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Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

Richard E. Donahoo, State Bar No. 186957
Sarah L. Kokonas, State Bar No. 262875
Judith L. Camilleri, State Bar No. 282503
DONAHOO & ASSOCIATES, PC
440 West First Street, Suite 101
Tustin, CA 92780
Telephone: (714) 953-1010
Facsimile: (714) 953-1777
Email: rdonahoo@donahoo.com
skokonas@donahoo.com
jcamilleri@donahoo.com

Attorneys for Plaintiff RAUL SANDOVAL, et al., and all those similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

RAUL SANDOVAL, on behalf of himself
and others similarly situated, and the
general public,

Plaintiffs,

v.

UNITED STORM WATER, INC., a
California Corporation, and DOES 1 to
100, Inclusive,

Defendants.

Case No.: **BC 6 3 3 6 5 2**

Judge:

Dept:

CLASS ACTION COMPLAINT:

1. Failure to Pay Wages and Overtime (Cal. Lab. Code §§1194);
2. Failure To Pay Prevailing Wages on Public Works (Cal. Lab. Code §§ 1194,1171,1174);
3. Meal Break Premium Pay Under Labor §226.7;
4. Rest Break Premium Pay Under Labor Code §226.7;
5. Violation of Labor Code §226(a);
6. Penalties Pursuant to Labor Code §203;
7. Violation of Business & Professions Code §17200;
8. Recovery Under Public Works Payment Bonds Under Civil Code §3250;

JURY TRIAL DEMANDED

1 Plaintiff RAUL SANDOVAL (“Plaintiff” or “named Plaintiff”) on behalf of himself and
2 all others similarly situated, complain of Defendants, and each of them, as follows:

3 **I. INTRODUCTION**

4 1. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of
5 Plaintiff and all individuals who hold or held the position of "hourly employees" who are
6 employed by, or formerly employed as construction workers by UNITED STORM WATER,
7 INC. any subsidiaries or affiliated companies doing business as "UNITED STORM WATER,
8 INC." (hereinafter collectively referred to as "UNITED STORM" or "Defendants"), within the
9 State of California.

10 2. Plaintiff brings this action on behalf of himself and all others similarly situated as
11 a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent the
12 class defined as follows:

13 All persons who are employed or have been employed, and who have worked as
14 hourly construction employees for UNITED STORM in the State of California since four (4)
15 years prior to the filing of this action. (“the Class”)

16 3. Plaintiff further proposes to represent a public works subclass (Public Works
17 Class) defined as follows:

18 All persons who are employed or have been employed, and who have worked in
19 execution of a public works project as an hourly employee for UNITED STORM in the State of
20 California since four (4) years prior to the filing of this action (“Public Works Subclass”).

21 4. From at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants have had a consistent policy of systemic noncompliance with California’s
23 prevailing wage laws. Defendants have both misclassified workers at lower wage classifications
24 and have failed to the full amount of prevailing wages owed to the employee, including overtime
25 and compensable travel time.

26 5. From at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendants have had a consistent policy of requiring hourly employees within the State
28 of California, including Plaintiff, to work at least five (5) hours without a meal period and failing

1 to pay such employees one (1) hour of pay at the employees regular rate of compensation for
2 each workday that the meal period is not provided or provided after five (5) hours, as required by
3 California state wage and hour laws.

4 6. From at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendants have had a consistent policy of failing to provide hourly employees within
6 the State of California, including Plaintiff, rest periods of at least ten (10) minutes per four (4)
7 hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay at
8 the employees regular rate of compensation for each workday that the rest period was not
9 provided, as required by California state wage and hour laws.

10 7. Plaintiff, on behalf of himself and all Class Members, bring this action pursuant to
11 Labor Code §§201, 202, 203, 203.5, 226, 226.7, 512, 558, 1194, 1199, 1771, 1774, 2699, and
12 California Code of Regulations, Title 8, Section 11040 seeking payment of unpaid wages owed,
13 meal and rest period compensation, penalties, injunctive and other equitable relief, and
14 reasonable attorneys' fees and costs.

