of liability.

City of Pacific Grove / Waste Water Pump Station 11 Project – The document provided was a 2015 DIR Assessment totaling \$84,171.31. The FCC knew but purposely failed to disclose that the amount was entirely paid by the City of Pacific Grove. This is because the City put the project out to bid without a prevailing wage requirement believing it was governed by their Charter City Exemption. After it was completed, the DIR determined that the City had erred. The City issued a change order to MPE paying for the resulting wage underpayment. The FCC has previously been provided a copy of the change order. Despite knowing that MPE did nothing wrong, the FCC still chose to use this as an example of wage theft by MPE.

Munoz v. Monterey Peninsula Engineering – The document provided was a 2017 lawsuit by a former employee. MPE successfully contested each and every PAGA allegation. There was no evidence of any PAGA violations nor were there any PAGA related payments. The court approved this stipulated dismissal.

Iriarte vs Monterey Peninsula Engineering – The document provided was a 2007 lawsuit by a former employee. The FCC knew, but failed to mention, that the \$70,000 wage payment to the employees was entirely funded by the City of Pacific Grove. This is because the City put the project out to bid without a prevailing wage requirement based upon their Charter City Exemption.

Nunez, et al, vs Monterey Peninsula Engineering – The document provided was the entire DRAFT copy of a 1993 lawsuit. The broad range of accusations regarding the administration of MPE's retirement plan was found to be meritless and subsequently dismissed by Summary Judgement. This is public knowledge. The single remaining disputed claim was settled with the one affected employee for less than \$10,000.

Both our reputation and ability to perform work for public clients have value. Your continued actions seek to intentionally diminish this value. We again insist that the FCC promptly and succinctly rescind its knowingly false and misleading statements and cease from making any further such statements. This letter, as well as the others we had sent to you, puts the FCC on notice. MPE will seek recovery from the FCC for any reputational or financial harm that may arise from its defamatory conduct and improper actions.

Sincerely,

A handwritten signature in black ink, appearing to read 'PBB', followed by a long horizontal line extending to the right.

Paul B. Bruno
CFO

Attachment B

AGREEMENT

4. Monterey will pay, and DLSE will accept, \$1,497.52 in full and final satisfaction of case no. 40-56394-148, reflecting \$709.78 in wages and \$232.74 in interest, to be disbursed by DLSE as set forth in the chart below, \$400.00 in penalties pursuant to Labor Code section 1775, \$80.00 in penalties pursuant to Labor Code section 1777.7, and \$75.00 in penalties pursuant to Labor Code section 1813.

Johnston, B.	\$90.80	\$31.30
Nazario III, D.	\$26.56	\$10.04
Platero, C.	\$151.37	\$48.69
Wax, M.	\$441.05	\$142.71

5. DLSE will request that DIR release \$1,497.52 from the deposit, and to immediately refund the balance with interest to Monterey. Upon receipt of funds, Monterey will withdraw its request for review.

6. Should either party to this agreement default, that party shall be liable for any such additional sums as may be incurred to enforce this settlement agreement, including attorney's fees and costs.

Attachment C

CITY OF PACIFIC GROVE
Monterey County, California

CONTRACT CHANGE ORDER NO. 7

Contract Reference: Combined Reconstruction of Wastewater Pump Station 11 and
Forcemain Replacement including Ocean View Blvd.
Street Overlay and Urban Runoff Diversion - Phase 3 Project

To: Monterey Peninsula Engineering

You are hereby requested to make changes described below from the plans and specifications or to do the following described work not included in the plans and specifications as part of the contract.

NOTE: This change order is not effective until approved by all parties.

