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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 22 2016

CLERK OF THE SUPERIOR COURT

By *Jacqueline L. [Signature]* Deputy

7 Attorneys for Plaintiffs

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

11 WILLIAM R. GERBER; and ERKKI MIKA T.  
12 SUVIVUO, individuals on behalf of themselves  
and others similarly situated, and the general  
13 public,

14 Plaintiff,

15 v.

16 HELIX ELECTRIC, INC., a California  
Corporation; and DOES 1 to 50 inclusive,

17 Defendants.

Case No. **RG16839905**

Assigned for all purposes to:

Judge

Dept

**CLASS ACTION COMPLAINT**

1. Breach of Contract- Third Party Beneficiary;
2. Violation of Business & Professions Code §17200

18  
19 Plaintiffs WILLIAM R. GERBER and ERKKI MIKA T. SUVIVUO (collectively "Plaintiffs" or  
20 "named Plaintiffs"), on behalf of themselves and all others similarly situated, allege as follows:

21 **I. NATURE OF THE ACTION**

22 1. This is a class action lawsuit brought on behalf of approximately 200 HELIX ELECTRIC,  
23 INC. ("HELIX") workers employed on a public works project identified as California Health Care  
24 Facility ("CHCF") Stockton Prison ("the Stockton Prison project"). The action is brought pursuant to  
25 Code of Civil Procedure §382, and seeks damages for breach of contract - third party beneficiary and for  
26 restitution under Bus. & Prof. Code §17200 for unpaid prevailing wages arising out of HELIX's (1)  
27 failure to pay for all hours worked; (2) failure to pay prevailing wages on public works; and (3) failure to  
28 properly calculate overtime wages on a public work. As a result of the unlawful practices on the  
Stockton Prison project, the 200 HELIX workers are owed lawfully earned wages, penalties and interest.

TAX FILING

1 **II. THE PARTIES**

2 2. Defendant HELIX ELECTRIC, INC. (“HELIX”) is, and at all times mentioned herein was, a  
3 California Corporation, duly licensed and organized in the State of California and authorized to do  
4 business in the State of California. HELIX conducted business as a licensed contractor, license number  
5 483309, working as a design-build, construction, engineering and electrical services Contractor. At all  
6 times mentioned in this complaint, HELIX’s northern California operations were headquartered at 7677  
7 Oakport Street, Suite 1040, Oakland, CA 94621. The managers of the Stockton Prison project were  
8 located in the aforementioned HELIX Oakland office.

9 3. Plaintiff WILLIAM R. GERBER (“Gerber”) was employed by HELIX as a non-exempt  
10 hourly employee in California from on or about November 2012 until on or about March 2013. Within  
11 the last four years, he worked on at least one public works project in the State of California. The public  
12 works projects where Gerber and other non-exempt hourly employees of HELIX worked included,  
13 without limitation, California Health Care Facility Stockton Prison.

14 4. Plaintiff ERKKI MIKA T. SUVIVUO (“Suvivuo”) was employed by HELIX as a non-  
15 exempt hourly employee in California from on or about November 2012 until on or about April 2013.  
16 Within the last four years, he worked on at least one public works project in the State of California. The  
17 public works projects where Suvivuo and other non-exempt hourly employees of HELIX worked  
18 included, without limitation, California Health Care Facility Stockton Prison.

19 5. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
20 defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiffs, who therefore  
21 sue Defendants by such fictitious names under Code of Civil Procedure §474. Plaintiffs are informed  
22 and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally  
23 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to  
24 amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as  
25 DOES when such identities become known.

26 6. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in  
27 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,  
28 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally

1 attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer  
2 and/or joint employer of Plaintiffs and the Class. All acts and omissions herein complained of were  
3 performed within the course and scope of said employment, service and/or agency and with the consent  
4 of each of the Defendants mentioned herein. All actions of each Defendant herein alleged were ratified  
5 and approved by the directors, officers and managing directors of Defendants.

### 6 **III. FACTUAL BACKGROUND**

7 7. HELIX provides large-scale design-build, construction and electrical services for  
8 municipalities and public agencies throughout California. Its services include, among other things,  
9 construction, engineering and electrical services for large scale projects.

10 8. HELIX employs numerous non-exempt hourly employees to carry out the company's  
11 services, including electricians, crew leaders, and foremen. The unlawful policies and practices alleged  
12 below apply to all HELIX hourly employees, regardless of job title, who worked on the Stockton Prison  
13 project.