15 8. Plaintiff was all times relevant herein, employees of Defendants and bring this
16 action as a class action on behalf of himself and others similarly situated.

17 9. Plaintiff, on behalf of himself and all Class Members, pursuant to Business &
18 Professions Code §§17200-17208, also seeks injunctive relief, restitution, and disgorgement of
19 all benefits defendants enjoyed from their failure to pay proper compensation.

20 10. Defendant Sureties (the identities of which are unknown), sued herein as Does 51-
21 100, issued payment bonds which provided that if the contractor, or any of their subcontractors
22 failed to pay for any work labor performed in connection with the public works project, that the
23 surety on the bond would pay same. Plaintiff and class members seek to recover under the
24 payment bonds for the projects which are within the applicable statute of limitations.

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2 **II. PARTIES**

3 **A. PLAINTIFF**

4 11. Venue as to each defendant is proper in this judicial district, pursuant to Code of
5 Civil Procedure §395. The unlawful acts alleged herein have a direct effect on Plaintiff and
6 those similarly situated within the State of California.

7 12. Plaintiff, RAUL SANDOVAL is a resident of California.

8 13. Plaintiff and the class were regularly required to:

9 (a) Work on and in execution of “public works” projects as such term is
10 defined by California Labor Code § 1720, et seq. without being paid the full amount of
11 prevailing wages due, including overtime and the employer portion of fringe benefits.

12 (b) Work in excess of five (5) hours per day without being provided a meal
13 period and not being compensated one (1) hour of pay at the regular rate of compensation for
14 each workday that a meal period was not provided or provided after five (5) hours, all in
15 violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders;

16 (c) Work without being provided a minimum ten (10) minute rest period for
17 every four (4) hours or major fraction thereof worked and not being compensated one (1) hour of
18 pay at their regular rate of compensation for each workday that a rest period was not provided;

19 (d) Work without being provided an accurate itemized wage statement that
20 reflects all deductions from payment of wages and accurately reporting total hours worked,
21 including when the employee begins and ends each work period, meal periods, and total daily
22 hours worked, by Plaintiff and the members of the proposed class.

23 14. Defendants willfully failed to provide all wages at the termination of their
24 employment with defendants.

25 **B. DEFENDANTS**

26 15. Defendant UNITED STORM WATER, INC. is a California Corporation and a
27 licensed contractor in the State of California, license number 768583, working as a general
28 engineering contractor with C21, C31, C42, C27 and HAZ classifications (representing Building
Moving Demolition, Construction Zion Traffic Control, Sanitation System, Landscaping and

1 Hazardous Substances Removal respectively). Defendant UNITED STORM WATER, INC.
2 employed Plaintiff and similarly situated persons within California.

3 16. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
5 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
6 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
7 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
8 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
9 capacities of the Defendants designated hereinafter as DOES when such identities become
10 known.

11 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
13 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
14 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
15 respects acted as the employer and/or joint employer of Plaintiff and the Class. All acts and
16 omissions herein complaint of were performed within the course and scope of said employment,
17 service and/or agency and with the consent of each of the Defendants mentioned herein. All
18 actions of each Defendant herein alleged were ratified and approved by the directors, officers
19 and managing directors of Defendants.

20 18. Plaintiff is informed and believes that each party identified herein as DOE 51 to
21 100 acted as a surety and issued a payment bond on at least one public works project alleged
22 herein and each was corporation duly authorized to do business in the State of California, and
23 was engaged under and by virtue of the laws of the State of California in making, guaranteeing,
24 and becoming surety on bonds and undertakings as required and authorized by law.

25 **III. FACTUAL BACKGROUND**

26 19. Plaintiff and the Class and the Public Works Subclass are, and at all times
27 pertinent hereto, have been non-exempt employees within the meaning of the California Labor
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1 Code, and the implementing rules and regulations of the IWC California Wage Orders.