DESCRIPTION OF WORK TO BE DONE:

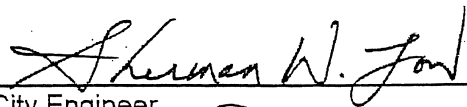
Under Reconstruction of Pump Station 11 and Forcemain Replacement including Ocean View Blvd. Street Overlay portion of the project:

1. Reimbursement for costs related to the State of California Civil Wage and Penalty Assessment for Monterey Peninsula Engineering:

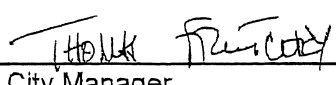
Total Cost for Change Order No. 7 = \$84,171.31

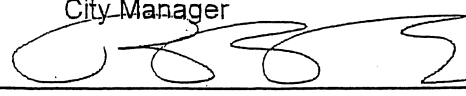
By reason of this order, the contract amount of \$1,975,257.34 will be increased by the sum of \$84,171.31.
The contract total including this and previous change orders will be \$2,059,428.65.

The increased cost is covered by the project contingency and is under the approved budget.

Submitted By:  Date: 3/11/15
City Engineer

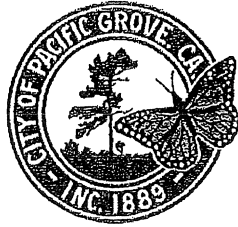
Recommended By:  Date: 3/16/15
Public Works Superintendent

Approved By:  Date: 3-16-15
City Manager

Accepted:  Date: 3/12/15
Contractor

By: _____ Title: _____

w/attachments



CITY OF PACIFIC GROVE

Pacific Grove Public Works

2100 Sunset Drive
Pacific Grove, Ca 93950
831-648-5722

April 23, 2014
Mr. Paul B. Bruno
Monterey Peninsula Engineering
P.O. Box 400
Marina CA 93933

Mr. Bruno,

This letter is concerning the formal Notice of Investigation from the Department of Industrial Relations regarding prevailing wage requirements for the Reconstruction of Wastewater PS 11 Force Main Replacement, including Ocean View Blvd street overlay project.

Attached is a PDF of Resolution 5874 which restates the policy of the Pacific Grove regarding the Charter City home rule exemption from prevailing wage requirements.

Sincerely,

Daniel Gho
City of Pacific Grove's Public Works Superintendent

Attachments:

1. Resolution 5874

RESOLUTION NO. 5874**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE RESTATING CURRENT CITY POLICY REGARDING PAYMENT OF STATE-ESTABLISHED GENERAL PREVAILING WAGE RATES**

WHEREAS, pursuant to California Labor Code Section 1770, et seq., local political subdivisions are required to pay, on public works projects, prevailing wage rates as established by the Director of the California Department of Industrial Relations; and

WHEREAS, California courts have long held that because California chartered cities enjoy autonomy over "municipal affairs" (Article XI, Section 5, California Constitution), and because the prevailing wage law, a general law, purports to cover a local municipal affair, i.e., local public works projects, that said prevailing wage law does not apply to chartered cities; and

WHEREAS, the City of Pacific Grove is a chartered city, enjoying the protection of Article XI, Section 5, California Constitution; and

WHEREAS, this Council desires to restate the established policy of this City, consistent with the aforescribed judicial precedent, that provisions of California Labor Code Section 1770, et seq., shall not be applicable to public works undertaken by the City of Pacific Grove;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. Wage rates paid on public works projects undertaken by the City of Pacific Grove, by either its own forces or by contract, shall not be governed by the prevailing wage law found at California Labor Code Section 1770, et seq.

SECTION 2. This exemption from said Labor Code provisions is based on precedent of long standing established on constitutional principles by the appellate courts of the State of California.

SECTION 3. This exemption is a restatement of existing City policy.

SECTION 4. This exemption notwithstanding, prevailing wages shall be appropriate when required by Federal or State grants and on other projects considered to be of statewide concern.