14 9. HELIX, as a corporate policy, required its workers on the Stockton Prison project to  
15 commence work before their scheduled start time and to continue to work after the scheduled end time  
16 and failed to pay for all hours worked on the project. Within the past four years, HELIX maintained a  
17 common corporate-wide policy and practice of not paying its hourly employees for all hours worked on  
18 the Stockton Prison project, not paying compensation for second meal periods and not providing accurate  
19 itemized wage statements. Plaintiffs seek to recover, on behalf of themselves and other employees, the  
20 unpaid minimum, prevailing and overtime wages resulting from HELIX'S unlawful policies on the  
21 Project.

### 22 **IV. CLASS ACTION ALLEGATIONS**

23 10. Plaintiffs bring claims on behalf of themselves and all others similarly situated pursuant to  
24 section 382 of the Code of Civil Procedure. Plaintiffs seek to certify a class composed of the following:  
25 All non-exempt hourly employees of HELIX within the four (4) years prior to the filing of this lawsuit  
26 until the date of certification who worked on the Stockton Prison project.

27 11. Plaintiffs reserve the right to amend or modify the class descriptions or establish  
28 additional subclasses as appropriate.

1 12. Plaintiffs Gerber and Suvivuo seek to be appointed as the representative of the Class.

2 13. This action has been brought and may properly be maintained as a class action under the  
3 provisions of §382 of the Code of Civil Procedure because there is a well-defined community of interest  
4 in the litigation and the proposed classes are easily ascertainable from HELIX's own records.

5 **A. NUMEROSITY**

6 14. The potential members of the classes as defined are so numerous that joinder of all the  
7 members of the Class is impracticable. While the precise number of Class Members has not been  
8 determined at this time, Plaintiffs are informed and believe that Defendant HELIX during the last four  
9 years employed over 200 non-exempt hourly employees.

10 **B. COMMONALITY**

11 15. HELIX enacted common policies applicable to all of the Class members, including but not  
12 limited to requiring the workers to work prior to the scheduled start time and after the scheduled end time  
13 on the Stockton Prison project. There are questions of law and fact common to the Class that  
14 predominate over any questions affecting only individual Class Members. These common questions of  
15 law and fact include, without limitation:

16 (a) whether the Stockton Prison was a public work under Labor Code §1720(a);

17 (b) whether HELIX was a contractor as defined under Labor Code §1722.1 when working on the  
18 Project;

19 (c) whether the General Contractors for the Stockton Prison project entered into a contract that  
20 required compliance with California's Prevailing Wage Law (Labor Code §§1770-1780);

21 (d) whether HELIX entered into a contract that required compliance with California's Prevailing  
22 Wage Law (Labor Code §§1770-1780);

23 (e) Defendant HELIX engaged in policies on the Stockton Prison project that resulted in the  
24 failure pay Plaintiffs and the Class for all hours worked and for properly calculated overtime;

25 16. Whether the common policies alleged herein by Plaintiffs' exists is a common question of  
26 fact and whether each challenged policies is actually unlawful is a common question of law and the  
27 resolution of these overarching common factual and legal issues will drive resolution of this lawsuit,  
28 making class treatment appropriate.





1 **UNFAIR BUSINESS PRACTICES**

2 **California Bus. & Prof. Code §17200**

3 **By Plaintiffs For Themselves and the Class**

4 **Against Defendant HELIX and DOES 1 through 50**

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

7 31. California Labor Code § 510 provides in relevant part:

8 Any work in excess of eight hours in one workday and any work in excess of 40  
9 hours in any one workweek and the first eight hours worked on the seventh day of work in  
10 any one workweek shall be compensated at the rate of no less than one and one-half times  
11 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall  
12 be compensated at the rate of no less than twice the regular rate of pay for an employee.  
13 In addition, any work in excess of eight hours on a seventh day of a workweek shall be  
14 compensated at the rate of no less than twice the regular rate of pay of an employee . . .

15 32. California Labor Code §1194 provides in relevant part that: “any employee receiving less  
16 than the minimum wage or the legal overtime compensation applicable to the employee is entitled to  
17 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
18 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

19 33. California Labor Code § 1997 makes it unlawful to pay an employee less than the  
20 minimum wage, as established by the Industrial Welfare Commission, for each hour worked.

21 34. Labor Code §1198 provides in relevant part, “the employment for longer hours than those  
22 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

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

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

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all  
hours worked in excess of eight (8) hours up to an including 12 hours in any workday, and  
for the first (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek;  
and

(b) Double the employee’s regular rate of pay for all hours worked in excess of  
12 hours in any workday and for all hours worked in excess of eight (8) hours on the  
seventh (7<sup>th</sup>) consecutive day of work in a workweek.