2 Defendants hire employees who work as "hourly employees."

3 20. Plaintiff and the Class and the Public Works Subclass are, and at all times
4 pertinent hereto, have been non-exempt employees within the meaning of the California Labor
5 Code, and the implementing rules and regulations of the IWC California Wage Orders.

6 21. Plaintiff and the Class and the Public Works Subclass are covered by California
7 Industrial Welfare Commission Occupational Wage Order No. 4-2001, California Industrial
8 Welfare Commission in No. 4 (Title 8 Cal. Code of Reg. §§11040).

9 22. Plaintiff and the Class and the Public Works Subclass have not been provided
10 meal periods for work days in excess of five (5) hours and were not compensated one hours
11 wages in lieu thereof.

12 23. Plaintiff and the Class and the Public Works Subclass have rest periods for work
13 days in excess of four (4) without being provided a rest period and were not compensated one
14 hours wages in lieu thereof.

15 24. Plaintiff and the Class and the Public Works Subclass have not been fully
16 compensated for their labor in connection with public works projects performed in the State of
17 California.

18 25. Defendants have failed to comply with Industrial Welfare Commission ("IWC")
19 Wage Order 4-2001(7) by failing to maintain time records showing when the employee begins
20 and ends each work period, meal periods, and total daily hours worked by itemizing in wage
21 statements all deductions from payment of wages and accurately reporting total hours worked by
22 Plaintiff and the members of the proposed class and the Public Works Subclass.

23 26. Defendants have failed to pay, at the termination of employment, all wages then
24 owed whether due because of failing to pay meal period premium payments and/or prevailing
25 wages.

26 IV. THE PROJECTS

27 27. Plaintiff claims all unpaid wages, including prevailing wages. Prevailing wages
28 are owed on all public works projects on which Plaintiff and Public Works Subclass members

1 performed work as employees of Defendants UNITED STORM, and Does 1-50. Such projects
2 were “public works” projects as defined by California Labor Code § 1720 et seq., for which
3 UNITED STORM, and Does 1-50 were required to pay prevailing wages.

4 28. Plaintiff is informed and believes that the public works projects where they and/or
5 class members worked include, but are not limited, those listed in Exhibit A.

6 29. Plaintiff and each Public Work Subclass member worked on public works
7 projects, the identity of each of which are yet unknown. The formal name and/or identity of the
8 public works projects are unknown to Plaintiff upon the filing of the herein amended Complaint.
9 Plaintiff seeks to recover for all work on all public works construction projects and reserve the
10 right to amend this complaint when the names of these additional private and public work
11 projects are ascertained.

12 30. Plaintiff and the Public Works Subclass members claim wages for their work on
13 California public works as an employee of Defendant UNITED STORM from four years prior to
14 the filing of the Complaint until the present. Plaintiff and each Public Works Subclass member
15 worked on at least one California public works project. Plaintiffs also claim wages for similarly
16 situated workers (“Public Works Subclass”) employed by UNITED STORM on California
17 public works projects.

18 **V. CLASS ACTION ALLEGATIONS**

19 31. Plaintiff brings this action on behalf of himself and all others similarly situated as
20 a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a
21 class defined as follows:

22 All persons who are employed or have been employed, and who have worked as
23 hourly construction employees for UNITED STORM in the State of California since four (4)
24 years prior to the filing of this action. (“the Class”)

25 32. Plaintiff further propose to represent a public works subclass (“Public Works
26 Class”) defined as follows:
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1 All persons who are employed or have been employed, and who have worked in
2 execution of a public works project as an hourly employee for UNITED STORM in the State of
3 California since four (4) years prior to the filing of this action.

4 33. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
5 or modify the class description with greater specificity or further division into subclasses or
6 limitation to particular issues.

7 34. This action has been brought and may properly be maintained as a class action
8 under the provisions of §382 of the Code of Civil Procedure because there is a well-defined
9 community of interest in the litigation and the proposed Class and Public Work Subclass is easily
10 ascertainable.