Attachment D



CITY OF PACIFIC GROVE

300 Forest Avenue
Pacific Grove, CA 93950

BANK OF AMERICA
601 LIGHTHOUSE AVENUE
PACIFIC GROVE, CA 93950

11:35
1210

CHECK NUMBER 054738

CHECK DATE
01/26/09

CHECK NO.
54738

AMOUNT

\$*****70,000.00*

PAY THE SUM OF SEVENTY THOUSAND DOLLARS & ZERO CENTS

TO THE ORDER OF MONTEREY PENINSULA ENGINEERING, INC
P.O. BOX 2317
MONTEREY CA 93942

VOID AFTER 6 MONTHS

Daniel E. Cort
Daniel E. Cort, Mayor

Catherine E. Kryszna
Catherine E. Kryszna, Assistant Finance Officer

TWO SIGNATURES REQUIRED

NOTE: The MICR & Arabic Numbering Bleeds Thru To Pink On The Back

⑈054738⑈ ⑆121000358⑆ 08559⑈80200⑈

VENDOR NO. 1786

CHECK NO. 54738

ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
702 5291	09001997	09001997	70,000.00	SETTLEMENT/STORM WATE Rec'd 1/26/09 4:30pm Deposit to Acct # 7200513943 1/27/09

1786

MONTEREY PENINSULA ENGINEERING, INC

DEPOSITED WITH

Rabobank, N.A.



Rabobank

OP-340 (04/08) Sunset Printing



TR:7 73-2 01/27/09 09:25 AM
XXXXXX3943 Ck Deposit \$70,000.00

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

Thank you for banking with us.

All items are received subject to conditions and terms stated in the Understanding Your Deposit Account Agreement & Disclosures booklet.

CITY OF PACIFIC GROVE • 300 Forest Avenue • Pacific Grove, CA 93950

CHECK NUMBER

054738



MONTEREY PENINSULA ENGINEERING

CONTRACTORS & ENGINEERS
P.O. BOX 2317
MONTEREY, CA 93942
(831) 384-4081

January 2, 2009

Dear _____:

On June 16, 2006, Monterey Peninsula Engineering submitted a bid on the Pacific Grove Urban Runoff Diversion Phase 2 project. Per the published Notice Inviting Sealed Bids and the Project Specifications, Monterey Peninsula Engineering was told that the project was not governed by the State prevailing wage law. MPE submitted its bid based upon its normal, open shop rates and paid accordingly.

In March of 2007, a lawsuit was filed regarding the payment of prevailing wages on the project. Although the company and the City believe that all wage payments to employees working on the Project were in fact correct and proper, and while there has been no legal determination otherwise, the City of Pacific Grove and Monterey Peninsula Engineering have agreed with the plaintiff's attorneys to resolve the matter. As part of the settlement, the City of Pacific Grove has placed money into a settlement fund for disbursement to the hourly field employees who worked on the project, based upon a formula reached and agreed upon with the plaintiff's attorneys after they had carefully reviewed company records on the Project, and the hours worked by various employees.

You have been identified as one of the employees eligible for an additional payment. The amount of your payment is a pro rata share of the settlement fund based upon hours worked on the project. In order to apply for this payment, you must sign and date the attached Settlement Agreement and Release of Claim form and return it to Paul Bruno in the office as soon as possible. The form will indicate the amount of the payment you will receive if you sign, date and return it within 90 days.

If you do not contact us to make your claim by April 2, 2009, we may be unable to act upon your claim. In addition, payments can only be processed if a sufficient number of employees have returned the form, and a sufficient percentage of the Settlement Fund is claimed.

Please note that this payment will be subject to payroll taxes and withholding and will be reported on your W-2 form.

Sincerely,

Monterey Peninsula Engineering

Paul B. Bruno, CPA
Chief Financial Officer

FORM OF CONTRACT

FOR

Imjin Parkway Widening Project

THIS AGREEMENT, made and entered into this ... _____ 2023, by and between The City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and Monterey Peninsula Engineering or "Contractor,"

W I T N E S S E T H:

FIRST: Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provided or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with the plans and specifications therefore, for PROJECT adopted by the Council of the City of Marina on

SECOND: It is expressly understood and agreed that this contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a. Accepted Proposal;
- b. Proposal Guaranty Bond;
- c. Contract Agreement;
- d. Performance Bond;
- e. Bond for Labor and Material;
- f. Proposal Supplement Including an Experience Statement and List of Proposed Subcontractors;
- g. These Plans and Specifications;
- h. The California State Standard Specifications and Standard Details 2018; and
- i. Insurance.