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

7           36. At all times mentioned herein, Defendant was subject to the minimum wage requirements  
8 pursuant to Labor Code §1194 and to California’s Prevailing Wage Law pursuant to Labor Code §1771  
9 et seq., regarding work undertaken in execution of public contracts. Pursuant to Labor Code §1194,  
10 Defendant had a duty to pay Plaintiffs not less than the minimum required hourly rate of pay and legal  
11 overtime wage for their work on the Project. Pursuant to Labor Code §§1771 and 1774, Defendant had a  
12 duty to pay Plaintiffs not less than the general prevailing rate of per diem wages, and not less than the  
13 general prevailing rate of per diem wages for holiday and overtime work.

14           37. The per diem wages and prevailing wages required to be paid pursuant to Labor Code  
15 §§1194, 1771 and 1774 are set forth in annual and semi-annual bulletins published by the California  
16 Department of Industrial Relations

17           38. Plaintiffs and other Class members performed work for HELIX, for which they were not  
18 compensated at the prevailing wage rate for all hours worked. Defendant’s common corporate-wide  
19 policy and practice of failing to pay Plaintiffs and Class members for all hours worked resulted in  
20 Plaintiffs and others members of the Class not receiving minimum and/or overtime wages for each hour  
21 worked.

22           39. Throughout the class period Plaintiffs Gerber and Suvivuo and other Class members  
23 worked on the Stockton Prison project, public works project, for which they were not paid overtime  
24 based on applicable prevailing wage rates due to HELIX’s systematic corporate policies.

25           40. As alleged herein as a result of Defendants’ violation of statutory duties, as more fully set  
26 forth above, Plaintiffs were damaged in an amount above the jurisdictional limits of this court. Plaintiffs  
27 seek the difference between the required prevailing wage rate for each hour worked and the amount  
28 actually paid.

1           41. As a result of the unlawful acts of Defendants, Plaintiffs have been deprived of  
2 compensation in amounts to be determined at trial, and are entitled to injunctive relief and recovery of  
3 such amounts, including interest thereon, attorney's fees, costs, and penalties.

4           42. Plaintiffs on behalf of themselves, the general public, and on behalf of others similarly  
5 situated, bring this claim pursuant to Business & Professions Code §17200, et seq. The conduct of all  
6 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to  
7 Plaintiffs, the general public, and the classes. Plaintiffs seek to enforce important rights affecting the  
8 public interest within the meaning of C.C.P. §1021.5.

9           43. Plaintiffs are "persons" within the meaning of Business & Professions Code §17204, and  
10 therefore have standing to bring this cause of action for injunctive relief, restitution, and other  
11 appropriate equitable relief.

12           44. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business  
13 practices.

14           45. Wage and hour laws express fundamental public policies. Providing employees with  
15 compensation and breaks are fundamental public policies of this State and of the United States. Labor  
16 Code §90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards,  
17 to ensure that employees are not required or permitted to work under substandard and unlawful  
18 conditions, and to protect law-abiding employers and their employees from competitors who lower their  
19 costs by failing to comply with minimum labor standards.

20           46. Defendants have violated statutes and public policies. Through the conduct alleged in this  
21 Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated  
22 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices  
23 in violation of Business & Profession Code §17200, et seq., depriving Plaintiffs, and all persons similarly  
24 situated, and all interested persons of rights, benefits, and privileges guarantees to all employees under  
25 law.

26           47. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of  
27 §17200 et. seq. of the Business & Professions Code.

28           48. Pursuant to California Business & Professions Code section 17200, *et seq.*, Plaintiffs and

1 the members of the classes defined above are entitled to preliminary and permanent injunctive relief,  
2 including accounting for an restitution of the wages unlawfully withheld and retained by Defendants  
3 during a period that commences four (4) years prior to the filing of this lawsuit, an award of attorneys'  
4 fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws, an  
5 equitable accounting, and an award of costs.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiffs pray for the following relief:

- 8 1. That the case be certified as a class action pursuant to CCP §382.
- 9 2. That Plaintiffs Gerber and Suvivuo be appointed as representatives of the Class.
- 10 3. That counsel for Plaintiffs be appointed as class counsel.
- 11 4. For compensatory damages and restitution in the amount of Plaintiffs' and each class  
12 members' unpaid wages, including overtime, measured as the difference between accrued wages at the  
13 proper wage and the actual wages paid to Plaintiffs and the Class, as may be proven at trial;
- 14 5. For an equitable accounting;
- 15 6. For a judicial declaration that HELIX violated California's Prevailing Wage Law;
- 16 7. An award of prejudgment and post judgment interest;
- 17 8. An award providing for payment of costs of suit;
- 18 9. An award of attorneys' fees under Civil Code §1021.5 and/or other applicable state laws;
- 19 and,
- 20 10. Such other and further relief as this Court may deem proper and just.

21 Dated: November 22, 2016

DONAHOO & ASSOCIATES, PC

22  
23 By: \_\_\_\_\_

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Judith L. Camilleri  
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