11 **A. NUMEROSITY**

12 35. The potential members of the Class and Public Work Subclass as defined are so
13 numerous that joinder of all the members of the Class is impracticable. While the precise
14 number of Class Members has not been determined at this time, Plaintiff is informed and
15 believes that defendants currently employ, and during the relevant time periods employed, over
16 50 "hourly employees".

17 36. Accounting for employee turnover during the relevant periods necessarily
18 increases this number substantially. Plaintiff alleges defendants' employment records would
19 provide information as to the number and location of all Class Members and the Public Work
20 Subclass. Joinder of all members of the proposed Class is not practicable.

21 **B. COMMONALITY**

22 37. There are questions of law and fact common to the Class that predominate over
23 any questions affecting only individual Class Members and the Public Work Subclass. These
24 common questions of law and fact include, without limitation:

25 (a) Whether Defendants have policies to pay Plaintiffs and the Class and the
26 Public Work Subclass for all time worked in execution of public works;

27 (b) Whether Defendants have policies to properly pay Plaintiff and the Class
28 and the Public Work Subclass the minimum required wage for the type of work performed

1 according to California's Prevailing Wage Law ("PWL") (Labor Code §1770, et seq.) on public
2 works projects;

3 (c) Whether Defendants have engaged in a pattern and practice of failing to
4 properly pay Plaintiff and the Class the minimum required wage for the work performed
5 according to the PWL;

6 (d) Whether the failure of Defendants to pay the minimum required wage
7 under the PWL for all work on public projects at the required wage rate has resulted in Plaintiff
8 and the Class and the Public Work Subclass not being paid all wages due at the applicable rates
9 on California public works projects;

10 (e) Whether Defendants violated Labor Code §§226.7 and 512, IWC Wage
11 Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040
12 by failing to provide meal periods before the fifth hour of employment and failing to compensate
13 said employees one (1) hours wages in lieu of meal periods;

14 (f) Whether Defendants violated Labor Code §§226.7 and 512, Wage Order
15 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
16 failing to provide daily rest periods for every four (4) hours or major fraction thereof worked and
17 failing to compensate said employees one (1) hours wages in lieu of rest periods;

18 (g) Whether Defendants violated Labor Code §226 and Wage Order 4-2001 or
19 other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
20 provide an itemized wage statements that accurately reflects all rates of pay applicable to the
21 hours worked, deductions from payment of wages, and total hours worked, including when the
22 employee begins and ends each work period, meal periods, and total daily hours worked, by
23 Plaintiff and the Class and the Public Work Subclass;

24 (h) Whether the failure of Defendants to keep accurate records has resulted in
25 Plaintiff and the Class and the Public Work Subclass not being paid for all time worked at the
26 applicable rates;

27 (i) Whether Defendants have engaged in a pattern or practice of suppressing
28 wage claims;

1 (j) Whether Defendants made “employer payments” into an approved fringe
2 benefit fund, plan, or program on behalf of Plaintiff and the Class and the Public Work Subclass;

3 (k) Whether payments made by Defendants as “employer payments” for all
4 per diem wages classified into an employee benefit fund on behalf of their employees were
5 “irrevocably paid” as required by California Labor Code §1773.1 and California regulations;

6 (l) Whether Defendants violated §§201-203 of the Labor Code by failing to
7 pay compensation due and owing at the time that any Class member's employment with
8 defendants terminated;

9 (m) Whether Defendants violated §2699 et. seq. of the Labor Code by
10 engaging in the acts previously alleged;

11 (n) Whether Defendants violated §17200 et seq. of the Business &
12 Professions Code by engaging in the acts previously alleged; and

13 (o) Whether Plaintiff and the Class and the Public Work Subclass are entitled
14 to equitable relief pursuant to Business & Professions Code §17200, et. seq.

15 (p) Whether Defendant Sureties, as sureties, are parties to public works
16 payment bonds given to guarantee payment of wages by Defendants to Plaintiff and the Class
17 and the Public Work Subclass on California public works projects;

18 (q) Whether a purported satisfaction or release agreements procured by
19 Defendants since the filing of this action from unnamed class members are enforceable.