THIRD: That said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work embraced and contemplated in this Agreement and as set forth in the Proposal adopted by the City of Marina, a true copy thereof hereto attached, also, for all loss or damage arising out of the nature of said work, or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City of Marina and for all risk connected with the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Plans and Specifications and the provisions of this Agreement, and the requirements of the Engineer under them, to wit: The prices as set forth in the Proposal of said Contractor for the work to be constructed and completed under this Agreement, which prices shall be considered as though repeated herein.

Twenty-Seven Million Seven Hundred Eighty-Two Thousand Fifty-Eight Dollars and Forty-Seven Cents

(\$ 27,782,058.47)

The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Special Provisions after execution of the contract on behalf of the City of Marina and the receipt from the City of Marina of a notice to proceed with the work.

FOURTH: The City of Marina hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications; and the said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

..FIFTH: No interest in this agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this contract, so far as the City of Marina is concerned. All rights of action, however, for any breach of this contract are reserved to City.

SIXTH: Contractor shall keep harmless and indemnify the City of Marina, its officers and employees and agents, from all loss, damage, cost or expense that arises or is set up for infringement of patent rights of anyone for use by the City of Marina, its officers, employees or agents, of articles supplied by the Contractor under this contract, of which he is not entitled to use or sell. Contractor agrees to, at his own cost and expense, defend in court the City, its officers, agents and employees, in any action which may be commenced or maintained against them or any of them, on account of any claimed infringement of patent rights, arising out of this agreement.

SEVENTH: The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within one year after acceptance of final payment by Contractor and to indemnify said City of Marina against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said one year, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until one year after the actual discovery thereof.

EIGHTH: The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City of Marina full coverage workmen's compensation and public liability insurance in the form and to the extent called for in Section 7-1.06 of the Standard Specifications, State of California, 2018 Edition. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least 30 days after receipt by the City of Marina by certified or registered mail of a written notice of such cancellation or reduction in coverage.

NINTH: Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7, Chapter 1 regarding Public Works and Public Agencies.

TENTH:

ATTORNEY'S FEES. In the event of any controversy, claim or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

ELEVENTH:

COMPLIANCE WITH PROVISIONS OF LAW.

- a) The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.
- b) Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.
- c) Contractor shall comply with laws relating to the work.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CONTRACTOR

CITY OF MARINA

By: _____

By: Layne P. Long, City Manager

Print Name: _____

Date: _____

Address: _____

Date: _____

APPROVED AS TO FROM:

By: _____

City Attorney

By: _____

Date: _____

Date: _____

ATTESTED:

By: _____

Anita Shepherd-Sharp
Deputy City Clerk

Date: _____

Resolution No. 2023-_____



Imjin Parkway Widening Project

Kimley»Horn

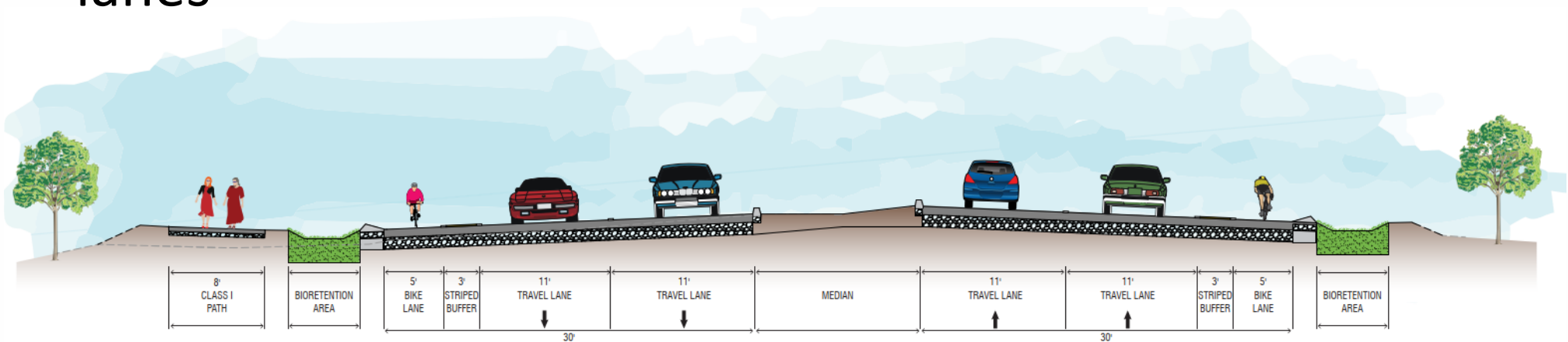
Expect More. Experience Better.

Project Overview



Improvements

- Widen to four lanes
- Install four roundabouts
- Install mixed use path
- On-street buffered bike lanes
- Stormwater treatment areas
- Retaining and sound walls
- Landscaping and irrigation





Corridor Layout





Corridor Layout





Corridor Layout



Funding

Component	Funding Source	Amount	
Construction	Local Impact Fee	\$2.00 million	
	Measure X	\$18.25 million	
	Senate Bill 1 (SB1) Local Partnership Program (LPP)	\$20.25 million	
	TOTAL	\$40.5 million	

March 29, 2023

Item No. **13(b)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 4, 2023

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-,
AWARDING THE IMJIN PARKWAY WIDENING PROJECT TO
MONTEREY PENINSULA ENGINEERING OF MARINA, CALIFORNIA
FOR THE AMOUNT OF \$27,782,058.47, AUTHORIZING THE CITY
MANAGER TO EXECUTE CONTRACT DOCUMENTS AND ALL
CHANGE ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL
REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND
AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2023-, awarding the Imjin Parkway Widening Project to Monterey Peninsula Engineering of Marina, California for the amount of \$27,782,058.47, and;
2. Authorizing the City Manager to execute contract documents and all change orders on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorizing the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

At the regular meeting of October 4, 2016, the City Council adopted Resolution No. 2016-142, Approving agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services for the widening of Imjin Parkway in the amount of \$2,173,520. The contract agreement has received two amendment approvals through Council Resolution No. 2019-14 and No. 2019-115.

At the regular meeting of June 15, 2017, the Public Works Commission adopted Resolution No. 2017-05(PW), receiving information on the City's Imjin Parkway Widening Project 30% Design.

At the regular meeting of September 18, 2018, the City Council adopted Resolution No. 2018-111, approving a Senate Bill 1 Local Partnership Program Baseline Agreement (SB1 LPP) to receive grant funding amounting to \$19 million for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project.

At the regular meeting of November 19, 2019, the City Council approved Resolution 2019-124, approving a Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor-Imjin Parkway Widening Project.

At the regular meeting of the California Transportation Commission of October 13-14, 2021, the Commission approved the allocation for locally administered Senate Bill 1 Local Partnership Program funds for the construction of the project.

At the regular meeting of November 2, 2021, the City Council approved Resolution No. 2021-116, approving advertising and call for bids for the Imjin Pkwy Widening Project.

At the regular meeting of November 15, 2022, the City Council approved Resolution 2022-136, approve Amendment No.1 to the Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project.

At the regular meeting of March 23-24, 2023, the California Transportation Commission approved the TAMC allocation of \$1.25 million of Senate Bill 1 Local Partnership Program funding to the Imjin Parkway Widening Project.