20 **C. TYPICALITY**

21 38. The claims of the named Plaintiff are typical of the claims of the class and the
22 Public Work Subclass. Plaintiff and all members of the class sustained injuries and damages
23 arising out of and caused by Defendants' common course of conduct in violation of laws,
24 regulations that have the force and effect of law and statutes as alleged herein. Plaintiff claims
25 are based on the same legal theories as the claims of the unnamed members of the class. The
26 legal issues as to which state and hours laws are violated by such conduct apply equally to
27 Plaintiff and all class members.

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1 **D. ADEQUACY OF REPRESENTATION**

2 39. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the class. Counsel who represents Plaintiff are competent and experienced in
4 litigating large employment class actions.

5 **E. SUPERIORITY OF CLASS ACTION**

6 40. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
8 questions of law and fact common to the Class predominate over any questions affecting only
9 individual members of the Class. Each member of the class has been damaged and is entitled to
10 recovery by reason of defendants' illegal policy and/or practice of denying class members proper
11 compensation.

12 41. Class action treatment will allow those similarly situated persons to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
15 action that would preclude its maintenance as a class action.

16 **VI. FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES AND OVERTIME**

18 **California Labor Code §§ 510, 1194, et seq., 1189, 1811 and 1815**

19 **By Plaintiff For Himself and the Class and the Public Works Subclass**

20 **Against Defendant UNITED STORM and DOES 1 through 50**

21 42. Plaintiff re-allege and incorporate by reference each and every allegation set forth
22 in the preceding paragraphs.

23 43. California Labor Code § 510 provides in relevant part:

24 Any work in excess of eight hours in one workday and any work in excess
25 of 40 hours in any one workweek and the first eight hours worked on the seventh
26 day of work in any one workweek shall be compensated at the rate of no less than
27 one and one-half times the regular rate of pay for an employee. Any work in
28 excess of 12 hours in one day shall be compensated at the rate of no less than
twice the regular rate of pay for an employee. In addition, any work in excess of
eight hours on a seventh day of a workweek shall be compensated at the rate of no
less than twice the regular rate of pay of an employee . . .

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

6 45. Labor Code §1198 provides in relevant part, “the employment for longer hours
7 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
8 ICW Order No. 16-2001(3)(A)(1) provides in relevant part:

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

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

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

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

 47. As alleged herein, Defendants failed to properly compensate Plaintiff for working
off-the-clock, and overtime. Plaintiff did not receive compensation for all hours worked over
eight per day or forty per week, including working various Saturdays and Sundays.

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

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

50. By their actions alleged above, Defendants violated the provisions of California Labor Code §§ 226, 510, 1194, et seq., 1198, and 1815 and are therefore liable to Plaintiffs for the damages caused. As a result of the unlawful acts of Defendants, Plaintiffs have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to injunctive relief and recovery of such amounts, including interest thereon, attorney's fees, costs, and penalties.

VII. SECOND CAUSE OF ACTION

FAILURE TO PAY PREVAILING WAGES ON PUBLIC WORKS

California Labor Code §§ 1194, 1771, 1774 et seq,

By Plaintiff For Himself and the Public Works Subclass

Against Defendant UNITED STORM and DOES 1 through 50

51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

52. At all times mentioned herein, Defendants were subject to the minimum wage requirements pursuant to Labor Code §1194 and to California's Prevailing Wage Law pursuant to Labor Code §1771 et seq., regarding work undertaken in execution of public contracts. Pursuant to Labor Code §1194, Defendants had a duty to pay Plaintiff not less than the minimum

1 required hourly rate of pay and legal overtime wage for their work on the Project. Pursuant to
2 Labor Code §§1771 and 1774, Defendants had a duty to pay Plaintiff not less than the general
3 prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages
4 for holiday and overtime work.

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

8 54. Plaintiff was paid less than the minimum required general prevailing rate of per
9 diem wages for their work as required by Labor Code §§1194, 1771 and 1774. Plaintiffs were
10 paid a fraction of the required pay rate.

11 55. As alleged herein as a result of Defendants' violation of statutory duties, as more
12 fully set forth above, Plaintiff was damaged in an amount above the jurisdictional limits of this
13 court. Plaintiff seeks the difference between the required prevailing wage rate for each hour
14 worked and the amount actually paid. Pursuant to Labor Code section 1194.2, Plaintiffs seek
15 liquidated damages for failure to pay minimum wage. Plaintiffs' audits and investigations are
16 continuing, however, the amounts claimed are above the jurisdictional minimum requirements of
17 this court. Plaintiff will seek leave of court to amend this Complaint according to proof at the
18 time of trial.

19 56. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
20 compensation in amounts to be determined at trial, and are entitled to injunctive relief and
21 recovery of such amounts, including interest thereon, attorney's fees, costs, and penalties.

22 **VIII. THIRD CAUSE OF ACTION**

23 **FAILURE TO ALLOW MEAL BREAKS PURSUANT TO LABOR CODE §226.7**

24 **By Plaintiff For Himself and the Class and the Public Works Subclass**

25 **Against Defendant UNITED STORM and DOES 1 through 50**

26 57. Plaintiff re-alleges and incorporates by reference each and every allegation set
27 forth in the preceding paragraphs.
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1 58. Labor Code §226.7 requires an employer to pay an additional hour of
2 compensation for each meal period the employer fails to provide. Employees are entitled to a
3 meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiffs and the class
4 consistently worked over five (5) hour shifts. Pursuant to the Code, Plaintiff and the class are
5 entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of
6 employment.

7 59. Defendants failed to provide Plaintiff and others with timely meal breaks of not
8 less than thirty (30) minutes as required by the Labor Code during the relevant class period.

9 60. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in
10 an amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at trial.

11 **IX. FOURTH CAUSE OF ACTION**

12 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

13 **By Plaintiff For Himself and the Class and the Public Works Subclass**

14 **Against Defendant UNITED STORM and DOES 1 through 50**

15 61. Plaintiff re-alleges and incorporates by reference each and every allegation set
16 forth in the preceding paragraphs.

17 62. Labor Code §226.7 requires an employer to pay an additional hour (1) of
18 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
19 ten (10) minute rest break for every four (4) hours worked. Plaintiff and the class and the Public
20 Works Subclass consistently worked over four (4) hours per shift with no rest breaks.

21 63. Defendants failed to provide Plaintiff and others with rest breaks of not less than
22 ten (10) minutes as required by the Labor Code during the relevant class period.

23 64. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in
24 an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial.

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1 **X. FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTION 226(a)**

3 **By Plaintiff For Himself and the Class and the Public Works Subclass**

4 **Against Defendant UNITED STORM and DOES 1 through 50**

5 65. Plaintiff re-alleges and incorporates by reference each and every allegation set
6 forth in the preceding paragraphs.

7 66. Section 226(a) of the California Labor Code requires defendants to itemize in
8 wage statements all deductions from payment of wages and to accurately report total hours
9 worked by Plaintiff and the members of the proposed class. Defendants have knowingly and
10 intentionally failed to comply with Labor Code §226(a) on each and every wage statement that
11 should have been provided to Plaintiff and members of the proposed class.

12 67. IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7) require defendants to
13 maintain time records showing, among others, when the employee begins and ends each work
14 period, meal periods, split shift intervals and total daily hours worked in an itemized wage
15 statements, and must show all deductions from payment of wages, and accurately report total
16 hours worked by Plaintiff and the members of the proposed class.

17 68. An employee suffering injury as a result of a knowing and
18 intentional failure by an employer to comply with Labor Code §226(a) is entitled to recover the
19 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
20 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
21 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
22 award of costs and reasonable attorney's fees.

23 **XI. SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES UNDER LABOR CODE §§203, 203.5**

25 **By Plaintiff For Himself and the Class and the Public Works Subclass**

26 **Against Defendant UNITED STORM and DOES 1 through 50**

27 69. Plaintiff re-alleges and incorporates by reference each and every allegation set
28 forth in the preceding paragraphs.

1 70. Numerous members of the class including Plaintiff are no longer employed by
2 Defendants. They were either fired or quit defendants employ.

3 71. The Defendants' failure to pay wages, as alleged above was willful in that
4 Defendants and each of them knew wages to be due but failed to pay them, thus entitling
5 Plaintiff and the class to penalties under Labor Code §203, which provides that an employee's
6 wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time
7 they were due.

8 72. Defendants have failed to pay Plaintiff and others a sum certain at the time of
9 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
10 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §203, Plaintiff and
11 members of the class are entitled to a penalty in the amount of Plaintiff' and others daily wage
12 multiplied by thirty (30) days.

13 **XII. SEVENTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION PURSUANT TO**
15 **BUSINESS & PROFESSIONS CODE §17200**

16 **By Plaintiff For Himself and the Class and the Public Works Subclass**

17 **Against Defendant UNITED STORM and DOES 1 through 50**

18 73. Plaintiff re-alleges and incorporates by reference each and every allegation set
19 forth in the preceding paragraphs.

20 74. This is a Representative Private Attorney General Action and Class Action for
21 Unfair Business Practices. Plaintiff, RAUL SANDOVAL, on behalf of himself, the general
22 public, and on behalf of others similarly situated, brings this claim pursuant to Business &
23 Professions Code §17200, et seq. The conduct of all Defendants as alleged in this Complaint has
24 been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the
25 class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning
26 of C.C.P. §1021.5.

1 75. Plaintiff is a "person" within the meaning of Business & Professions Code
2 §17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
3 and other appropriate equitable relief.

4 76. Business & Profession Code §17200, et seq. prohibits unlawful and unfair
5 business practices.

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

12 78. Defendants have violated statutes and public policies. Through the conduct
13 alleged in this Complaint, Defendants, and each of them, have acted contrary to these public
14 policies, have violated specific provisions of the Labor Code, and have engaged in other
15 unlawful and unfair business practices in violation of Business & Profession Code §17200, et
16 seq., depriving Plaintiffs, and all persons similarly situated, and all interested persons of rights,
17 benefits, and privileges guarantees to all employees under law.

18 79. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
19 violation of §17200 et. seq. of the Business & Professions Code.

20 80. Defendants by engaging in the conduct herein alleged, by not providing proper
21 compensation, either knew or in the exercise of reasonable care should have known that the
22 conduct was unlawful. As such it is a violation of §17200 et. seq. of the Business & Professions
23 Code.

24 81. As a proximate result of the above mentioned acts of Defendants, Plaintiffs and
25 others similarly situated have been damaged in a sum as may be proven.

26 82. Unless restrained by this Court, Defendants will continue to engage in the
27 unlawful conduct as alleged above. Pursuant to Business & Professions Code this Court should
28 make such orders or judgments, including the appointment of a receiver, as may be necessary to

1 prevent the use or employment, by Defendants, their agents or employees, of any unlawful or
2 deceptive practice prohibited by the Business & Professions Code, and/or, including but not
3 limited to, disgorgement of profits which may be necessary to restore Plaintiffs and the class
4 members to the money Defendants have unlawfully failed to pay.

5 **XIII. EIGHTH CAUSE OF ACTION**

6 **RECOVERY OF WAGES AND PENALTIES**

7 **UNDER STATUTORY PAYMENT BONDS**

8 **By Plaintiff For Himself and the Public Works Subclass**

9 **Against Defendant UNITED STORM and DOES 51 through 100**

10 83. Plaintiff re-alleges and incorporates by reference each and every allegation set
11 forth in the preceding paragraphs.

12 84. Plaintiff is informed and believes that contemporaneously with the execution of
13 the contracts for public works projects where one or more of the Plaintiffs and Class Members
14 worked, the Defendant Sureties, (identified as DOES 1-50) issued payment bond(s) for the
15 purpose of complying with Civil Code Sections 3096 and 3247 through 3252, which were
16 thereafter filed with and approved by the Awarding Body and/or its agents. The bonds were
17 statutory bonds and provided that if the contractor, or any of their subcontractors, failed to pay
18 for any work or labor performed on one or more of the respective public works projects, or for
19 skill or services provided to one or more of the respective public works projects, that the surety
20 on the bond would pay the same.

21 85. Plaintiffs are unaware of the surety and bond number for every payment bond for
22 the public works projects at issue and will amend the complaint to ascertain the same. Plaintiffs
23 and Class Members seek recovery against any and all payment bonds as allowed by law, whether
24 known or unknown, within the applicable statutes of limitations.

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

1 87. In addition, the Sureties are liable for penalties arising out of the nonpayment of
2 required wages, including but not limited to penalties under Labor Code §§ 203 and 203.5.

3 88. There is now due, owing and unpaid wages and penalties for labor performed on
4 one or more of the respective public works projects at issue by the Plaintiffs and Class Members.
5 Plaintiffs and class members seek as damages the difference between the amount paid and the
6 legal minimum wage and all available penalties. Plaintiffs' audit and investigation are
7 continuing, however, the amounts claimed are above the jurisdictional minimum requirements of
8 this court. As a result of the unlawful acts of Defendants, Plaintiff and class members have been
9 deprived of wages and penalties in amounts to be determined at trial, and are entitled to recovery
10 of such amounts, plus interest thereon, attorneys' fees, and costs.

11 **RELIEF REQUESTED**

12 WHEREFORE, Plaintiffs pray for the following relief:

13 1. For compensatory damages in the amount of Plaintiffs' and each class members'
14 unpaid wages, including overtime, measured as the difference between accrued wages at the
15 proper prevailing wage and the actual wages paid to Plaintiffs and the Class, as may be proven at
16 trial;

17 2. For compensatory damages in the amount of Plaintiffs' and each class members'
18 hourly wage for each meal period missed or taken late from at least four (4) years prior to the
19 filing of this action to the present as may be proven;

20 3. For compensatory damages in the amount of Plaintiffs' and each class members'
21 hourly wage for each shift where rest period(s) were missed from at least four (4) years prior to
22 the filing of this action to the present as may be proven;

23 4. For liquidated damages pursuant to Labor Code §1194.2 for failure to pay
24 minimum wage;

25 5. For penalties pursuant to Labor Code §226(e) for violation of Labor Code §226(a)
26 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
27 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
28 exceeding an aggregate penalty of four thousand dollars (\$4,000);

1 6. For penalties pursuant to Labor Code §§203 for all employees who were
2 terminated or resigned equal to their daily wage times thirty (30) days;

3 7. For penalties pursuant to Labor Code §§203.5 on each project for all employees
4 who equal to their daily wage times thirty (30) days;

5 8. An order enjoining Defendants and its agents, servants, and employees, and all
6 persons acting under, in concert with, or for it from providing Plaintiff and class members with
7 proper breaks pursuant to Labor Code §512 and IWC 4-2001;

8 9. For restitution for unfair competition pursuant to Business & Professions Code
9 §17200, including disgorgement or profits, in an amount as may be proven;

10 10. An award of prejudgment and post judgment interest;

11 11. An award providing for payment of costs of suit;

12 12. An award of attorneys' fees under Labor Code §1194 and/or other applicable state
13 laws; and

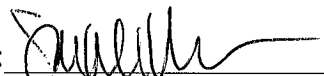
14 13. Such other and further relief as this Court may deem proper and just.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

17 Dated: September 9, 2016

DONAHOO & ASSOCIATES, PC

18
19 By: 

20 Richard E. Donahoo

21 Sarah L. Kokonas

Judith L. Camilleri

22 Attorneys for Plaintiffs Raul Sandoval, et al.

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Exhibit A

Public Projects

1. Connector Pipe Screen Installation – City of Santa Ana
2. Connector Pipe Screen Installation – City of Paris
3. Catch Basin Cleaning City of Long Beach
4. Pump House Cleaning City of Long Beach
5. Channel Cleaning City of Long Beach
6. Connector Pipe Screen Installation LA County
7. Catch Basis Cleaning LA County