ANALYSIS:

On December 15, 2022, City staff advertised the Project with an Engineer’s construction contract estimate of \$29-34 million. On January 31, 2023, sealed bids were received, opened and publicly read for the Imjin Parkway Widening Project.

Five (5) bids were received as follows:

Monterey Peninsula Engineering	\$27,782,058.47 (Lowest Bid)
Graniterock Construction Company	\$28,211,282.39
DeSilva Gates Construction	\$29,564,926.68
Teichert Construction	\$30,956,260.77
Granite Construction Company	\$33,968,171.15

The lowest bid total is \$27,782,058.47 from Monterey Peninsula Engineering (MPE) of Marina, California. The cost estimate for City staff construction management, inspection, material testing, biological surveying, construction design support, administration, contingency and project closeout is \$11,960,000. Therefore, the total project cost amounts to \$39,742,058.47.

On February 8, 2023, staff received a bid advisory notice via email from the Foundation for Fair Contracting organization (FFC) requesting that the City reject MPE’s bid proposal (“**EXHIBIT A**”). Per the City’s Municipal code and project contract documents, FFC as a non-profit does not meet the requirements to submit an official bid protest. The allegations of non-responsiveness were reviewed by the City Attorney who found no validation to reject MPE’s bid proposal. The contractor also provided the City with a response to the bid advisory notice (“**EXHIBIT B**”). After consideration of the information provided, staff has found the bid to be responsive and find no issues concerning MPE’s responsibility to perform the work of the contract (“**EXHIBIT C**”). The construction contract for the project requires that state prevailing wages be paid for the work performed. City’s Construction Management consultant, Harris and Associates, will monitor compliance with prevailing wage laws for the duration of the project as part of their scope of work.

Consistent with SB1 and Measure X grant procedures, these grants will be reimbursed for project expenditures to the City. The City previously allocated \$2 million in Public Facility Impact Fees (PFIF, Roadway) as part of the Fiscal Year 21/22 budget. These PFIF funds will be utilized to advance the payment of project costs prior to reimbursement. This project timeline is approximately two and a half years, and PFIF will be restored by the grant funds. It is currently estimated that \$500,000 in project costs will be expended in Fiscal Year 22/23, with the remainder to be expended in Fiscal Years 23/24 and 24/25. Administering reimbursement with the grantor will be done on a quarterly basis or more frequently as deemed cost effective.

FISCAL IMPACT:

The total construction budget for the project is \$40.5 million, funded with \$20.25 million from the Local Partnership Program competitive grant; \$18.25 million from Measure X; and \$2 million from Public Facility Impact Fees (PFIF, Roadway).

Should the City Council approve this request, the City Finance Director will make all necessary accounting and budgetary entries to facilitate a short-term intrafund loan to the Capital Improvement Program Project EDR1808 – Imjin Pkwy Widening.

ENVIRONMENTAL:

California Environmental Quality Act (CEQA)

At the regular meeting of February 5, 2019, the City Council adopted Resolution No. 2019-11, adopting a mitigated negative declaration and mitigation monitoring program for the Imjin Parkway Widening Project. The Notice of Determination was filed with the State Office of Planning and Research and recorded with the Monterey County Records Office.

National Environmental Protection Act (NEPA)

In reviewing and approving projects under NEPA, Caltrans is the lead Agency in complying with all applicable federal environmental laws and with Federal Highway Administration's (FHWA) NEPA regulations, policies, and guidance, and is legally responsible and liable for the environmental decisions made on projects under NEPA Assignment. Caltrans has determined that this project is a Categorical Exclusion under 23 USC 327.

Incidental Take Permit (ITP)

The California Endangered Species Act (CESA) incidental take permit (ITP) has been issued by the California Department of Fish and Wildlife (CDFW) on December 12, 2022. All requirements set by the Permit and its Mitigation Monitoring and Reporting Program (MMRP) are currently underway, and staff are working with CDFW to finalize all protection measures and conditions prior to start of construction. The anticipated construction start date is June 2023.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
Public Works Department
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina