

**S275431**

**CASE NO. 21-16201**

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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GEORGE HUERTA,

*Plaintiff and Appellant,*

v.

CSI ELECTRICAL CONTRACTORS, INC.,

*Defendant and Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
CASE No. 5:18-cv-06761-BLF  
BETH LABSON FREEMAN, UNITED STATES DISTRICT JUDGE

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**APPELLANT'S EXCERPTS OF RECORD VOLUME 4 OF 6**

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**06.14.00** No Employee shall work more than one (1) shift at straight time in any consecutive twenty-four (24) hours. No arrangement of shifts shall be permitted that prevents any Employee from securing eight (8) consecutive hours of rest in any consecutive twenty-four (24) hours. Such twenty-four (24) hours shall be computed from the start of the Employee's assigned shift.

**06.14.01** Where there is equipment to be operated on a single-shift operation before the single shift begins or after it ends, or on a Saturday, a Sunday or a holiday, the Operating Engineer who regularly operates the particular piece of equipment shall be given first choice to perform the work, for not to exceed twelve (12) hours except in an emergency, and if an Assistant to Engineer is required, the Assistant to Engineer who is regularly assigned to the particular piece of equipment shall be given first choice to perform the work.

**06.15.00** Where in any locality existing traffic conditions, weather conditions or power availability render it desirable to start the day shift at an earlier or later hour, such starting time may be set by mutual written agreement of the Individual Employer and the Union. Such different starting time may not be terminated except on a Friday or upon completion of the job.

**06.16.00** If a breakdown occurs on equipment operated by Employees covered by this Agreement, it shall be in the discretion of the Individual Employer whether the Operator and his Assistant to Engineer or other Employees shall make the repairs including routine maintenance.

**06.17.00** The recognized established practice regarding the starting and warming up of equipment by Employees under this Agreement shall not be changed.

**06.18.00** No Employee shall be required to work alone during the hours of darkness when performing maintenance work on equipment. This provision shall not apply to Employees servicing and/or starting equipment one (1) hour prior to the start of a shift.

**06.19.00 Meal Period.** There shall be a regularly scheduled meal period. The meal period shall be one-half (1/2) hour and shall be scheduled to begin not more than one-half (1/2) hour before and completed not later than one (1) hour after the mid-point of the regularly scheduled hours of work for each Employee's shift. The meal period for Mechanics, Service and Lubricating Engineers, may be scheduled to permit work at the applicable straight-time rate during the regularly scheduled meal period

**06.19.01** If the Individual Employer requires the Employee to perform any work included in Section 02.04.00 of this Agreement through his/her scheduled meal period, the Employee shall be paid at the applicable overtime rate for such meal period and shall be afforded an opportunity to eat on the Individual Employer's time.

**06.19.02 Second (2<sup>nd</sup>) Meal Period.** No Employee shall be required to work continuously for more than ten (10) hours per workday without the Individual Employer providing the Employee with an uninterrupted second (2<sup>nd</sup>) thirty (30) minute meal period.

**06.19.03** However, if an Employee works over ten (10) hours, the Individual Employer and Employee may mutually agree to waive the Employee's entitled second (2<sup>nd</sup>) meal period so long as the first meal period was taken and the Employee works not more than a total of twelve (12) hours.

**06.19.04** Should any provision of California State Labor Code Section 512 be amended during the term of this Agreement, the parties agree to meet to address those changes in accordance with Section 03.05.00 (General Savings Clause) of this Agreement.

**06.19.05** All disputes concerning meals and/or rest periods are subject to the Grievance Procedures provided for in Section 18.00.00 and must be brought to the attention of the Employer, in writing, by the Union or Employee within

fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final and binding upon both parties.

**06.20.00 Foremen and Shifters.** No foremen or shifters shall be allowed to perform any work covered by this Agreement or operate any equipment covered by this Agreement, except as provided in the Special Provisions Concerning Foremen Other Than General Foremen, Section 21.00.00.

**06.21.00 Show-Up Time.** When an Employee reports on his/her shift, or when dispatched and he/she reports at the agreed time and designated place and there is no work covered by Section 02.04.00 provided for him/her by the Individual Employer, he/she shall be paid two (2) hours at the rate applicable to his/her classification at the straight-time hourly or overtime rate applicable on that day as show-up time; if the Employee is requested to stand by, and does so, and is given no work, he/she shall be paid four (4) hours' pay at the rate applying to the job or unless such Employee or applicant reported in a condition unfit to perform his/her work or unless such applicant was rejected by the Individual Employer in accordance with the provisions of the Job Placement Regulations of this Agreement, Section 04.10.39. Provided, however, if his work is suspended on account of weather conditions, the Employee shall be entitled to show-up time only if he/she remains on the jobsite for two (2) hours pending abatement of such weather, unless sent home earlier by the Individual Employer. If his/her work is started, in lieu of show-up time, the Employee shall be compensated as provided in 06.02.00 and 06.03.00 of this Section. If an Employee's work is to be suspended for any reason, the Employee shall be notified at least two (2) hours before being required to report on his shift. The Employee shall keep the Individual Employer advised at all times of his/her correct address and telephone number. When the Employee has no telephone, or when the Employee cannot be reached at the number furnished to the Individual Employer, he/she shall not be entitled to show-up time in the event he/she reports on a day of inclement weather unless he has previously called the Individual Employer at the time and place designated in a notice posted on the job. The provisions of this Section shall apply also when the Employee is working under Section 13.00.00 and 14.00.00 of this Agreement. The Individual Employer and the Union may mutually agree to other and additional means of notification of Employees.

**06.22.00** Whenever an Employee is called out to work or employed on a Saturday, Sunday or a holiday, he/she shall be paid at least four (4) hours at the applicable overtime rate unless the overtime work immediately precedes his/her regular shift and he works or is paid for the first half of his regular shift, in which case he shall be paid for the overtime actually worked by the hour and half-hour. All time worked beyond the first four (4) consecutive hours on Saturday, Sunday and holidays shall be reckoned by the hour at the applicable overtime rate. On a two-shift or three-shift job if Employees are called out to work or employed on the first shift on a Saturday, Sunday or holiday, the above shall apply but if any Employees are called out or employed to work on a second or third shift on Saturday, Sunday or holiday all shift work Employees called out or employed shall be compensated in accordance with either Section 06.05.00 or 06.06.00, as the case may be.

**06.23.00** In the event an Employee has completed his/her regular shift and returned to his residence, and is called back to perform his/her overtime work, such Employee shall be paid at least two (2) hours at the applicable overtime rate. In the event an Employee has not worked his/her scheduled shift and is called out to perform overtime work, such Employee shall be paid at least four (4) hours at the applicable overtime rate.

**06.24.00** The holidays referred to in this Agreement are as follows: New Year's Day (January 1), President's Day (3rd Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (1st Monday in September), Thanksgiving Day (4th Thursday in November), the day after Thanksgiving Day (4th Friday in November), and Christmas Day (December 25). Holidays falling on Sunday shall be observed on the following Monday. Martin Luther King Day shall become a recognized holiday when and if the five basic crafts adopt it as a holiday.

**06.25.00 Overtime on All Work Covered By This Agreement in Areas 1 and 2.** The applicable overtime rates shall apply for the shift, work covered by 02.04.00, equipment, area, location and classification on Saturdays, Sundays and holidays and all time before a shift begins and after it ends.

**06.25.01 Overtime Areas 1 and 2 (all forty-six [46] Counties).** One and one-half (1-1/2) times the applicable straight-time hourly rate shall be paid for all work performed before a shift begins and after it ends and for all work performed on Saturdays. Double (2) the straight-time hourly rate shall be paid for all work on Sundays and holidays.

**06.25.02** Assistants to Engineers shall be paid at the applicable overtime rate when required to "grease" or "fire up" prior to the start of the shift or after the shift has ended.

**06.25.03 Tide Work.** Except as provided for in Section 14.02.06, an Individual Employer who is performing tide work shall establish a starting time for the project between 5:00 a.m. and 10:00 a.m. which corresponds to the tide on the first day of the project. All hours worked before or after the shift as established herein shall be paid at the special single shift rates set forth in 01.03.00, 01.03.01, 01.03.02, 01.03.03, 01.03.04 and 01.04.00. When an Employee is called out to work tide work, the minimum pay for such work shall be eight (8) hours at straight time as provided herein including fringe benefits. Each hour worked on Saturday shall be paid at time and one half (1-1/2) and each hour worked on Sundays and holidays shall be paid at double time. When an Employee is called out to work on Saturdays, Sundays or holidays, the applicable overtime rate shall be paid for each hour worked, and the minimum pay shall be six (6) hours at the overtime rate.

**06.26.00 No Restrictions on Production.** Subject to all State and Federal rules and regulations governing or applicable to the safety of Employees, place of employment and operation of equipment, no rules, customs or practices shall be permitted that limit production or increase the time required to do any work.

**06.27.00 Rest Periods.** As provided by the State of California Industrial Welfare Commission Order No. 16-2001 covering Construction operations, Employees are authorized and shall be permitted to take a total of ten (10) minutes during each four (4) hour segment of their assigned work shift for a rest period.

**06.27.01** There shall be no formal organized rest periods during working hours and as far as practicable the break will be taken as near to the middle of each four (4) hour work segment as possible. Rest periods shall be scheduled in a manner so as not to interfere with workflow or continuous operations and Employees shall coordinate the timing of each ten (10) minute rest break with their supervisors and fellow employees to assure the continuity of work. Employees shall be required to remain in their respective work area, or to take their rest period in a specific area designated by the Individual Employer.

**06.27.02** It is understood that the Employee will take his appropriate rest period unless the Individual Employer specifically directs the Employee not to take this rest break due to operational requirements. Employees are required to notify their supervisor whenever they are unable to take their state-mandated rest periods.

**06.27.03** If an Individual Employer fails to authorize and permit an Employee to take daily rest periods as provided herein, the Employee shall be paid a penalty wage payment equal to one (1) hour at his/her applicable hourly wage rate excluding fringe benefits for missed rest periods that day regardless of the number of missed rest periods.

**06.27.04** All disputes concerning meals and/or rest periods are subject to the Grievance Procedures provided for in Section 18.00.00 and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final and binding upon both parties.

#### **06.28.00 HEAT ILLNESS COOL-DOWN RECOVERY PERIOD**

**06.28.01** A heat illness preventative cool-down recovery period shall be made available for employees working in high heat conditions in order to prevent heat illness in accordance with CAL OSHA requirements and Individual Employer standards.

**06.28.02** If the Employee is not provided a cool-down recovery period by the Individual Employer, Employee must report it immediately to the Individual Employers onsite Supervisor and in no event no later than the end of the shift.

**06.28.03** If an Individual Employer fails to provide an Employee a recovery period in accordance with state requirements, the Employee shall be paid a penalty wage payment equal to one (1) hour at his/her applicable hourly wage rate excluding fringe benefits for missed recovery period that day regardless of the number of missed periods.

**06.28.04** All disputes concerning recovery periods are subject to the Grievance Procedures provided for in Section 18.00.00 and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final and binding upon both parties.

**07.00.00 MANNING**

**07.01.00** The manning of equipment shall be in accordance with the provisions of Section 01.00.00 and this Section 07.00.00. In addition to the manning provisions therein contained, when an Engineer requires assistance in addition to any that must be provided for, he/she shall be assisted by an Employee covered by this Agreement (Assistant to Engineer, Deckhand or Registered Apprentice). (Refer to Section 07.10.00.)

**07.01.01** Only an Employee covered by this Agreement shall start and warm up equipment and the recognized established practice regarding the classification of Employee used in the starting and warming up of equipment shall not be changed.

**07.01.02** Assistant to Engineer when assigned to equipment shall be under the direct supervision of the Operator at all times.

**07.02.00 Asphalt Plant Crew.** It is agreed that the Asphalt Plant Crew shall consist of a Plant Engineer and two (2) additional Employees. The Plant Engineer shall be in charge of the entire plant. In the case of an automatic asphalt plant, the asphalt plant minimum crew shall consist of a Plant Engineer and Boxman. It is further provided that if any additional assistance is required in the asphalt plant crew, such assistance shall be performed by an Employee covered by this Agreement.

**07.03.00 Change Rule.** An Employee may be changed between classifications and pieces of equipment provided any piece of equipment the Employee leaves is not operated except by an Employee covered by this Agreement. However, an Employee who is transferred to another piece of equipment and who is not qualified to operate that piece of equipment, shall not be discharged or laid off, but shall be returned to the equipment to which he/she was originally dispatched.

**07.03.01** The Individual Employer shall not assign an Assistant to Engineer to perform the work of an Operating Engineer. The Individual Employer may assign an Operating Engineer to perform the work of an Assistant to Engineer; provided, not currently on the payroll of the Individual Employer shall be laid off or terminated as a result of such an assignment. The foregoing shall not preclude transfers for brief emergency or relief periods, provided a replacement has been requested from the Job Placement Center serving the job or project.

**07.03.02** On building jobs, the Assistant to Engineer may for four (4) hours or less, operate the following equipment: (1) Forklift, (2) Small Rubber-Tired Tractor, (3) Bobcat. Should any assistance be required, it shall be an Employee covered by this Agreement.

**07.04.00 Signals.** The necessity for the use of an Employee to give signals to Employees covered by this Agreement shall be determined by the Individual Employer. When used, he shall be an Assistant to Engineer, or a Registered Apprentice. (Refer to Section 07.10.00.)

**07.05.00** Whenever a person starts, stops or operates pumps over 750 GPM (except automatic electric pumps), compressors over 210 CFM (except automatic electric compressors), welding machines, or generators over 150 KW, he shall be an Employee covered by this Agreement. Any servicing and maintenance of the above equipment regardless of size, including automatic electric pumps and automatic electric compressors, shall be performed by an Employee covered by this Agreement.

**07.05.01 Generators.** Generator/Welder House: one (1) Engineer required.

**07.05.02 Compressors.** On compressor houses, manifold compressors or large single unit compressors (750 CFM or more) in the same location: one (1) Engineer required.

**07.06.00** On any job or project where an Employee is utilized to operate a Forklift (Group 8), or an Individual Employer employs a Heavy Duty Repairman, such Employee(s) may be utilized in lieu of one of the Employees otherwise required by Sections 07.05.00, 07.05.01 Generators and 07.05.02 Compressors. This Section 07.06.00 shall not apply to the required manning on Compressor Houses.

**07.07.00 Field Survey Work.** The classifications herein referred to shall apply only to Employees covered hereby, regularly employed in field survey work, excluding Individual Employer, executive, administrative or supervisory personnel, professional or office engineer personnel, draftsmen, estimators, timekeepers, messengers, guards, clerical help or field office help, and excluding the use of survey instruments normally used by any other employees in the performance of their duties.

**07.07.01** Field survey work shall be that work performed by such Employees in connection with the establishment of control points governing construction operations when performed by the Individual Employer on any type of home, office or commercial building construction. "Control points governing construction operations" shall be defined as such vertical and horizontal controls as must be established in connection with site preparation work before actual construction can get underway.

On commercial, office, or multi-storied buildings, site preparation work in connection with the establishment of control points governing construction operations on locations and elevations of fills, excavations, piles, caisson, and utilities shall be considered to be field survey work.

**07.07.02** On all types of heavy, highway and engineering construction, when the Individual Employer is required by Contracting Authority to furnish his own field survey service or when the Individual Employer at his/her own discretion hires Employees to perform field survey work, then in such instances, such work shall come within the classifications set forth in Section 01.00.00.

**07.07.03** For any field survey work beyond the direct control of the Individual Employer, the referred to classifications and conditions shall not apply.

**07.07.04** The Union will cooperate with the Individual Employer in the placing of student engineering trainees, so long as it does not materially affect the normal employment of regular Employees.

**07.07.05** When an Instrument Man is required by the Individual Employer to work from drawings, plans or specifications without the direct supervision of a Party Chief, he shall be paid at the Chief of Party rate.

**07.07.06** A party consisting of three (3) or more Employees shall include a Chief of Party.

**07.07.07** On a large project using several small parties and having a Chief of Party on the jobsite and in charge of the small parties, each small party shall have an Instrument Man or Chief of Party as one of the members of the small party.

**07.08.00 Warranty.** The maintenance and repair of equipment done at the site of construction, alteration, painting, repair or demolition of a building, structure or other work shall be performed exclusively by an Employee, or by employees covered by a collective bargaining agreement with the Union; provided, however, that if the Individual Employer has a written contract of warranty covering the equipment, work covered by such warranty may be performed at the jobsite for not more than six (6) months from purchase in the case of new equipment, or not more than thirty (30) days from purchase in the case of used equipment by persons not covered by this Agreement who are eligible to register as Class A Operating Engineers, or Class A Assistant to Engineer, under the Job Placement Regulations of this Agreement, and further provided that for non-warranty work or for work performed after the aforementioned six (6) months and thirty-day time periods all maintenance and repair work will be performed under the terms and conditions

of this Agreement, except that in the event of a factory modification to be performed on the jobsite, one factory representative shall be excluded from the foregoing.

**07.08.01** When an Individual Employer, at his/her discretion, wishes to utilize Employees covered by this Agreement to perform Soils and Materials Testing, such Employee shall be employed in accordance with the applicable classification set forth in Section 01.03.00.

**07.09.00 *Journeyman Training.*** Employees who have been, while unemployed under this Agreement, continuously registered in a California Job Placement Center or other approved Job Placement Center during the previous calendar year (registration during the calendar week following termination shall not break continuous registration) and have not refused three (3) or more dispatches during the previous calendar year and are at the time of application for training registered in a California Job Placement Center:

Training shall take place at an approved training center and such training shall be under the direction of the Operating Engineers Joint Apprenticeship Committee.

Room and board Monday through Friday, except on designated holidays as determined by the Joint Apprenticeship Committee while at the training center and the cost of training shall be paid by the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund.

**07.09.01** Training shall terminate:

- (1) On Friday following the Employee's attaining two hundred forty (240) hours of training, except that the Employee may be allowed to train eighty (80) additional hours on the approval of the Joint Apprenticeship Committee.
- (2) A shutdown of all or part of the operations of the training center affecting the Employee's training.
- (3) Dispatch by a Job Placement Center to employment under a Collective Bargaining Agreement with the Union.
- (4) In the case of a termination under 2 or 3 above, the Employee shall be eligible for further training subject to 1 above.

**07.09.02** This training program shall be open at such time as the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund Trustees so determine.

**07.09.03** Employees applying for training shall be eligible for training on a first come-first trained basis to the extent of the funds made available by the Affirmative Action Trust and that the training facilities are available.

**07.09.04** Employees requesting training must be current on dues, have worked a minimum of three hundred and fifty [350] hours for a contributing Employer during the current or previous year, pass a substance abuse test, cannot be on the good standing fund and shall request training through the Operating Engineers Local 3 JATC.

**07.09.05** The Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund Trustees are specifically authorized to modify 07.09.00 through 07.09.04.

**07.10.00 *Registered Apprentices.*** The wages, rates of pay, hours of labor and the other conditions of employment of Registered Apprentices shall be and are governed entirely by the terms and conditions of this Agreement except as modified in 07.10.01 through and including 07.10.13.

**07.10.01** The education, training and disciplining of Registered Apprentices shall be governed by the appropriate Joint Apprenticeship Committee and Standards:

- (1) Operating Engineers Apprenticeship Committee for the 46 Counties of Northern California;
- (2) Northern California Surveyors Joint Apprenticeship Committee.

**07.10.02 Apprentice Wage Rates.** The straight-time hourly rate of Operating Engineers Registered Apprentices in the Operating Engineers Apprenticeship Program shall receive the following percentage of the Group 4 rate set forth in Section 01.03.00:

- 1<sup>st</sup> Period Apprentice — 55%
- 2<sup>nd</sup> Period Apprentice — 60%
- 3<sup>rd</sup> Period Apprentice — 65%
- 4<sup>th</sup> Period Apprentice — 70%
- 5<sup>th</sup> Period Apprentice — 85%

The Apprentice wage rate to be calculated at 55% of the Group 4 wage rate shall apply to the eight hundred eighty [880] hours of on-the-job training described below (1<sup>st</sup> Period).

**1<sup>st</sup> Period.** The 1<sup>st</sup> Period for the Construction Branches shall consist of twelve hundred (1,200) hours. Three hundred twenty [320] hours of orientation training at a designated training center in the following: Apprenticeship orientation, safety, grade setting, lubrication, general maintenance, and introduction to the following categories: track-type equipment, rubber tire-type equipment, hoisting-type equipment and stationary-type equipment.

Eight hundred eighty (880) ) hours of the 1<sup>st</sup> Period will be on-the-job training, employed by a participating or contributing Employer.

**1<sup>st</sup> Period Surveyors.** One thousand (1,000) hours of the 1<sup>st</sup> Period will be on-the-job training, employed by a participating or contributing Employer.

The straight-time hourly rate of Surveyors Apprentices shall be:

- 1st Period— 60% of Chainman-Rodman
- 2nd Period — 70% of Chainman-Rodman
- 3rd Period— 80% of Chainman-Rodman
- 4th Period— 90% of Chainman-Rodman
- 5th Period— 100% of the wage rate applicable to the classification covering the type of work being performed.
- 6th Period— 100% of the wage rate applicable to the classification covering the type of work being performed.
- 7th Period— 100% of the wage rate applicable to the classification covering the type of work being performed.
- 8th Period— 100% of the wage rate applicable to the classification covering the type of work being performed.

**07.10.03** Applicants selected for Apprenticeship by the Joint Apprenticeship Committee may request evaluation by the appropriate Joint Apprenticeship Committee to receive credit which may be applicable for past experience.

The Joint Apprenticeship Committee may determine through evaluation whether the Apprentice shall be a First through Fifth Period Apprentice and shall be paid the appropriate percentage as set forth in Section 07.10.12.”

Surveyor Apprentices shall be evaluated and receive the wage scale of the proper wage schedule as determined by the application of the proper percentage of the appropriate classification for the period of training and the work performed, all as determined by the NCS-JAC.

**07.10.04** Apprentice manning shall be in conformance with the schedule as set forth in this Agreement.

**A. PRIVATE WORK:** A qualified Individual Employer shall employ one (1) Apprentice when at least nine (9) Journeymen are regularly employed. Individual Employers may utilize a one to one (1:1) Apprentice to Journeyman ratio up to a maximum of four [4] Apprentices. After nine [9] Journeymen, Individual Employer may employ one [1] Apprentice for each additional two [2] Journeymen Employees hired. The following exempt Employees will not be considered Journeyman Operating Engineers in determining the number of Journeyman Operating Engineers employed for the purposes of this paragraph.

Exempt Employees include:



1. Foremen not operating equipment or working with the tools of the trade and/or Superintendent
2. Assistant Engineers
3. Preferred List Journeymen
4. Journeymen working outside the 46 Counties
5. Employees not Journeymen Operating Engineers (i.e. office employees)
6. Apprentices
7. Journeymen not performing covered work (i.e. training, supplemental related training, Estimators, Exempt Code 7)
8. Owner-Operators

Notwithstanding the other provisions of this paragraph, the Individual Employer shall comply with the California Labor Code when performing publicly-funded work.

- B. PUBLIC WORKS:** On public works projects, the Individual Employer agrees to comply with the State law for apprenticeship manning requirements as provided by the Division of Apprenticeship Standards.

**Ratio 1:1 Public Works:** A qualified Individual Employer may employ one (1) Apprentice when at least one (1) Journeyman is regularly employed. When four (4) Journeyman Operators are employed on a Project for a particular Individual Employer, the next Employee hired to perform Operators work, must be an Apprentice and this ratio will be continued for every four (4) additional Operators being employed on the Project. If the Union is unable to fill the Apprentice dispatch request and the Individual Employer has made a written dispatch request for an Apprentice on a Project, the Individual Employer shall be relieved of this ratio obligation, until an Apprentice becomes available for dispatch.

**C.** The Joint Apprenticeship Committee established by the parties to this Agreement shall have the responsibility for establishing a referral procedure for Apprentices in conformance with the training standards. The Union shall dispatch all Apprentices in accordance with the procedure established by the Joint Apprenticeship Committee. The cost of dispatching Apprentices shall be borne entirely by the Joint Apprenticeship Trust.

**07.10.05 Apprentice Manning Non-Compliance.** In the event a Union Representative or Apprentice Coordinator of the Union determines that an Individual Employer currently has no Registered Apprentice(s) employed or less than the number required, the Union Representative or Apprentice Coordinator shall notify the Employer and the Individual Employer in writing of the non-compliance and indicate that the Union has apprentices available for dispatch. The Individual Employer will have ten (10) working days to comply after receipt of notice if the Union has apprentices available for dispatch. The Union Representative or Apprentice Coordinator shall meet with the Individual Employer during the ten (10) working day period. Failure to comply within ten (10) working days shall subject the Individual Employer to a penalty of four hundred dollars (\$400) per work day (from the date written notice was received) for each day of non-compliance, up to a maximum of ten (10) days. Penalties shall be paid to the Operating Engineers' Affirmative Action Trust Fund.

**07.10.06 Apprentice Manning Oversight Panel.** The parties recognize that some Individual Employers may not be able to provide safe, meaningful training for Apprentices. Further, there may be violations or disputes under these provisions that will require review and action. Therefore, an Apprentice Manning Oversight Panel is established for the purpose of considering the following:

- 1) If safe apprentice training is not available
- 2) If meaningful apprentice training is not available
- 3) Deviations from these apprentice manning provisions
- 4) Interpretations of these apprentice provisions
- 5) Individual Employer compliance
- 6) Individual Employer extensions

## 7) Categorical work-style exemptions (i.e. sweepers, grinders, pumpers, etc.)

The Apprentice Manning Oversight Panel shall consist of two (2) representatives of the Union and two (2) representatives of the Employer. A minimum of one (1) Employer representative shall serve on any issue relating to one of its Individual Employers. The Apprentice Manning Oversight Panel shall be empowered with the same powers of resolution provided to a panel convened for grievances with a specific and exclusive focus on apprenticeship manning and dispatch. No employment related matters for individual Employees may be presented to the Oversight Panel. If the Oversight Panel is unable to resolve questions of interpretation or issues other than safe meaningful training, said matters shall be subject to Section 18.00.00 "Grievance Procedure." The provisions of this paragraph shall apply to all Employers. All decisions of the Apprentice Manning Oversight Panel shall be in writing and distributed to all Individual Employers.

**07.10.07** When such Registered Apprentice completes the total apprenticeship training, such Registered Apprentice may return as a Journeyman to any Individual Employer for whom he/she has previously worked if the Individual Employer so requests him/her and if no Journeyman is laid off or replaced by the employment of such Employee. The employment of the Journeyman as outlined above shall be in compliance with the Job Placement Regulations.

**07.10.08** A Registered Apprentice may be assigned (subject to the control of the Joint Apprenticeship Committee) to operate equipment or perform work covered by this Agreement, provided that the Registered Apprentice is under the supervision of a Journeyman. The utilization of Registered Apprentices to operate equipment or perform work shall be in accordance with approved Apprenticeship Standards.

**07.10.09** In the event there are no Assistant to Engineers or Preferred Classification Employees registered or available for work in an Assistant to Engineer classification, a Registered Apprentice shall be dispatched in lieu thereof. However, when so employed, the Registered Apprentice shall receive the applicable Registered Apprentice rate or the applicable Assistant to Engineer rate, whichever is greater; provided, however, a Registered Apprentice being utilized as an Assistant to Engineer is subject to the provisions set forth in Section 04.10.06(b) of the Job Placement Regulations.

**07.10.10 Selection Procedures.** All Apprentice applicants entering the Apprenticeship Program shall be subject to the Selection Procedures in the Apprenticeship Standards of the Joint Apprenticeship Committee for Operating Engineers for the 46 Northern Counties in California.

**07.10.11 Orientation Training.** All Apprentices entering the Apprenticeship program shall receive orientation training at a designated training center pursuant to a curriculum developed by the Joint Apprenticeship Committee. Such participation in the Orientation Training shall be at the discretion of the Joint Apprenticeship Committee.

**07.10.12** The Apprentice manning requirements set forth in 07.10.04 are not mandatory when they apply to permanent plants producing rock, sand and aggregates of all kinds, concrete (excluding cement), asphalt and macadam where such plants are in competition with like plants not covered by the Master Agreement.

**07.10.13. 1.** An Individual Employer, who has employed an apprentice for at least six months during the apprentice's fourth period, shall receive apprentice manning credit for all of the Employee's work for the Individual Employer as a journeyperson during the twelve (12) months immediately following the date the Employee obtains journeyperson status.

2. An Individual Employer shall receive apprentice manning credit for each hour of an apprentice's Supplemental Related Training ("SRT") increment if the Individual Employer employs the apprentice during three (3) of the six (6) months immediately following the apprentice's SRT increment.

3. All work of an Advanced Apprentice will count as apprentice manning credit for the Individual Employer's apprentice manning obligations under the applicable provisions of this Agreement.

**08.00.00 SUPPLEMENTARY WORKING CONDITIONS**

**08.01.00 Tools.** The Individual Employer shall provide on each jobsite a secure place where his Heavy Duty Repairman may keep his tools. If all or any part of a Heavy Duty Repairman's kit of working tools is lost by reason of the failure of the Individual Employer to provide such a secure place, or by fire, flood, or theft involving forcible entry while in the secure place designated by the Individual Employer, the Individual Employer shall reimburse such Heavy Duty Repairman for any such loss from a minimum of one hundred dollars (\$100.00) to a maximum of twenty-five thousand dollars (\$25,000.00). In order to obtain the benefits of this paragraph, a Heavy Duty Repairman must provide the Individual Employer with an inventory of his/her tools at the time he commences work and updated inventory whenever the Heavy Duty Repairman acquires additional tools.

**08.01.01** Heavy Duty Repairmen shall furnish their own hand tools, but special tools shall be furnished by the Individual Employer as needed, such as: pin presses, spanner wrenches, air or electric wrenches, testing and measuring devices other than a hand rule, gear and bearing pullers, electric drills, reamers, taps and dies, oxy-acetylene hoses, gauges, torches and tips, torque wrenches, twenty-four-inch (24") pipe wrenches or socket wrenches, and sockets requiring over three-quarter-inch (3/4") drive, box-end wrenches over 1" and open-end wrenches over 1". Heavy Duty Repairmen and/or the Registered Apprentices shall be entitled to a tool pick-up time before the end of each shift, which shall not be less than five (5) minutes or more than fifteen (15) minutes.

**08.02.00 Transportation.** No Employee covered by this Agreement shall, as a condition of employment, furnish transportation within the jobsite or between jobsites, or from yard to jobsite for transportation of Employees or tools or equipment or for any other purpose.

**08.02.01** When the Individual Employer transports Employees from yard to jobsite, or within jobsite, or to power lines or pipelines, he/she shall provide safe and suitable transportation.

**08.02.02** When the access to where the work is being performed (at a job or project or within a job or project) is unsuitable, or no parking facilities are provided within a five-minute walk from where the Employees' work is being performed, the Individual Employer shall transport the Employees to and from where the Employees' work is to be performed, and such transport shall be one-half on the Individual Employer's time and one-half on the Employees' time.

**08.02.03** Where free parking is not available, parking places or parking facilities will be provided by the Individual Employer for the Employees at no cost to the Employees. If the Employee must pay for parking the Individual Employer shall reimburse the Employee for each parking expenditure; provided, however, the Individual Employer may require the submission of dated and signed receipts. Such receipts may be turned in weekly or on termination of employment whichever is sooner.

**08.02.04** The transportation, by means of its own power, of equipment and the loading and unloading of equipment of the type or kind operated by Employees covered by this Agreement shall be performed by Employees covered by this Agreement.

**08.03.00 Facilities.** The Individual Employer agrees to furnish suitable shelter and protection to protect the Employees from falling material and from the elements (including, but not limited to, dust, heat, rain and cold).

**08.03.01** On all jobs, clean drinking facilities and cool water shall be provided the Employees by the Individual Employer.

**08.03.02** Suitable, adequate and sanitary toilet facilities shall be provided on all jobs.

**08.04.00 Employee Bonds.** No Employee shall be required by Employer or any Individual Employer to deposit a cash bond with the Employer or the Individual Employer or any other person. In the event that a surety bond is so required, the Employer or the Individual Employer shall pay the premium upon said bond.

**09.00.00 SERVICING OTHER CRAFTS**

**09.01.00** Employees on a particular project and assigned to work with a craft or crafts temporarily shall not be entitled to any of the conditions of the craft or crafts. "Temporarily" shall be interpreted as meaning any work performed in a single day of four (4) hours or less.

**09.02.00** When Employees covered by this Agreement are employed on a job or project where another craft or crafts work a shorter day or shorter week, such Employees affected shall be afforded the opportunity to earn an amount equal to a full shift, full day or full week, as the case may be, at the applicable straight-time wage rate.

**09.03.00** When Employees perform work covered by this Agreement in support of another craft that receives over-time for any period of time between 8:00 a.m. and 4:30 p.m., Monday through Friday, they shall be compensated on the same basis.

**09.04.00** Combination mixer and compressor operator on gunite work shall be classed as servicing a Specialty craft or crafts.

**10.00.00 ADDITIONAL RESPONSIBILITY**

**10.01.00 Working Leadman.** When an Individual Employer employs more than one (1) Heavy Duty Repairman and less than five (5) Heavy Duty Repairmen on any shift, and if a Heavy Duty Master Mechanic or Heavy Duty Repairman Foreman is not employed on such shift, then in lieu of such supervision one (1) Heavy Duty Repairman shall be a working Leadman and his straight-time hourly wage rate shall be that of Group 4, set out in Section 01.03.00 plus fifty cents (\$.50) per hour.

**10.02.00 Payment of Wages.** Each Employee shall be paid his/her wages in full each week promptly after the close of his shift on payday and on the jobsite. The wages of Employees, who are terminated, shall be due and payable in full at the time of termination. Employees quitting or resigning shall be paid in accordance with the laws of the State of California. Accompanying each payment of wages shall be a separate statement identifying the Individual Employer, and showing the total earnings, the amount of each deduction, the purpose thereof and net earnings.

**10.02.01** Habitual violations of this Section will subject the Individual Employer to penalties as may be determined by the Board of Adjustment.

**10.03.00 Work at More Than One Rate.** If more than one (1) straight-time hourly rate is applicable to the work performed by an Employee during his/her regular shift or on overtime, his pay shall be computed at the highest straight-time hourly rate, or overtime as the case may be, applicable to the work, equipment, area, location and classification for the full shift and for all the overtime due in any workday, Saturday, Sunday or holiday, provided, however, that the Employee works a minimum of two (2) hours at the higher straight-time hourly rate of pay.

**10.03.01** No Employee receiving a higher rate of pay or better conditions by reason of an existing contract with another employer association or Employer and the Union shall suffer a reduction of pay or loss of conditions by reason of the execution of this Agreement.

**10.03.02** No Employee receiving a higher rate of pay or better conditions by reason of an existing contract with another Employer Association or Employer and the Union shall suffer a reduction of pay or loss of conditions by reason of such Association becoming an Employer or his/her Employer becoming an Individual Employer and the Employee becoming an Employee hereunder.

**11.00.00 SUBSISTENCE AND TRAVEL, RENTED EQUIPMENT**

**11.01.00** On any job, location or project located more than thirty-five (35) miles from the permanent yard of the Individual Employer, Operating Engineers employed by an Individual Employer who is regularly engaged in the business of renting hoisting equipment (except cranes), gradalls, truck-mounted pavement breakers, or truck-mounted earth augers, on a fully operated basis, shall receive in addition to their regular and overtime wages a daily subsistence as follows:

Effective June 16, 1998— \$20.00

**11.01.01** Any crane rental work to be performed on a fully operated basis shall be performed under the wage rates, fringe benefit rates and all other terms and conditions of the existing Master Agreement for Equipment Rental.

**11.01.02** Within thirty (30) days of the execution of this Agreement, any such Individual Employer having more than one (1) yard shall notify the Union, in writing, of the location of his permanent yard, or permanent yards. Such locations can be changed once each year by giving written notice to the Union. Such payments for subsistence shall be excluded from the wages of the Employee for the purpose of the Fair Labor Standards Act.

**11.01.03** No subsistence shall be paid on any job when the Employee's time starts and ends at the Individual Employer's permanent yard without any break in compensable hours except for meal periods.

**11.02.00** On jobs on which an Employee does not receive subsistence, the understanding of the undersigned parties is as follows:

**11.02.01** An Employee shall not receive travel time or travel expense except under 11.03.00 and 11.04.00 below.

**11.03.00 Travel Expense.** Where the Employee is transported on the Individual Employer's equipment, travel expense shall not be due.

**11.03.01** Travel expense will be paid when moving cranes from yard to job, job to yard and job to job when crane is not returned to its original starting point at the end of the day, and when the Employee receives travel time under 11.04.00.

**11.03.02** Travel expense, when due an Employee furnishing his own transportation shall be paid at the rate of twenty-five cents (\$.25) per mile and the Individual Employer shall also pay bridge, ferry or toll fares involved; provided that no Employee shall be required to furnish the means of transportation as a condition of employment.

**11.04.00 Travel Time.** On any day on which an Employee is required to report to the yard, the Employee's time will start at the yard. On any day on which the Individual Employer requires an Employee to return to the yard and when, absent a pre-arrangement to cover transportation under 11.03.01, an Employee is required to report to the yard on that date, an Employee's time will end at the yard.

**12.00.00 FRINGE BENEFITS**

**12.01.00 General Provisions.** The Individual Employer will make the following payments for each hour worked or paid each Employee by an Individual Employer covered by this Agreement. Such payments shall be paid by each Individual Employer by the due date specified in Section 12.01.02.

**12.01.01 Determination of Delinquencies.** Any Individual Employer shall be considered delinquent if late payment or underpayment occurs whether because it (a) fails to submit a contribution report form with the full contribution by the delinquent date specified in Section 12.01.02, or (b) fails to submit contributions on behalf of all employees for whom contributions are required under its contribution agreement, or (c) fails to properly compute the contributions according to the applicable contributions formula, or (d) otherwise fails to meet its obligations to the Trust Funds.

**12.01.02 Due Date and Delinquent Date.** The due date for Individual Employer contributions is the 15<sup>th</sup> day of the month immediately following the month for which work was performed or paid. The delinquent date is the 26<sup>th</sup> day of

the month immediately following the month for which work was performed or paid for unpaid contributions not received by the 25<sup>th</sup> day of the month.

**12.01.03 Place and Manner of Payment.** All Individual Employer payments shall be made in Alameda, California, or such other location as may be designated by the Trust Funds. All such payments shall be made in the manner provided by the applicable Trust Agreement creating a Trust Fund, or if not a Trust Fund, in the manner provided for in this Agreement. Each Individual Employer is bound by all the terms and conditions of each Trust Fund's Trust Agreement and any amendment thereto whether adopted before or after this Agreement, all of which documents are incorporated herein by reference.

**12.01.04 Examination of Records.** The Union or the Trust Funds, or their agents or accountants may require the Individual Employer to submit to them for examination, any information relevant to the administration of the Trust Funds, to confirm the Individual Employer's reporting compliance, and the Individual Employer must submit such information pursuant to the terms of the Trust Agreements incorporated herein. If more than minor underpayments are found due on audit, the Individual Employer shall reimburse the Trust Funds, upon demand of the Trust Funds, the costs of said examination in addition to any other obligations it may have hereunder. Minor underpayments shall be defined as 10% of the proper contributions for the period tested

**12.02.00 Health and Welfare and Sick Benefits.** Each Individual Employer covered by this Agreement shall pay into the Operating Engineers' Health and Welfare Trust Fund for Northern California according to the following schedule:

\$11.24 per hour – Effective 7/1/16

\$.\* per hour – Effective 6/26/17

\$.\* per hour – Effective 6/25/18

\$.\* per hour – Effective 6/24/19

\*To be allocated by the Union.

Two cents (\$.02) per hour of the Health and Welfare contribution shall be paid to Addiction Recovery Program, Inc. ("ARP"). This payment shall be in addition to money the Health and Welfare Fund currently provides ARP.

**12.02.01** If a National Health Act or State Health Care Act is enacted, the parties shall meet to eliminate any duplicate benefits and duplicate cost to the Individual Employer. If the Individual Employer's total benefit cost for providing Health and Welfare benefits to Employees is reduced because of a change in the law, the Union shall allocate the savings portion of the hourly Operating Engineers' Health & Welfare Fund contribution rate, as determined by the Board of Trustees, to the Operating Engineers' Pension Trust Fund for purposes of funding any liabilities.

**12.03.00 Pensioned Health and Welfare.** Each Individual Employer covered by this Agreement shall pay into the Pensioned Operating Engineers' Health and Welfare Trust Fund according to the following schedule:

\$2.39 per hour – Effective 7/1/16

\$.\* per hour – Effective 6/26/17

\$.\* per hour – Effective 6/25/18

\$.\* per hour – Effective 6/24/19

\*To be allocated by the Union.

**12.04.00 Pension.** To fund the Pension Plan for the Pension Trust Fund for Operating Engineers, each Individual Employer covered by this Agreement shall pay into the Pension Trust Fund for Operating Engineers, according to the following schedule:

\$10.78 per hour – Effective 6/29/15

**Preferred Schedule of the Rehabilitation Plan: \$.63 cents per hour/each year**

\$10.78 per hour – Effective 7/1/16

\$.\* per hour – Effective 6/26/17

\$.\* per hour – Effective 6/25/18

\$.\* per hour – Effective 6/24/19

The parties agree that sufficient contributions will be made available from these increases to the Pension Fund to support any Rehabilitation/Funding Improvement schedule adopted by the Pension Board of Trustees pursuant to the Pension Protection Act of 2006 and the Union will select an option (Schedule) in the Pension's Rehabilitation Plan or Funding Improvement Plan, whichever is applicable. Additional monies required for such Rehabilitation Plan/Funding Improvement Schedule shall be allocated from existing negotiated increases, wages and/or fringe benefits.

\*2016, 2017, 2018 and 2019 Pending annual review by the Plan's Actuaries & Trustees

**12.04.01** Each Individual Employer covered by this Agreement shall pay into the Operating Engineers' Pension Trust Fund according to the following schedule for Apprentices:

1<sup>st</sup> thru 5<sup>th</sup> Period

\$9.18 per hour – Effective 6/29/15

**Preferred Schedule of the Rehabilitation Plan: \$.63 cents per hour/each year**

\$9.18 per hour – Effective 7/1/16

\$.\* per hour – Effective 6/26/17

\$.\* per hour – Effective 6/25/18

\$.\* per hour – Effective 6/24/19

\*2016, 2017, 2018 and 2019 Pending annual review by the Plan's Actuaries & Trustees

**12.04.02** The Pension Plan is and has been a defined benefit pension plan.

**12.04.03 Pension Funding Protection**

(a) When the Pension Plan first becomes one hundred and twenty percent (120%) or more funded (as determined by the Plan's actuary using such actuarial assumptions and methods for valuation of both Plan assets and liabilities which in the aggregate represent the actuary's best estimate of the Plan's funded status,) the parties agree that non-benefit contribution amounts allocated under the Pension Plan's Funding Improvement Plan or Rehabilitation Plan (*i.e.* monies in excess of the seven dollars (\$7.00) per hour Journeyman rate and the five dollars and forty cents (\$5.40) per hour Apprentice rate and referred to herein as "excess monies") shall be reallocated to the Annuity Fund as of a date determined by the Board of Trustees if permitted under Federal Law in effect at that time.

(b) In the event that the Pension Plan subsequently becomes less than one hundred twenty percent (120%) funded, the parties agree that the amount of excess monies previously allocated to the Annuity Fund will be reallocated

back to the Pension Plan going forward in such amounts and as of a date as determined necessary by the actuary and approved by the Pension Plan's Board of Trustees, until such time as the Pension Plan again becomes one hundred twenty per cent (120%) or more funded, in which case the provisions of subparagraph (a) shall be applied again.

**12.05.00 Affirmative Action Training Fund.** Each Individual Employer covered by this Agreement shall pay into the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund according to the following schedule:

\$ .77 per hour – Effective 7/1/16

\$ .\* per hour – Effective 6/26/17

\$ .\* per hour – Effective 6/25/18

\$ .\* per hour – Effective 6/24/19

\*To be allocated by the Union.

In addition to the above, the Individual Employer shall pay one dollar (\$1.00) per hour for each hour worked or paid each Registered Apprentice into the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice, and Journeyman Affirmative Action Training Fund.

**12.06.00 Vacation, Holiday and Sick Pay.** Each Individual Employer covered by this Agreement shall pay into the Operating Engineers' Vacation, Holiday and Sick Pay Trust Fund according to the following schedule:

\$4.51 per hour – Effective 7/1/16

\$2.85 per hour [Vacation Pay] – Effective 6/29/15

\$ .50 cents per hour [Sick Pay] – Effective 7/1/16

\$1.11 per hour [Supplemental Dues] – Effective 7/1/16

\$ .05 cents per hour [Administrative Fee, this amount is not taxable to the Employees] – Effective 7/1/16

\$ .\* per hour – Effective 6/26/17

\$ .\* per hour – Effective 6/25/18

\$\* per hour – Effective 6/24/19

\*To be allocated by the Union.

**Registered Apprentices.** Each Individual Employer covered by this Agreement shall pay into the Operating Engineers' Vacation, Holiday and Sick Pay Trust Fund for Apprentices according to the following schedule:

\$4.01 - per hour – Effective 7/1/16

\$2.35 per hour [Vacation Pay] – Effective 7/1/16

\$ .50 cents per hour [Sick Pay] – Effective 7/1/16

\$1.11 per hour [Supplemental Dues] – Effective 7/1/16

\$ .05 cents per hour [Administrative Fee, this amount is not taxable to the Employees] – Effective 7/1/16

\$ .\* per hour – Effective 6/26/17

\$ .\* per hour – Effective 6/25/18

\$ .\* per hour – Effective 6/24/19

\*To be allocated by the Union.



**12.06.01** Effective July 1, 2016, the Union grants Individual Employers a waiver under the Healthy Workplaces, Healthy Families Act of 2014 (AB 1522). In return for said waiver, Individual Employers shall remit to Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund a one-time additional contribution of fifty cents [\$.50] per hour worked identified as the contribution for Sick Pay. No additional fringe benefits are due for any sick, vacation, or holiday pay. Employees may use these monies for paid sick leave purposes.

Any disputes concerning the validity of the waiver granted under the Healthy Families Act of 2014 are subject to Section 18.00.00 Grievance Procedure. If the California legislature amends the Healthy Workplaces, Healthy Families Act of 2014, then Union and Employer agree to meet and confer to negotiate any required conformance to the amended law.

**12.06.02 Paid Sick Leave Waivers.** The bargaining parties also expressly agree, to the fullest extent permitted by law, to waive any paid sick leave provisions of the following local paid sick leave ordinances: San Francisco (Administrative Code Section 12W), Oakland (Municipal Code Section 592 et.seq.), Emeryville (Municipal Code Title 5, Chapter 37). In addition, to the fullest extent permitted by law, this waiver shall apply to any other Federal, State, City, County or other local ordinance requiring mandatory Paid Sick Leave that may be adopted during the term of this agreement.

**12.06.03** In addition, if any Federal, State, City, County or other local ordinance requiring mandatory compensated time off other than Paid Sick Leave is enacted during the term of this Agreement; then the Union and the Employer agree to meet and confer within thirty (30) business days.

**12.06.04** The parties agree that the payments provided in this Section are in lieu of the Employee's actually taking a vacation, holiday or sick leave. Such payments shall not be considered part of the hourly wage rates for the purpose of computing overtime, either under the Fair Labor Standards Act, the Walsh-Healy Act or any other law, and no vacation or sick leave payment shall be made on the basis of a premium rate of time and one-half or double time.

**12.06.05 Deduction of Taxes.** All taxes due from each Employee including taxes due by reason of payments for Vacation, Holiday and Sick Pay shall be deducted by each Employee's Individual Employer from each Employee's regular wages and such total tax deductions together with the amount payable for Vacation, Holiday and Sick Pay shall be separately noted on the Employee's paycheck.

**12.06.06** The Administration Fee per hour shall be paid by each Individual Employer. It shall not be taxable to the Employee.

**12.06.07 IUOE/PAC** The Employees may voluntarily authorize in writing that a portion of said payments be made to the Political Action Committees established by Operating Engineers Local 3 and/or by the International Union of Operating Engineers.

**12.07.00 Annuity Fund.** To fund the Operating Engineers Annuity Plan, each Individual Employer covered by this Agreement shall pay into the Pension Trust Fund for Operating Engineers, according to the following schedule:

\$ .40 per hour – Effective 7/1/16

\$.\* per hour – Effective 6/26/17

\$.\* per hour – Effective 6/25/18

\$.\* per hour – Effective 6/24/19

\*To be allocated by the Union.

**12.07.01** The Annuity Plan is and has been a defined contribution pension plan.

**12.08.00 Contract Administration Fund.** Each Individual Employer covered by this Agreement shall pay into the Contract Administration Fund according to the following schedule:

**United Contractors (UCON)**

\$.10 per hour - Effective July 1, 2013 \*

**Independent Short Form Employers**

\$.04 per hour - Effective July 1, 2013

**AGC**

\$.09 per hour -Effective July 1, 2013

**UMIC, INC.**

\$.07 per hour - Effective July 1, 2013

**ACE**

\$.09 per hour - Effective July 1, 2013

**CEA**

\$.10 per hour - Effective July 1, 2013

**NAEC**

\$.10 per hour – Effective April 1, 2015\*

\*Individual Employers who are Members of the Association shall make the payments set forth in Section 12.08.00 directly to the Association through its monthly billings.

All payments required pursuant to this section shall not be deemed wages due to the Employees with respect to whose work such contributions and payments are made.

**12.08.01** Such monies provide compensation to the Employer for negotiations and administration of the provisions of this Agreement, including Section 18.00.00, for the industry.

**12.08.02 Industry Labor Management Committee.** The parties agree to form a Labor-Management Committee to provide a forum to discuss issues of mutual interest and concern. The Committee shall meet no less than semi-annually during the term of this Agreement. The formation of the Committee and the holding of its meetings are not intended to open the Contract for negotiations or to supplant the Grievance and Arbitration Procedures. Each party will provide the other with an agenda of the items to be discussed and no party will be required to discuss any matter that has not been the subject of advanced notice. All expenses of the Committee, where undertaken jointly, shall be borne equally.

**12.09.00 Industry Stabilization Fund.** Each Individual Employer covered by this Agreement shall pay into the Industry Stabilization Fund according to the following schedule:

\$.06 per hour - Effective June 29, 1998

**12.09.01** Such monies shall be utilized to enhance the enforcement of prevailing wage laws through The Foundation for Fair Contracting within the geographic area covered by this Agreement.

**12.10.00 Job Placement Center and Market Area Committee Administration Market Preservation Fund.** Each Individual Employer covered by this Agreement shall pay into the Job Placement Center and Market Area Committee Administration Market Preservation Fund according to the following schedule:

\$.11 per hour - Effective June 24, 2002

**12.11.00 Business Development Funds.** Each Individual Employer covered by this Agreement shall pay into the Business Development Trust Fund(s) according to the following schedule:

**United Contractors (UCON)**

California Alliance for Jobs – \$.07 per hour Effective July 1, 2013

**AGC**

California Alliance for Jobs – \$.05 per hour Effective July 1, 2013

Construction Industry Force Account Committee – \$.02 per hour Effective July 1, 2013

**NAEC**

California Alliance for Jobs – \$.07 per hour Effective April 1, 2015

**UMIC, INC.**

California Alliance for Jobs – \$.07 per hour Effective July 1, 2013

Construction Industry Force Account Committee – \$.02 per hour Effective July 1, 2013

**Independent Short Form Employers**

California Alliance for Jobs – \$.10 per hour Effective July 1, 2013

Construction Industry Force Account Committee – \$.02 per hour Effective July 1, 2013

**ACE**

California Alliance for Jobs – \$.06 per hour Effective July 1, 2013

Construction Industry Force Account Committee – \$.01 per hour Effective July 1, 2013

**CEA**

Business Development Fund - \$.06 per hour Effective July 1, 2010

**12.11.01** Such monies shall be utilized to maintain and increase signatory contractors' market share and to develop new markets.

**12.11.02 Heavy & Highway Committee.** Only those contributing Associations shall participate on the Heavy and Highway Committee. The Individual Employer shall contribute to the Heavy and Highway Committee according to the following schedule:

**AGC**

\$.01 per hour - Effective January 1, 2001

**ACE**

\$.01 per hour - Effective January 1, 2001

**CEA**

\$.01 per hour - Effective July 1, 2010

**Independent Short Form Employers**

\$.01 per hour - Effective January 1, 2001

**UMIC, INC.**

\$.01 per hour - Effective January 1, 2001

**12.12.00 Supplemental Dues.** Effective for all work performed on and after July 1, 2016, it is agreed that upon written authorization, provided by the Union, or Union's designee, as required by law, the amount designated by the Union shall be deducted from the Vacation, Holiday and Sick Pay of each Employee and remitted directly to the Union. The amount

of the Supplemental Dues transmittal shall be specified on a statement sent to the Employees. Such remittance shall be made to the Union monthly. Supplemental Dues are specifically part of the uniform monthly dues of each Employee, as specified in the provisions of Section 04.02.00, Union Security, of this Agreement. The Employees shall be obligated to make such payment directly to the Union on a monthly basis if the dues authorization provided for herein is not executed, under such terms and conditions as from time to time may be prescribed by the Union. The Union shall pay into the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund an administration fee for the remittance of Supplemental Dues to the Union.

**12.12.01** The Union shall exonerate, reimburse and hold harmless the Employer, each Individual Employer, and their respective officers, directors, agents, and employees, individually and collectively, against any and all liabilities and reasonable expenses arising out of the payment, receipt or a distribution of the amounts designated by the Union.

**12.12.02 *Operating Engineers Retiree Supplemental Benefit Plan***

**12.12.03** It is understood and agreed to by the Employers and the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers that a new joint labor-management trust fund will be established during the term of the current Master Labor Agreement for purposes of providing eligible retirees with supplemental benefit checks only, which shall not be associated with or be a basis of funding for the Pension or Health and Welfare Plans.

**12.12.04** It is also further understood and agreed by the parties that this Plan is an Employee welfare benefit plan and that this Plan will be funded out of the Union membership's designated wage allocation as determined by the Union. It is the intent of the parties that the maximum total funding for this plan shall not exceed fifteen cents (\$.15) per year during the term of this Agreement or any future agreement, unless expressly agreed to by the parties in writing.

**12.12.05** It is also agreed to by the parties that no monies shall be allocated to this newly established fund until such time as the pension fund reaches a ninety percent (90%) funded level, which has been verified by the Pension Fund actuary.

**12.13.00 *Delinquencies.*** Insofar as payments by Individual Employers into the Trust Funds are concerned, time is of the essence. The parties recognize and acknowledge that the regular and prompt payment of amounts due to the Trust Funds by Individual Employers is essential to the efficient and fair administration of the Trust Funds and the maintenance of plan benefits, and that the Boards of Trustees of the Trust Funds have established a reasonable, diligent, and systematic collection process. If Individual Employers do not make timely payments, the Trust Funds lose the investment return they should have received, and incur additional administrative expense in the form of letters, telephone calls, and other collection expenses. In addition, the Trust Funds incur additional management expense by reason of time necessary to oversee the collection process by the Board of Trustees, Executive Director, and others. The Trust Funds are also delayed or prevented from processing claims by employees for benefits under the plan. The Trust Funds' collection expenses, and inability to pay benefits constitute damages arising from an Individual Employer's default in making payments, and these damages cannot be allowed to deplete the contributions promptly paid by other Individual Employers.

**12.13.01 *Liquidated Damages.*** It would be extremely difficult and impractical to fix the actual expense and damage to the Funds for each Individual Employer's default. Therefore, the amount of liquidated damages to the Trust Funds resulting from any Individual Employer's default, over and above attorneys' fees, audit fees and interest for delinquent contributions, shall be 10% of the unpaid contributions as of the delinquent date. However, if a lawsuit to collect delinquent contributions has been filed, the amount of liquidated damages on the unpaid contributions shall be increased to an amount equal to the greater of 20% of the unpaid contributions, or interest on the amount of the unpaid contributions from the delinquent date until the dates they are paid in full, at the rate referred to in Section 12.13.02 below.

**12.13.02 Interest.** Unpaid contributions shall accrue late interest charges from the delinquent date until paid, at the rate of 10% per year simple interest beginning on the delinquent date. The Boards of Trustees of the Trust Funds may from time to time establish such other rates as they deem appropriate, in accordance with the Trust Agreements.

**12.13.03 Installments.** In addition, if a delinquent Individual Employer agrees to pay its delinquency in installments and fails to make such payments in the amount and at the time and place agreed, it is agreed that the amount of damage to each Trust Fund resulting from any such failure shall be by way of liquidated damages and not as a penalty to each such Trust Fund, the sum of the unpaid installment due and unpaid to each such Trust Fund, for each such failure to pay in full within the time provided, which amount shall become due and payable to each such Trust Fund in Alameda, California, or at the place and time otherwise directed by the Trust Funds. The unpaid installment shall bear interest at the rate of ten percent (10%) per annum until paid.

**12.13.04 Special Rules for Repeated Delinquencies.** The Trust Funds may, in the event of repeated delinquencies by the same Individual Employer, make special rules applicable to the due date of said Individual Employer's contributions and may require the Individual Employer to post a bond or other security against further delinquencies; or to increase an existing bond or security for that purpose.

**12.13.05 Settlements.** Liquidated damages and late interest charges on unpaid contributions may be waived or compromised under appropriate circumstances pursuant to the delinquency collection procedures established for the Trust Funds.

**12.13.06 Collection Expenses.** If any Individual Employer defaults in the making of such payments and if either the Union, the Trust Funds or the Plan, or any of them, consults or causes to be consulted legal counsel with respect thereto, or files or causes to be filed any suit or claim with respect thereto, there shall be added to the obligation of the Employer who is in default all reasonable expenses incurred by the Union and the Trust Funds in the collection of same, including but not limited to, reasonable attorneys' fees, auditors' and accountants' fees, court costs and all other reasonable expenses incurred in connection with such suit or claim including any appellate proceedings therein.

**12.13.07 Special Rules.** When a contributing Individual Employer has been assessed liquidated damages and interest for a period of two (2) late months during any twelve (12) consecutive month period, upon the occurrence of the second (2nd) assessment, and subject to subsection (e) below, the Individual Employer will promptly be notified (with copies to the Local Union and the Employer) that if said Individual Employer becomes delinquent again and is assessed liquidated damages and interest during any of the succeeding twelve (12)-month period, he/she will be subject to the following rules:

(a) The Individual Employer shall be audited in order to determine compliance with the provisions of this Section 12.00.00 and/or the Trust Fund Documents.

(b) The Individual Employer shall be required to provide the Trust Funds with a cash deposit or bond equal to the sum of the three (3) highest months' contributions made in the immediate preceding twelve (12)-month period, or such lesser sum as the Delinquency Committee deems appropriate.

(c) The Individual Employer's due and delinquent date shall be the 15th day of the month.

(d) Once these special rules have been applied to an Individual Employer, they shall remain in effect for at least twelve (12) months. At the end of this period, the Individual Employer may petition the Board to terminate these special rules and release the cash deposit or bond; this may be allowed only if the Individual Employer has been current in his/her reports and contributions for each and every month during the preceding twelve (12) -month period and the Board is otherwise satisfied that there will be no further delinquencies.

(e) The foregoing rules shall not actually be applied to any Individual Employer until the Delinquency Committee has been advised at a meeting that they have become applicable (or will become applicable if another delinquency occurs).

The Delinquency Committee may then, upon its own motion or upon the Individual Employer's request, waive any of the above rules, in whole or in part, for reasonable cause. If the Delinquency Committee has been so advised and has not waived these rules or any of them, the rules will be applied by the Trust Funds.

**12.13.08 California Law.** The parties recognize and agree:

(a) that the references to fringe benefits in Sections 7071.5 and 7071.11 of the California Business and Professions Code include payments for fringe benefits and vacation, holiday and sick pay as described in this Agreement and Trust Agreements creating each Trust;

(b) that said payments are for the benefit of the Employees of each Individual Employer covered by this Agreement, and that the failure of an Individual Employer to make said payments, in the manner and at the time prescribed, causes damage to all Employees, including the Employees of the Individual Employer in default, in the amount of the unpaid fringe benefits and vacation, holiday sick pay as well as the liquidated damages established herein, interest, and any attorneys' and accountants' fees which the Union, the Trusts, or the Plan, or any of them, may incur with respect to said default;

(c) that the Union, the Trusts or the Plan, or any of them, may bring a claim or legal action against the Individual Employer's license bond on behalf of an Employee or Employees covered by this Agreement.

**12.14.00 Security for Payments.** Each Individual Employer delinquent one (1) or more months in making the payments set forth in Section 12.00.00 shall be notified of such delinquency in writing by the Fund Manager of the Trust Funds. Copies of such notices shall be sent to the Employer and to the Union.

**12.14.01 Notice.** Each such delinquent Individual Employer shall within five (5) days of the receipt of such written notice pay the delinquent amount in full or make other suitable arrangements acceptable to the Delinquency Committee of the Trust Funds for payment. Such amounts owing are to be determined by the Fund Manager of the various Funds. The Fund Manager shall notify the Employer of any such arrangements which may be made by the Delinquency Committee with the Individual Employer.

**12.14.02 Failure to Pay.** If an Individual Employer fails to pay the delinquencies as determined by the Fund Manager in the time provided in 12.14.01, or fails to make other suitable arrangements for payment acceptable to the Trust Funds, it shall not be a violation of this Agreement so long as such delinquency continues, for the Union to withdraw the Employees who are subject hereto from the performance of any work for such Individual Employer and such withdrawal for such period shall not be a strike or work stoppage within the terms of this Agreement. In the event that any Employees of any Individual Employer shall be withdrawn pursuant to any similar clause in any agreement between the Individual Employer and any other labor organization, then the Union may respect such withdrawal, and for the period thereof, may refuse to perform any work for such Individual Employer, and such refusal for such period shall not be a violation of this Agreement.

**12.14.03 Withdrawn Employees.** Any Employees so withdrawn or refusing to perform any work as herein provided shall not lose their status as Employees but no such Employee shall be entitled to claim or receive any wages or other compensation for any period during which he has been so withdrawn or refused to perform any work.

### **13.00.00 STEEL FABRICATING AND ERECTING WORK**

Manning under this Section 13.00.00 shall be as provided in Section 07.00.00, "MANNING," except tank erection work or structural steel work which shall be manned as provided in this Section 13.00.00 and 01.03.02. Employees performing work in classifications not set forth in Section 01.03.02 shall be considered support Employees, and shall be paid at the wage rates for the classifications set forth in Section 01.03.00, and shall work under the terms and conditions contained in the main body of this Agreement excluding this Section 13.00.00.

**13.01.00** Only Employees manning hoisting equipment working four (4) hours or more in support of a crew or crews consisting of four (4) men/women or more of the crafts listed below shall be covered by and under this Section 13.00.00:

- (1) International Association of Bridge, Structural and Ornamental Iron Workers Union,
- (2) International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths and Helpers,
- (3) United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada,
- (4) International Brotherhood of Electrical Workers.

**13.01.01** This Section 13.00.00 shall cover all work of the Individual Employer in the geographical area as described in 02.07.00 of this Agreement and the classifications set forth in this Section and any new classifications added under Section 20.00.00 of this Agreement in Northern California. If Individual Employers perform work covered by this Section 13.00.00 in the State of Hawaii, such work shall be covered by this Section.

**13.01.02** The provisions of this Section 13.00.00 with respect to the work covered by this Section to the extent they differ from any specific provision in this Agreement shall supersede such provision and this Section as to such provision shall control.

**13.02.00 Coverage.** This Section 13.00.00 shall cover and apply only to hoisting work performed and power-operated equipment customarily operated by the Union in conjunction with the crews of the International Association of Bridge, Structural and Ornamental Iron Workers Union, with the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths and Helpers; or with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, or with the International Brotherhood of Electrical Workers.

**13.03.00 Wages and Classifications.** Employees performing work covered by this Section 13.00.00 shall be employed in the classifications and at the wage rates set forth in Section 01.03.02 including such additions as may be made in accordance with Section 20.00.00 of this Agreement.

**13.04.00 Fringe Benefits.** Fringe benefits applicable to Employees working under the provisions of this Section shall be the same as those set forth in Section 12.00.00 of this Agreement.

**13.05.00 Working Rules.** Except as provided hereunder, the Working Rules applicable to this Section 13.00.00 shall be in accordance with Section 06.00.00 of this Agreement.

**13.05.01 Reckoning of Time.** The straight-time of an Employee shall be reckoned by the shift in the following instances:

- (1) During the Employee's first (1st) calendar week of employment.
- (2) During the week the work covered by this Agreement is completed. A break in such work of five (5) or more days excluding Saturdays, Sundays or holidays, shall be considered the same as a completion of such work.
- (3) If work is shut down by the Contracting Authority; by any Governmental agency having authority to suspend the work; by lack of fuel, power or water, or by reason of strike or if the crew they are servicing does not appear for work when work is available and such fact or facts is or are confirmed by the Contracting Authority in writing.

**13.05.02** Employee(s) manning hoisting equipment, including Forklifts and Ross Carriers under the terms of this Section shall have their straight time during the second (2nd) and subsequent weeks of employment reckoned by five (5) straight-time days per week, Monday through Friday, for which forty (40) hours shall be paid, except in a week in which there is inclement weather, and except as otherwise provided in this paragraph. In a week in which there is inclement weather the above guarantee shall not be applicable, but an Employee shall be afforded the opportunity to earn the equivalent of twenty-four (24) hours' pay at the applicable straight-time rate. This guarantee shall not apply to re-bar work or on jobs under fifty (50) tons. In any week in which an overtime holiday falls, the straight time shall be

reduced by the number of overtime holidays falling within the week. Any time worked on such holiday shall be in addition to the straight-time workdays in the week in which the holiday falls. A break in the continuity of employment of three (3) days or less excluding Saturdays, Sundays or holidays, shall not result in an Employee being returned to a first week of employment status.

**13.05.03** The starting time of the first shift on two-shift operations shall be between 5:00 a.m. and 8:00 a.m. at the option of the Individual Employer. Once established, the starting time shall not be changed except to take advantage of maximum daylight, or by the mutual consent of the Individual Employer and the Union.

**13.05.04** When there is a single welding machine on the job and no Hoisting Engineer is employed, no Engineer shall be required to maintain and service such single welding machine. When there is a single welding machine on the job and a Hoisting Engineer is employed, such Engineer shall receive one (1) hour additional at the applicable overtime rate of pay for servicing and maintaining such welding machine, provided such servicing work is performed outside the regular shift.

**13.05.05** When the number of Operating Engineers (excluding Assistant to Engineers) employed by the Individual Employer on a job or project exceeds ten (10), an Operating Engineer Master Mechanic, who may operate equipment in emergencies, shall be employed.

**13.05.06** On structural steel or tank erection, an Operating Engineer shall operate, maintain and service gasoline- or diesel-driven welding machines when the welding is being performed by another craft being supported by the Union.

**13.05.07** On all types of construction, when Individual Employer is required by Contracting Authority to furnish his own field survey or when Individual Employer at his own discretion hires Employees to perform field survey work, then in such instances, such work shall come within the classifications herein mentioned.

**13.05.08** When an Instrument Man is required by the Individual Employer to work from drawings, plans, or specifications without the direct supervision of a Party Chief, he shall be paid at the Chief of Party rate.

**13.05.09** For any field survey work beyond the direct control of the Individual Employer, the referred to classifications and conditions shall not apply.

**13.05.10 Overtime.** Employees employed on all work performed under this Section 13.00.00 shall receive time and one-half (1-1/2) for the first two (2) hours over eight (8) up to and including ten (10) hours, Monday through Friday, and time and one-half (1-1/2) for the first eight (8) hours on Saturdays (except where the Operating Engineer is servicing a craft receiving double [2] time, then the Operating Engineer shall receive double [2] time). Double (2) time shall be paid for all hours over ten (10) Monday through Friday, and over eight (8) hours on Saturdays, Sundays and holidays shall be double (2) time.

**13.05.11** When Employees covered by this Section are employed to service another craft or crafts that work a shorter day or shorter week, such Employees shall be afforded the opportunity to earn an amount equal to a full shift, full day or full week, as the case may be, at the applicable straight-time wage rate.

**13.05.12** When Employees perform work covered by this Section in support of another craft that receives overtime for any period of time between 8:00 a.m. and 4:30 p.m., Monday through Friday, they shall be compensated on the same basis.

**13.06.00 Subsistence, Travel Time, Travel Expenses.** Employees covered by this Section 13.00.00 shall be compensated at the rate of twenty dollars (\$20.00) per each workday as subsistence pay (in addition to their regular compensation) when employed on any job more than thirty-five (35) road miles by the shortest normally traveled route from the Employee's "basing point". The Employee's "basing point" shall be the Job Placement Center (i.e., which has historically been servicing the area where the job or project is located), provided that when an Employee is transferred to a job or project his "basing point" shall be the permanent yard or shop of the Individual Employer to which such Employee is regularly assigned, and provided further that when an Employee is terminated or quits from the employ of the Individual Employer and is rehired by letter in accordance with the Job Placement Regulations of this Agreement,



within thirty (30) working days by the Individual Employer at another job or project, then the permanent yard or shop of the Individual Employer to which such Employee was regularly assigned when he was terminated or quit shall be considered such Employee's "basing point". Such compensation shall be paid for the duration of the job.

**13.06.01** Within thirty (30) days of the execution of this Agreement any Individual Employer having more than one (1) yard or shop within the area covered by this Section shall notify the Union in writing of which locations are to be deemed "permanent" under the foregoing, and similarly, upon establishing his first such yard or shop. Such locations can be changed once each year by giving written notice to the Union.

**13.06.02** It is understood that a day is a working day if the Employee is required by the Individual Employer to report to the jobsite and is prevented from working due to conditions beyond said Individual Employer's control. (Example: rainy days, or days when steel is not available, etc.)

**13.06.03** On Saturday, Sunday and holidays, when work is not performed on these days, no such expenses will be paid, except as provided in 13.06.02.

**13.06.04** When a job is of one (1) day's duration and the Employee is paid (or furnished) transportation and is paid his total travel time to and from the yard or shop and the job he shall not, in addition, be paid subsistence.

**13.06.05** *Travel Time.* On jobs not subject to 13.06.00, an Employee shall not receive travel time unless he is engaged in equipment transportation. On such jobs, unless transportation is made available to the Employee or the Employee is paid travel expense for the first and last day, an Employee's time shall begin and end at the yard or shop.

**13.06.06** On jobs subject to 13.06.00, travel time, at the rate of thirty-five (35) miles per hour from the first day of employment there, and for returning from the job on the day employment there terminates, provided that all travel time, except equipment transportation, which by the direction of the Individual Employer is performed during overtime hours, shall be computed at straight time.

**13.06.07** *Travel Expense.* Where the Employee is transported to and/or from the job on equipment furnished by the Individual Employer, travel expense shall not be due.

**13.06.08** On jobs subject to 13.06.00, Employees shall be paid travel expense from the yard or shop to job and return on the first and last days of employment there, respectively in accordance with the current IRS rate per mile, and the Individual Employer shall also pay any bridge, ferry or toll fares involved.

**13.06.09** *Payment of Subsistence, Travel Time and Travel Expense.* An Employee shall be paid (when due under 13.06.00 of this Section 13.00.00) subsistence, travel time, and transportation expense on each separate job; provided that, in the cases of Employees who are "transferred" or "terminated or quit and rehired" by letter in accordance with the Job Placement Regulations of this Agreement, within thirty (30) working days by the Individual Employer at another job or project, the distances applicable in the case of travel time and travel expense shall be those from the last job to the next (rather than between yard or shop and job).

**13.06.10** Travel time and travel pay shall be due "going and returning" only in the case of Employees who work to the completion of the job or who are terminated by the Individual Employer. An Employee who quits the job prior to its completion shall be due neither travel time nor travel expense for "returning".

**13.06.11** Subsistence, travel time, and travel expense (when due under 13.06.00) shall be paid by separate check, weekly, and the Employee shall be furnished with a sufficient statement thereof.

#### **14.00.00 PILEDIVING**

**14.01.00** Employees working in conjunction with a crew (a crew shall consist of four [4] workers of whom one [1] shall be a Foreman) of Piledrivers and four (4) hours or more on any shift shall be covered by and under the provisions of Section 14.00.00. In addition, if any crew in any Agreement the Employer is a party to, or becomes a party to, is reduced below four (4) workers, this Section 14.00.00 shall also apply.

**14.01.01** The provisions of this Section 14.00.00 with respect to the work covered by this Section to the extent they differ from any specific provision in this Agreement shall supersede such provision and this Section as to such provision, shall control.

**14.01.02 Work Covered.** The operation, repair and maintenance of engines and machinery and the operation of deck engines in connection with piledrivers and derrick barges engaged in the following work shall be performed by Employees working under this Agreement:

- (1) The driving by steam, electric, hydraulic, drop hammer, bodine hammer, or any other device used, staying, capping, pulling and cutting off of all pre-cast concrete piles, pile jackets, composite piles, cast-in-place piles, and any and all pre-cast structural shapes and units, the setting of which is performed with power equipment or piledriving and setting equipment.
- (2) The placing, framing, driving (by steam, hydraulic, electric, drop hammer, bodine hammer or any other device used), fastening, capping and pulling of piling of every kind.
- (3) The construction of wharves, decks, trestles, viaducts, bridges and similar structures, up to and including the decks thereof. The construction of substructures of underpasses, subways, overhead crossings, pre-cast bulkheads, and other similar structures where piledriving or other derrick equipment or other power-operated equipment customarily operated by the Union is used. The building of ferry slips, cofferdams, open cribs, caissons, dry docks and marine railways and in the construction and erection of towers, bunkers and other similar structures necessary for the completion of the above-mentioned projects.
- (4) The moving and placing of heavy machinery, boilers, tanks, guns and similar masses when and where hoisting and portable equipment is used. This work shall be done, when necessary and expedient, in conjunction with machinery mechanics from other crafts.
- (5) The wrecking and dismantling of all structures covered by (1) through (4).

**14.01.03 Wages and Classifications.** Employees performing work covered by this Section 14.00.00 shall be employed in the classifications and at the wage rates set forth in Section 01.03.03 including such additions as may be made in accordance with Section 20.00.00 of this Agreement. Employees performing operation, maintenance and repair of equipment not set forth by classification in Section 01.03.03 shall be considered support Employees, and shall be paid at the wage rates for the classifications set forth in Section 01.03.00, and shall work under the terms and conditions contained in the applicable Sections outside of this Section 14.00.00.

**14.01.04 Fringe Benefits.** Benefits applicable to Employees working under the provisions of this Section 14.00.00 shall be the same as those set forth in Section 12.00.00 of this Agreement.

**14.02.00 Working Rules.** Except as provided hereunder the Working Rules applicable to this Section 14.00.00 shall be in accordance with Section 06.00.00 of the main body of the Agreement.

**14.02.01 Minimum Hours.**

- (1) The straight time of an Employee shall be reckoned by the shift in the following instances:
  - (a) During the Employee's first (1st) calendar week of employment
  - (b) During the week the job is completed
  - (c) If an Employee quits or is discharged for cause
  - (d) If work is shut down by written order of the Contracting Authority
  - (e) If work is shut down by lack of materials
- (2) In the event there is a major mechanical breakdown (i.e., Employees directly affected by such breakdown), Employees shall be paid not less than four (4) hours at the applicable rate for work performed and any time thereafter shall be reckoned by the hour.

**14.02.02** Employees working with piledriving crews and Employees working as Heavy Duty Repairmen working on maintenance and/or repair of piledriving equipment shall have their straight time during the second (2nd) and subsequent weeks of employment reckoned by five (5) straight-time days per week, Monday through Friday, for which forty (40) hours shall be paid except in a week in which there is inclement weather, and except as otherwise provided in this paragraph. In a week in which there is inclement weather the above guarantee shall not be applicable, but an Employee shall be afforded the opportunity to earn the equivalent of twenty-four (24) hours' pay at the applicable straight-time rate. In any week in which an overtime holiday falls, the straight time shall be reduced by the number of overtime holidays falling within the week. Any time worked on such holiday shall be in addition to the straight-time workdays in the week in which the holiday falls. A break in the continuity of employment of three (3) days or less shall not result in an Employee being returned to a first week of employment status.

**14.02.03** An Employee whose time is reckoned under this Section 14.02.00 who is late for work, or who is absent from work, shall have his straight time reduced by the hours he is late or absent.

**14.02.04 Report Pay.** Where an Employee during his first (1st) and last week of employment reports for work on his shift or at the time he is requested to report, and there is no work provided by the Individual Employer, he shall be paid two (2) hours' show-up time, at the rate applicable on that date; however, he shall be required to remain on the jobsite for two (2) hours pending abatement of inclement weather unless sent home earlier by the Individual Employer. In the event that work is started, time shall be reckoned as provided in 14.02.01 of this Section. If work is to be suspended for any reason the Employee shall be notified at least two (2) hours before being required to report to work. The Employee shall keep the Individual Employer advised at all times of his correct address and telephone number.

**14.02.05** The starting time of the first shift on two-shift operations shall be between 5:00 a.m. and 8:00 a.m., Standard Time, at the option of the Individual Employer. Once established, the starting time shall not be changed except to take advantage of maximum daylight, or by the mutual consent of the Individual Employer and the Union.

**14.02.06 Tide Work.** When an Employee or Employees are called out to work tide work, the minimum pay for such work shall be eight (8) hours at regular straight-time. In computing time to be paid for under this provision, each hour worked before 8:00 a.m. or after 4:30 p.m. shall be considered as being two (2) straight-time hours and each one-half (1/2) hour shall be considered as being one (1) straight-time hour; each hour worked between 8:00 a.m. and 4:30 p.m. shall be considered as being one (1) straight-time hour. The foregoing shall not apply to time worked on Saturdays, Sundays, or holidays. In the event an Employee or Employees are called out to work tide work on Saturdays, Sundays, or holidays, the overtime rate (double straight-time) shall be paid for each hour worked, and the minimum pay shall be six (6) hours at said overtime rate.

**14.02.07 Overtime.** Employees employed on all work performed under this Section 14.00.00 shall receive double (2) the applicable straight-time rate for all work performed before a shift begins and after it ends, and on Saturdays, Sundays and holidays, except that time and one-half (1-1/2) shall be paid for the first two (2) hours of overtime on a regular workday, regardless of whether such overtime is worked before or after the regular work hours.

Repair, maintenance and start-up time before a shift begins and after the shift ends and on Saturdays shall be one and one-half (1-1/2) times the applicable straight-time rate. Sundays and holidays shall be double (2) the straight-time rate.

*NOTE:* If at any time during the life of this Agreement, the overtime provisions in the Master Labor Agreement between UCON, AGC, NAEC, UMIC, INC., CEA and ACE, and all other Signatory Employers and Piledrivers Local Union No. 34 are modified with respect to this Section or Section 14.02.06 to provide for a different rate of overtime, then this Section and/or Section 14.02.06 shall be modified accordingly.

**14.02.08** On off-shore work, all time spent in travel from shore shall be portal to portal and compensated at an amount equal to the straight-time rate.

**14.03.00 Subsistence, Travel Time, Travel Expenses.** Subsistence, travel time, and travel expenses shall be paid in accordance with applicable Section of the Master Labor Agreement between UCON, AGC, NAEC, UMIC, INC., CEA and

ACE, and all other Signatory Employers and the Piledrivers, Divers, Carpenters, Bridge, Wharf and Dock Builders, Local No. 34. In the event the Employer is unable to reach a new agreement or is no longer bound to an agreement with Local No. 34, subsistence, travel time and travel expenses shall be paid in accordance with the agreement between the Piledriving Contractors Association and Local No. 34.

**15.00.00 SPECIAL WORKING RULES AND CONDITIONS FOR WORKING UNDERGROUND**

**15.01.00** The provisions of this Section with respect to the work covered by this Section to the extent they differ from any specific provision in this Agreement shall supersede such provision and this Section as to such provision, shall control.

**15.02.00 Underground Rate.** Wage rates for Underground Work shall be in accordance with Section 01.03.06.

**15.02.01** The underground straight-time hourly wage rate shall apply for the full shift and overtime of any Employee performing work underground.

**15.02.02 Tunnel Shift Work.** Second (2nd) or Special Single Shift shall be paid in accordance with Section 01.03.06. When three (3) shifts are employed for five (5) or more consecutive days (or less by mutual written agreement), seven and one-half (7-1/2) consecutive hours, exclusive of meal period, shall constitute a shift's work for which eight (8) hours shall be paid for all shifts.

**15.03.00** These Special Working Rules and Conditions cover all work and equipment involved in the excavation and initial lining, if applicable, below the surface of the earth except open ditches, excavations and jacking operations under highways, railroads, embankments, etc., but not limited to tunnels, shafts, tunnel shafts, adits, raises, subways, chambers and underground installations including but not limited to power houses, storage facilities, offices, control centers or surge chambers including the lining of same which fall within the jurisdiction of the Union or require the operation of equipment of the kind or type covered by this Agreement. Where open cutwork is covered over or decked, regardless of the material or materials used, and men are required to work under such cover, they shall work and be paid in accordance with the terms and conditions of this Section for all excavation work.

**15.03.01** For the purposes of this Section 15.00.00, tunnels, raises and shafts shall be defined as follows:

*Tunnel.* An underground excavation (lined or unlined) whose length exceeds its width the inclination of the grade from the excavation shall be no greater than 20° from the horizontal; should the inclination of grade from the horizontal exceed 20°, the excavation heretofore defined shall constitute a raise.

*Shaft.* An excavation (lined or unlined) made from the surface of the earth, generally vertical in nature, but may decline up to 75° from the vertical, and whose depth is greater than 15 feet and its largest horizontal dimension. For the purposes of this Section an underground silo shall be defined the same as a shaft.

**15.03.02 Tunnel Survey Work.** Subject to the provisions of Apprentice Manning beginning at Section 07.10.00, all tunnel survey work, including the use of Laser Beams, is work covered by this Agreement.

**15.04.00 Compensation for Travel Underground.** The Individual Employer shall pay Employees covered by this Agreement working underground on a portal-to-portal basis as follows: The hours of employment of such Employees shall commence at the portal of the underground work at which he is directed by the Individual Employer to report for work on his shift and shall end at such portal, except as provided in 15.05.01.

**15.05.00 Change House.** The Individual Employer shall establish and maintain a change house within a reasonable distance of each portal of the underground work. It shall be equipped with showers, toilet facilities, lockers and heating and drying facilities in accordance with the number of men in each crew. Each change house shall be constructed to provide that all clothing will dry between shifts. The Individual Employer will reimburse Employees for clothing or personal belongings in an amount up to one hundred fifty dollars (\$150.00) in the event the change house is destroyed by fire, provided a claim form is filed as required by the applicable insurance company. This shall not apply to short dry tunnels, such as under highways or railroad embankments.

**15.05.01** If the change house is located more than one thousand two hundred fifty (1,250) walkable feet from a portal, then the time of work shall start and end for pay purposes at the change house. This shall not affect the well-established practice of Employees who are required to report before their regular starting time to fire up, grease, or maintain equipment, or are required to report early or remain after their regular shift. These Employees shall be paid at the applicable overtime rate which shall be reckoned by the hour and the half-hour.

**15.06.00 *Special Clothing.*** The Individual Employer shall furnish rubber clothing, boots, safety hats, or any other special gear required at no expense to the Employees. Such equipment shall be returned to the Employer in the same condition subject to reasonable wear and tear.

**15.07.00 *Minimum Crews.*** It is understood that there are various types and sizes of moles and mining machines which may necessitate increasing or decreasing the crew size, in which event the Individual Employer and the Union shall agree at the Pre-Job Conference upon the crew size to perform the operation and repair of said equipment. If the Individual Employer and the Union are unable to agree upon the crew size, the matter shall be referred for resolution in accordance with the provisions of Section 18.00.00 of this Agreement.

**15.08.00 *Tunnel Safety.*** In the event the Individual Employer requests a variance from the Tunnel Safety Order, other than electrical and/or diesel, such requests will be mailed to the Union at the same time such written request is mailed to the Division of Industrial Safety.

**15.08.01 *Manhaul Vehicles for Underground Work.*** Manhaul vehicles used for personnel transport, but not designed for this purpose, shall be provided with safe seating and side and end protection to prevent falls. Convenient means of mounting and dismounting the vehicles shall be provided. Adequate protection shall be provided during inclement weather. A bell or other means of communication with the operator shall be installed.

#### **16.00.00 SAFETY**

**16.01.00 *No Limitation of Production.*** Subject to all State and Federal rules and regulations governing or applicable to the safety of Employees, place of employment and operation of equipment, no rules, customs, or practices shall be permitted that limit production or increase the time required to do any work.

**16.02.00 *Cooperation.*** The Union shall cooperate with the Individual Employer in the carrying out of all such Individual Employer's safety measures and practices for accident prevention not in conflict with the provisions of this Agreement, and in carrying out and adhering to all of the applicable State and Federal safety laws. Any Employee may be discharged for knowingly failing to perform work in conformance with the Employer's Safety Code or as required by the State or Federal Safety Orders or other applicable statutes. The safety standards and rules contained herein are minimum standards and are not intended to imply that the Union objects to the establishment and imposition by the Individual Employer of additional or more stringent safety rules to protect the health and safety of the Employees. It shall be the exclusive responsibility of the Individual Employer to insure compliance with safety standards and rules.

Nothing in this Agreement is intended to make the Union liable to anyone in the event that injury or accident occurs.

**16.02.01** Employees shall perform their duties in each operation in such a manner as to promote efficient operation of each particular duty and of any job as a whole, not in conflict with the provisions of this Agreement.

**16.02.02 *Addiction Recovery and Substance Abuse Policy.*** The Union, the Employer and Individual Employers have established a joint program which shall enable all parties to deal with drug and/or alcohol abuse problems from both a safety and productivity enhancement point of view as well as recognizing the individual rights and wellbeing of each Employee. Said policy and program is set forth in Addendum C attached hereto and made a part hereof. The implementation of this policy is not mandatory by any Individual Employer, but once implemented, the program shall remain in effect unless otherwise agreed to by the Union and the Individual Employer.

**16.03.00 *Unsafe Conditions.*** It is further agreed by both parties that too great an emphasis cannot be laid upon the need of safe working conditions. The Individual Employers will provide and Employees shall use the provided health and

safety equipment. Employees shall return the equipment to the Individual Employer upon termination of its use on the project. No Employee shall be required to work on, with, or about an unsafe piece of equipment or under an unsafe condition.

**16.03.01** No set of health or safety regulations, however, can comprehensibly cover all possible unsafe practices of working; therefore, the Union and the Individual Employer undertake to promote in every way possible the realization of the responsibility of the Employees and the Individual Employer with regard to preventing accidents to himself or to his fellow Employees. No Employee shall be discharged for refusing to work on or about equipment or a condition that is unsafe. Any Employee discharged for refusal to work under the above conditions shall be made whole by the Employer for lost wages and benefits.

**16.04.00 Union Notification.** In the event there is a serious injury to an Employee the Union Representative or the Job Placement Center servicing the project shall be notified. The Union Representative servicing the project shall furnish the Individual Employer with his home telephone number.

**16.05.00 Notices.** The Individual Employer must post the name and address of its doctor and of the Workers' Compensation Insurance carrier on the jobsite.

**17.00.00 JOB STEWARDS**

**17.01.00 Number of Job Stewards.** The Union may select an Employee on each shift in operation on a job or project to serve as Job Steward. Where the size of the project makes it appropriate, the Union may appoint additional Job Stewards.

**17.02.00 Performance of Duties.** In addition to his regularly assigned work the Job Steward shall be permitted to perform, during working hours, the duties set forth in 17.05.00. The Union agrees that such duties shall be performed as expeditiously as possible and the Individual Employers agree to allow Job Stewards a reasonable amount of time for the performance of such duties.

**17.03.00 Notification of Appointment and Termination.** The Union shall notify the Individual Employer, or his representative, in writing, of the appointment of Job Steward, and the Individual Employer shall notify the Union of his termination.

**17.04.00 Notification Prior to Layoff.** The Individual Employer shall notify the Job Placement Center servicing the job or project at least two (2) workdays prior to an intended layoff of a Job Steward. This provision shall not apply to discharges for "just cause" which will be subject to Sections 04.03.00–04.03.02.

**17.05.00 Duties.** The Job Steward shall be limited to and shall not exceed the following duties and activities:

**17.05.01** Check the dispatch of each Employee dispatched under the terms of this Agreement to his Individual Employer before such Employee commences work, or as soon thereafter as practical.

**17.05.02** Report to his/her Business Representative all violations of this Agreement.

**17.05.03** Report to his/her Business Representative any Employee covered by this Agreement, who during his shift, leaves the jobsite without giving the Individual Employer and the Job Steward prior notice.

**17.06.00 Prohibitions.** The Job Steward shall not:

**17.06.01** Stop the Individual Employer's work, for any reason.

**17.06.02** Tell any Employee covered by this Agreement that he cannot work on the job.

**17.07.00 Dismissal.** Infraction of either of the two (2) rules set forth in 17.06.00 shall be cause for immediate dismissal of the Job Steward without any prior notice.

**17.08.00 Reduction in Force.** In a classification in which there is a Job Steward wherein the Job Steward's abilities are equal to the other Employees', and except as otherwise provided above, the Job Steward shall be the last to be selected for a reduction in force.

**17.09.00 Business Representative.** A Business Representative(s) of the Union shall be permitted on all jobs, but shall not interfere with the work.

**17.09.01** Provision shall be made by the Individual Employer for the admission of such Business Representative(s) to the jobsite of the Individual Employer at all times and places where work is being performed by the Individual Employer or by any subcontractor of any tier of the Individual Employer.

**17.09.02** The Business Representative(s) so admitted shall concern themselves only with work, equipment and Employees covered by this Agreement.

**18.00.00 GRIEVANCE PROCEDURE**

**18.01.00** No dispute, complaint or grievance concerning the interpretation, application, or compliance with any provision or provisions of Sections 12.00.00, 19.00.00, or 20.00.00 of this Agreement is subject to the provisions of this Section 18.00.00.

**18.02.00** All other disputes, complaints and grievances concerning the interpretation, application, or compliance with any provision or provisions of this Agreement are subject to the following procedure:

**18.02.01** In the event that a complaint or dispute arises on a job, it shall be first reported to the authorized Union Representative and the Individual Employer who shall then attempt to adjust said complaint or dispute at the jobsite level.

**18.02.02** If said complaint or dispute is not satisfactorily adjusted by the authorized Union Representative and the Individual Employer or his/her representative at the jobsite level, either party may request a Board of Adjustment to be convened and the matter shall be submitted, in writing, to the Employer or the Union for the settlement of such grievance.

**18.02.03** The written grievance notice shall specify, if known, the date(s) of the alleged violation(s), the nature of the alleged violation(s), the specific provision(s) of the Agreement applicable to the complaint or dispute, and the remedy sought by the grieving party.

**18.02.04 Grievance Timeliness.** No complaint, dispute, or grievance, shall be recognized unless called to the attention of the Employer by the Union, or the attention of the Union by the Employer, in writing, within fifteen (15) business days (excluding weekends and holidays) after the date the last alleged violation was committed. This time limit may be extended by written mutual agreement of the Employer or Individual Employer and the Union.

**18.02.05** In the event the grievance involves the issue of a subcontractor's alleged violation and where the subcontractor is signatory directly to this Agreement as an Individual Employer, the grievance shall be filed against said subcontractor and said grievance shall be processed to its final conclusion through these procedures.

**18.02.06 Board of Adjustment.** The Board of Adjustment shall be composed of two (2) panel members named by the Union, two (2) panel members named by the Employer, and the permanent Impartial Arbitrator, Anne Andrews Ellis.

**18.02.07** In the event the permanent Impartial Arbitrator is unable to serve at a scheduled Board, one of the following shall serve as an alternate Impartial Arbitrator, if available: 1) Mark Joseph Divelbiss, 2) Alexander Cohn, 3) Matthew Goldberg, 4) Luella Nelson. These alternates shall be contacted in numbered order until one is available.

**18.02.08 Arbitration.** The Employer, Individual Employer, or Union may timely notify, in writing within a minimum of fourteen (14) calendar days of the Board of Adjustment hearing, the other and elect to utilize an attorney for

representation for the alleged complaint, dispute or grievance, in which case the matter shall proceed directly to Arbitration (instead of a Board of Adjustment).

**18.02.09** The Impartial Arbitrator will be selected pursuant to the provisions of Section 18.02.06 and 18.02.07. The scheduling of the Arbitration hearing shall not exceed ninety (90) calendar days, or unless mutually agreed upon by the parties, from the date of the notice of the dispute or grievance.

**18.02.10** The expenses of the Arbitration hearing, including the Impartial Arbitrator and the cost of a court reporter, shall be borne equally by the Employer or Individual Employer and the Union. A copy of the court reporter transcripts shall be paid by the requesting party.

**18.02.11** Upon mutual agreement between the Employer or Individual Employer and the Union, the parties may elect to convene a Board of Adjustment without the permanent Impartial Arbitrator. This Board of Adjustment shall be convened within thirty (30) calendar days from the date of the grievance notice. If the panel members at the Board of Adjustment, within twenty-four (24) hours after such meeting, cannot agree on any matter referred to it, the matter shall then proceed to Arbitration. The parties thereof within three (3) days shall choose an Impartial Arbitrator who shall have no business or financial connection with either party. In the event the parties are unable unanimously to agree upon the identity of said Impartial Arbitrator within said three-day period, the permanent Impartial Arbitrator or alternate as provided in Section 18.02.06 and 18.02.07 shall be selected as provided therein. The matter shall then proceed to arbitration with all due expedition.

**18.02.12** Decisions of the Board of Adjustment or Impartial Arbitrator shall be within the scope and terms of this Agreement, and shall be final and binding upon all parties hereto. The Board of Adjustment or Impartial Arbitrator shall only have jurisdiction and authority to determine the meaning, application of, or compliance with the provisions of this Agreement and shall not have jurisdiction or authority to add to or detract from, amend, modify or alter in any way the provisions of this Agreement or its intent.

**18.02.13** Arbitrability or preliminary matters relative to the complaint, dispute, or grievance and/or proceedings shall be subject to the decision of the Board of Adjustment or Impartial Arbitrator, which shall be final and binding on the matter.

**18.02.14** The Employer, the Individual Employer and the Union shall be subject to the written *Joint Rules of Procedure for Northern California* for the Board of Adjustment and Arbitration adopted by the Employer and the Union, incorporated by reference herein, and which may be amended at any time by mutual agreement between the Employer and the Union.

**18.03.00 No Cessation of Work.**

**18.03.01** With respect to any dispute, complaint or grievance arising under the terms and conditions of this Agreement, which is subject to arbitration under the provisions of 18.00.00 and Job Placement Regulations 04.10.43, of this Agreement, the Employer and Individual Employer agree that they and each of them will not authorize any lockout, slowdown or stoppage of work and the Union will not authorize any strike, slowdown or stoppage of work.

**18.03.02** The foregoing no-strike, no-lockout provision of 18.03.01 shall apply and shall only be of force and effect with respect to or concerning a dispute, complaint or grievance subject to arbitration under the provisions of 18.00.00 and Job Placement Regulations 04.10.43 of this Agreement. With respect to any disputes, complaints or grievances not subject to arbitration under the provisions of 18.00.00, 19.00.00 and Job Placement Regulations 04.10.43 of this Agreement, the Union is hereby specifically authorized to withdraw any or all of the Employees of such Individual Employer subject to this Agreement from work covered by this Agreement for such Individual Employer and such



withdrawal shall not, so long as such dispute shall continue, be a violation of this Agreement or any clause, sentence, paragraph or section of this Agreement.

**18.03.03** Any Employees withdrawn or refusing to perform any work as herein provided shall not lose their status as Employees but no such Employee shall be entitled to claim or receive any wages or other compensation for any period during which he has been so withdrawn or refused to perform any work, provided, however, nothing in 18.03.00 shall in any way modify or affect the Union's obligation or the provisions of any Trust Agreement or amendment thereof referred to in 12.00.00 of this Agreement.

**18.03.04** If and when the Union has any dispute, complaint or grievance with an Individual Employer concerning any manning provision of Section 07.00.00 or any hiring provision of Section 04.00.00, including the Job Placement Regulations, the Union shall not exercise its rights to withdraw Employees under Section 18.03.03 for seventy-two (72) hours after receipt by the Employer of written notice by the Union of the dispute, complaint or grievance.

**18.03.05** If the Union has exercised its right to withdraw Employees because of a dispute, complaint or grievance with an Individual Employer concerning a manning violation then the Individual Employer shall have a right to follow the procedures set out in 18.02.00. In the event the Individual Employer mans the equipment as requested by the Union or decides to leave the equipment down, and the Board of Adjustment determines there was no manning violation by the Individual Employer, the Union shall not be liable for costs or loss incurred by manning the equipment or leaving it down.

**18.03.06** The decision of the Board of Adjustment with respect to the manning of any classification shall control the manning of that classification thereafter and the Union shall not withdraw Employees unless an Individual Employer fails to man the classification in accordance with the decision of the Board of Adjustment. After fifteen (15) days subsequent to such decision of the Board of Adjustment, if an Individual Employer does not man a classification in accordance with the decision of the Board of Adjustment, the Union shall not be bound by Section 18.03.04 with respect to such classification and Individual Employer.

**18.03.07** Regardless of any provision of Section 18.00.00 to the contrary, the right of withdrawal will not be exercised only to harass an Individual Employer.

**18.04.00 *Manning and Hiring Violations.*** An Individual Employer who has violated any of the manning provisions of Section 07.00.00 or the hiring provisions of Section 04.00.00 of this Agreement shall pay into the Operating Engineers Pensioned Health and Welfare Trust Fund an amount not to exceed the wages, straight time and overtime, and fringe benefits that would have been paid by the Individual Employer but for the violation plus twenty-five percent (25%) of the total amount not as a penalty but by way of liquidated damages for the damages suffered by the Union. Such payments shall be for not more than ten (10) days of said violation prior to the notification of the Employer, as provided in Section 18.03.04.

**18.04.01** In the event there is a dispute between the Employer and the Union over the amount due, said dispute will be settled in accordance with the provisions set forth in 18.02.00 and work shall continue in accordance with the provisions of Section 18.03.01.

**18.04.02** If the Individual Employer fails to make any payments determined to be owing pursuant to this Section, the Union shall have the right to withdraw Employees in accordance with 18.03.02 and 18.03.03 until such payment is made.

#### **19.00.00 *JURISDICTIONAL DISPUTES***

**19.01.00** There shall be no cessation or interference in any way with any work of the Employer or any Individual Employer by reason of jurisdictional disputes between the Union and any other union affiliated with the AFL-CIO or the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America with respect to jurisdiction over any of the work covered by this Agreement. Such disputes will be settled by the Unions themselves, and if not settled then it shall be submitted to the International Presidents of the Unions involved in the dispute for determination and if not settled, the parties hereto agree that the dispute shall be submitted to the Arbitration Panel set forth in the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry or its successor acceptable

to the Building and Construction Trades Department of the AFL-CIO and the International Union of Operating Engineers. The Employer, the Individual Employer and the Union shall be and are bound by the Arbitration Panel's determination, decision and/or award and the misassignment if any is found shall be promptly corrected by the Individual Employer unless the other union shall refuse to abide by the determination and decision in which case the Union shall be and is authorized to proceed to enforce the decision by any lawful means in which case the work shall proceed as originally assigned by the Individual Employer until such decision is made. In the event an Individual Employer shall misassign the work after notice of the decision, he shall be subject to such penalty as shall be determined by the Board of Adjustment.

*NOTE:* If the International Presidents cannot resolve the dispute, it is submitted to arbitration through the aforesaid Plan, provided such Plan for the Settlement of Jurisdictional Disputes is subscribed to by the disputing parties. Such arbitrator's decision is final and enforceable in court.

**20.00.00 ADDITIONAL WORK OR CLASSIFICATIONS**

**20.01.00 New Equipment.** This Agreement contemplates that as and when equipment and other means and methods of operating equipment not presently in use in the area covered by this Agreement is or are about to be introduced on a jobsite, the Employer and the Union shall upon written request by either party meet within ten (10) working days to negotiate an appropriate rate, classification and working rule for the equipment's operation and for the other means or methods of operating equipment not presently in use.

**20.02.00 Committee.** Such rate, classification and working rule shall be established at a job conference ten (10) days prior to the time the equipment or means or methods of operating equipment not presently in use are introduced on a jobsite, and if it is not settled at such a conference, the matter may be referred to a standing committee consisting of three (3) representatives each of the Union and the Employer established by the Union and the Employer to conduct such negotiations.

**20.02.01** Such committee will meet within ten (10) days after written request of the Individual Employer intending to operate such equipment or use such means or methods of operating equipment not presently in use accompanied by photograph and pertinent catalog or other data on the equipment or means or methods of operating equipment not presently in use and agree to a straight-time hourly wage rate for each classification required and working rule within fifteen (15) days from the date of notice unless the parties mutually agree to extend the time, which rate and classification and working rule shall be added to and become a part of Section 01.00.00, as of the date of the initial introduction of the equipment or such means or methods of operating equipment not presently in use on a jobsite.

**20.02.02** Until such rate or rates, classification or classifications and working rule is established, the Individual Employer may operate the equipment or use such means or methods of operating equipment not presently in use at a temporary rate or rates, classification or classifications and working rule for thirty (30) calendar days only from the initial introduction of the equipment or means or methods of operating equipment not presently in use on a jobsite, provided that such thirty (30) calendar-day period may be extended by mutual agreement of the committee provided in 20.02.00. The permanent rate, classification and working rule, when established, will be paid retroactively to the date of the initial introduction of the equipment or means or methods of operating equipment not presently in use on a jobsite.

**20.02.03** The foregoing shall also apply when work under air pressure is undertaken or when nuclear devices, Laser Beams or other devices for field surveying or to move earth not specifically covered in Section 01.00.00 are used, or to be used.

**21.00.00 SPECIAL PROVISIONS CONCERNING FOREMEN OTHER THAN GENERAL FOREMEN**

**21.01.00 General Provisions.** The provisions of this Section 21.00.00, to the extent they differ from any specific provision of other Sections of this Agreement, shall supersede such provision and this Section 21.00.00, as to such provision, shall control.

**21.02.00** *Classified as Supervisors.* Foremen shall not be subject to the Job Placement Regulations of this Agreement except where such Foremen are employed to operate equipment (other than in an on-the-job emergency).

**21.03.00** *Foremen and Shifters.* The Individual Employer shall have the right to determine the number of Foremen and Shifters, with the following exceptions:

**21.03.01** When the Individual Employer employs nine (9) or more Journeymen/Apprentice Operating Engineers on a spread to operate individually-manned pieces of earthmoving equipment, or individually-manned pieces of equipment directly supplemental thereto, or any combination thereof on any shift, he/she shall designate a Foreman or Shifter to supervise them.

**21.03.02** When five (5) or more Journeymen/Apprentice Operators are employed by an Individual Employer to operate individually manned pieces of earthmoving equipment, or individually manned pieces of equipment directly supplemental thereto or any combination thereof on overtime, the Foreman or Shifter who is in charge of supervising the operation of the equipment during the straight-time hours shall be afforded the opportunity to work overtime including Saturdays, Sundays, and holidays.

**21.03.03** When individually manned units of earthmoving equipment, which are being operated under this Agreement, are being supervised, the immediate supervision shall be done by a Foreman or Shifter pursuant to this Agreement.

**21.03.04** When an Individual Employer employs ten (10) or more Journeyman/Apprentice Operating Engineers for work performed under a National Maintenance or a Refinery Project he shall designate a Foreman or Shifter covered by this Agreement to supervise them.

**21.04.00** *Heavy Duty Repairman Foremen or Master Mechanics (Heavy Duty).* The Individual Employer shall have the right to determine the number of Heavy Duty Repairman Foremen or Master Mechanics (Heavy Duty), with the following exceptions:

**21.04.01** When the Individual Employer is employing five (5) or more Heavy Duty Repairmen, he/she shall employ a Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) to supervise them.

**21.04.02** When five (5) or more Heavy Duty Repairmen are performing work on an overtime basis, the Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) who is in charge of the preceding straight-time work shall be afforded the opportunity to work overtime including Saturdays, Sundays and holidays.

**21.04.03** No Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) shall work with the tools, except when required in the supervision of his work, and except in an on-the-job emergency, provided, however, in the event a regular Heavy Duty Repairman is absent, the Heavy Duty Repairman Foreman or Master Mechanic (Heavy Duty) may work with the tools, provided in such case that prior to such work the appropriate Job Placement Center of the Union has been requested to dispatch a replacement.

**21.05.00** *Fringe Benefits.* The Individual Employer shall abide by Section 12.00.00 with respect to Foremen, Shifters, Heavy Duty Repairman Foremen, and Master Mechanics (Heavy Duty) in the same manner as applied to all Employees covered by this Agreement.

**21.06.00** *Union Security.* When the Individual Employer uses Foremen and Master Mechanics (Heavy Duty), they shall be required to be members of the Union.

**22.00.00 SPECIAL PROVISIONS COVERING SUPERVISORY PERSONNEL ABOVE THE RANK OFFOREMAN**

**22.01.00** *Fringe Benefits.* The Individual Employers may cover their supervisory personnel above the rank of Foremen in the Operating Engineers' Health and Welfare Trust Fund for Northern California, Pensioned Operating Engineers' Health and Welfare Fund and Pension Trust Fund for Operating Engineers by paying into the above Trusts set forth in the Master Agreement monthly on the basis of 168 hours per month in accordance with the schedules set forth in the Master Agreement, regardless of the hours worked by any such Employee in a month; provided, however, once the

Individual Employer makes one (1) payment on behalf of such Employee, it shall continue to make such payment so long as the Employee is in its employ during the life of the Agreement, above the rank of Foreman. The Employee must be a member of the Union in good standing and must maintain membership in the Union in good standing for the life of this Agreement. An Individual Employer may elect not to make payments to the Health and Welfare Trust on behalf of such supervisory personnel if the Individual Employer provides the Employees with health care benefits through another source. If an Individual Employer does not make payments to the Health and Welfare Trust Fund on such an Employee's behalf, it may not do so for the duration of this Agreement.

**23.00.00 MAP DESCRIPTION FOR AREAS 1 AND 2**

**23.01.00** The following is a description based upon township and range lines of Areas 1 and 2.

**23.02.00** Area 1 is all of Northern California within the following lines:

1. Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S, of the Mount Diablo Base and Meridian,
2. Thence Easterly along the Southerly line of Township 19S, to the Northwest corner of Township 20S, Range 6E,
3. Thence Southerly to the Southwest corner of Township 20S, Range 6E,
4. Thence Easterly to the Northwest corner of Township 21S, Range 7E,
5. Thence Southerly to the Southwest corner of Township 21S, Range 7E,
6. Thence Easterly to the Northwest corner of Township 22S, Range 9E,
7. Thence Southerly to the Southwest corner of Township 22S, Range 9E,
8. Thence Easterly to the Northwest corner of Township 23S, Range 10E,
9. Thence Southerly to the Southwest corner of Township 24S, Range 10E,
10. Thence Easterly to the Southwest corner of Township 24S, Range 31E,
11. Thence Northerly to the Northeast corner of Township 20S, Range 31E,
12. Thence Westerly to the Southeast corner of Township 19S, Range 29E,
13. Thence Northerly to the Northeast corner of Township 17S, Range 29E,
14. Thence Westerly to the Southeast corner of Township 16S, Range 28E,
15. Thence Northerly to the Northeast corner of Township 13S, Range 28E,
16. Thence Westerly to the Southeast corner of Township 12S, Range 27E,
17. Thence Northerly to the Northeast corner of Township 12S, Range 27E,
18. Thence Westerly to the Southeast corner of Township 11S, Range 26E,
19. Thence Northerly to the Northeast corner of Township 11S, Range 26E,
20. Thence Westerly to the Southeast corner of Township 10S, Range 25E,
21. Thence Northerly to the Northeast corner of Township 9S, Range 25E,
22. Thence Westerly to the Southeast corner of Township 8S, Range 24E,
23. Thence Northerly to the Northeast corner of Township 8S, Range 24E,
24. Thence Westerly to the Southeast corner of Township 7S, Range 23E,
25. Thence Northerly to the Northeast corner of Township 6S, Range 23E,
26. Thence Westerly to the Southeast corner of Township 5S, Range 20E,
27. Thence Northerly to the Northeast corner of Township 5S, Range 20E,
28. Thence Westerly to the Southeast corner of Township 4S, Range 19E,
29. Thence Northerly to the Northeast corner of Township 1S, Range 19E,
30. Thence Westerly to the Southeast corner of Township 1N, Range 18E,
31. Thence Northerly to the Northeast corner of Township 3N, Range 18E,
32. Thence Westerly to the Southeast corner of Township 4N, Range 17E,
33. Thence Northerly to the Northeast corner of Township 4N, Range 17E,
34. Thence Westerly to the Southeast corner of Township 5N, Range 15E,

35. Thence Northerly to the Northeast corner of Township 5N, Range 15E,
36. Thence Westerly to the Southeast corner of Township 6N, Range 14E,
37. Thence Northerly to the Northeast corner of Township 10N, Range 14E,
38. Thence Easterly along the Southern line of Township 11N, to the California/Nevada State Border,
39. Thence Northerly along the California/Nevada State Border to the Northerly line of Township 17N,
40. Thence Westerly to the Southeast corner of Township 18N, Range 10E,
41. Thence Northerly to the Northeast corner of Township 20N, Range 10E,
42. Thence Westerly to the Southeast corner of Township 21N, Range 9E,
43. Thence Northerly to the Northeast corner of Township 21N, Range 9E,
44. Thence Westerly to the Southeast corner of Township 22N, Range 8E,
45. Thence Northerly to the Northeast corner of Township 22N, Range 8E,
46. Thence Westerly to the Northwest corner of Township 22N, Range 8E,
47. Thence Northerly to the Southwest corner of Township 27N, Range 8E,
48. Thence Easterly to the Southeast corner of Township 27N, Range 8E,
49. Thence Northerly to the Northeast corner of Township 28N, Range 8E,
50. Thence Westerly to the Southeast corner of Township 29N, Range 6E,
51. Thence Northerly to the Northeast corner of Township 32N, Range 6E,
52. Thence Westerly to the Northwest corner of Township 32N, Range 6E,
53. Thence Northerly to the Northeast corner of Township 35N, Range 5E,
54. Thence Westerly to the Southeast corner of Township 36N, Range 3E,
55. Thence Northerly to the Northeast corner of Township 36N, Range 3E,
56. Thence Westerly to the Southeast corner of Township 37N, Range 1W,
57. Thence Northerly to the Northeast corner of Township 38N, Range 1W,
58. Thence Westerly to the Southeast corner of Township 39N, Range 2W,
59. Thence Northerly to the Northeast corner of Township 40N, Range 2W,
60. Thence Westerly to the Southeast corner of Township 41N, Range 4W,
61. Thence Northerly to the Northeast corner of Township 42N, Range 4W,
62. Thence Westerly to the Southeast corner of Township 43N, Range 5W,
63. Thence Northerly to the California/Oregon State Border,
64. Thence Westerly along the California/Oregon State Border to the Westerly Boundary of Township Range 8W,
65. Thence Southerly to the Southwest corner of Township 43N, Range 8W,
66. Thence Easterly to the Southeast corner of Township 43N, Range 8W,
67. Thence Southerly to the Southwest corner of Township 42N, Range 7W,
68. Thence Easterly to the Southeast corner of Township 42N, Range 7W,
69. Thence Southerly to the Southwest corner of Township 41N, Range 6W,
70. Thence Easterly to the Northwest corner of Township 40N, Range 5W,
71. Thence Southerly to the Southwest corner of Township 38N, Range 5W,
72. Thence Westerly to the Northwest corner of Township 37N, Range 6W,
73. Thence Southerly to the Southwest corner of Township 35N, Range 6W,
74. Thence Westerly to the Northwest corner of Township 34N, Range 10W,
75. Thence Southerly to the Southwest corner of Township 31N, Range 10W,
76. Thence Easterly to the Northwest corner of Township 30N, Range 9W,
77. Thence Southerly to the Southwest corner of Township 30N, Range 9W,
78. Thence Easterly to the Northwest corner of Township 29N, Range 8W,
79. Thence Southerly to the Southwest corner of Township 23N, Range 8W,
80. Thence Easterly to the Northwest corner of Township 22N, Range 6W,
81. Thence Southerly to the Southwest corner of Township 16N, Range 6W,
82. Thence Westerly to the Southeast corner of Township 16N, Range 9W,

83. Thence Northerly to the Northeast corner of Township 16N, Range 9W,
84. Thence Westerly to the Southeast corner of Township 17N, Range 12W,
85. Thence Northerly to the Northeast corner of Township 18N, Range 12W,
86. Thence Westerly to the Northwest corner of Township 18N, Range 15W,
87. Thence Southerly to the Southwest corner of Township 14N, Range 15W,
88. Thence Easterly to the Northwest corner of Township 13N, Range 14W,
89. Thence Southerly to the Southwest corner of Township 13N, Range 14W,
90. Thence Easterly to the Northwest corner of Township 12N, Range 13W,
91. Thence Southerly to the Southwest corner of Township 12N, Range 13W,
92. Thence Easterly to the Northwest corner to Township 11N, Range 12W,
93. Thence Southerly into the Pacific Ocean, and,
94. Commencing in the Pacific Ocean on the extension of the Humboldt Base Line,
95. Thence Easterly to the Northwest corner of Township 1S, Range 2E,
96. Thence Southerly to the Southwest corner of Township 2S, Range 2E,
97. Thence Easterly to the Northwest corner of Township 3S, Range 3E,
98. Thence Southerly to the Southwest corner of Township 5S, Range 3E,
99. Thence Easterly to the Southeast corner of Township 5S, Range 4E,
100. Thence Northerly to the Northeast corner of Township 4S, Range 4E,
101. Thence Westerly to the Southeast corner of Township 3S, Range 3E,
102. Thence Northerly to the Northeast corner of Township 5N, Range 3E,
103. Thence Easterly to the Southeast corner of Township 6N, Range 5E,
104. Thence Northerly to the Northeast corner of Township 7N, Range 5E,
105. Thence Westerly to the Southeast corner to Township 8N, Range 3E,
106. Thence Northerly to the Northeast corner of Township 9N, Range 3E,
107. Thence Westerly to the Southeast corner of Township 10N, Range 1E,
108. Thence Northerly to the Northeast corner of Township 13N, Range 1E,
109. Thence Westerly into the Pacific Ocean, excluding that portion of Northern California contained within the following lines:
110. Commencing at the Southwest corner of Township 12N, Range 11E, of the Mount Diablo Base and Meridian,
111. Thence Easterly to the Southeast corner of Township 12N, Range 16E,
112. Thence Northerly to the Northeast corner of Township 12N, Range 16E,
113. Thence Westerly to the Southeast corner of Township 13N, Range 15E,
114. Thence Northerly to the Northeast corner of Township 13N, Range 15E,
115. Thence Westerly to the Southeast corner of Township 14N, Range 14E,
116. Thence Northerly to the Northeast corner of Township 16N, Range 14E,
117. Thence Westerly to the Northwest corner of Township 16N, Range 12E,
118. Thence Southerly to the Southwest corner of Township 16N, Range 12E,
119. Thence Westerly to the Northwest corner of Township 15N, Range 11E,
120. Thence Southerly to the point of beginning at the Southwest corner of Township 12N, Range 11E.

**23.03.00** Area 2 shall be all areas not part of Area 1 described above.

**24.00.00 CHANGES**

**24.01.00** It is hereby understood and agreed that no settlement of any dispute as to the interpretation of this Agreement or the interpretation of any word, phrase, clause, sentence, paragraph or section thereof other than as may be determined through Section 18.00.00, Grievance Procedure, shall be of any force or effect unless and until it is (a) reduced to writing; (b) signed by the Business Manager of the Union; and (c) the Secretary of the Employer representing the Individual Employer.

**25.00.00 TERM OF AGREEMENT**

**25.01.00Employer's Membership.** This Agreement is made for and on behalf of and shall be binding upon the Employer, any Association of Employers signatory hereto, and the Individual Employers as defined in 02.02.00.

**25.01.01** The Employer and each Association of Employers signatory hereto represents that upon the date of the execution of this Agreement the Employer or Association of Employers signatory hereto, as the case may be, represents its members, Individual Employers as defined in 02.02.00, and that said Individual Employers have duly authorized it to make this contract for and on their behalf as parties hereto.

**25.02.00 Agreement Binding Upon Parties.** This Agreement shall be binding upon the heirs, executors, administrators, successors, purchasers and assigns of the parties hereto.

**25.03.00 Effective and Termination Dates.** This Agreement shall be effective July 1, 2016, and shall remain in effect through June 30, 2020, and if the written notice provided by Section 8(d) of the National Labor Relations Act as Amended is not given by either the Union or the Employer to the other, it shall continue indefinitely; provided however, this Agreement may be terminated at any time after June 30, 2020, by either the Union or the Employer giving to the other the written notice provided by Section 8(d) of the Act in which event this Agreement shall terminate at the end of the sixtieth (60th) calendar day after receipt of such notice. Regardless of when terminated, the Union and Employer will negotiate exclusively with each other during the last sixty (60) days of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have hereunto executed this Agreement as of the date hereof by their respective representatives duly authorized to do so this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**FOR THE EMPLOYER:**

**FOR THE UNION:**

**NORTHERN ALLIANCE of  
ENGINEERING CONTRACTORS [NAEC]**

**OPERATING ENGINEERS LOCAL UNION NO. 3 of the  
International Union of Operating Engineers, AFL-CIO**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dan Reding  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
James K. Sullivan  
Recording-Corresponding Secretary

\_\_\_\_\_  
Title

\_\_\_\_\_  
Russell E. Burns  
Business Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Steve Ingersoll  
Vice President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Justin Diston  
Financial Secretary

\_\_\_\_\_  
Title

\_\_\_\_\_  
Dave Harrison  
Treasurer



**ATTACHMENT "A"**  
**SUBCONTRACTING TERMS AND CONDITIONS AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between \_\_\_\_\_ ("Subcontractor") and OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO ("Union"), covering subcontracted work for \_\_\_\_\_ ("SIGNATORYEMPLOYER") on the \_\_\_\_\_ (Project) located at \_\_\_\_\_ (Project Address).

For this Project only, the Subcontractor hereby agrees to be bound by the wage rates, fringe benefit rates, hours and all other terms and conditions of employment contained in the current Master Construction Agreement for Northern California between the OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO and THE SIGNATORY ASSOCIATIONS, and any successor agreements thereto which may be in effect during the Project, except for those modifications as outlined below. All references in the Master Agreement to either "Employer" or "Individual Employer" shall, include to mean the Subcontractor.

Upon submission of this Agreement, a trust fund account shall be established for the duration of this Project and the Subcontractor shall be notified of the account number by the Trust Fund office.

This Agreement shall terminate upon notice to the Union of the completion of the Subcontractors' work at the above-mentioned Project. Upon completion of the Project, the Subcontractor shall notify the Union of the completion date.

The undersigned representative has been authorized to bind the Subcontractor to this Agreement, this day \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_.

**AUTHORIZED BY:**

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_ CA License #: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

Address: \_\_\_\_\_ City/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**FOR OFFICIAL USE ONLY:**

Billing Account# \_\_\_\_\_ Commence Billing: \_\_\_\_\_

**Original:            Operating Engineers Local Union 3  
                          1620 South Loop Road  
                          Alameda, CA 94502**

**Copy:    Signatory Employer  
             Subcontractor**

**ADDENDUM "A"**  
**RESIDENTIAL CONSTRUCTION**  
**AND**  
**BUILDING CONSTRUCTION**

**SECTION 1 Coverage**

**Section 1.1** This Addendum shall apply to Residential Construction and Building Construction work as defined below which is performed in the Counties listed below.

**Section 1.2** All terms and conditions of the Master Agreement shall apply to such work except for those provisions which are specifically modified or superseded by this Addendum. The Master Agreement will apply in its entirety to all work not covered by this Addendum.

**SECTION 2 Definition of Type of Work**

**SECTION 3 Wages and Fringe Benefits Section 2.1 Residential Construction:** Town or row houses; apartment buildings (4 stories or less); single family houses; mobile home developments; multi-family houses; and student housing.

**Section 2.2 Building Construction:** Alterations and additions to non-residential buildings; apartment buildings (5 stories and above); arenas (enclosed); auditoriums; automobile parking garages; banks and financial buildings; barracks; churches; hospitals; hotels; industrial buildings; institutional buildings; libraries; mausoleums; motels; museums; nursing and convalescent facilities; office buildings; out-patient clinics; passenger and freight terminal buildings; police stations; post offices; city halls; civic centers; commercial buildings; court houses; detention facilities; dormitories; farm buildings; fire stations; power plants; prefabricated buildings; remodeling buildings; renovating buildings; repairing buildings; restaurants; schools; service stations; shopping centers; stores; subway stations; theaters; and warehouses. Buildings which are part of a water treatment or sewage treatment plant are not covered by this Addendum, they are "Heavy" work.

<b>Group 1 (4 classifications)</b>	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
Area 1	\$41.25			
Area 2	\$43.25			
<b>Group 2 (7 classifications)</b>				
Area 1	\$39.80			
Area 2	\$41.80			
<b>Group 3 (19 classifications)</b>				
Area 1	\$38.40			
Area 2	\$40.40			
<b>Group 4 (34 classifications)</b>				
Area 1	\$37.07			
Area 2	\$39.07			
<b>Group 5 (21 classifications)</b>				
Area 1	\$35.86			
Area 2	\$37.86			

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
<b>Group 6 (30 classifications)</b>	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
Area 1	\$34.59			
Area 2	\$36.59			
<b>Group 7 (28 classifications)</b>				
Area 1	\$33.50			
Area 2	\$35.50			
<b>Group 8 (32 classifications)</b>				
Area 1	\$32.42			
Area 2	\$34.42			
<b>Group 8A (5 classifications)</b>				
Area 1	\$30.30			
Area 2	\$32.30			
<b>Foreman and Shifters, Over 7 Employees</b>				
Area 1	\$41.25			
Area 2	\$43.25			
<b>Foreman (Working), Under 7 Employees</b>				
Area 1	\$39.80			
Area 2	\$41.80			
<b>Master Mechanic, Over 5 Employees</b>				
Area 1	\$41.25			
Area 2	\$43.25			
<b>Special Single Shift and Second Shift Wage Rates</b>				
<b>Group 1</b>				
Area 1	\$45.40			
Area 2	\$47.40			
<b>Group 2</b>				
Area 1	\$43.76			
Area 2	\$45.76			
<b>Group 3</b>				
Area 1	\$42.20			
Area 2	\$44.20			
<b>Group 4</b>				
Area 1	\$40.68			
Area 2	\$42.68			
<b>Group 5</b>				
Area 1	\$39.33			
Area 2	\$41.33			
<b>Group 6</b>				
Area 1	\$37.89			
Area 2	\$39.89			
<b>Group 7</b>				
Area 1	\$36.68			
Area 2	\$38.68			

<b>Group 8</b>	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
Area 1	\$35.47			
Area 2	\$37.47			
<b>Group 8A</b>				
Area 1	\$33.08			
Area 2	\$35.08			
<b>Foreman and Shifters, Over 7 Employees</b>				
Area 1	\$45.40			
Area 2	\$47.40			
<b>Foreman (Working), Under 7 Employees</b>				
Area 1	\$43.76			
Area 2	\$45.76			
<b>Master Mechanic, Over 5 Employees</b>				
Area 1	\$45.40			
Area 2	\$47.40			
<b>All Cranes and Attachments (Same Manning as Master Agreement)</b>				
<b>Group 1 (3 classifications)</b>	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
Area 1	\$42.85			
Area 2	\$44.85			
<b>Group 1-A (5 classifications)</b>				
Area 1	\$42.10			
Area 2	\$44.10			
<b>Group 2-A (6 classifications)</b>				
Area 1	\$40.41			
Area 2	\$42.41			
<b>Group 3-A (4 classifications)</b>				
Area 1	\$38.77			
Area 2	\$40.77			
<b>Group 4-A (3 classifications)</b>				
Area 1	\$35.86			
Area 2	\$37.86			
<b>Group 5-A (3 Classifications)</b>				
Area 1	\$45.04			
Area 2	\$47.04			
2921 1. Foreman and Shifters, (non-working) 7 Employees and over**				
Area 1	\$44.04			
Area 2	\$46.04			

**All Cranes & Attachments (continued)**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
2931 2. Foreman (working), under 7 Employees **				
Area 1	\$45.04			
Area 2	\$47.04			
3341 3. Master Mechanic, over 5 Employees**				

\*\*At the discretion of the Employer

**5183\*\* Truck Crane Assistant to Engineer**

**Group 1**

Area 1	<b>\$36.19</b>
Area 2	<b>\$38.19</b>

**Group 1-A**

Area 1	\$35.44
Area 2	\$37.44

**Group 2-A**

Area 1	\$35.20
Area 2	\$37.20

**Group 3-A**

Area 1	\$34.96
Area 2	\$36.96

**5183\*\* Hydraulic**

**Group 3-A**

Area 1	\$34.59
Area 2	\$36.59

**5173\*\* Assistant to Engineer**

**Group 1**

Area 1	<b>\$34.02</b>
Area 2	<b>\$36.02</b>

**Group 1-A**

Area 1	\$33.27
Area 2	\$35.27

**Group 2-A**

Area 1	\$33.05
Area 2	\$35.05

**Group 3-A**

Area 1	\$32.80
Area 2	\$34.80

**All Cranes and Attachments, Special Single Shift and Second Shift Wage Rates**

	7/1/16*	6/26/17*	6/25/18*	6/24/19*
	\$2.70	\$2.35	\$2.35	\$2.35
<b>Group 1</b>				
Area 1	\$47.11			
Area 2	\$49.11			
<b>Group 1-A</b>				
Area 1	\$46.36			
Area 2	\$48.36			
<b>Group 2-A</b>				
Area 1	\$44.45			
Area 2	\$46.45			
<b>Group 3-A</b>				
Area 1	\$42.59			
Area 2	\$44.59			
<b>Group 4-A</b>				
Area 1	\$39.33			
Area 2	\$41.33			

**Group 5-A Foreman**

Area 1	\$47.41
Area 2	\$49.41
2921 1. Foreman and Shifters, (non-working) 7 Employees and over**	
Area 1	\$46.41
Area 2	\$48.41
2931 2. Foreman (working), under 7 Employees**	
Area 1	\$47.41
Area 2	\$49.41
3341 3. Master Mechanic, over 5 Employees**	

\*\*At the discretion of the Employer

**5183\*\* Truck Crane Assistant to Engineer**

<b>Group 1</b>	
Area 1	\$39.62
Area 2	\$41.62
<b>Group 1-A</b>	
Area 1	\$38.87
Area 2	\$40.87
<b>Group 2-A</b>	
Area 1	\$38.60
Area 2	\$40.60
<b>Group 3-A</b>	
Area 1	\$38.33
Area 2	\$40.33

<b>5183** Hydraulic</b>	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
<b>Group 3-A</b>				
Area 1	\$37.89			
Area 2	\$39.89			
<b>5173** Assistant to Engineer</b>				
<b>Group 1</b>				
Area 1	\$37.16			
Area 2	\$39.16			
<b>Group 1-A</b>				
Area 1	\$36.41			
Area 2	\$38.41			
<b>Group 2-A</b>				
Area 1	\$36.17			
Area 2	\$38.17			
<b>Group 3-A</b>				
Area 1	\$35.89			
Area 2	\$37.89			

#### **Classifications and Rates for Steel Erectors and Fabricators**

**(Same Manning as Master Agreement)**

	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
<b>Group A-1 (3 classifications)</b>	\$43.79			
<b>Group 1 (3 classifications)</b>	\$43.04			
<b>Group 2 (4 classifications)</b>	\$41.33			
<b>Group 3 (2 classifications)</b>	\$39.94			
<b>Group 4 (3 classifications)</b>	\$38.01			
<b>Group 5 (1 classification)</b>	\$36.76			

The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications are as follows:

<b>5183** Truck Crane Assistant to Engineer</b>	
<b>Group A-1</b>	\$36.80
<b>Group 1</b>	\$36.05
<b>Group 2</b>	\$35.83
<b>Group 3</b>	\$35.58
<b>5183** Hydraulic</b>	
<b>Group 3</b>	\$35.20
<b>5173** Assistant to Engineer</b>	
<b>Group A-1</b>	\$34.66
<b>Group 1</b>	\$33.91
<b>Group 2</b>	\$33.66
<b>Group 3</b>	\$33.43

**Steel Erectors and Fabricators, Special Single Shift and Second Shift Wage Rates**

	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
<b>Group A-1</b>	\$48.16			
<b>Group 1</b>	\$47.41			

**Steel Erectors and Fabricators, Special Single Shift and Second Shift Wage Rates**

	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
<b>Group 2</b>	\$45.49			
<b>Group 3</b>	\$43.91			
<b>Group 4</b>	\$41.76			
<b>Group 5</b>	\$40.34			

**5183\*\* Truck Crane Assistant to Engineer**

<b>Group A-1</b>	\$40.30
<b>Group 1</b>	\$39.55
<b>Group 2</b>	\$39.29
<b>Group 3</b>	\$39.01

**5183\*\* Hydraulic**

<b>Group 3</b>	\$38.60
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**5173\*\* Assistant to Engineer**

<b>Group A-1</b>	\$37.88
<b>Group 1</b>	\$37.13
<b>Group 2</b>	\$36.86
<b>Group 3</b>	\$36.58

**Classifications and Rates for Piledrivers (Same Manning as Master Agreement)**

	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
<b>Group A-1 (3 classifications)</b>	\$43.16			
<b>Group 1 (4 classifications)</b>	\$42.41			
<b>Group 2 (5 classifications)</b>	\$40.70			
<b>Group 3 (4 classifications)</b>	\$39.09			
<b>Group 4 (3 classifications)</b>	\$37.39			
<b>Group 5 (0 classifications)</b>	\$36.14			
<b>Group 6 (1 classification)</b>	\$34.89			
<b>Group 7 (0 classifications)</b>	\$33.83			
<b>Group 8 (2 classifications)</b>	\$32.75			



The straight-time rates of pay for the Truck Crane Assistant to Engineer and Assistant to Engineer classifications are as follows:

**5183\*\* Truck Crane Assistant to Engineer**

	<b>7/1/16*</b>	<b>6/26/17*</b>	<b>6/25/18*</b>	<b>6/24/19*</b>
	<b>\$2.70</b>	<b>\$2.35</b>	<b>\$2.35</b>	<b>\$2.35</b>
<b>Group A-1</b>	\$36.51			
<b>Group 1</b>	\$35.76			
<b>Group 2</b>	\$35.53			
<b>Group 3</b>	\$35.26			

**5173\*\* Assistant to Engineer**

<b>Group A-1</b>	\$34.34
<b>Group 1</b>	\$33.59
<b>Group 2</b>	\$33.34
<b>Group 3</b>	\$33.11

**Piledrivers, Special Single Shift and Second Shift Wage Rates**

<b>Group A-1</b>	\$47.45
<b>Group 1</b>	\$46.70
<b>Group 2</b>	\$44.76
<b>Group 3</b>	\$42.97
<b>Group 4</b>	\$41.04
<b>Group 5</b>	\$39.65
<b>Group 6</b>	\$38.23
<b>Group 7</b>	\$37.04
<b>Group 8</b>	\$35.84

**5183\*\* Truck Crane Assistant to Engineer**

<b>Group A-1</b>	\$39.97
<b>Group 1</b>	\$39.22
<b>Group 2</b>	\$38.97
<b>Group 3</b>	\$38.66

**5173\*\* Assistant to Engineer**

<b>Group A-1</b>	\$37.53
<b>Group 1</b>	\$36.78
<b>Group 2</b>	\$36.50
<b>Group 3</b>	\$36.23

**SECTION 3      *Fringe Benefits***

*Fringe Benefit Rates.* The fringe benefit rates set forth in the Master Agreement, Sections 12.02.00 through 12.12.12, shall apply to all work covered by this Addendum.

**SECTION 4      *Addendum Counties***

**Section 4.1**      This Addendum shall apply to covered work as defined in Section 2 which is performed in the Counties listed below:

Alpine; Amador; Butte; Calaveras; Colusa; Del Norte; El Dorado; Fresno; Glenn; Humboldt; Kings; Lake; Lassen; Madera; Mariposa; Mendocino; Merced; Modoc; Monterey; Napa; Nevada; Placer; Plumas; Sacramento; San Benito; San Joaquin; Santa Cruz; Shasta; Sierra; Siskiyou; Stanislaus; Sonoma; Sutter; Tehama; Trinity; Tulare; Tuolumne; Yuba; and Yolo.

**SECTION 5      *Work Rules***

These work rules will apply to all building construction work, parking lots, and driveways covered by the Master Agreement in all counties covered by the Master Agreement on jobs on which the value of the work covered by the Master Agreement for the entire project is less than \$3,000,000.00. The Individual Employer shall not engage in or enter into any scheme, plan or device with the Contracting Authority or Developer to job split or split contracts with the intent of pricing a specific job or project under \$3,000,000.00. The Individual Employer shall provide the Union with documentation to establish that the value of a job is under \$3,000,000.00.

**Section 5.1**      Straight time hours shall be reckoned by the half (1/2) shift, three quarters (3/4) of a shift and by the full shift.

**Section 5.2**      An Employee who works at more than one rate on the same day shall be paid at the highest rate for all hours worked if the Employee works at the highest rate for at least one half of the Employee's straight-time hours worked that day. If the Employee works at the highest rate for less than one half of the Employee's straight-time hours that day, the Employee shall be paid for actual time worked at each rate.

**Section 5.3**      So long as the Individual Employer properly mans a job, it may make full utilization of Employees by assigning them work other than work defined in Section 02.05.00 of the Master Agreement.

**Section 5.4**      The regular work day shall be eight (8) consecutive hours or ten (10) consecutive hours (exclusive of a meal period) which shall constitute a regular shift's work. The regular starting time of a single shift shall be between 5:00 a.m. and 10:00 a.m. The parties may establish different starting times.

**Section 5.5**      Forty (40) hours of work, Monday through Friday, shall constitute the regular workweek.

**Section 5.6**      All work performed in excess of forty (40) hours in any one (1) week and all hours worked on Saturday shall be paid for at the overtime rate of time and one-half (1-1/2). All work performed on Sunday and holidays shall be paid at double time.

## **ADDENDUM "B"**

### **RETIREE WORK PROVISIONS**

Recognizing that retired Employees may from time to time wish to return to work on a temporary basis, the Employer and the Union have agreed that said Retiree may return to work on the following basis:

- (1) Retiree is age 62 years or over.
- (2) Does not replace any Employee currently on the payroll of the Individual Employer.
- (3) Is requested to work during the months of April through November of any calendar year.
- (4) There is less than fifteen percent (15%) registered on the out-of-work list in their Job Placement Center servicing the job or project to which the Employee is to be dispatched.
- (5) Retiree is not eligible to register or work in a Preferred Classification.
- (6) A Journeyman shall not be employed as an Assistant to Engineer.

(7) **PENSIONED HEALTH AND WELFARE.** Each Individual Employer covered by the Retiree Work Provisions shall pay into the Operating Engineers' Pensioned Health and Welfare Trust Fund according to the following schedule:

Effective July 1, 2016 – The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on July 1, 2016, less the amount paid to the Vacation, Holiday and Sick Pay and the Supplemental Dues.

Effective June 26, 2017 – The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on June 26, 2017, less the amount paid to the Sick, Vacation and Holiday Pay and the Supplemental Dues.

Effective June 25, 2018 – The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on June 25, 2018, less the amount paid to the Vacation, Holiday and Sick Pay and the Supplemental Dues.

Effective on June 24, 2019–The sum of all hourly contribution rates set forth in Section 12.00.00 which are in effect on June 24, 2019, less the amount paid to the Vacation, Holiday and Sick Pay and the Supplemental Dues.

(8) **VACATION, HOLIDAY AND SICK PAY.** Each Individual Employer covered by the Retiree Work Provisions shall pay into the Operating Engineers Vacation, Holiday and Sick Pay according to the following schedule:

Effective July 1, 2016 – the amount provided for in Section 12.06.00

(9) **SUPPLEMENTAL DUES.** (See Section 12.12.00)

Effective July 1, 2016– the amount provided for in Section 12.12.00

**ADDENDUM "C"**  
**JOINT LABOR MANAGEMENT**  
**SUBSTANCE ABUSE POLICY**

**I. INTRODUCTION**

The Union and the Employer establish this Policy in order to provide the Individual Employer with a comprehensive substance abuse program, to provide Employees who abuse and/or are addicted to drugs, including alcohol, a means to receive treatment for their abuse and/or addiction, and to provide for a safe workplace. An Individual Employer is not obligated by this Agreement to have a substance abuse policy. Implementation of this Policy is not mandatory by any Individual Employer, but this Policy is the only policy the Individual Employer may implement for Employees. Once implemented, the Policy shall remain in effect unless otherwise agreed to by the Union and the Individual Employer.

An Individual Employer which is regulated by the United States Department of Transportation ("DOT") Code of Federal Regulation CFR 382 and 49 may elect not to implement the testing provisions of this Policy for its Employees who are not regulated by DOT.

**II. NOTICE**

- A. An Individual Employer must give written notice to the Union that it is implementing this Policy. The notice must be delivered in person, by certified mail or by FAX before it implements the Policy. A DOT regulated Individual Employer shall specifically notify the Union whether it is implementing the testing provisions of this Policy for its Employees who are not subject to DOT regulations. The notice shall be delivered to the Union at the following address:

Operating Engineers Local Union No. 3  
1620 South Loop Road  
Alameda, CA94502  
(FAX: [510] 748-7401)

- B. The Individual Employer may not implement this Policy unless it subjects all management and supervisory employees to the same type of testing which is provided herein.
- C. An Individual Employer who has implemented this Policy shall advise the Union dispatchers with whom it places an order for Employees that it intends to drug test dispatched Employees. A test result shall not be set aside because an Individual Employer does not give such notice.
- D. An Individual Employer who implements this Policy shall provide written notice of this Policy to all Employees including those dispatched to it by the Union and shall provide each Employee with a copy of the Policy.
- E. Failure to give a form of notice as set forth in this section shall make any drug testing engaged in by the Individual Employer a violation of the Master Agreement and no results of any such test shall be relied upon to deny employment or pay or to discipline any Employee.

**III. PURPOSE OF POLICY**

- A. The Individual Employer and the Union are committed to providing a safe and productive work environment for Employees. The Employer, Individual Employer and the Union recognize the valuable resource we have in our Employees and recognize that the state of an Employee's health affects attitude, effort, and job performance. The parties recognize that substance abuse is a behavioral, medical and social problem that causes decreased efficiency and increased risk of accidents and of injury.

The Individual Employer and the Union therefore adopts this Policy. The intent of the Policy is threefold:

1. To maintain a safe, drug and alcohol free workplace;
  2. To maintain our work force at its maximum effectiveness; and
  3. To provide confidential referral to the Addiction Recovery Program ("ARP") and to provide confidential treatment to those Employees who recognize they have a substance abuse problem and voluntarily seek treatment for it.
- B. In order to achieve these purposes, it is our primary goal to identify those Employees and refer them to professional counseling, and treatment *before* job performance has become a disciplinary problem. Employees are urged to use the services available through ARP. ARP will assist them and refer them to the appropriate treatment program.
1. Treatment for substance abuse and chemical dependency is provided under the Health and Welfare Plan, up to the limits described in the plans.
  2. An Employee shall be granted necessary leave of absence for treatment ARP recommends contingent upon signing a return-to-work agreement as provided for in Section XI.

#### **IV. EDUCATION PROGRAM**

The Individual Employer will implement a comprehensive drug awareness and education program which shall be in conformance with the DOT regulations. The program shall include educating Employees and management/supervisory personnel about substance abuse and chemical dependency, the adverse effect they have on Employees and the Individual Employer, and the treatment available to Employees who abuse substances and/or are chemically dependent, and the penalties that may be imposed upon Employees who violate this Policy. The Individual Employer shall consult with ARP before it implements this policy so that ARP can provide education to the Individual Employer and its Employees. ARP shall continue to provide an educational program for the Individual Employer for their Employees and shall, to the maximum extent possible, train the Employees of Individual Employer who implement this Policy.

#### **V. CONFIDENTIALITY**

The Individual Employer will abide by all applicable State and Federal laws and regulations regarding confidentiality of medical records in any matter related to this Policy. The Individual Employer shall designate one of its management, supervisory or confidential employees to be its custodian of records and contact person for all matters related to this Policy. All such records shall be kept in a locked file which shall be labeled "confidential." Employee records related to this Policy shall not be kept in the Employee's personnel file.

All information from an Employee's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the Employee. The results of a positive drug test shall not be released until the results are confirmed. Every effort will be made to insure that all Employee issues related to this Policy will be discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in the disciplinary procedure.

#### **VI. TESTING**

Testing for the presence of alcohol or controlled substances and/or their by-products in one's body may only be performed under the conditions set forth herein. All testing shall be done in accordance with the standards

established by the Substance Abuse and Mental Health Services Administration ("SAMHSA"), any successor agency, or any other agency of the federal government which has responsibility for establishing standards for drug testing. All such agencies shall be collectively referred to as "SAMHSA."

Chain of Custody. All SAMHSA standards for Chain of Custody will be adhered to. A specimen for which the SAMHSA standards are not complied with shall not be considered for any purpose under this Policy.

Laboratories. All laboratories which perform tests under this Policy shall be SAMHSA certified.

Testing Procedures and Protocols. All SAMHSA standards for testing standards and protocols shall be followed. All specimens which are determined to be positive by the SAMHSA approved screening test shall be subject to a SAMHSA certified confirmatory test (gas chromatography/mass spectrometry).

Second Test. The laboratory shall save a sufficient portion of each specimen in a manner approved by SAMHSA so that an Employee may have a second test performed. Immediately after the specimen is collected, it will be labeled and then initialed by the Employee and a witness. If the sample must be collected at a site other than the drug and/or alcohol testing laboratory, the specimen shall then be placed in a transportation container. The container shall be sealed in the Employee's presence and the Employee shall be asked to initial or sign the container. The container shall be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method. Any Employee whose specimen is tested positive and who challenges a test result may have the second portion of the sample tested at his/her expense and at a laboratory agreed upon by the Employee and the MRO so long as that laboratory is SAMHSA certified and has been or is approved by the parties and the Employee requests the second test within seventy-two (72) hours of notice of a positive result. If the second test is negative, the Employee will be considered to have been tested negative.

Cut-Off Levels. SAMHSA standards for cut-off levels will be complied with when applicable. The cut-off levels for both the screening and confirmatory tests shall be per Federal standards as determined by the U. S. Department of Health and Human Services ("DHHS"). Only tests which are positive pursuant to the SAMHSA standards shall be reported to the Medical Review Officer as positive. A .04 blood/alcohol level or above shall be considered to be positive.

Medical Review Officer. A Medical Review Officer ("MRO") shall verify all positive test results. The MRO must be a licensed physician. The MRO shall be a member of the American Society of Addictive Medicine ("ASAM") if available. If no ASAM members are available, the MRO shall be certified by the Medical Review Officers' Certification Council. The Union shall approve all MRO's. Upon verification of a positive test result, the MRO shall refer the affected Employee to ARP for assessment and referral to treatment, if appropriate.

Consent Form. Any Employee directed to submit to a test in accordance with this Policy will sign a consent and release form, a copy of which is attached hereto (Form "A"). The consent and release form will only authorize (1) the facility where the specimen is collected to collect the specimen, (2) the laboratory which performs the test to perform the test and to provide the results to the MRO, and, if negative, to the Individual Employer, and (3) the MRO to verify tests and report to the Individual Employer whether the test is positive or negative. The consent and release form shall notify the Employee that he/she may have a Union representative present if available.

The Employee may be disciplined if he/she refuses to sign the authorization if the Individual Employer has advised the Employee (1) he/she must sign it or he/she will be disciplined up to and including termination, (2) the release is limited as provided herein, (3) the Employee has a right to consult with a Union representative before signing the release and before submitting to the test. An Employee who believes the Individual Employer is improperly directing him/her to submit to a test may file a grievance under the Master Agreement. The test results will be disregarded if the Board of Adjustment or Arbitrator determines the Individual Employer was not authorized by this Policy to direct the Employee to submit to the test.

Substances to be Tested For. A specimen may be tested for alcohol, cannabinoids (THC), barbiturates, opiates, cocaine, phencyclidines (PCP), amphetamines, and methaqualone or the by-products of these substances. A specimen shall not be tested for anything else. If DOT revises its list of substances for which it requires Individual Employer to test, this Section will be revised to include those substances. The laboratory will report positive test results to the MRO. The MRO will verify whether the test is positive or negative. The MRO shall report to the Individual Employer whether the Employee tested positive or negative for one of these substances. The MRO will not identify the substance(s) for which the Employee tested positive unless specifically required to do so by DOT regulations.

Urine, Blood, or Breath Test. The Individual Employer may direct the Employee to submit to a urine test or at the Employee's request, a blood test for alcohol and/or other drugs, or a breath test for alcohol. An Employee who is unable to provide a urine sample within one (1) hour of being directed to do so, will submit to a blood test.

Notification to Employer of Test Results. The laboratory shall report negative test results to the Individual Employer. The laboratory will report positive test results to the MRO. The MRO will verify whether the test was positive or negative and will report the final results to the Individual Employer.

## VII. TYPES OF PERMISSIVE TESTING

### A. TIME OF DISPATCH TESTING

An Individual Employer may require an Employee to be tested for the presence in the Employee's body of one of the drugs or by-products thereof set forth above at the time the Employee is dispatched (on one of the first three (3) days of employment). It must test all Employees at the time they are dispatched if it tests any Employee. The Individual Employer shall put the Employee to work or pay the Employee pending the test results unless the Employee has been dispatched to a DOT regulated assignment and the Individual Employer does not have any work for the Employee to perform which is not subject to the DOT regulations or if it has probable cause to believe the Employee is impaired, intoxicated, or under the influence of a drug. The standards for probable cause are set forth below in Section B. If the Individual Employer does not allow an Employee to work pending the test results because it believes it has probable cause, it shall make the Employee whole for all lost wages and benefits if the Employee tests negative. Employees who test positive will be referred to ARP. The Individual Employer shall not be obligated to employ any such Employee after ARP releases the Employee to return to work but may employ such Employee under the terms of a return-to-work agreement. An Employee who refuses to submit to a drug/alcohol test when dispatched shall not be paid show-up time.

An Individual Employer may test Employees who are recalled from layoff as provided for in the Job Placement Regulations who have not worked for thirty (30) days. If the Individual Employer tests any Employee who is recalled, it must test all such Employees. An Individual Employer may test all Employees at the time they are dispatched under this Section except for those who are recalled.

Time of Dispatch Screening by the Job Placement Center: The parties shall establish a joint committee to determine whether there is a feasible means by which the Job Placement Centers can conduct the drug/alcohol screen before dispatching an Employee so that only Employees with a negative test will be referred.

### B. PROBABLE CAUSE TESTING

An Individual Employer may require an Employee to submit to a drug test as provided for in this Policy if it has probable cause that the Employee is impaired, intoxicated, and/or under the influence of a drug. Probable cause must be based on a trained Management Representative's (preferably not in the bargaining unit) objective observations and must be based upon abnormal coordination, appearance, behavior, absenteeism, speech or odor. The indicators shall be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol and shall be indicators not reasonably explained as resulting from causes other than

the use of such controlled substance and/or alcohol (such as, but not by way of limitation, fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.). Probable cause may not be established, and thus not a basis for testing, if it is based solely on the observations and reports of third parties. The trained Management Representative's observations and conclusions must be confirmed by another trained Management Representative. The grounds for probable cause must be documented by the use of an Incident Report Form (see Form "B" attached). The Management Representative shall give the Employee a completed copy of this Incident Report Form and shall give the Union Representative, if present, a copy of the Incident Report Form before the Employee is required to be tested. After being given a copy of the Incident Report Form, the Employee shall be allowed enough time to read the entire document and to understand the reasons for the test.

The Management Representative also shall provide the Employee with an opportunity to give an explanation of his/her condition, such as reaction to a prescribed drug, fatigue, lack of sleep, exposure to noxious fumes, reaction to over-the-counter medication or illness. If available, the Union Representative shall be present during such explanation and shall be entitled to confer with the Employee before the explanation is required. If the Management Representative(s), after observing the Employee, and hearing any explanation, concludes that there is in fact probable cause to believe that the Employee is under the influence of or impaired by, drugs or alcohol, the Employee may be ordered to submit to a drug test.

The Individual Employer shall advise the Employee of his/her right to consult with a Union Representative (including a Steward) and allow the Employee to consult with a Union Representative before the Employee submits to the test, if the Union Representative is available.

Employees required to submit to a test under Section B will be paid for all time related to the test including the time the Employee is transported to and from the collection site, all time spent at the collection site, and all time involved completing the consent and release form if the test results are negative.

#### C. ACCIDENT TESTING

An Individual Employer shall require Employees who are directly, or indirectly, involved in work-related accidents involving property damage or bodily injury that requires medical care or work-related accidents which would likely result in property damage or bodily injury be subject to a test as provided herein. The innocent victims of an accident will not be subject to a test unless probable cause exists. The Individual Employer shall complete an Incident Report Form (see Form B attached) whenever it tests an Employee under this Section.

#### D. UNANNOUNCED RANDOM TESTING

An Individual Employer may initiate unannounced random testing, a selection process where affected Employees are selected for testing and each Employee has an equal chance of being selected for testing. If an Individual Employer initiates such testing, all Employees shall be subjected to such testing. The Individual Employer may establish two random testing pools; one for DOT regulated Employees and one for all others. An Individual Employer who initiates random testing shall specifically state in its notice to the Union and its notice to Employees that Employees will be subject to random testing. The Individual Employer shall give thirty (30) days' notice to the Union and Employees prior to implementing a random drug testing program.

#### E. DOT REGULATED EMPLOYEES

Notwithstanding any other provision of this Policy, the Individual Employer may require its Employees who are covered by the DOT drug and alcohol testing regulations to submit to testing as required by those regulations. Such testing will be conducted in strict accordance with the Regulations. The Individual Employer may discipline an Employee who tests positive as defined by the Regulations subject to Section XI, REHABILITATION/DISCIPLINE, of the Policy. ARP shall be the Substance Abuse Professional for all Employees.



ARP, to the maximum extent possible, shall provide the mandated training to all Employees. Employees who are subject to DOT regulations who have a positive "pre-employment" test (as defined by the DOT regulations) will be paid show-up time only if the Individual Employer does not have any work for the Employee to perform which is not subject to the DOT regulations pending the test result. Employees who are tested under the DOT Regulations who are not allowed by those Regulations to continue to perform safety sensitive functions, as defined by the Regulations, shall be paid for hours worked.

**F. OWNER/AWARDING AGENCY REQUIREMENTS**

Whenever owner or awarding agency specifications require the Individual Employer to provide a drug-free workplace, the Union and the Employer or the Individual Employer shall incorporate such additional requirements herein. This Policy shall apply to all such testing.

**G. QUICK TESTS**

The parties agree to allow the Employers to use, on an individual basis, an oral or urine quick test approved by the bargaining parties as an effective low-cost tool for substance abuse screening for pre-hire, time of dispatch screening only. Testing procedures for the oral test (including the oral screen – OSR device) and the urine test shall be conducted in a manner consistent with the product manufacturer's specifications; in an effort to produce the most consistent and accurate results possible. Dispatched members who fail this saliva or urine test will be sent for standard urine testing. When the Individual Employer conducts the oral screen, a negative result may be accepted and the applicant may be put to work with no further testing required. A non-negative (inconclusive) result will subject the applicant to the Standard Procedures in this Agreement.

**VIII. EMPLOYER REFERRALS**

A decline in an Employee's job performance is often the first sign of a personal problem which may include substance abuse or chemical dependency. Supervisory personnel will be trained to identify signs of substance abuse, chemical dependency, and declining job performance. The Individual Employer may formally refer an Employee to ARP based upon documented declining job performance or other observations prior to testing under Section VII and/or disciplining the Employee.

**IX. EMPLOYEE VOLUNTARY SELF-HELP PROGRAM**

An Employee who has a chemical dependency and/or abuses drugs and/or alcohol is encouraged to participate in an Employee Voluntary Self-Help Program. Any such Employee shall be referred to ARP. Employees who seek voluntary assistance for alcohol and/or substance abuse may not be disciplined for seeking such assistance. Request by Employees for such assistance shall remain confidential and shall not be revealed to other Employees or management personnel without the Employee's consent. ARP shall not disclose information on drug/alcohol use received from an Employee for any purpose or under any circumstances, unless specifically authorized in writing by the Employee.

The Individual Employer shall offer an Employee affected by alcohol or drug dependence an unpaid medical Leave of Absence for the purpose of enrolling and participating in a drug or alcohol rehabilitation program.

**X. PROHIBITED ACTIVITIES/DISCIPLINE**

An Employee shall not possess, use, provide, dispense, receive, sell, offer to sell, or manufacture alcohol and/or any controlled substances as defined by law or have any measurable amount of any such substance or by-product thereof as defined in Section VI while on the Individual Employer's property or jobsite and/or while working for the Individual Employer unless the Employee has the Individual Employer's express permission to do so. An Employee shall not work while impaired, intoxicated or under the influence of alcohol and/or any controlled substance. An Employee who uses medication prescribed by a physician will not violate these rules by using such medication as prescribed if the Employee's physician has released the Employee to work. An Employee who uses over-the-counter

medication in accordance with the manufacturer's and/or doctor's recommendation shall not violate the rules by using such medication. Impairment caused by prescribed medication and/or over-the-counter medication does not constitute a violation. The Individual Employer may prohibit an Employee who is impaired as a result of proper use of prescription or over-the-counter medication from working while the Employee is impaired but may not discipline such an Employee. An Employee who is impaired by misuse of prescription or over-the-counter medication violates the Policy and is subject to discipline as provided herein.

#### **XI. REHABILITATION/DISCIPLINE**

The Individual Employer may discipline an Employee who violates any provision of Section X. Such Employee is subject to disciplinary action up to and including termination. Among the factors to be considered in determining the appropriate disciplinary response are the nature and requirements of the Employee's work, length of employment, current job performance, the specific results of the test, and the history of past discipline.

The Individual Employer is not required to refer to ARP any Employee who violates any provision of Section X which prohibits the sale of, attempted sale of or manufacture of prohibited substances before it disciplines the Employee. The Individual Employer may not discipline any Employee who violates any other provisions of Section X until such Employee has been offered an opportunity to receive treatment and/or counseling.

Any Employee who fails to come forward to receive treatment and/or counseling prior to an accident, drug screen, for cause or random test shall not be eligible for the reemployment provisions of this Section XI.

Any Employee who comes forward to receive treatment and/or counseling prior to an accident, drug screen, for cause or random test shall be subject to reemployment as follows. The Employee will not be discharged if he/she agrees in writing to undergo the counseling/treatment ARP prescribes. The Individual Employer shall re-employ the Employee when ARP releases him/her to return to work if it has work available. It will not be required to lay-off any current Employee in order to re-employ the Employee. If it does not have any work available when ARP releases the Employee, it shall re-employ the Employee as soon as it has work available. The Employee will be subject to a return-to-work agreement. The Individual Employer, the Union and the Employee will enter into a return-to-work agreement. The return-to-work agreement will require the Employee to comply with and complete all treatment ARP, or the treatment provider, as the case may be, determines is appropriate. It will also provide a monitoring of the Employee's compliance with the treatment plan ARP, or the treatment provider, develops and will allow the Individual Employer to require the Employee to submit to unannounced testing. The Individual Employer may discipline the Employee for not complying with the return-to-work agreement. A positive test on an unannounced test will be considered a violation of the return-to-work agreement. Any unannounced testing shall be performed in accordance with this Policy. The Union and the Individual Employer will attempt to meet with any Employee who violates the return-to-work agreement and attempt to persuade the Employee to comply with the return-to-work agreement. This procedure shall be followed on a consistent basis. Employees who are working under a return-to-work agreement shall be subject to all of the Individual Employer's rules to the same extent as all other Employees are required to comply with them.

The parties agree to establish a Substance Abuse Testing Procedures Committee who shall be empowered to periodically review and update testing procedures. Either party may request a meeting under this section and such meeting shall be convened within thirty (30) days.

The Substance Abuse Procedures Committee composed of Jim Murray, Steve Clark, Jack Estill, Tim Conway, Mark Breslin, Russ Burns, Mark Reynosa and Byron Loney.

#### **XII. NON-DISCRIMINATION**

The Individual Employer shall not discriminate against any Employee who is receiving treatment for substance abuse and/or chemical dependency. All Employees who participate in ARP and/or are undergoing or have undergone treatment and rehabilitation pursuant to this Policy shall be subject to the same rules, working conditions, and

discipline procedures in effect for all Employees. Employees cannot escape discipline for future infractions by participating in ARP and/or undergoing treatment and rehabilitation.

**XIII. COST OF PROGRAM**

Evaluation and treatment for substance abuse and chemical addiction are provided for through the Health and Welfare Plan. An Individual Employer who adopts this Policy will not incur any additional cost for assessment, referral and treatment beyond that which is incorporated into its Health and Welfare contribution rate. ARP is funded through the Health and Welfare Trust to provide its current level of service which includes performing assessments of Employees and their covered dependents, referral of Employees and covered dependents who are undergoing rehabilitation and providing limited education and training programs to Individual Employer. The Individual Employer will pay all costs for testing.

**XIV. GRIEVANCE PROCEDURE**

All disputes concerning the interpretation or application of this Policy shall be subject to the grievance and arbitration procedures of the Master Labor Agreement.

**XV. SAVINGS CLAUSE**

The establishment or operation of this Policy shall not curtail any right of any Employee found in any law, rule or regulation. Should any part of this Policy be determined contrary to law, such invalidation of that part or portion of this Policy shall not invalidate the remaining portions. In the event of such determination, the collective bargaining parties will immediately bargain in good faith in an attempt to agree upon a provision in place of the invalidated portion.

**FORM "A"**  
**EMPLOYEE CONSENT AND RELEASE FORM**

I, \_\_\_\_\_, have been directed by my employer, \_\_\_\_\_, to submit to a drug/alcohol screen (urine or blood for drugs other than alcohol or urine, blood or breath for alcohol) at a collection facility designated under the terms of the Substance Abuse Policy ("Policy") which is part of the collective bargaining agreement between my employer and Operating Engineers Local Union No. 3 (the "Local 3 Agreement") which governs my employment with my employer. The specimen shall be tested to detect the presence of Amphetamines, Cocaine, Cannabinoids (THC), Opiates, Phencyclidine, Barbiturates, Methaqualone and Alcohol. I consent to the following:

1. The facility which collects a specimen from me may do so;
2. The laboratory which performs the test may submit the results of the test to the designated Medical Review Officer and, if negative, as defined by the Policy, to my employer; and
3. The Medical Review Officer may verify the test and report to my employer whether the test was positive or negative, as defined by the Policy.

In addition to Time of Dispatch testing, if I am directly or indirectly involved in a work-related accident involving property damage, bodily injury that requires medical care or work-related accidents which would likely result in property damage or bodily injury, I consent to be tested in accordance with the Policy. I also consent to be tested if my employer has probable cause to do so as set forth in the Policy. I also consent to be randomly tested in accordance with the Policy. I also consent to be tested if my employment is regulated by the United States Department of Transportation Code of Federal Regulations CFR 382 and 49 and my employer is required to test me under these regulations.

My employer has advised me that:

1. I have a right to have a Union Representative present if available;
2. I must sign this form and that I may be disciplined up to and including discharge if I do not;
3. The release is limited as provided herein; and
4. I have a right to consult with a Union Representative before I sign this release.

I am signing this Consent Form because I have been directed to do so by my employer. By doing so I am not waiving any rights I may have under the Local 3 Collective Bargaining Agreement or any applicable law except as expressly provided for herein. By signing this Agreement, I am not acknowledging that my employer has probable cause to believe I have violated any provision of the substance abuse policy which is part of the Local 3 Agreement or any of my employer's policies which pertain to my employment.

- ☞ I previously have received a copy of the Policy.
- ☞ My employer has provided me with a copy of the Policy.

\_\_\_\_\_  
(Employee Signature)

\_\_\_\_\_  
(Employee Name [Please Print])

\_\_\_\_\_  
(Date)

**Witness:**

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Witness Name [Please Print])

\_\_\_\_\_  
(Date)

**FORM "B"**  
**INCIDENT REPORT FORM**

Employee Involved: \_\_\_\_\_

Date of Incident: \_\_\_\_\_ Time of Incident: \_\_\_\_\_

Location of Incident: \_\_\_\_\_

Employee's Job Assignment/Position: \_\_\_\_\_

Employee Notified of His/Her Right to Union Representation:  Yes  No

Date Notified: \_\_\_\_\_ Time Notified: \_\_\_\_\_

Witness to Incident: \_\_\_\_\_

Witness' Observation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Employee's Explanation: \_\_\_\_\_ E

\_\_\_\_\_

\_\_\_\_\_

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness' Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Action Taken: \_\_\_\_\_

\_\_\_\_\_

Date/Time Action Taken: \_\_\_\_\_

**ADDENDUM "D"**  
**MEMORANDUM OF AGREEMENT**  
**(Entry Level Operator)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between Signatory Associations ("Employer") and OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL CIO ("Union").

The Employer and the Union have met and agreed to add the following classification to their current Agreement and to amend their Agreement as follows:

**01.00.00      ENTRY LEVEL OPERATOR**

**01.01.00**      The Employer may employ Employees in the Entry Level Operator classification for private work only. Entry Level Operators may perform work in any classification specified in Section 01.03.00 of the Master Construction Agreement for Northern California.

**01.02.00**      *Probationary Period.* The first seven hundred fifty (750) hours worked shall be considered the probationary period for the Entry Level Operator.

**01.03.00**      No Entry Level Operator shall displace or cause the layoff or termination of employment of the Employer's Employees who are employed on the job on which the Entry Level Operator is employed, when the Employer hires an Entry Level Operator.

**02.00.00      HIRING**

**02.01.00**      The Employer may only hire Entry Level Operators when there is less than fifteen percent (15%) registered on the out-of-work list in Journeyman classifications, in the Job Placement Center servicing the job or project to which the Employee is to be dispatched.

**02.01.02**      Entry Level Operator Employees shall not earn eligible status under Section 04.10.24 ii (5 year letter) of the Job Placement Regulations until he/she has completed three thousand [3000] hours as an Entry Level Operator.

**02.02.00**      The Employer may hire Employees from any source if the Union's Job Placement Center is unable to fill the position within forty-eight [48] hours. The Employer shall refer to the Job Placement Center any Employee whom it hires from a source other than the Job Placement Center. It shall do so within forty-eight (48) hours of the day the Employee begins work. The Job Placement Center shall issue the Employee a dispatch slip.

**03.00.00 WAGES**

**03.01.00** For private work only, the current wage rate for the Entry Level Operator shall be based on percentage of the current Group 4 wage rate from the Northern California Master Agreement ("Master Agreement"):

**Job Classifications -Straight-time hourly**

			<u>7/1/16</u>	<u>6/26/17</u>	<u>6/25/18</u>	<u>6/24/19</u>
2687 — First 750 hours .....	60%	<b>Area 1</b>	\$22.97			
		<b>Area 2</b>	\$24.97			
2688 — Second 750 hours .....	70%	<b>Area 1</b>	\$26.80			
		<b>Area 2</b>	\$28.80			
2689 — Third 750 hours.....	80%	<b>Area 1</b>	\$30.62			
		<b>Area 2</b>	\$32.62			
2697 — Fourth 750 hours .....	90%	<b>Area 1</b>	\$34.45			
		<b>Area 2</b>	\$36.45			

**Job Classifications -Special Single and Second Shift**

			<u>7/1/16</u>	<u>6/26/17</u>	<u>6/25/18</u>	<u>6/24/19</u>
2687 — First 750 hours .....	60%	<b>Area 1</b>	\$25.23			
		<b>Area 2</b>	\$27.23			
2688 — Second 750 hours .....	70%	<b>Area 1</b>	\$29.44			
		<b>Area 2</b>	\$31.44			
2689 — Third 750 hours.....	80%	<b>Area 1</b>	\$33.64			
		<b>Area 2</b>	\$35.64			
2697 — Fourth 750 hours .....	90%	<b>Area 1</b>	\$37.85			
		<b>Area 2</b>	\$39.85			

\* To be allocated by the Union, the allocation shall become effective forty-five (45) days after receipt of written notice by the Employer, but in no event earlier than July 1, 2016, June 26, 2017, June 25, 2018 and June 24, 2019. Untimely notification of contractual wage, fringe benefit or dues increase shall not result in a default.

**03.01.01** For work other than private, the wage rate for Entry Level Operator shall be at least one hundred percent (100%) of the current prevailing wage rate for the work being performed.

**03.02.00** When the Entry Level Operator has completed three thousand [3000] hours worked, he/she shall be considered a qualified Journeyman Operator.

**03.02.01** When the Entry Level Operator has attained Journeyman Operator status, he/she shall receive one hundred percent (100%) of the applicable wage and fringe benefits for a Journeyman Operator.

**03.03.00** *Private Work Agreement ("PWA").* When working in a District where a Private Work Agreement ("PWA") is in effect, an Entry Level Operator shall not be paid less than the wages set forth in Section 03.01.01, unless these exceed those noted in the PWA. The wage percentages noted in Section 03.01.00 are not to be applied to any Private Work Agreement.

**04.00.00 FRINGE BENEFITS**

**04.01.00 Health and Welfare.** The Employer shall pay into the Operating Engineers' Health and Welfare Trust Fund for Northern California according to the following schedule:

\$11.24 per hour - Effective July 1, 2016

\*- Effective June 26, 2017

\*- Effective June 25, 2018

\*- Effective June 24, 2019

\* To be allocated by the Union.

**04.02.00 Pensioned Health and Welfare.** The Employer shall pay into the Pensioned Operating Engineers' Health and Welfare Trust Fund according to the following schedule:

\$2.26 per hour – Effective July 1, 2016

**04.03.00 Pension.** The Employer shall pay into the Operating Engineers' Pension Trust Fund according to the following schedule:

\$7.91 per hour – Effective June 29, 2015

**Preferred Schedule of the Rehabilitation Plan: \$.63 per hour/each year**

\$7.91- per hour – Effective 7/1/16

\$. \* per hour – Effective 6/26/17

\$. \* per hour – Effective 6/25/18

\$. \* per hour – Effective 6/24/19

The parties agree that sufficient contributions will be made available from these increases to the Pension Fund to support any Rehabilitation/Funding Improvement schedule adopted by the Pension Board of Trustees pursuant to the Pension Protection Act of 2006 and the Union will select an option (Schedule) in the Pension’s Rehabilitation Plan or Funding Improvement Plan, whichever is applicable. Additional monies required for such Rehabilitation Plan/Funding Improvement Schedule shall be allocated from existing negotiated increases, wages and/or fringe benefits.

\*2016, 2017, 2018 and 2019 Pending annual review by the Plan’s Actuaries & Trustees

**04.03.01** The Pension is and has been a defined benefit pension plan.

**04.04.00 Affirmative Action Training Fund.** The Employer shall pay into the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeyman Affirmative Action Training Fund according to the following schedule:

\$.77 per hour – Effective 7/1/16

\$. \* per hour – Effective 6/26/17

\$. \* per hour – Effective 6/25/18

\$. \* per hour – Effective 6/24/19

\* To be allocated by the Union.



**04.05.00 Vacation, Holiday and Sick Pay.** Each Individual Employer covered by this Agreement shall pay into the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund according to the following schedule:

\$2.81 per hour – Effective 7/1/16

\$1.65 per hour [Vacation Pay] – Effective 7/1/16

\$.50 cents per hour [Sick Pay] – Effective 7/1/16

\$1.11 per hour [Supplemental Dues] – Effective 7/1/16

\$.05 cents per hour [Vacation Trust Administrative Fee] – Effective 7/1/16

\$. \* per hour – Effective 6/26/17

\$. \* per hour – Effective 6/25/18

\$. \* per hour – Effective 6/24/19

\* To be allocated by the Union.

Effective July 1, 2016, the Union grants Individual Employers a waiver under the Healthy Workplaces, Healthy Families Act of 2014 (AB 1522). In return for said waiver, Individual Employers shall remit to Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund a one-time additional contribution of fifty cents [\$.50] per hour worked identified as the contribution for Sick Pay. No additional fringe benefits are due for any sick, vacation, or holiday pay. Employees may use these monies for paid sick leave purposes.

Any disputes concerning the validity of the waiver granted under the Healthy Families Act of 2014 are subject to Section 18.00.00 Grievance Procedure. If the California legislature amends the Healthy Workplaces, Healthy Families Act of 2014, then Union and Employer agree to meet and confer to negotiate any required conformance to the amended law.

**04.05.01 Paid Sick Leave Waivers.** The bargaining parties also expressly agree, to the fullest extent permitted by law, to waive any paid sick leave provisions of the following local paid sick leave ordinances: San Francisco (Administrative Code Section 12W), Oakland (Municipal Code Section 592 et.seq.), Emeryville (Municipal Code Title 5, Chapter 37). In addition, to the fullest extent permitted by law, this waiver shall apply to any other Federal, State, City, County or other local ordinance requiring mandatory Paid Sick Leave that may be adopted during the term of this agreement.

**04.05.02** In addition, if any Federal, State, City, County or other local ordinance requiring mandatory compensated time off other than Paid Sick Leave is enacted during the term of this Agreement; then the Union and the Employer agree to meet and confer within thirty (30) business days.

**04.05.03** The parties agree that the payments provided in this Section are in lieu of the Employee's actually taking a vacation, holiday or sick leave. Such payments shall not be considered part of the hourly wage rates for the purpose of computing overtime, either under the Fair Labor Standards Act, the Walsh-Healy Act or any other law, and no vacation or sick leave payment shall be made on the basis of a premium rate of time and one-half or double time.

**04.05.04 Deduction of Taxes.** All taxes due from each Employee including taxes due by reason of payments for Vacation, Holiday and Sick Pay shall be deducted by each Employee's Individual Employer from each Employee's regular wages and such total tax deductions together with the amount payable for Vacation, Holiday and Sick Pay shall be separately noted on the Employee's paycheck.

**04.05.05** The Administration Fee per hour shall be paid by each Individual Employer. It shall not be taxable to the Employee.

**04.06.00** *Supplemental Dues.* Effective for all work performed on and after July 1, 2016, it is agreed that upon written authorization, provided by the Union or Union's designee, as required by law, the amount designated by the Union shall be deducted from the Vacation, Holiday and Sick Pay of each Employee and remitted directly to the Union. The amount of the Supplemental Dues transmittal shall be specified on a statement sent to the Employees. Such remittance shall be made to the Union monthly. Supplemental Dues are specifically part of the uniform monthly dues of each Employee, as specified in the provisions of Section 04.02.00, Union Security, of this Agreement. The Employees shall be obligated to make such payment directly to the Union on a monthly basis if the dues authorization provided for herein is not executed, under such terms and conditions as from time to time may be prescribed by the Union. The Union shall pay the Operating Engineers Local union no. 3 Vacation. Holiday and Sick Pay Trust Fund an administration fee for the remittance of Supplemental Dues to the Union.

**04.06.01** The Union shall exonerate, reimburse and hold harmless the Employer, each Individual Employer, and their respective officers, directors, agents, and employees, individually and collectively, against any and all liabilities and reasonable expenses arising out of the payment, receipt or a distribution of the amounts designated by the Union.

**OFFICES OF LOCAL UNION NO. 3**

**LOCAL 3 HEADQUARTERS**

1620 South Loop Road, Alameda, CA94502 ..... 510/748-7400

**SAN FRANCISCO/SAN MATEO**

828 Mahler Road, Suite B, Burlingame, CA94010 ..... 650/652-7969

**FAIRFIELD**

2540 N. Watney Way, Fairfield, CA94533 ..... 707/429-5008

**ROHNERT PARK**

6225 State Farm Dr., #100, Rohnert Park 94928..... 707/585-2487

**OAKLAND**

1620 South Loop Road, Alameda, CA94502 ..... 510/748-7446

**STOCKTON**

1916 North Broadway, Stockton, CA95205..... 209/943-2332

**EUREKA**

1213 Fifth Street Eureka, CA 95501 ..... 707/443-7328

**FRESNO**

4856 N. Cedar, Fresno, CA 93726..... 559/229-4083

**YUBA CITY**

468 Century Park Drive, Yuba City, CA95991 ..... 530/743-7321

**REDDING**

20308 Engineers Lane, Redding, CA96002 ..... 530/222-6093

**SACRAMENTO**

3920 Lennane Drive, Sacramento, CA 95834 ..... 916/993-2055

**SAN JOSE**

325 Digital Drive, Morgan Hill, CA95037 ..... 408/465-8260

**RENO**

1290 Corporate Blvd., Reno, Nevada 89502 ..... 775/857-4440

**ELKO**

1094 Lamoille Hwy., Elko, Nevada 89801..... 775/753-8761

**SALT LAKE CITY**

1958 W.N.Temple, Salt Lake City, Utah84116..... 801/596-2677

**HONOLULU**

1075 Opakapaka Street, Kapolei, HI 96707 ..... 808/845-7871

**HILO**

50 Waianuenue, Hilo, HI96720..... 808/935-8709

**MAUI**

95 Lono Avenue, Ste. #104, Kahului, HI96732 ..... 808/871-1193

# EXHIBIT E

**PROJECT LABOR AGREEMENT  
FOR THE  
CALIFORNIA FLATS SOLAR PROJECT**

**MONTEREY COUNTY, CALIFORNIA**

**ARTICLE 1  
INITIAL PROVISIONS**

1.1 This Project Labor Agreement ("Agreement") is entered into by McCarthy Building Companies, Inc. ("Primary Employer"), Operating Engineers Local 3, Carpenters Local 605, Pile Drivers Local 34, Millwrights Local 102, Laborers Local 270, IBEW Local 234, and Ironworkers Local 155 who have executed this Agreement (the "Unions").

1.2 The California Flats Solar Facility Project (the "Project") is an approximately 280 MW photovoltaic solar power plant located in Monterey County, California. The Project is owned by CA Flats Solar 130, LLC and CA Flats Solar 150, LLC ("Owner"). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies and only to the Project.

1.3 Primary Employer is an employer primarily engaged in the construction industry and has the authority to enter into this agreement.

1.4 As provided below, other than Primary Employer, all construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2 below), or performing Covered Work, will be subject to this Agreement by executing Attachment A, the Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as "Employer" or "Employers").

1.5 The Unions are labor organizations whose members are construction industry employees. The Unions are party to multi-employer collective bargaining agreements ("Master Agreement") applicable to employers working within the geographic jurisdiction. Primary Employer is a signatory to the Carpenters and Laborers Master Agreements only.

1.6 A large labor pool represented by the Unions will be required to execute the Covered Work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and

the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.

1.7 In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the Primary Employer, Employers and with other construction employers engaged on the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In particular, the Unions shall make all efforts to first source local labor to the Project and shall cooperate with each Employer's efforts to comply with all applicable laws and regulations related to such local hiring requirements.

1.8 The parties recognize the importance of solar power in assuring that California is provided with adequate supplies of renewable energy for economic growth, the creation of job opportunities and for a greater degree of energy independence. By entering into this Agreement, the parties recognize the unique nature of a solar photovoltaic power plant and that the terms and conditions covered by this Agreement are therefore unique. Accordingly, the parties have in good faith arrived at the special conditions contained in this Agreement, and the parties agree to work together jointly to support the Project and make it successful.

## **ARTICLE 2 SCOPE OF AGREEMENT**

2.1 This Agreement covers all on-site construction, alteration, demolition or repair of buildings, structures, and other works which are part of the Project. All work covered by this Agreement is referred to as "Covered Work." As of the execution of this agreement there is no work planned to be performed in temporary yards or at adjacent facilities; in the event that Primary Employer determines it is necessary to use a temporary yard or adjacent facility this Agreement shall govern that work.

2.2 The following are specifically excluded from the definition of Covered Work:

2.2.1 Any work performed on or near the Project site by federal, state, county, city or other governmental bodies and/or agencies or their contractors or work performed by utilities or their contractors;

2.2.2 Work performed by supervisors not covered by a collective bargaining agreement, technical or non-manual employees including but not limited to executives, office and clerical personnel, drafters, staff engineers, technical advisors, vendor quality control representatives, logistic and materials support, timekeepers, messengers,

or any other employees above the classification of general foreman who perform administrative/clerical functions; and

### 2.2.3 Operations and maintenance work.

2.3 Fabrication provisions in local and/or national agreements shall not apply. Any manufactured items produced in a manufacturing facility for the supply of products to the Project is not Covered Work and shall not be considered subcontracting under Article 3 below. However, any offsite assembly of components (other than manufacturing products at a manufacturing facility) for the Project is Covered Work and shall be performed onsite.

## ARTICLE 3 SUBCONTRACTING

3.1 Primary Employer and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract or subcontract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer is a signatory to the Carpenters and Laborers Master Agreements only. Primary Employer intends to self-perform those portions of the Carpenters and Laborers Covered Work identified on Attachment B. Nothing herein is intended to bind Primary Employer to any other Master Agreements than those the Primary Employer is already a signatory to so long as Primary Employer self-performs only work assigned to the Carpenters or Laborers as provided in Attachment B.

3.3 Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes a party to this Agreement, who is primarily a C-10 electrical contractor (for IBEW Covered Work only), and who is or becomes signatory to the applicable Master Agreement pertaining to the scope of work identified in Attachment B for that particular Employer, or, in the case of a national contractor, a national agreement with the applicable Union. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound and the applicable Master Agreement. Every Employer shall notify the Union in writing within five business days after it has subcontracted work, and shall at the same time provide to the Union a copy of the executed Attachment A,



**Agreement to be Bound.**

3.4 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer and every other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement, and the applicable Master Agreement or national agreement as provided in Section 3.2 above. Any Employer that fails to obtain the signature of its lower tier contractors or subcontractors shall be liable for any failure of that lower tier contractor or subcontractor to comply with the provisions of this Agreement, including any contributions to any trust funds that the lower tier contractor or subcontractor fails to make. Each Employer shall provide a copy of their signature and their subcontractors' signature to the Agreement to Be Bound to the applicable union.

**ARTICLE 4  
WAGES AND BENEFITS**

4.1 All employees performing Covered Work and covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages and benefits, and contributions made on their behalf to multi-employer trust funds, all in accordance with the applicable Union's Master Agreement in effect at the time of the execution of the Agreement to be Bound and any subsequently negotiated Master Agreement, however Employers shall not be liable for any retroactive increase in compensation (wages or benefits of any kind) unless otherwise agreed to within the new Master Agreement.

4.2 Employees performing Covered Work in the IBEW CW classification shall receive wages and benefits as specified in Attachment C.

**ARTICLE 5  
UNION RECOGNITION AND  
REFERRAL**

5.1 The Employers recognize the Unions signatory to this Agreement which have craft jurisdiction over such Employer's scope of work on the Project as the sole and exclusive collective bargaining agent for their construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of the Unions.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the applicable Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring practices of the Unions as set forth in each applicable Master Agreement, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 The Unions shall exert their utmost efforts, including requesting assistance from other local unions, to recruit a sufficient number of skilled craftsmen to fulfill the manpower requirements of the Employers. In the event the referral facilities maintained by the Union does not refer the employees as requested by an Employer within a forty-eight (48) hour period after such requisition is made by an Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for those applicants from the Union within forty-eight (48) hours of the commencement of employment, and the dispatch shall upon request be issued by the Union to the employee. Employer will notify the Union of such gate-hires.

5.5 If specified in the applicable Master Agreement, each Union shall have the right to designate a working journeyman as a working steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. The steward shall be concerned with the employees of the steward's Employer and not with the employees of any other Employer. A steward shall be allowed sufficient time to perform his/her duties.

## **ARTICLE 6 WORK STOPPAGES AND LOCKOUTS**

6.1 During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, handbilling where the handbilling relates to the Project or to the Owner, Primary Employer, or other Employer working or providing work on the Project, or interference with the work or other disruptive activity of any kind at the Project site for any reason by the Unions, their agents, representatives, or by any employee, and there shall be no lockout by any Employer. Failure of either a Union or an employee to cross any picket line established at the Employer's project site is a violation of this Article.

6.2 The Unions shall not sanction, aid, abet, encourage, condone or participate in or continue any work stoppage, delay, strike, picketing or any other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project or which violate this Article, shall be subject to disciplinary action, including discharge, and, if justifiably discharged for the above reasons, shall not be eligible for rehire or further work on the Project.

6.3 A Union shall not be liable for acts of employees that it does not represent. With respect to employees the Union does represent, the principal officer or officers of the Union will immediately instruct, and order and use the best efforts of his office to cause such employees to cease any violations of this Article. A Union complying with this obligation shall not be liable for any unauthorized acts of the employees it represents. The failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4 The Unions agree that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing, handbilling or interference with the work or any other disruptive activity at the Project site in violation of this Article, the Primary Employer may suspend all or any portion of the Project work affected by such activity at the Primary Employer's discretion and without penalty.

**6.6** In lieu of, or in addition to, any other action at law or equity or any rights an Employer may have under the applicable Master Agreement, any party may institute the following procedure when a breach of this Article is alleged, after the Union has been notified of the fact, understanding that the grieving party has the discretion to opt for resolution of any dispute under this Article or through Article 8 instead.

**6.6.1** The party invoking this procedure shall notify the American Arbitration Association who shall select an arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the Union.

**6.6.2** Upon receipt of said notice, the Arbitrator selected above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists or is threatened to resume.

**6.6.3** The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

**6.6.4** The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail or by electronic mail upon issuance. The Union accepts service pursuant to any of the foregoing means of notice and expressly waives notice by more formal means.

**6.6.5** Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The

Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail or by electronic mail. All parties waive the right to require the issuance of a bond or other security for issuance of an injunction or an appeal to a refusal to issue one under this Article.

6.6.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue. The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

6.6.7 If the Arbitrator determines that a violation has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, \$10,000; for the second shift, \$15,000; for the third shift, \$20,000; for each shift thereafter on which the craft has not returned to work, \$20,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance with this section and this Article.

6.7 The procedures contained in this Article shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8 Notwithstanding the provisions of Section 6.1 above, it is agreed that with forty eight (48) hours prior written notice to the Primary Employer, the Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails with respect to work on the Project to make timely payments to the Union's benefit plans or to pay timely its weekly payroll in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withhold their services from such contractor or subcontractor, Primary Employer shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9 If a Master Agreement expires, both the Employer and the Union will abide by the terms of the expired Master Agreement for the duration of the Project until such time as a new Master Agreement is entered into.

**ARTICLE 7  
WORK RULES, HOLIDAYS**

7.1 The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. The standard work week shall be five (5) consecutive days starting on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2 Moved to Attachment B

7.3 Moved to Attachment B

7.4 Moved to Attachment B

7.5 It will not be considered a violation of this Agreement when the Primary Employer shuts down the Project at the discretion of the Primary Employer for any reason other than a labor dispute or any Employer considers it necessary to shut down to avoid loss of human life because of an emergency situation that could endanger life or safety. In such cases, employees will be compensated only for the actual time worked. In case of a situation described above whereby the Primary Employer or any Employer requests employees to wait in a designated area available for work the employees will be compensated for the waiting time.

7.6 Recognized holidays shall be as follows: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate as provided in the applicable Master Agreement not to exceed double the straight time rate of pay.

**ARTICLE 8  
GRIEVANCE PROCEDURE**

8.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than successorship) shall be considered a grievance. Questions between or among parties signatory to the Master Agreement arising out of or involving the interpretation of the Master Agreement

shall be resolved under the grievance procedure(s) provided in the applicable Master Agreement.

8.2 The Primary Employer and other Employers, as well as a Union, may bring forth grievances under this Article.

8.3 A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or reasonably should have been discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

8.4 Grievances shall be settled according to the following procedure (provided that grievances that do not involve an individual grievant or grievants shall be discussed by Primary Employer and the Union, and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, shall commence at Step 2):

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the grievance has been brought to the attention of the Employer.

Step 2

In the event the matter remains unresolved in Step 1 above after five(5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager of the Union or his designee and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed or emailed to the Primary Employer.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager of the Union or his designee and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative and the Primary Employer for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance.

8.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.

8.9 Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.



8.10 In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail, electronic mail, or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance. Failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance to the other without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances.

8.11 In order to encourage the resolution of disputes and grievances, the parties agree that settlements shall not be precedent setting.

**ARTICLE 9  
WORK JURISDICTION AND PRE-JOB  
MEETINGS**

9.1 All Covered Work will be assigned to the appropriate Union as identified in Attachment B.

9.2 Prior to the commencement of work at the site of construction the Primary Employer shall hold a Pre-job Conference with the Unions for the purpose of discussing the scope, schedule, manpower requirements, and jurisdictional work assignments. A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each contractor's contract.

9.3 In the event of any jurisdictional or similar dispute concerning an Employer's assignment of work on this Project, the Employer and the Unions agree to cooperate to attempt to resolve such dispute expeditiously and efficiently; however, nothing in this Section shall require the Unions to agree to any modification of this Agreement. Until the jurisdictional or similar dispute is resolved, the Employer's work assignment shall be followed. This Article (including Attachment B), rather than any jurisdictional dispute resolution procedure in a Union's Master Agreement, shall apply to jurisdictional disputes involving the assignment of work on this Project to a Union.

**ARTICLE 10  
GENERAL WORKING CONDITIONS**

10.1 The selection of craft foremen and/or general foremen shall be entirely the responsibility of each Employer, it being understood that in the selection of such foremen and/or general foremen the Employer will give primary consideration to the qualified individuals referred to the Employer who are available in the local area. After giving such consideration, the Employer may select such individuals from other areas. All foremen shall take orders from the designated Employer representatives.

10.2 There shall be no limit on production by employees or restrictions on the full use of tools or equipment. Employees using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.

10.3 The Primary Employer and/or any Employer may establish and employees shall observe such reasonable project job site work rules as the Primary Employer and/or Employer deems appropriate. These rules will be reviewed and discussed at the pre-job conference, distributed to all employees, posted at the project site by the Primary Employer, and may be amended thereafter as necessary.

**ARTICLE 11  
MANAGEMENT RIGHTS**

11.1 The Primary Employer and Employers retain and shall exercise full and exclusive authority and responsibility for the management of their respective operations and work forces, except as expressly limited by the terms of this Agreement or the applicable Master Agreement. This authority includes, but is not limited to, the rights retained by Employers under the Master Agreement and the rights to:

11.1.1 Plan, direct and control the operation of all the work.

11.1.2 Decide the number and type of employees required for the work.

11.1.3 Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required, and to select and hire directly all supervisory personnel above the classification of general foreman it considers necessary and desirable, without such persons being referred by the Union.

11.14 Discharge, suspend or discipline employees in accordance with the applicable Master Agreement.

11.15 Require all employees to observe the Primary Employer's, Employer's and Owner's reasonable Project Rules, Security, Environmental and Safety Regulations, consistent with the provisions of this Agreement. These Project Work Rules and Regulations shall be supplied to the Union, to all employees and posted on the job site.

11.16 Determine the work methods and procedures.

11.1.7 Determine the competency of all employees.

11.1.8 Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by any Union to perform work, including overtime work, assigned. Such cases shall be subject to the grievance procedure.

11.1.9 Utilize any safe work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer.

11.1.10 Purchase materials or equipment from any source it deems appropriate.

11.2 The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Employers, therefore, retain all legal rights not specifically given up in this Agreement.

## **ARTICLE 12 SUCCESSORSHIP AND SURVIVABILITY**

12.1 The subcontracting obligations described in Article 3 are independent obligations of Primary Employer which shall survive any full or partial termination of Primary Employer's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of Primary Employer's right to control and coordinate construction work on the Project; (ii) any full or partial termination or transfer of a contract, if any, between Primary Employer and any Owner for any Covered Work; (iii) the transfer of all or any portion of the Project or any interest in the Project by any Project Owner; or (iv) any other event that results in the replacement of Primary Employer with another contractor.

12.2 The parties agree that: (i) if Primary Employer's involvement

in the Project is terminated as described in Section 12.1, and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then Primary Employer shall pay liquidated damages, as described in Section 12.3, to compensate for the actual damages caused by reason thereof. The parties agree that such damages would be unreasonably difficult, costly, inconvenient or impracticable to calculate and, accordingly, they agree to liquidated damages which bear a reasonable relationship to the actual harm suffered by the Union and their members, as provided in Section 12.3 ("Liquidated Damages").

12.3 In that Liquidated Damages are owed as described in Section 12.2, Primary Employer shall pay an amount equal to the journeyman total compensation package of the applicable Union for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signed to this Agreement. The Liquidated Damages shall be paid as follows: Half to the qualified pension plan and half to the qualified health and welfare plan of the Union having jurisdiction over the work performed by the contractor not signatory to this Agreement. The parties agree that the Unions shall enforce, collect and receive Liquidated Damages pursuant to Article 12 on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to enforce independently the provisions of this Agreement, including, but not limited to, the Liquidated Damages provisions contained in Article 12.

12.4 Primary Employer shall be released from all obligations under this Agreement with respect to all or any portion of the Project, including liability for the payment of Liquidated Damages, and shall have no liability for any breach of this Agreement by a successor upon Primary Employer's receipt of a fully executed release by the Union. Such release shall not be withheld if, under all the circumstances, the Union, in the exercise of its reasonable judgment, determines that the successor has the financial means to complete the Project and to comply with the successor Primary Employer's obligations and undertakings under this Agreement, including any obligation to pay Liquidated Damages.

12.5 This Article shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

**ARTICLE 13  
HELMETS TO HARDHATS**

13.1 The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

13.2 The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

**ARTICLE 14  
GENERAL PROVISIONS**

14.1 If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the parties shall suspend the operation of such article or provision during the period of its invalidity, and the Primary Employer and the Unions shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision negotiated by the Primary Employer and the Unions shall be binding on all parties signatory to this Agreement. At all times relevant the provisions of Article 6 will apply.

14.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or

circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

14.3 The provisions of this Agreement shall take precedence over conflicting provisions of the applicable Master Agreement or any other local, area, regional, or national collective bargaining agreement.

14.4 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement shall apply.

14.5 This Agreement may be amended or otherwise modified by mutual agreement in writing between Primary Employer and the Unions. Employers executing Attachment A, the Agreement to be Bound, acknowledge and accept all such amendments and modifications executed prior to their respective execution of the Agreement to be Bound.

14.6 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

14.7 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

## **ARTICLE 15 TERM OF AGREEMENT**

15.1 The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work at the Project pursuant to Article 2.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of March 13, 2015.

McCarthy Building Companies, Inc.

Laborers Local Union 270

By: [Signature]  
Its: Vice President Operations

By: Enrique G. Argüello  
Its: Business Manager

Carpenters Local Union 605

By: \_\_\_\_\_  
Its: Business Manager

Pile Drivers Local Union 34

By: \_\_\_\_\_  
Its: Business Manager

Millwrights Local Union 102

By: \_\_\_\_\_  
Its: Business Manager

Operating Engineers Local Union 3

By: \_\_\_\_\_  
Its: Business Manager

International Brotherhood of Electrical  
Workers Local Union 234

By: \_\_\_\_\_  
Its: Business Manager

Iron Workers Local Union 155

By: \_\_\_\_\_  
Its: Business Manager

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of March 13, 2015.

McCarthy Building Companies, Inc.

Laborers Local Union 270

By: [Signature]  
Its: Vice President Operations

By: \_\_\_\_\_  
Its: Business Manager

Carpenters Local Union 605

By: [Signature]  
Its: Business Manager

Pile Drivers Local Union 34

By: [Signature]  
Its: Business Manager

Millwrights Local Union 102

By: [Signature]  
Its: Business Manager

Operating Engineers Local Union 3

By: \_\_\_\_\_  
Its: Business Manager

International Brotherhood of Electrical  
Workers Local Union 234

By: \_\_\_\_\_  
Its: Business Manager

Iron Workers Local Union 155


By: \_\_\_\_\_  
Its: Business Manager



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of March 13, 2015.

McCarthy Building Companies, Inc.

Laborers Local Union 270

By:   
Its: Vice President Operations

By: \_\_\_\_\_  
Its: Business Manager

Carpenters Local Union 605

By: \_\_\_\_\_  
Its: Business Manager

Pile Drivers Local Union 34

By: \_\_\_\_\_  
Its: Business Manager

Millwrights Local Union 102

By:   
Its: Business Manager

Operating Engineers Local Union 3

By: \_\_\_\_\_  
Its: Business Manager

International Brotherhood of Electrical  
Workers Local Union 234

By: \_\_\_\_\_  
Its: Business Manager

Iron Workers Local Union 155

By: \_\_\_\_\_  
Its: Business Manager

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of March 13, 2015.

McCarthy Building Companies, Inc.

Laborers Local Union 270

By: [Signature]  
Its: Vice President Operations

By: \_\_\_\_\_  
Its: Business Manager

Carpenters Local Union 605

By: \_\_\_\_\_  
Its: Business Manager

Pile Drivers Local Union 34

By: \_\_\_\_\_  
Its: Business Manager

Millwrights Local Union 102

By: \_\_\_\_\_  
Its: Business Manager

Operating Engineers Local Union 3

By: \_\_\_\_\_  
Its: Business Manager

International Brotherhood of Electrical  
Workers Local Union 234

By: [Signature] 3.24.2015  
Its: Business Manager

Iron Workers Local Union 155

By: \_\_\_\_\_  
Its: Business Manager

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of March 13, 2015.

McCarthy Building Companies, Inc.

Laborers Local Union 270

By: [Signature]  
Its: Vice President Operations

By: \_\_\_\_\_  
Its: Business Manager

Carpenters Local Union 605

By: \_\_\_\_\_  
Its: Business Manager

Pile Drivers Local Union 34

By: \_\_\_\_\_  
Its: Business Manager

Millwrights Local Union 102

By: \_\_\_\_\_  
Its: Business Manager

Operating Engineers Local Union 3

By: \_\_\_\_\_  
Its: Business Manager

International Brotherhood of Electrical  
Workers Local Union 234

By: \_\_\_\_\_  
Its: Business Manager

Iron Workers Local Union 155

By: [Signature]  
Its: Business Manager

**ATTACHMENT A  
AGREEMENT TO BE BOUND**

**PROJECT LABOR AGREEMENT  
CALIFORNIA FLATS SOLAR PROJECT**

The undersigned hereby certifies and agrees that:

- 1.) It is an Employer as that term is defined in Section 1.4 of the California Flats Solar Project Labor Agreement ("Agreement") because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Article 2 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED:

Name of Employer

\_\_\_\_\_

\_\_\_\_\_

(Authorized Officer & Title)

\_\_\_\_\_

(Address)

\_\_\_\_\_

**ATTACHMENT B  
WORK ASSIGNMENTS**

<b>ITEM</b>	<b>WORK ACTIVITY</b>	<b>ASSIGNMENT</b>
1.	Surveying	OE
2.	Soil testing, compaction testing	OE
3.	Grading, cranes, trenching machines, forklift work serving multiple crafts	OE
4.	Curbs and gutters	Carp/IW/Laborers
5.	Vegetation management and weed control	Laborers
6.	Chain link perimeter fencing	Laborers/OE
7.	Dust control	Laborers
8.	Landscaping and erosion control	Laborers
9.	Rigging for off-loading of large equipment or materials of multiple crafts	IW
10.	Excavation and backfilling of trenches by hand	Laborers
11.	Drinking water distribution	Laborers
12.	General site cleanup	Laborers
13.	Concrete foundations	Carp/IW/Laborers
14.	Post insertion <ul style="list-style-type: none"> <li>• Seated equipment</li> <li>• Walk-behind equipment (no seat and &lt;50 HP)</li> </ul>	OE/Piledrivers Laborers
15.	Uncrating of metallic components of the racking system	Laborers
16.	Supporting steel, brackets, I-Beams, and other metallic components of the racking system between the post and module attachment	IW
17.	Cleanup of crating materials for the racking system	Laborers
18.	Handling and installation of PV Modules:  The staging area placement, inspection, uncrating of panels will be the work of the Laborers, including cleanup of crate materials.  The installation of PV panels/modules is the work of the IBEW	Laborers  IBEW

<b>ITEM</b>	<b>WORK ACTIVITY</b>	<b>ASSIGNMENT</b>
19.	Electrical and communications wiring, cables and conduit below and above ground, AC and DC connections, wire trays, combiner boxes, tracking control boxes and other electrical equipment	IBEW
20.	Mounting and alignment of drive motors; pivot shaft	Millwright
21.	Handling and installation of inverter enclosures	IBEW/IW
22.	Industry standard electrical startup and commissioning	IBEW
23.	Buildings	BTs Plan Jurisdiction
24.	Water storage tanks and piping	Boilermaker/UA

Any other work assignments will be based on this table and traditional building trades' jurisdiction.

#### Journeyman and Apprenticeship Ratios

Handling and installation of PV modules will be primarily performed by employees in the IBEW CW classification. There shall be at least one journeyman and one apprentice for each four CWs.

There shall be at least one journeyman for each apprentice for IBEW Covered Work other than PV module handling and installation.

Employers may utilize Ironworker apprentices for all Ironworker Covered Work, provided that there shall be at least one journeyman for each one apprentice.

## ATTACHMENT C Construction Wireman



**Construction Electrician/Construction Wireman  
Wage and Fringe Benefits**



California Bay Area Region  
For Locals 6, 180, 234, 302, 332, 551, 595W, and 617  
Effective January 1, 2015 to May 31, 2015

CE/CW Classifications	WAGE	HEALTH & WELFARE (refer to Appendix D)	NEBF (3% of wages)	NLMCC	TRAINING (JATC)	AMF (0.5% of wages)	TOTAL PACKAGE
Construction Electrician Level 2, (Lead/Foreman (110%))	\$31.60	\$5.01	\$0.95	\$0.01	\$0.85	\$0.16	\$38.58
Construction Electrician Level 2 (10,001 and above)	\$28.73	\$5.01	\$0.86	\$0.01	\$0.85	\$0.14	\$35.60
Construction Electrician Level 1 (8,001 - 10,000 hrs) (80%)	\$22.98	\$5.01	\$0.69	\$0.01	\$0.85	\$0.11	\$29.65
Construction Wireman Step 6 (7,001 - 8,000 hrs) (75%)	\$21.55	\$5.01	\$0.65	\$0.01	\$0.85	\$0.11	\$28.18
Construction Wireman Step 5 (6,001 - 7,000 hrs) (70%)	\$20.11	\$5.01	\$0.60	\$0.01	\$0.85	\$0.10	\$26.68
Construction Wireman Step 4 (5,001 - 6,000 hrs) (65%)	\$18.67	\$5.01	\$0.56	\$0.01	\$0.85	\$0.09	\$25.19
Construction Wireman Step 3 (4,001 - 5,000 hrs) (60%)	\$17.24	\$5.01	\$0.52	\$0.01	\$0.85	\$0.09	\$23.72
Construction Wireman Step 2 (3,001 - 4,000 hrs) (55%)	\$15.80	\$5.01	\$0.47	\$0.01	\$0.85	\$0.08	\$22.22
Construction Wireman Step 1 (2,000 -3,000 hrs) (50%)	\$14.37	\$5.01	\$0.43	\$0.01	\$0.85	\$0.07	\$20.74

1. All trust contributions shall paid on hours worked.
2. Apprenticeship contributions shall be paid to the Local Union where the work is being performed.
3. Working assessments will be 3% of the hourly wage and shall be paid to the Local Union where the work is being performed.
4. June 1, 2015 – cost of living increase using the Bay Area index

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**PROOF OF SERVICE**

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On June 8, 2021, I served a copy of the following document(s) described below on the interested parties in this action, as follows:

**DECLARATION OF AMY ARNOLD IN SUPPORT OF DEFENDANT CSI ELECTRICAL CONTRACTORS, INC.'S SECOND MOTION FOR PARTIAL SUMMARY JUDGEMENT**

- BY U.S. MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically served the documents on the date shown below to the e-mail addresses of the person listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.
- ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.
- FEDERAL:** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

Executed on June 8, 2021, at Los Angeles, California.



\_\_\_\_\_  
Lillian Marquez



SERVICE LIST

1 2 3 4 5 6	Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com	Attorneys for Plaintiff, George Huerta
7 8 9 10 11	Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com	Attorneys for Plaintiff, George Huerta
12 13 14 15 16	James A. Bowles Hill Farrer & Burrill LLP One California Plaza 300 S. Grand Avenue, 37 <sup>th</sup> Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com	Attorneys for Defendant, Milco National Construction, Inc.
17 18 19 20 21 22	Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com	Attorneys for Plaintiff, California Compaction Corporation

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

George Huerta, an individual on behalf of himself and all others similarly situated and as a representative plaintiff,

Plaintiff,

v.

First Solar, Inc., a Delaware corporation; California Flats Solar, LLC, a Delaware Limited Liability Company; CA Flats Solar 130, LLC, a Delaware Limited Liability Company; CA Flats Solar 150, LLC, a Delaware Limited Liability Company; Cal Flats Solar CEI, LLC, a Delaware Limited Liability Company; Cal Flats Solar Holdco, LLC, a Delaware Limited Liability Company; CSI Electrical Contractors, Inc.; Milco National Constructors, Inc.; California Compaction Corporation; and Does 1 through 10,

Defendants.

Case No.: 5:18-cv-06761-BLF

**[PROPOSED] ORDER GRANTING DEFENDANT CSI ELECTRICAL CONTRACTORS, INC.’S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**

Date: November 18, 2021  
Time: 9:00 a.m.  
Ctrm: 3

State Complaint Filed: July 30, 2018  
State First Amended Complaint Filed: October 1, 2018  
Removal Filed: November 7, 2018

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**[PROPOSED] ORDER**

The Court, having reviewed the contents of CSI Electrical Contractors, Inc.’s (“CSI”) Second Motion for Partial Summary Judgment (“Motion”), having considered the briefs and arguments of the Parties, and finding good cause therein, hereby ORDERS that, pursuant to Federal Rules of Civil Procedure 56(d), CSI’s Motion is hereby GRANTED. Specifically, the Court finds that there is no dispute as to any material fact as to Plaintiff’s claim for unpaid wages under California Wage Order 16, paragraph 5(A), based on the allegation that the first location where Plaintiff’s presence was required by CSI was the Security Gate where the badging occurred.

Accordingly, and not seeing any genuine disputed issues of material fact, partial summary judgment is granted.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Hon. Beth Labson Freeman  
United States District Judge

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**PROOF OF SERVICE**

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On June 8, 2021, I served a copy of the following document(s) described below on the interested parties in this action, as follows:

**[PROPOSED] ORDER GRANTING DEFENDANT CSI ELECTRICAL CONTRACTORS, INC.’S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**

- BY U.S. MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically served the documents on the date shown below to the e-mail addresses of the person listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.
- ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.
- FEDERAL:** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

Executed on June 8, 2021, at Los Angeles, California.



Lillian Marquez

SERVICE LIST

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<p>7 8 9 10 11</p> <p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>12 13 14 15 16</p> <p>James A. Bowles Hill Farrer &amp; Burrill LLP One California Plaza 300 S. Grand Avenue, 37<sup>th</sup> Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>17 18 19 20 21 22</p> <p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Joint Stipulation re Disagreement re Class  
Notice and Request for Status Conference**


**[Proposed] Order**

1 Counsel for Plaintiff George Huerta and Defendant CSI Electrical Contractors, Inc.  
2 (“Defendant”) (“Parties”) have met and conferred regarding whether any class claims remain and  
3 whether class notice should be sent to class members in light of the Court’s ruling granting Defendant’s  
4 Motion for Partial Summary Judgment. Defendant contends that no class claims remain, and Plaintiff  
5 contends that the 5(A) class claim remains.

6 The Parties request a status conference to discuss this and other issues with the Court.

7 Dated: May 26, 2021

THE DION-KINDEM LAW FIRM

8  
9 BY:   
10 PETER R. DION-KINDEM, P.C.  
11 PETER R. DION-KINDEM  
Attorney for Plaintiff George Huerta

12 Dated: May 26, 2021

FORD & HARRISON LLP

13  
14 BY:           /s DANIEL B. CHAMMAS            
15 DANIEL B. CHAMMAS  
16 Attorney for Defendant  
CSI Electrical Contractors, Inc.

17 **ORDER**

18 Pursuant to the Parties’ Stipulation, a status conference is set for \_\_\_\_\_ at  
19 \_\_\_\_\_.

20  
21 Date: \_\_\_\_\_

\_\_\_\_\_  
22 Beth Labson Freeman  
23 District Court Judge  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

GEORGE HUERTA,  
Plaintiff,  
v.  
CSI ELECTRICAL CONTRACTORS, INC.,  
Defendant.

Case No. 18-cv-06761-BLF

**ORDER GRANTING STIPULATION  
AND SETTING CASE MANAGEMENT  
CONFERENCE FOR JUNE 3, 2021 AT  
10:30AM**

The Court GRANTS the parties' stipulation at ECF 144 and SETS a case management conference for **June 3, 2021 at 10:30am.**

**IT IS SO ORDERED.**

Dated: May 26, 2021



BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California





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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Plaintiff's Statement re Remaining Claims  
Following Court's Ruling on Motion of CSI  
Electrical Contractors, Inc. for Partial  
Summary Judgment**

1 Pursuant to the Court's Order dated April 28, 2021 (Dkt 142), Plaintiff responds to the Court's  
2 request for Plaintiff's statement as to what claims Plaintiff contends remain to be tried in this case.

3 **I. PLAINTIFF'S PARAGRAPH 5(A) CLAIM REMAINS TO BE TRIED.**

4 **A. Plaintiff's 5(A) claim**

5 Paragraph 5(A) of Wage Order 16 provides:

6 (A) All employer-mandated travel that occurs *after the first location where the*  
7 *employee's presence is required by the employer* shall be compensated at the employee's  
8 regular rate of pay or, if applicable, the premium rate that may be required by the  
9 provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.  
10 (Emphasis added.)  
11

12 Plaintiff has always contended that the first location where the employees' presence was  
13 required by CSI was at the Security Gate where the badging occurred. This claim was not dependent  
14 on, and does not require proof, that the Security Gate was the *only* location where the employees could  
15 enter the Solar Site, nor is this claim dependent on, and does not require proof, that a badging process  
16 occurred at such location.

17 **B. The Court's Certification Orders**

18 On March 12, 2021, the Court entered an Order certifying the 5(A) claim and other claims. (Dkt  
19 119) Thereafter, on March 18, 2021, the parties stipulated, and the Court ordered, that the 5(A) class be  
20 defined as follows:

21 all non-exempt persons who were employees of or worked for CSI Electrical Contractors,  
22 Inc. on the construction of the California Flats Solar Project at any time within the period  
23 from July 30, 2014 through the date of class certification who were not paid for all time  
24 traveling from Security Gate of the Site where the badging occurred to when they began  
25 to be paid and from when they stopped being paid to when they arrived back at the  
26 Security Gate where the badging occurred. (Dkt 127, ¶ 2c)  
27  
28

1 The parties thereafter stipulated, and on March 30, 2021, the Court ordered, that Paragraph 3 of  
2 the Certification Order be modified as follows:

3  
4 3. The class issues are (1) whether Security Time constituted “hours worked” under  
5 California law; (2) whether travel time between the Security Gate where the badging  
6 occurred and the parking lots constituted “hours worked” under California law; (3)  
7 whether travel time after the Security Gate where the badging occurred was time for  
8 which class members were entitled to be paid pursuant to Wage Order No. 16 ¶ 5(A); (4)  
9 whether meal periods constituted “hours worked” under California law; (5) whether CSI  
10 is liable for penalties under Section 203; (6) whether CSI violated its obligations under  
11 Section 226(a); (7) *whether CSI had a uniform policy that the first location where the*  
12 *employee’s presence was required by CSI was the Security Gate where the badging*  
13 *occurred*; and (8) whether CSI had a uniform policy preventing class members from  
14 leaving their daily work sites during their meal periods. (Emphasis added.) (Dkt 135.)

15 The parties agreed that nothing in their Stipulation “shall preclude any 5A class claim based on  
16 contention that the Security Gate where the security badging process occurred was the first location  
17 where the employees’ presence was required by CSI or the Entrance and/or Exit security claims  
18 involving lines of employee vehicles and other vehicles that occurred to enter and/or exit through the  
19 Security Gate where the security badging occurred after the Phase 1 Security Gate was initially opened  
20 in the morning . . .” (*Id.* ¶ 9.)

21 **C. CSI’s partial summary judgment motion**

22 The only issues sought to be adjudicated in Defendant’s motion for partial summary judgment  
23 relating to the 5(A) claim, and the only issues that were adjudicated by the Court regarding the 5(A)  
24 claim, are the following:

25 3. The requirement that Plaintiff enter the Project from its single entrance does not  
26 obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage  
27 Order 16;  
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6. The requirement that Plaintiff “badge in” at a guard shack each morning does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16; (Dkt 141, pages 19-20)

As discussed below, neither of these findings preclude Plaintiff’s 5(A) claim.

**D. There is nothing in Paragraph 5(A) that limits its effect to locations that are the only entrance to a specific property at which employees work.**

There is nothing in Paragraph 5(A) that limits its effect to locations that are the only entrance to a specific property at which employees work, nor is there any language in Paragraph 5(A) that requires employees “report to work” at the first location where their presence is required in order for Paragraph 5(A) to be applicable. For example, if construction workers were required to be at a specific location at the beginning of the day that was not at an entrance to a specific property at which the employees worked, such as a gas station or the employer’s office, and then travel to where they worked for the day and “report to work” there, they would still be entitled to compensation for all travel to and from that first location under Paragraph 5(A).

Similarly, if the Project had more than one entrance and some employees were first required to be present at one entrance and other employees were first required to be present at another entrance, they would all be entitled to be paid for travel time occurring after their respective entrances. Plaintiff does not need to establish that Plaintiff was required to enter the Project from a single entrance in order to pursue a 5(A) claim.

Here, Plaintiff established through declarations that the Security Gate was in fact the “first location where the employee’s presence is required” by CSI. (Huerta Decl. ¶¶ 11, 17; Clarno Decl. ¶¶ 9, 14; Garcia Decl. ¶¶ 9, 14; Tucker Decl. ¶¶ 11, 16.)

**Huerta Declaration**

- “When the mandatory entrance and exit security process occurred at the Phase 1 Security Gate, I was told by CSI management, by the security office, and by other management

1 that the first place the other CSI workers and I were required to be at the beginning of the  
2 day in order to work was the Phase 1 Security Gate . . . (Huerta Decl., Dkt 128-2, ¶ 11.)

- 3  
4 • To work on the Solar Site, the first place the other workers and I were required to be was  
5 at the Security Gate where the mandatory security process occurred . . . (Huerta Decl.,  
6 Dkt 128-2, ¶17.)

7 **Clarno Declaration**

- 8 • I was told by CSI management during my orientation for Phase 2 that the first place the  
9 other CSI workers and I were required to be at the beginning of the day in order to work  
10 was the Phase 2 Security Gate . . . (Claro Decl., Dkt 128-3, ¶9.)  
11  
12 • To work at the Solar Site, the other workers and I were required to be present physically  
13 at the Phase 2 Security Gate . . . (Claro Decl., Dkt 128-3, ¶14.)

14 **Garcia Declaration**

- 15 • I was told by CSI management (including my foreman Daniel Jimenez), for Phase 2 that  
16 the first place the other CSI workers and I were required to be at the beginning of the day  
17 in order to work was the Phase 2 Security Gate . . . (Garcia Decl., Dkt 128-5, ¶ 9.)  
18  
19 • To work at the Solar Site, the first place the other CSI workers and I were required to be  
20 at the beginning of the day was the Phase 2 Security Gate . . . (Garcia Decl., Dkt 128-5,  
21 ¶14.)

22 **Tucker Declaration**

- 23 • I was told by CSI management during my orientation for Phase 2 that the first place the  
24 other CSI workers and I were required to be at the beginning of the day in order to work  
25 was the Phase 2 Security Gate . . . (Tucker Decl., Dkt 128-4, ¶11.)  
26  
27 • To work at the Solar Site, that the first place the other CSI workers and I were required to  
28 be at the beginning of the day was the Phase 2 Security Gate . . . (Tucker Decl., Dkt 128-  
4, ¶16.)

1           ***CSI did not produce any evidence contradicting these declarations.***

2           Thus, even though Plaintiff happened to have entered the Solar Site from a single entrance,  
3 because the Security Gate was the “first location where the employee’s presence is required” by CSI,  
4 then all travel occurring thereafter is compensable under Paragraph 5(A). The Court’s finding that “The  
5 requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to compensate  
6 Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16” does not foreclose Plaintiff’s  
7 5(A) claim.

8           **E.       There is nothing in Paragraph 5(A) that limits its effect to locations where a badging**  
9           **process occurs.**

10           Similarly, there is no language in Paragraph 5(A) that limits its effect to locations where a  
11 badging process occurs. If, for example, construction workers were required to be at a specific location  
12 at the beginning of the day, such as a gas station or the employer’s office, and then travel to where they  
13 “reported to work” and worked for the day, they would be entitled to compensation for all travel to and  
14 from that first location, regardless of whether there was any “badging” process at that first location or  
15 whether they “reported to work” at the first location.

16           Plaintiff has never contended that the requirement that Plaintiff “badge in” at the Security Gate  
17 each morning was the fact that obligated CSI to compensate Plaintiff for travel occurring after the  
18 Security Gate under Paragraph 5(A). Rather, Plaintiff contends that because the Security Gate was the  
19 location where his and the class members’ presence was first required, he and the class members were  
20 entitled to be paid for travel occurring thereafter under Paragraph 5(A). ***Plaintiff would and does have***  
21 ***this 5(A) claim even if there was no badging process at the Security Gate.***

22           Here, Plaintiff established through declarations that the Security Gate was in fact the “first  
23 location where the employee’s presence is required” by CSI. (See declaration citations, *supra*) ***CSI did***  
24 ***not produce any evidence contradicting these declarations.***

25           Thus, regardless of whether the Security Gate had a badging process, because the Security Gate  
26 was the “first location where the employee’s presence is required” by CSI, then all travel occurring  
27 thereafter is compensable under Paragraph 5(A). The Court’s finding that “The requirement that  
28

1 Plaintiff ‘badge in’ at a guard shack each morning does not obligate CSI to compensate Plaintiff for  
2 reporting to work under Paragraph 5(A) of Wage Order 16” therefore does not foreclose Plaintiff’s  
3 5(A) claim.

4 **II. REMAINING CLAIMS FOR UNPAID “HOURS WORKED”**

5 If CSI had believed that *all* of Plaintiff’s claims were meritless, it would have filed a motion for  
6 summary judgment, not a motion for partial summary judgment.

7 In Plaintiff’s operative First Amended Complaint, Plaintiff alleges:

8  
9 30. Plaintiff and other class members were subject to wrongfully unpaid off-the-clock  
10 work time before their scheduled start times and after their scheduled stop times but were  
11 only paid for the time between their scheduled start and stop times. Specifically, the  
12 Project is located on the Jack Ranch. To get to the Solar Site, it was necessary to pull off  
13 Highway 46 and drive onto a road. The Security Gate Entrance to the Solar Site is about a  
14 quarter of a mile or so from the intersection of Highway 46 and this road (“Security Gate  
15 Entrance”). . . . *Defendants required him and other class members to arrive at the*  
16 *Security Gate Entrance controlled by Defendants, to wait in vehicle lines for*  
17 *Defendants’ biologists to approve the road for travel, then wait in a vehicle line to have*  
18 *their badges swiped (“badge in”) by a person or persons employed or controlled by*  
19 *Defendants. . . .*

20 31. Approximately a month after Plaintiff began working at Phase Two of the Project  
21 under California Compaction, in or about April 2018, Defendants created a new badging  
22 station, further up the Solar Site Access Road and closer to the parking lots, that was  
23 approximately seven to eight miles from the Security Gate Entrance (“Second Badging  
24 Station”). *Although, the badging location changed, Defendants maintained the original*  
25 *Security Gate Entrance and continued to require class members to wait outside the*  
26 *original Security Gate Entrance in the mornings until the biologists had approved*  
27 *travel on the Solar Site Access Road. . . .*

1 32. When they arrived at the parking lot, Plaintiff and other class members were required  
2 to wait in lines to sign in on approximately four sign-in sheets in the lot. Because of the  
3 large number of workers, class members could have to wait 10 to 15 minutes to get  
4 through these lines. Once they signed the sheet, class members were generally required to  
5 locate their crews and either attend company meetings or take company transport to the  
6 specific locations where they were to work that day (“Installation Sites”). . . .

7  
8 33. The times recorded by Defendants as class members’ start times were their scheduled  
9 times and reflected the time at which Defendants expected class members to be either at  
10 company meetings or at their designated Installation Sites. The start times therefore did  
11 not reflect the actual time Plaintiff and other class members were under Defendants’  
12 control. Specifically, *the start time failed to reflect Plaintiff and other class members’*  
13 *arrival at Defendants’ Security Gate Entrance, their time waiting to get through that*  
14 *gate*, the time of the controlled drive to the Second Badging Station (during the  
15 applicable period), the time waiting in line to badge through the Second Badging Station  
16 (during the applicable period), the time of the controlled drive from the Second Badging  
17 Station to their assigned parking lot (during the applicable period), *the time waiting in*  
18 *line to sign in for the day, or the time to travel from the sign-in locations to the*  
19 *morning meeting location or Installation Sites.*

20 34. Similarly, at the end of the day, the stop times recorded by Defendants were Plaintiff  
21 and other class members’ scheduled stop times and did not reflect the actual time at  
22 which Plaintiff and other class members were no longer under Defendants’ control. . . .

23 . . .

24 36. Plaintiff and class members were entitled to be paid for all hours worked for  
25 Defendants, *including time waiting outside of the Entrance Security Gate*, travel time  
26 between the Entrance Security Gate and the parking lot, badging time, *waiting in line to*  
27  
28



1 *sign in time, and travel time to meetings and/or Installation Sites in the mornings.*

2 (Emphasis added.)

3  
4 CSI’s motion for partial summary judgment did not seek to adjudicate, and the Order granting  
5 CSI’s motion for partial summary judgment did not adjudicate, *every* element of time that Plaintiff  
6 alleged constituted hours worked for which Plaintiff was not paid. Moreover, in the Stipulation agreed  
7 to and ordered by the Court, the parties stipulated that “Plaintiff George Huerta’s claim that he was  
8 required to arrive at the Phase 1 Security Gate at a specific time before it opened is not a part of the  
9 class claims and is only part of Huerta’s individual claims.” (Dkt 135, ¶ 8.)


10 Therefore, the unadjudicated individual claims remain to be tried.

11 **III. MEDIATION WITH MAGISTRATE JUDGE**

12 Plaintiff’s counsel has met and conferred with CSI’s counsel. Plaintiff is willing to accept a  
13 settlement conference referral to a magistrate judge regarding this case. Defendant’s counsel has  
14 indicated that he needs to evaluate Plaintiff’s position as to the remaining issues before his client can  
15 decide whether to accept a settlement conference referral to a magistrate judge regarding this case.<sup>1</sup>

16 Dated: May 3, 2021

THE DION-KINDEM LAW FIRM

17  
18 BY:   
19 PETER R. DION-KINDEM, P.C.  
20 PETER R. DION-KINDEM  
21 Attorney for Plaintiff George Huerta

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28 <sup>1</sup> The *Durham* case is set for mediation with a private mediator on June 29, 2021.

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

GEORGE HUERTA,  
Plaintiff,

v.

CSI ELECTRICAL CONTRACTORS,  
INC.,  
Defendant.

Case No. 18-cv-06761-BLF

**ORDER ON REMAINING ISSUES AND  
SETTLEMENT CONFERENCE**

On April 28, 2021, the Court issued an order granting Defendant’s motion for partial summary judgment in full. The Court DIRECTS Plaintiff to inform the Court of the remaining claims in this case **no later than May 5, 2021**.

The parties SHALL inform the Court **no later than May 5, 2021** whether they would appreciate a settlement conference referral to a magistrate judge regarding this case and all related cases.

**IT IS SO ORDERED.**

Dated: April 28, 2021



BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California



PETER R. DION-KINDEM (SBN 95267)  
THE DION-KINDEM LAW FIRM  
PETER R. DION-KINDEM, P. C.

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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

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California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
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Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**SECOND JOINT STIPULATION FOR  
ORDER CLARIFYING CLASS  
CERTIFICATION ORDER**

The parties stipulate and request that the Court enter an Order modifying the Court's Class  
Certification Order to clarify certain of the certified issues.

**SECOND JOINT STIPULATION FOR ORDER MODIFYING CLASS CERTIFICATION  
ORDER TO CLARIFY ISSUES - Case No. 5:18-cv-06761-BLF**

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7. The parties agree that Paragraph 3 of the Certification Order be modified as follows:
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**SECOND JOINT STIPULATION FOR ORDER MODIFYING CLASS CERTIFICATION  
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11 Dated: March 29, 2021

THE DION-KINDEM LAW FIRM

12 BY:

13 

14 PETER R. DION-KINDEM, P.C.  
15 PETER R. DION-KINDEM  
16 Attorney for Plaintiff George Huerta

17 Dated: March 29, 2021

FORD & HARRISON LLP

18 BY:       /s DANIEL B. CHAMMAS      

19 DANIEL B. CHAMMAS  
20 Attorney for Defendant  
21 CSI Electrical Contractors, Inc.



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
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Holdco, LLC, a Delaware Limited Liability  
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Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
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~~Proposed~~ **Order Modifying Class  
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15  
16 Dated: March 30, 2021



17 BETH LABSON FREEMAN  
18 UNITED STATES DISTRICT JUDGE  
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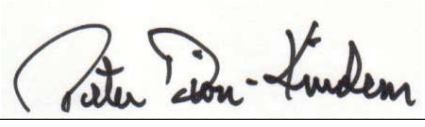
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11 Dated: March 29, 2021

THE DION-KINDEM LAW FIRM

12  
13 BY:   
14 PETER R. DION-KINDEM, P.C.  
15 PETER R. DION-KINDEM  
16 Attorney for Plaintiff George Huerta

17 Dated: March 29, 2021

FORD & HARRISON LLP

18 BY:       /s DANIEL B. CHAMMAS        
19 DANIEL B. CHAMMAS  
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**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Plaintiff's Objections to Declarations  
submitted by Defendant CSI Electrical  
Contractors, Inc. in its Reply Papers re  
Motion for Partial Summary Judgment**

Date: April 8, 2021

Time: 9:00 a.m.

Crtrm: 3

1 **I. THE NEW DECLARATIONS SHOULD BE STRICKEN.**

2 The declarations submitted with CSI's reply brief raise new facts, which is not permitted. (*See*  
 3 *Provenz v. Miller* (9th Cir. 1996) 102 F.3d 1478, 1483 ("Where new evidence is presented in a reply to  
 4 a motion for summary judgment, the district court should not consider the new evidence without giving  
 5 the non-movant an opportunity to respond." (internal quotation marks and alterations omitted));  
 6 *Schwartz v. Upper Deck Co.* (S.D. Cal. 1999) 183 F.R.D. 672, 682 ("It is well accepted that raising of  
 7 new issues and submission of new facts in [a] reply brief is improper." (internal quotation marks  
 8 omitted)). A court may strike new evidence raised for the first time in a reply. (*Roe v. Doe* (N.D. Cal.,  
 9 June 30, 2009, No. C 09-0682 PJH) 2009 WL 1883752, at \*5.)

10 Accordingly, Plaintiff requests that the Court strike the two declarations submitted by CSI for  
 11 the first time in its reply papers. If the Court is going to consider such declarations, Plaintiff should be  
 12 given leave to respond to same. See Local Rule 7-3(d), which provides in relevant part:

13 **(d) Supplementary Material.** Once a reply is filed, no additional memoranda, papers or  
 14 letters may be filed without prior Court approval, except as follows:

15 **(1) Objection to Reply Evidence.** If new evidence has been submitted in the reply, the  
 16 opposing party may file within 7 days after the reply is filed, and serve an Objection to Reply  
 17 Evidence, which may not exceed 5 pages of text, stating its objections to the new evidence,  
 18 which may not include further argument on the motion. The Objection to Reply Evidence  
 19 must be filed and served not more than 7 days after the reply was filed. . . .

20 **II. PLAINTIFF OBJECTS TO THE DECLARATION OF DANIEL CHAMMAS.**


21 Mr. Chammas seeks to attach additional pages from Plaintiff's deposition transcript. This is  
 22 improper. Defendant had the opportunity to present whatever evidence it wanted to present in its  
 23 moving papers and should not be permitted to sandbag Plaintiff by attempting to present additional  
 24 evidence in its reply papers.

25 **III. THE DECLARATION OF KEITH MENDES SHOULD BE STRICKEN.**

26 CSI offers the declaration of Mr. Mendes in support of its Reply Memorandum. This is replete  
 27 with inadmissible and irrelevant conclusions and inadmissible hearsay. Defendant had the opportunity  
 28 to present whatever evidence it wanted to present in its moving papers and should not be permitted to  
 sandbag Plaintiff by attempting to present additional evidence in its reply papers. His testimony, even if  
 proper, is irrelevant to any issue before this Court on this motion in any event.

Dated: March 29, 2021

THE DION-KINDEM LAW FIRM

BY:   
PETER R. DION-KINDEM, P.C.  
PETER R. DION-KINDEM  
Attorneys for Plaintiff George Huerta

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6 Attorneys for Defendant,  
7 CSI Electrical Contractors, Inc.

8 **UNITED STATES DISTRICT COURT**  
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22 Defendants.

Case No.: 5:18-cv-06761-BLF  
Assigned to Hon. Beth Labson Freeman

**DEFENDANT CSI ELECTRICAL  
CONTRACTORS INC.'S REPLY BRIEF IN  
SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Date: April 8, 2021  
Time: 9:00 a.m.  
Ctrm: 3

State Complaint Filed: July 30, 2018  
State First Amended  
Complaint Filed: October 1, 2018  
Removal Filed: November 7, 2018



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 2 32 Cal. App. 4th 968 (1995) ..... 12, 13

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 4 2020 U.S. LEXIS 242080 (N.D. Cal. Dec. 23, 2020) ..... 11

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1 **I. INTRODUCTION**

2 Plaintiff George Huerta opposes this partial motion for summary judgment entirely on  
 3 grounds that have been already rejected by this Court and unanimously by the Ninth Circuit.  
 4 While this is his right because he is not bound by the prior related actions, *Griffin v. Sachs*  
 5 *Electric et al.*, Case No. 17-cv-03778-BLF (“*Griffin Action*”) and *Durham v. Sachs Electric et al.*,  
 6 Case No. 18-cv-04506-BLF (“*Durham Action*”), this Court should reaffirm its prior holdings and  
 7 the Ninth Circuit’s holding (“*Griffin Decisions*” and “*Durham Decision*”), and award Defendant  
 8 CSI Electrical Contractor Inc.’s partial summary judgment here. Huerta’s opposition tries to  
 9 revive three claims from the *Griffin Action* and the *Durham Action*: (1) the badging process  
 10 claims, (2) the drive time claims, and (3) the hours worked during meal period claims. Huerta’s  
 11 arguments have been rejected before and they should be rejected again.

12 Huerta’s claims arising out of the badging process are barred as a matter of law. As this  
 13 Court and the Ninth Circuit held, accessing a door or a perimeter with a key or a card is not  
 14 compensable. The bag check cases are a poor analogy to the badging process here. Huerta  
 15 confirmed what Griffin and Durham had testified to—that all he had to do at the guard shack was  
 16 present his badge to be scanned. This procedure is fundamentally different than an employee  
 17 handing over his or her belongings to be searched. Realizing this, Huerta echoes what Griffin and  
 18 Durham had said—that his vehicle was subject to search. An employer reserving the right to  
 19 search, however, does not entitle employees to the unpaid wages owed when an employer forces  
 20 all of its employees to regularly spend time going through those searches.

21 Huerta’s claims for time spent driving between the entrance to the Project and the parking  
 22 lot were also flatly rejected by this Court and the Ninth Circuit. Like his fellow class members,  
 23 Huerta also claims that rules about how and where he could drive after entering the Project  
 24 controlled him because he could not use that time effectively for his own purposes. Traveling to a  
 25 work station, however, after entering the employer’s premises, is never an opportunity to use that  
 26 time for an employee’s purposes. The commute cases borrowed by Huerta to establish that the  
 27 time is compensable are not relevant here because a commute is an opportunity to run errands,  
 28 drop children off at school, and stop for a cup of coffee. Just as before, this Court should hold that

1 such time is not compensable as a matter of law.

2 Finally, Huerta tries to revive a claim in the *Durham* Action for unpaid wages during a  
3 meal period in which he claims he was not relieved of all duty. As this Court recently held in the  
4 *Durham* Decision, the statutory exemption in the Labor Code permits collective bargaining  
5 agreements (“CBA”) to provide meal periods to union members that do not relieve them of all  
6 duty. Wage Order 16—which is to be afforded the same dignity as a statute—provides that if a  
7 meal period does not relieve a union member of all duty, then such time is not to be counted as  
8 time worked. This exception is as broad as possible, clearly including minimum wage claims.  
9 Obviously, Huerta cannot collect minimum wage for time that is not counted as time worked.

10 **II. THE GRIFFIN AND DURHAM DECISIONS ARE DISPOSITIVE OF HUERTA’S**  
11 **CLAIMS**

12 Contrary to Huerta’s argument, CSI is not urging this Court to apply *res judicata* or  
13 collateral estoppel to his claims, but rather to uphold *stare decisis*. The *Griffin* and *Durham*  
14 Decisions are not binding on Huerta’s claims, but those cases should be applied to and dispose of  
15 the identical claims here. It would be one thing if factual issues unique to Griffin and Durham  
16 were the driving force behind the rulings against their claims. As explained in the moving papers  
17 and further below, the exact same facts that led this Court and the Ninth Circuit to hold that  
18 Griffin’s and Durham’s claims were barred as a matter of law also are the basis of Huerta’s  
19 claims. Therefore, unless this Court reverses its own ruling and takes issue with the Ninth  
20 Circuit’s affirmation of that holding, the same legal principles should be applied here. *See Mack*  
21 *v. Hernandez*, 2010 U.S. Dist. LEXIS 59701, \*33-34, n.6 (S.D. Cal. May 6, 2010) (“unpublished  
22 decisions have persuasive value and indicate how the Ninth Circuit applies binding authority”);  
23 *GeoTag v. Zoosk*, 2014 U.S. Dist. LEXIS 24782, \*9 (N.D. Cal. Feb. 26, 2014) (same).

24 **III. ALL OF HUERTA’S CLAIMS ARISING OUT OF BADGING PROCESS AT THE**  
25 **GUARD SHACK FAIL AS A MATTER OF LAW**

26 **A. The Badge In/Badge Out Process Is Not Analogous To The Bag Search Cases**

27 Like Griffin, Huerta argues that stopping at a guard shack in a vehicle to have a badge  
28 scanned before entering or exiting a facility is analogous to presenting bags to security to be rifled  
through and searched before walking out of a building. Huerta cites to exactly the same cases that

1 Griffin did to make the same exact argument: *Cervantez v. Celestica*, 618 F. Supp. 2d 1208 (C.D.  
 2 Cal. 2009), *Frlekin v. Apple*, 8 Cal. 5th 1038 (2020), and *Pelz v. Abercrombie and Fitch*, 2015  
 3 WL 12712298 (C.D. Cal., June 4, 2015) But this Court and the Ninth Circuit rejected those cases  
 4 because the bag searches in those cases were nothing like the scanning of badges in a vehicle.

5 In *Griffin v. Sachs*, 390 F. Supp. 3d 1070, 1090 (N.D. Cal. 2019), this Court rejected  
 6 Griffin’s argument that “workers were [] under Sachs's control at the **beginning and end** of the  
 7 workday because they were required to badge-in and badge-out at the Security Gate.” (Emphasis  
 8 added.) This Court distinguished *Cervantez* because in that case, “the security screening at issue  
 9 was ‘akin to screenings at an airport’ to which all employees had to submit.” *Id.*, 1090-91. This  
 10 Court held that, “[h]ere, by contrast, personnel at the Security Gate did not screen employees or  
 11 their belongings in such a manner. Instead, workers traveling by car presented their badges at the  
 12 guard shack to gain entry through the Security Gate.” *Id.* The Court noted that “workers were not  
 13 required to exit the car, but simply held up their badges for scanning by the person(s) staffing the  
 14 guard shack,” which was “analogous to scanning or flashing an employee badge to enter a  
 15 compound or campus, and unlike the airport-like screening in *Cervantez* that applied to all  
 16 employees.” *Id.* This Court also considered *Pelz*, and distinguished it because it involved an  
 17 “actual bag check before the employees were permitted to leave.” *Id.*, at 1091.

18 The California Supreme Court decision in *Frlekin* had not been issued at the time of this  
 19 Court’s ruling, but the Ninth Circuit squarely rejected its relevance to the badging process here. In  
 20 *Griffin v. Sachs*, 831 Fed. Appx. 270, 271 (9th Cir. Dec. 11, 2020), the Ninth Circuit held:

21 Griffin was not under Sachs's control while waiting in line for guards to badge  
 22 him in or out at the security gate. Griffin relies on *Frlekin v. Apple, Inc.*, 8 Cal.  
 23 5th 1038, 258 Cal. Rptr. 3d 392, 457 P.3d 526 (Cal. 2020), in arguing that  
 24 employees must be compensated any time they wait for and undergo “mandatory  
 25 security processes.” *Frlekin* made clear that an employer's level of control over its  
 26 employees is the ‘determinative factor’ in assessing whether compensation is  
 27 required, but that case involved mandatory searches of employees' bags and other  
 28 belongings. 457 P.3d at 534. Here, although the line of vehicles waiting to pass

1 through the security gate could be long, all Sachs's employees had to do was flash  
2 their badges to a guard, which is significantly less invasive than the exit searches  
3 at issue in *Frlekin*. Griffin's Security Time is thus not compensable.

4 After this Court's ruling and the Ninth Circuit's decision, it is simply beyond dispute that the  
5 badge in and badge out procedure in employee's vehicles on the Project is not compensable.

6 Huerta attempts to dramatize the badging process by pointing to "specific tasks" that were  
7 required of him. Huerta asserts that he was required to "wait[] in line," "driv[] his vehicle through  
8 the line," "locate his badge," and "show [it] to the exit security personnel." (Opp. at 13.) All of  
9 these "tasks," however, were also required in *Griffin*. Huerta further argues that workers "also had  
10 to leave the line if they did not have their security badge." (*Id.*) According to Huerta, in such  
11 cases, CSI "would make the vehicle park on the side of the road, and would require any  
12 passengers who did not have their scan-in badges to go into the guard shack to be cleared to pass  
13 through the Security Gate." (*Id.*, at 4.)

14 However, if an employee forgets his or her key or access card to enter a building, a  
15 requirement to verify identity is not an indicia of control requiring compensation. It would make  
16 no sense to allow an employer to require an employee to present a card or a badge or a key to  
17 enter the workplace without compensation, if that employer were not also permitted to enforce  
18 such a requirement by verifying that those seeking to access the premises are authorized to be  
19 there if they do not have the access card.

20 Huerta contends that during the badging process, workers "were also required to allow  
21 their vehicles to be searched, some of which were." (Opp. at 13.) Huerta, however, fails to  
22 provide the most important fact of all—that his vehicle was ever, even on a single occasion,  
23 searched. Huerta does not even say that he observed or is aware that any vehicles were searched.  
24 Huerta, rather, cites to a few other employees, none of whom were searched themselves, but can  
25 weakly state that they "have seen security guards search vehicles during the exit process." These  
26 assertions are meaningless here because there is no indication if such searches involved any more  
27 than a handful of vehicles; *i.e.*, such observed searches were not part of a routine or regular event.

28 Huerta also blurs the distinction between reserving the right to search vehicles and the

1 actual search of vehicles. CSI was on the Project for more than a year, and more than 58,000  
 2 badges were scanned during that time period. (Mendes Decl., ¶ 7.) Huerta cannot raise a triable  
 3 issue of fact that the vehicles passing through the guard shack presenting those badges to be  
 4 scanned were ever searched any more than on a handful of occasions.

5 Huerta also attempts to speculate about what an attendant was thinking when he “looked”  
 6 at Huerta’s “pick-up truck.” (Huerta Decl., ¶ 27.) According to Huerta, during the badge out  
 7 process, he “observed that the security guards would look at the bed of [his] truck to make sure  
 8 there were no tools or anything else improper in there.” (*Id.*) Obviously, Huerta cannot  
 9 competently testify about what others were thinking while they were looking in the direction of  
 10 something. Equally important, Huerta does not say that anyone ever touched his vehicle or  
 11 anything in it, opened a door, lifted a single thing up, or rummaged through anything in or on his  
 12 trunk. This is the critical difference between *Frlekin* and this case. If the gate attendants opened  
 13 up trunks and searched inside after each vehicle stopped, then a fair analogy can be made. But  
 14 because vehicles here merely stopped to scan badges before moving on, *Frlekin* is not helpful to  
 15 Plaintiff, even if the gate attendants stared at the vehicle upon its exit.

16 It simply does not matter if the gate attendants were vigilant, alert, and trying to identify  
 17 any potential safety issues, as long as they did no more than look around while scanning badges.  
 18 Obviously, an employee exiting a parking garage who needs to scan a badge to open a mechanical  
 19 gate need not be compensated just because the gate attendant “eyeballed” the employee’s vehicle  
 20 as the employee left, no matter what the attendant may have been thinking. Finally, Apple  
 21 searched bags solely on the way **out**; here, badges were scanned on the way **in** as well.

22 Importantly, Huerta confirmed that his time through the badging process was brief and  
 23 uneventful. *See* Huerta Depo., 75:1-9 (Q So you held [a badge] up and they scanned it; correct?  
 24 That's correct. Q They didn't take it from you; they just scanned it while you're holding it? A  
 25 That's correct. Q And then you drove out; correct? You were done; right? A Yes.); *id.*, 191:8-19;  
 26 192:2-13 (Q [Y]ou'd have to stop at the security gate, roll down your window, and let them scan  
 27 your badge? A That is correct. Q And **they would just scan your badge and that would it be it;**  
 28 **right? You would do nothing else at the first security gate;** correct? A When they only had one



1 security gate, that's correct....Q And then the first time that you stopped in that situation when  
 2 there was a second security gate would be to show your badge at the second security gate? A That  
 3 is correct. Q **And would it be the same thing that you did with the first security gate, show**  
 4 **your badge and they scan it? A That is correct. Q And then you would drive from the**  
 5 **second security gate to the parking lot; correct? A Yes.)** (Emphasis Added.)

6 **B. The Badging-In At The Guard Shack Does Not Require Compensation Under**  
 7 **Paragraph 5(A) Of Wage Order 16**

8 Huerta asserts that “the Security Gate where the mandatory entrance security process  
 9 occurred was the first location where the employees' presence was required.” (Opp. at 17.)  
 10 According to Huerta, this requirement to “report” to the security gate entitles him to “reporting  
 11 time pay” under Paragraph 5(A) of Wage Order 16. (*Id.*) As pointed out in the moving papers,  
 12 however, this Court and the Ninth Circuit each rejected this precise argument. (Mot. at 5-6.)  
 13 Huerta does not even attempt to distinguish between his reporting to the badging gate and  
 14 Griffin’s reporting to the badging gate. Huerta does not argue why these holdings do not equally  
 15 apply to his “Paragraph 5(A) claim.” Huerta does not challenge, take issue, or even address the  
 16 reasoning of these decisions. Therefore, this Court’s holding adjudicating the Paragraph 5(A)  
 17 claim in the employer’s favor and the Ninth Circuit’s decision affirming that holding should be  
 18 applied to this case to achieve the same result.

19 **C. CSI Did Not “Suffer or Permit” Work During The Badging Process**

20 Huerta argues that he should be paid for the badging process because the “activities CSI  
 21 requires of its workers for the security process in this case meet [the] plain-language definition of  
 22 ‘work.’” (Opp. at 17.) Huerta reasons that these activities “involve ‘exertion’ or ‘effort’ required  
 23 by CSI, including complying with security personnel's directions, driving a vehicle in the security  
 24 line, rolling down windows, locating and displaying identification cards, allowing vehicles to be  
 25 searched, and moving vehicles as directed by security personnel.” (*Id.*) Setting aside the  
 26 “searches” that never occurred, the other tasks are not compensable any more than walking from a  
 27 parking lot or opening a door on the way to a time clock before work also involves “exertion” or  
 28 “effort.” Finally, all of these tasks at the badging gate were present in the *Griffin* Action and were

1 rejected as forming any part of compensable behavior.

2 **IV. WHETHER OR NOT EMPLOYEES CAN USE THE TIME EFFECTIVELY FOR**  
 3 **THEIR OWN PURPOSES IS NOT THE TEST FOR COMPENSABLE CONTROL**  
 4 **IN THE CONTEXT OF EMPLOYEES ACCESSING, EXITING, OR TRAVELING**  
 5 **ON THE EMPLOYER’S PREMISES**

6 Throughout his brief, Huerta argues that many of the activities required by CSI are  
 7 compensable because they prevented employees from using the time effectively for their own  
 8 purposes. In a lengthy discussion, this Court rejected the exact same argument in *Griffin*. In that  
 9 case, this Court noted that Griffin argued that “‘Sachs workers had no ability to run errands once  
 10 they passed through the Security Gate’ and that after passing through the Security Gate ‘they were  
 11 not free to use the time effectively for their own purposes.’” *Griffin*, 390 F. Supp 3d at 1088  
 12 (citing Griffin’ brief). This Court held that “Plaintiff’s argument misses the essential point,”  
 13 holding that “Plaintiff’s argument is not salient because no employee in any work context driving  
 14 her own vehicle could run errands while ‘traveling on the employer’s premises before work’” and  
 15 that “[t]he fact that Plaintiff could no longer run an errand while on the Project [site] does not  
 16 speak to the level of control.” *Id.* (citing Sachs’ brief). The Ninth Circuit rejected Griffin’s  
 17 identical argument as well, noting that his drive “more closely resembles a continuation of his  
 18 commute,” and holding that “[t]he rules governing the drive were not particularly burdensome  
 19 and reflected the nature of the property—a remote, private ranch containing cattle, as well as  
 20 endangered species and their habitat.” *Griffin*, 831 Fed. Appx. at 271-272.

21 In his brief, Huerta does not argue that the rules were any different than those in the  
 22 *Griffin* Action. Like Griffin, Huerta relies heavily on *Morillion v. Royal Packing*, 22 Cal. 4th 575  
 23 (2000), asserting that *Morillion* compels compensation for the time in Huerta’s vehicle from the  
 24 moment that he approaches the security gate. Just as in *Morillion*, argues Huerta, CSI “determined  
 25 when, where and how employees were to travel between the Security Gate and the parking lots.”  
 26 (Opp. at 14.) “CSI controls ‘how’ the workers must travel — they are limited in how fast they can  
 27 go, whether they can stop, whether they can pass other vehicles,” and “CSI’s workers were  
 28 confined to the Access Road just as the *Morillion* workers were confined to the buses...required  
 to use a specific route on private land after entering the secured Site and were subject to stringent

1 controls over what they could do while on the Access Road.” (*Id.*)

2 To be clear, CSI certainly is not arguing that rules prohibiting certain conduct or  
3 regulating an employee’s path of travel ordinarily do not warrant compensation or that such rules  
4 cannot constitute compensable control. Context, however, is everything, and the “level of control”  
5 that such rules impose on an employee traveling on the employer’s premises before and after  
6 work is significantly less than the same rules at a different time and a different place.

7 In *Morillion*, for example, the Court held that a bus ride—not on the employer’s  
8 premises—was compensable because it was required and therefore “prohibit[ed] [the employees]  
9 from effectively using their travel time for their own purposes.” *Morillion*, 22 Cal. 4th at 586.  
10 The Court even noted that “during the bus ride plaintiffs could not drop off their children at  
11 school, stop for breakfast before work, or run other errands requiring the use of a car. Plaintiffs  
12 were foreclosed from numerous activities **in which they might otherwise engage if they were**  
13 **permitted to travel to the fields by their own transportation.**” *Id.* (emphasis added).

14 Similarly, the Ninth Circuit has held that the employer’s requirement that the plaintiff  
15 “drive [a company] vehicle **directly** from home to his job and back,” without making personal  
16 stops rose to the level of compensable control under California law. *Rutti v. LoJack*, 596 F.3d  
17 1046, 1061-62 (9th Cir. 2010). *See also Oliver v. Konica*, 51 Cal. App. 5th 1, 25 (2020) (requiring  
18 employees to carry tools in vehicles may require compensation during a commute if employees’  
19 “vehicles were nearly completely full with tools and parts” and their “personal pursuits during  
20 commute times [w]ere restricted by the volume of parts in their vehicles”).

21 Therefore, in these cases, the courts held that the employers’ rules affecting how an  
22 employee could travel can exert a sufficient level of control over the employees during commutes  
23 to warrant compensation. The central reasoning behind these decisions is that employees were  
24 controlled because they were unable to use their commute time effectively for their own purposes.

25 Like trying to fit a square peg into a round hole, Huerta attempts to force this reasoning to  
26 apply to his travel on the Project by using the language used by the courts in *Morillion*, *Rutti*, and  
27 *Oliver*. (*See Opp.* at 14 (“[a]fter the workers entered the Site through the Security Gate and drove  
28 to and from the parking lots on the Access Road, they were under CSI’s control and could not

1 effectively use such time effectively for their own purposes such as running personal errands.”)  
2 But the reasoning of *Morillion/Rutti/Oliver* is inapt here because an ordinary commute is an  
3 **opportunity** for employees to drive passengers, run errands, take detours, drop their children off  
4 at school, and stop for coffee. These opportunities were taken from employees by the employer  
5 (1) in *Morillion* by requiring them to report to a bus stop, board a bus, and be driven to the fields  
6 where they worked, (2) in *Rutti* by restricting them from making personal stops on the way to  
7 work or to ride with passengers during their commute, and (3) in *Oliver* by forcing them to load  
8 their vehicles with so many tools that their commute could not be used for personal pursuits.

9 By contrast, when an employee is travelling on the employer’s premises before and after  
10 work, he obviously cannot drop off his child at school. As soon as an employee turns her vehicle  
11 onto the employer’s property, she can no longer stop at the grocery store or run personal errands.  
12 The plain disconnect between the reasoning of the *Morillion/Rutti/Oliver* commute cases and this  
13 case is that none of those cases considered the salient issue here: an employee traveling on the  
14 employer’s premises before starting work and after ending work.

15 Therefore, rules imposed during an ordinary commute may exercise a level of control over  
16 an employee that is substantial and that requires an employer to compensate him for that time.  
17 Just like in *Morillion, Rutti, and Oliver*, such rules deprive the employees of opportunities to use  
18 the time in question effectively for their own purposes. *See, e.g., Rutti*, 596 F.3d at 1062 (“Here,  
19 **the level is total control**. To repeat, Rutti was required to use the company truck and was  
20 permitted no personal stops or any other personal use.”) (Emphasis added.)

21 The Court in *Frlekin* warned about using the reasoning of the commute cases like  
22 *Morillion* to the question of control over employees while at work. In *Frlekin*, the court rejected  
23 the employer’s argument that “unlike the employees in *Morillion*, plaintiffs may theoretically  
24 avoid a search by choosing not to bring a bag or iPhone to work.” *Frlekin*, 8 Cal. 5th at 1050-51.  
25 The court reasoned that “there are inherent differences between cases involving time spent  
26 traveling to and from work, and time spent **at** work....[Unlike the control in *Morillion*,] Apple  
27 controls its employees **at the workplace**, where the employer’s interest—here, deterring theft—is  
28 inherently greater.” *Id.*, at 1051 (emphasis in original).

1 The court held that “[b]ecause Apple’s business interests and level of control are greater in  
 2 the context of an onsite search, the mandatory/voluntary distinction applied in *Morillion* is not  
 3 dispositive in this context.” *Id.* Just as the “mandatory/voluntary distinction” in *Morillion* could  
 4 not be imported in to the context of the onsite search in *Frlekin*, the “using the time effectively for  
 5 his or her own purposes” test in the commute cases is not helpful in the context of an employee  
 6 traveling on the employer’s premises before and after work. Accordingly, all of the rules cited by  
 7 Huerta that “controlled” him on the drive from the guard shack to the parking lot did not deprive  
 8 him of any opportunities as he made his way across the Project. The fact that he could not use the  
 9 time on the drive effectively for his own purposes was due to the fact that he was reporting to  
 10 work on the employer’s premises, and not because of any employer rules.

11 **V. HUERTA’S CLAIM FOR HOURS WORKED DURING MEAL PERIODS**  
 12 **CANNOT SURVIVE THE DURHAM DECISION**

13 In the *Durham* Action, this Court already rejected a claim for hours worked during a meal  
 14 period based on an allegation of not being relieved of all duty where the employee works under a  
 15 qualifying collective bargaining agreement. In his opposition brief, Huerta does not attempt to  
 16 distinguish *Durham*, but rather attempt to persuade this Court that it erred in its holding. This  
 17 Court was correct before, and it should reaffirm its prior decision.

18 **A. Huerta Testified That He Was A Member Of A Union**

19 Huerta argues that CSI has “not offered any admissible evidence that Plaintiff worked  
 20 under any qualifying CBA.” (Opp. at 18.) Huerta, of course, does not, because he cannot, deny  
 21 being a union member, and instead quibbles with whether CSI has properly authenticated  
 22 Huerta’s union dispatch documents under the business records exception to the hearsay rule.  
 23 Huerta, however, completely ignores his own testimony cited in the moving papers. (Mot. at 4.)  
 24 In his deposition, Huerta admits that he is “a member of the Operating Engineers Local 3,” that  
 25 the Union “called’ and offered him a chance to work on a “solar project,” and that Huerta  
 26 “accepted the order.” Huerta Depo., 22:11-15; 27:24-28:21. Huerta testified that he later “inquired  
 27 about...work[ing] at Milco” on the Project, the “dispatch [from the union] came out of Santa  
 28 Clara,” and he was sent by the union to work for Milco on the Project. (*Id.*, at 121:2-122:16.)

1           **B. Huerta’s Claim That He Was Not Relieved Of All Duty During His Meal**  
 2           **Period Does Not Entitle Him To Compensation Because He Worked Under A**  
 3           **Qualifying CBA**

4           Unable to disclaim his union membership and in the face of the *Durham* Decision, Huerta  
 5           recreates the same argument already rejected by this Court. First, Huerta argues that “an  
 6           employee's right to be paid for all hours worked exists **independently** of any right to meal periods  
 7           and is not **derivative** of the employee's meal period rights.” (Opp. at 19 (emphasis added).)  
 8           *Durham* cites *Gutierrez v. Brand Energy*, 50 Cal. App. 5th 786 (2020), for support, but that case,  
 9           as this Court held, actually supports the employer’s claim.

10           Huerta, like *Durham*, argues that *Gutierrez* stands for the proposition that CBA  
 11           exemptions do not preclude an employee from suing for minimum wage. This Court rejected this  
 12           precise argument, noting that *Gutierrez* “held that an employer owes an employee minimum  
 13           wages **even where a qualifying CBA exempts certain travel time** because Wage Order 16  
 14           § 5(D) did not contain an express exemption from the minimum wage requirements of Cal. Labor  
 15           Code § 1194.” *Durham*, 2020 U.S. LEXIS 242080, \*14 (emphasis in original). This Court  
 16           recognized that “*Gutierrez* relied on the language of the Wage Order to conclude that § 5(D) does  
 17           not permit an employee to enter into a CBA that waives their right to minimum wage.” *Id.*

18           This Court rejected *Durham*’s argument because “the reasoning in *Gutierrez* relied on the  
 19           language of Wage Order 16 § 5, which is far narrower than the language in § 10.” *Id.*, at \*15. This  
 20           Court also noted that “*Gutierrez* expressly distinguished situations in which there is an applicable  
 21           statutory exemption,” concluding that “[t]he reasoning in *Gutierrez* counsels that this Court  
 22           should similarly distinguish *Durham*'s claims where, as in *Araquistain*, there is an express  
 23           statutory exemption for the particular right at issue. *Id.*, at \*15-16.

24           This Court was correct that Wage Order 16, §5(D) (“Section 5(D)”) is “far narrower” than  
 25           Wage Order 16, § 10(D) (“Section 10(D)”). Section 5(D) specified exactly what type of  
 26           compensation a union member was not entitled to receive for Post-First Location Travel—the  
 27           regular rate of pay. Section 10(D), by contrast, provides that union members’ meal periods **are**  
 28           **not “counted as time worked”** even if they are not relieved of all duty. *Gutierrez*’s literal  
 reading of the wage order to exclude only the remedy identified from compensation actually

1 supports CSI’s argument here. Section 10(D) clearly includes an express minimum wage  
 2 exemption for “on-duty” meal periods—if a meal period is not “counted as time worked,” then  
 3 the minimum wage is not owed.

4 Huerta tries to evade Section 10(D) by arguing that he “is not alleging that the time of his  
 5 meal break should be compensated ‘because he was not relieved of all duty,’” but only “that the  
 6 time of his meal periods constitutes ‘hours worked’ because of the control CSI exercised over him  
 7 during the meal period.” (Opp. at 22.) A claim that a meal period was “controlled,” however, is a  
 8 claim that a meal period was “on duty.” Huerta’s claim that “workers were restricted during meal  
 9 periods from leaving their daily work sites” (Opp. at 19) was first recognized in *Bono v.*  
 10 *Bradshaw*, 32 Cal. App. 4th 968, 971 (1995), which held that “an employee remains subject to the  
 11 control of his or her employer **and is not relieved of all duty** if he or she is precluded from  
 12 leaving the workplace during the meal period.” (Emphasis added.) The *Bono* court, in fact, held  
 13 that “an employee who has a duty or obligation to remain on the premises during meal periods is  
 14 not ‘**free of all duty.**’” *Id.*, at 975 (emphasis added). Indeed, the very definition of an “off-duty  
 15 meal period is an uninterrupted 30-minute period during which the employee is relieved of all  
 16 duty or employer control.” *Jernagin v. City of L.A.*, 2013 Cal. App. Unpub. LEXIS 3780, \*24  
 17 (Cal. Ct. Appl. May 29, 2013). “[T]he test” to determine if a meal period can “be designated ‘off-  
 18 duty’” is “whether the control exercised by the employer permitted the employees to use ‘the time  
 19 effectively for [their] own purposes.’” *Id.*, \*33.

20 As a matter of statutory interpretation, Huerta improperly ignores the plain words of the  
 21 specific provision of Wage Order 16 about whether time during a meal period is “counted as time  
 22 worked,” and resorts instead to the more general standard for “hours worked.” “[A] fundamental  
 23 canon of statutory interpretation holds that, when there is an apparent conflict between a specific  
 24 provision and a more general one, the more specific one governs, regardless of the priority of the  
 25 provisions’ enactment.” *United States v. Soberanes*, 318 F.3d 959, 963 (9th Cir. 2003). *See also*  
 26 Cal. Civ. Proc. § 1859 (“when a general and [a] particular provision are inconsistent, the latter is  
 27 paramount to the former”). Here, Huerta violates this most fundamental canon of statutory  
 28 interpretation by arguing that this **Court should evaluate his claim that the time he spent on a**

1 **meal break should be counted as time worked without referring to a provision in the**  
 2 **relevant wage order that states that such time should not be counted as time worked.**

3 Furthermore, Huerta is attempting to rewrite Wage Order 16 and create new law.  
 4 Subsection (E) provides that “Subsections (A), (B), **and (D)** of Section 10, Meal Periods, **shall**  
 5 **not apply** to any employee covered by a valid collective bargaining agreement.” Wage Order 16,  
 6 § 10(E) (emphasis added). Section 10(D), as noted above, effectively provides that, unless an  
 7 employee is relieved of all duty during a meal period, the meal period shall be counted as time  
 8 worked. *Id.*, § 10(D). Huerta is asking this Court to rewrite Subsection (E) to remove Subsection  
 9 (D) from the list of inapplicable subsections by counting on-duty meal periods as “time worked.”  
 10 If the IWC had intended for a union member’s on-duty meal period to be counted as time worked,  
 11 then it would not have listed Subsection (D) in the group of subsections that were inapplicable to  
 12 union members. *See* Cal. Code Civ. Proc. § 1858 (“In the construction of a statute or instrument,  
 13 the office of the Judge is simply to ascertain and declare what is in terms or in substance  
 14 contained therein, not to insert what has been omitted, **or to omit what has been inserted**; and  
 15 where there are several provisions or particulars, such a construction is, if possible, to be adopted  
 16 as will give effect to all.”) (emphasis added); *Baxter v. Cal. Ins. Guar. Assn.*, 85 Cal. App. 4th  
 17 306, 315 (2000) (a court may not ignore a “statutory exclusion,” “may not rewrite the statute to  
 18 include” what has been excluded, and may not “insert what has been omitted, or to omit what has  
 19 been inserted.’...We are not authorized to insert qualifying provisions not included, and may not  
 20 rewrite the statute to conform to an assumed intention which does not appear from its language...  
 21 Any other reading of the statute would do violence to the word selected by the Legislature.”).

22 Huerta cites *Bono* in support of relying on the provision the wage order requiring the  
 23 payment of minimum wage for all “hours worked.” (Opp. at 24.) But *Bono* did not deal with a  
 24 union, a CBA exemption or the construction industry; *i.e.*, the court’s reference to the general  
 25 provision regarding “hours worked” is appropriate if the specific provision regarding whether to  
 26 count on-duty meal periods as “hours worked” for union members is not applicable.

27 Huerta’s attempt to distinguish the cases cited by CSI and this Court fails. Huerta asserts  
 28 that this Court should not have relied on *Araquistain* because “the plaintiff was not asserting an



1 ‘hours worked’ claim.” (Opp. at 24.) But *Araquistain* was properly relied upon by this Court  
 2 because that case held that, under the section 512 exception, a meal period need not be  
 3 “completely free of employer control.” *Araquistain*, 229 Cal. App. 4th at 234. The court cited the  
 4 “legislative history [as proof] that the bill was intended to increase meal period flexibility.” *Id.*, at  
 5 237. The court held that union and employers are “free to bargain over the terms of their meal  
 6 period, including whether the meal period will be of a specified length and **whether employees**  
 7 **will be relieved of all duty during that time.**” *Id.*, at 238. *Araquistain* is relevant here because it  
 8 supports CSI’s argument that it need not provide employees with a meal period during which  
 9 employees are relieved of all duty under California law. *See also Perez v. Leprino Foods*, 2018  
 10 U.S. Dist. LEXIS 47698, \*11 (E.D. Cal. Mar. 22, 2018) (interpreting *Araquistain* as “expanding  
 11 on *Vranish* to explain that labor unions are also free to set the terms of meal periods, including the  
 12 length and **whether employees are relieved of duty in a manner that provides lesser**  
 13 **protection than the California Labor Code would in other circumstances**”).

14 *Pyara* did involve an hours worked claim, and Huerta simply misreads it. Huerta argues  
 15 that the court held that an employee “could make a claim for unpaid wages for hours worked  
 16 under 1194(a).” (Opp. at 24-25.) But *Pyara* made that statement in the context of its holding that  
 17 section 301 of the LMRA did not preempt the unpaid wages claim. *Pyara*, 2016 U.S. Dist. LEXIS  
 18 94892, \*12-17. The court concluded that because it “does not inhere in the CBA but in state law,  
 19 the LMRA does not preempt *Pyara*’s first cause of action for time shaving. **However, to the**  
 20 **extent this cause of action rests upon violations of overtime or meal periods, the motion for**  
 21 **judgment on the pleadings is granted because those claims are statutorily barred.** To the  
 22 extent that the time shaving occurred on non-statutorily barred claims, the motion for judgment on  
 23 the pleadings is denied.” *Id.*, \*17 (emphasis added). Therefore, *Pyara* is exactly on point and the  
 24 court’s refusal to hold the minimum wage claims preempted by section 301 does not detract from  
 25 its holding that the claim is statutorily barred by section 512.

26 Huerta dismisses as irrelevant *Chavez v. Smurfit*, 2018 U.S. Dist. LEXIS 232653 (C.D. Cal.  
 27 Oct. 17, 2018) because it involved overtime and “[t]here was no discussion at all about an ‘hours  
 28 worked’ claim.” (Opp. at 25.) But *Chavez* provides a perfect statutory analogy to the claim here.

1 The statutory overtime exemption in section 512 for meal periods is substantively identical to the  
 2 exemption in section 514, which provides that section 510 requiring the payment of overtime does  
 3 “not apply to an employee covered by a valid collective bargaining agreement if the agreement  
 4 expressly” contains various wage rates. Cal. Lab. Code § 514. Even though section 514 does not  
 5 mention the minimum wage statute, the court in *Chavez* still held that a union member could not  
 6 make a claim for unpaid wages based on the failure to pay overtime. *See id.*, \*11, n.5 (“Because  
 7 the unpaid overtime claim is barred, the unpaid minimum wages claim necessarily fails.”).

8 Finally, Huerta’s citation to *Andrade v. Rehrig Pacific Company*, 2020 U.S. Dist. LEXIS  
 9 71005 (C.D. Cal. Apr. 22, 2020) does not help him at all. *Andrade* rejected a claim that the court  
 10 had “jurisdiction over the entire action because plaintiff’s overtime, meal period, and rest break  
 11 claims are **preempted by the LMRA** based on the [CBA].” The section 301 preemption analysis  
 12 has nothing to do with the issue here.

13 **VI. THIS MOTION DISPOSES OF ALL CERTIFIED CLAIMS**

14 The new certification order signed on March 18, 2021 (“Amended Certification Order”)   
 15 confirmed that all certified claims are subject to summary judgment. The only individual claim  
 16 remaining after this motion is Huerta’s claim that he was allegedly told to report to the Phase 1  
 17 security gate before it opened at sunrise (“Project Entrance Claim”). CSI did not move for  
 18 summary judgment on that claim. The Amended Certification Order, consistent with the parties’  
 19 stipulation at oral argument, clarified that only the gate where badging occurs is a part of the  
 20 certified claims. Because badging never occurred at the project entrance during Phase 2, all  
 21 certified claims involve the second gate, which is miles after Huerta was allegedly required to  
 22 report to the Project at sunrise. (Arnold Decl., ¶¶ 3-4.) The certified claims now involve an  
 23 alleged reporting, not to the entrance of the Project, but rather to the badging gate miles down the  
 24 road, that is deemed a “reporting,” not because of an instruction to meet there at sunrise, but  
 25 rather because employees must present a badge to an attendant. As explained above, these claims  
 26 should all be adjudicated in CSI’s favor, leaving no certified classes remaining.

27 Date: March 25, 2021

FORD & HARRISON LLP  
 By: /s/ Daniel B. Chammas  
 Daniel B. Chammas

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**PROOF OF SERVICE**

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On **March 25, 2021**, I served a copy of the following document(s) described below on the interested parties in this action as follows:

**DEFENDANT CSI ELECTRICAL CONTRACTORS INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

**BY U.S. MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

**SEE ATTACHED SERVICE LIST**

**FEDERAL:** I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **March 25, 2021**, at Los Angeles, California.



\_\_\_\_\_  
Lillian Marquez

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**SERVICE LIST**

<p>Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>James A. Bowles Hill Farrer &amp; Burrill LLP One California Plaza 300 S. Grand Avenue, 37<sup>th</sup> Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>

1 Daniel B. Chammas (SBN 204825)  
Min K. Kim (SBN 305884)  
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6 Attorneys for Defendant,  
CSI Electrical Contractors, Inc.  
7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 George Huerta, an individual on behalf of  
himself and all others similarly situated and  
12 as a representative plaintiff,

13 Plaintiff,

14 v.

15 First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware  
16 Limited Liability Company; CA Flats Solar  
130, LLC, a Delaware Limited Liability  
17 Company; CA Flats Solar 150, LLC, a  
Delaware Limited Liability Company; Cal  
18 Flats Solar CEI, LLC, a Delaware Limited  
Liability Company; Cal Flats Solar Holdco,  
19 LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.;  
20 Milco National Constructors, Inc.;  
California Compaction Corporation; and  
21 Does 1 through 10,

22 Defendants.  
23  
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Case No.: 5:18-cv-06761-BLF  
Assigned to Hon. Beth Labson Freeman

**DECLARATION OF DANIEL B.  
CHAMMAS IN SUPPORT OF  
DEFENDANT CSI ELECTRICAL  
CONTRACTORS, INC.’S REPLY BRIEF  
IN SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Date: April 8, 2021  
Time: 9:00 a.m.  
Ctrm: 3

State Complaint Filed: July 30, 2018  
State First Amended  
Complaint Filed: October 1, 2018  
Removal Filed: November 7, 2018

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**DECLARATION OF DANIEL B. CHAMMAS**

I, Daniel B. Chammas, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and before this Court, and am a Partner with the law firm of Ford & Harrison, LLP, attorneys of record for defendant CSI Electrical Contractors, Inc. (“CSI”). I am providing this declaration in support of CSI’s Reply Brief in support of Motion for Partial Summary Judgment. I have personal knowledge of each of the matters set forth below and, if called as a witness could and would testify competently to each of them under oath.

2. Attached as **Exhibit A** hereto is a true and correct copy of the relevant portions of the deposition transcript of Plaintiff George Huerta whom I deposed in this matter on August 27, 2020.

I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct.

Executed this 25th day of March, 2021, at Los Angeles, California.

/s/ Daniel B. Chammas  
DANIEL B. CHAMMAS

# EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual  
on behalf of himself and all  
others similarly situated and  
as a representative plaintiff,

Plaintiff,

vs.

CASE NO. 5:18-cv-06761-BLF

First Solar, Inc., a Delaware  
corporation; California Flats  
Solar, LLC, a Delaware Limited  
Liability Company; CA Flats  
Solar 130, LLC, a Delaware  
Limited Liability Company CA  
Flats Solar 150, LLC, a  
Delaware Limited Liability  
Company; Cal Flats Solar CEI,  
LLC, a Delaware Limited  
Liability Comany; Cal Flats  
Solar Holdco, LLC, a Delaware  
Limited Liability Company;  
CSI Electrical Contractors,  
Inc.; Milco National  
Constructors, Inc.; California  
Compaction Corporation and Does  
1 through 10,

Defendants.

---

VIDEOTAPED DEPOSITION OF GEORGE HUERTA

APPEARING REMOTELY FROM FRESNO COUNTY, CALIFORNIA

August 27, 2020

10:10 a.m.

REPORTED STENOGRAPHICALLY BY:

Deborah L. Heskett, CSR No. 11797

APPEARING REMOTELY FROM LOS ANGELES COUNTY



1 REMOTE APPEARANCES:

2

3 For Plaintiff:

4 THE BLANCHARD LAW GROUP, APC  
5 LONNIE CLIFFORD BLANCHARD, III  
6 5211 East Washington Boulevard, Number 2262  
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8 213.599.8255  
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10 For CSI Electrical Contractors, Inc.:

11 FORD & HARRISON LLP  
12 DANIEL B. CHAMMAS  
13 350 South Grand Avenue, Suite 2300  
14 Los Angeles, California 90071  
15 213.237.2400  
16 dchammas@fordharrison.com

17 Also Present:

18 STAN BEVERLY, VIDEOGRAPHER

19 DULCE GONZALEZ

20 ARTHUR DRAPER

21

22

23

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25

1 A That's correct.

2 Q Okay. Any other cases where you've sued  
3 anybody in?

4 A No.

5 Q Have you ever been sued?

6 A No.

7 Q Have you ever been convicted of a felony?

8 A No.

9 Q Have you filed for bankruptcy?

10 A No.

11 Q Are you a member of a union currently?

12 A I am a member of the Operating Engineers  
13 Local 3.

14 Q Operate Engineers?

15 A That's correct.

16 Q And even though you're retired, are you  
17 still a member of the union?

18 A Yes, I am.

19 Q Are you paying dues?

20 A Yes, I am.

21 Q And what reason do you have for being a  
22 member of the union if you're not working anymore?

23 A If I'm not a union member, I would not  
24 collect their benefits.

25 Q Pension related?

1 were bent in some -- in some way or another or they  
2 need to be realigned.

3 BY MR. CHAMMAS:

4 Q Okay. And how about the backhoe, how  
5 did -- what did they do with the backhoe?

6 MR. BLANCHARD: Same objections.

7 THE WITNESS: They filled in potholes, made  
8 trenches, filled in holes in the roadway, whatever  
9 needed to be repaired in the road.

10 BY MR. CHAMMAS:

11 Q Okay. So tell me -- tell me, do you  
12 remember your -- the first day you worked on the  
13 project? Do you remember when that was?

14 A I don't remember the approximate date.

15 Q So I think you -- sounds like you don't  
16 remember the exact date, but are you able to  
17 estimate in any way, including what year it was?

18 A The year was 2018, I believe February.

19 Q February 2018 you believe is the first day  
20 you worked on the project?

21 A That's correct.

22 MR. BLANCHARD: Ambiguous.

23 BY MR. CHAMMAS:

24 Q How did you come to work on the project?  
25 What happened?

1           A     I -- I was on a waiting list with the  
2 union, and they called me and asked if I want to do  
3 work on this project.

4           Q     So a waiting list, is that like a list  
5 saying you're looking for work and you want them to  
6 let you know when -- when available work comes --  
7 comes up? Is that the kind of list you were  
8 describing?

9           A     That's correct.

10          Q     Okay. So do you remember when you got the  
11 call? Was in February 2018 or was it before?

12          A     I don't -- I don't recall at this time.

13          Q     Okay. Do you remember -- so when you got  
14 the call, they asked you -- did -- what did they  
15 say? Was it describing the project in any way?  
16 What did they say to -- to ask you if you wanted to  
17 accept the job?

18          A     They called and they said it was another  
19 solar project. It was in the same area of the first  
20 phase. I knew the first phase, and I accepted the  
21 order.

22          Q     Okay. So sounds like you're describing the  
23 start of your work on Phase II; is that correct?

24          A     That's correct.

25          Q     Can you describe the start of your work on

1 Q Okay. So you -- you held it up and they  
2 scanned it; correct?

3 A That's correct.

4 Q They didn't take it from you; they just  
5 scanned it while you're holding it?

6 A That's correct.

7 Q And then you drove out; correct? You were  
8 done; right?

9 A Yes.

10 Q Okay. So -- and then the next day, you  
11 reported again to California Compaction; correct?

12 A I reported at the guard shack -- to the  
13 guard shack.

14 Q Okay. So forget the word "reported."

15 So you worked for California Compaction the  
16 next day; correct?

17 A That's correct.

18 Q And -- and you went to the guard shack;  
19 correct?

20 A That's correct.

21 Q All right. So now I want to try to  
22 summarize your experience at California Compaction  
23 until you moved to Milco. And if you can just tell  
24 me most days, if you're able to, your best  
25 recollection for most days, what time would you

1 A That is correct.

2 Q And so is the reason you asked to work for  
3 Milco because your supervisor at California  
4 Compaction didn't call you back?

5 A Yes, that's correct.

6 Q All right. And then did your union say,  
7 sure, we can accommodate that?

8 A Yes.

9 Q And so what did they -- did they -- is this  
10 on the phone, or did you have to go there in person?

11 A To?

12 Q This is your union. Did you do this on the  
13 phone with your union, make the request, e-mail, or  
14 did you call, or did you show up in person when you  
15 were trying to get this opportunity at Milco?

16 A For that -- for that work area, that --  
17 that job, the dispatch came out of Santa Clara.  
18 They told me that they would send the dispatch to  
19 Fresno and that I could pick up the dispatch there  
20 in Fresno.

21 Q And the dispatch is the order for you to go  
22 to Milco?

23 A That is correct.

24 Q Okay. And so did they tell you the kind of  
25 work you'd be doing for Milco?

1 A Yes.

2 Q What did they say? Forklift?

3 A It was forklift.

4 Q And -- and you were fine with that?

5 A Yes.

6 Q So do you know how long you worked for  
7 Milco -- how long you worked for California  
8 Compaction before you started working for Milco?

9 A It was -- it was roughly four months  
10 working for California Compaction.

11 Q Okay. So you think it was, like, February  
12 to June 2018?

13 A Yeah, yes.

14 Q And then you started working for Milco;  
15 correct?

16 A That's correct.

17 Q And on your first day for Milco, did you  
18 know what time you were supposed to report or you're  
19 supposed to arrive?

20 A It stated on my dispatch what time.

21 Q What time did it say?

22 A I believe it said 7:00 a.m.

23 Q Okay. And so did you leave at 4:00, 4:15  
24 like you had before? Did you do the exact same  
25 thing to get there?

1 know what the procedures were thereafter.

2 BY MR. CHAMMAS:

3 Q Okay. So -- but you do know that even when  
4 you were waiting -- like, for example, you were  
5 still -- you were never the first car you said;  
6 right?

7 A That's correct.

8 Q So before when there was no second security  
9 gate and you were, let's say, the fifth car, you'd  
10 have to stop at the security gate, roll down your  
11 window, and let them scan your badge. We talked  
12 about that; right?

13 A That is correct.

14 Q And -- and they would just -- and they  
15 would just scan your badge and that would it be it;  
16 right? You would do nothing else at the first  
17 security gate; correct?

18 A When they only had one security gate,  
19 that's correct.

20 Q Okay. So when there was a second security  
21 gate and you were, let's say, the fifth car, and the  
22 car in front of you went, you would just pass the  
23 security gate; right? You wouldn't stop at the  
24 security gate, would you, once the car started  
25 moving?



1 A That is correct.

2 Q And then the first time that you stopped in  
3 that situation when there was a second security gate  
4 would be to show your badge at the second security  
5 gate?

6 A That is correct.

7 Q And -- and would it be the same thing that  
8 you did with the first security gate, show your  
9 badge and they scan it?

10 A That is correct.

11 Q And then you would drive from the second  
12 security gate to the parking lot; correct?

13 A Yes.

14 Q How long did it take to get between the  
15 second security gate and the parking lot?

16 A Ten minutes, maybe 15.

17 Q Okay. Ten to 15 minutes; correct?

18 A Yes.

19 Q All right. And so we were describing your  
20 work when you worked with CSI, and so you did the  
21 same thing every day until what? What was your last  
22 day working with CSI? What happened?

23 A I went back to Milco National. They -- CSI  
24 had me go back to Milco National.

25 Q Sorry to interrupt, but that sounds like

1 STATE OF CALIFORNIA )  
2 ) ss  
3 COUNTY OF LOS ANGELES )  
4

5 I, Deborah L. Heskett, a Certified  
6 Shorthand Reporter duly licensed and qualified in  
7 and for the State of California, do hereby certify  
8 that there came before me remotely on the 27th day  
9 of August 2020, the following named person, to-wit:  
10 George Huerta, who was duly sworn to testify the  
11 truth, the whole truth, and nothing but the truth of  
12 knowledge touching and concerning the matters in  
13 controversy in this cause; and that he was thereupon  
14 examined under oath and his examination reduced to  
15 typewriting under my supervision; that the  
16 deposition is a true record of the testimony given  
17 by the witness.

18 I further certify that pursuant to FRCP  
19 Rule 30(e)(1) that the signature of the deponent:

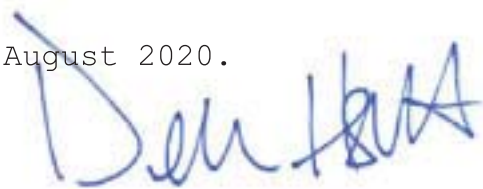
20   X   was requested by the deponent or a  
21 party before the completion of the deposition;

22        was not requested by the deponent  
23 or a party before the completion of the deposition.  
24

25 I further certify that I am neither

1 attorney or counsel for, nor related to or employed  
2 by any of the parties to the action in which this  
3 deposition is taken, and further that I am not a  
4 relative or employee of any attorney or counsel  
5 employed by the parties hereto, or financially  
6 interested in the action.

7 CERTIFIED TO BY ME on this 30th day of  
8 August 2020.

9 

10 \_\_\_\_\_  
11 DEBORAH L. HESKETT  
12 CSR No. 11797

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**PROOF OF SERVICE**

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**DECLARATION OF DANIEL B. CHAMMAS IN SUPPORT OF DEFENDANT CSI ELECTRICAL CONTRACTORS, INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

**BY U.S. MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**BY OVERNIGHT MAIL:** By placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically served the documents on the date shown below to the e-mail addresses of the person listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

**ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

**FEDERAL:** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

Executed on March 25, 2021, at Los Angeles, California.



Lillian Marquez

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**SERVICE LIST**

<p>Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>James A. Bowles Hill Farrer &amp; Burrill LLP One California Plaza 300 S. Grand Avenue, 37<sup>th</sup> Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>

1 Daniel B. Chammas (SBN 204825)  
Min K. Kim (SBN 305884)  
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5 mkim@fordharrison.com

6 Attorneys for Defendant,  
7 CSI Electrical Contractors, Inc.

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 George Huerta, an individual on behalf of  
12 himself and all others similarly situated and  
as a representative plaintiff,

13 Plaintiff,

14 v.

15 First Solar, Inc., a Delaware corporation;  
16 California Flats Solar, LLC, a Delaware  
Limited Liability Company; CA Flats Solar  
130, LLC, a Delaware Limited Liability  
17 Company; CA Flats Solar 150, LLC, a  
Delaware Limited Liability Company; Cal  
18 Flats Solar CEI, LLC, a Delaware Limited  
Liability Company; Cal Flats Solar Holdco,  
19 LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.;  
20 Milco National Constructors, Inc.;  
California Compaction Corporation; and  
21 Does 1 through 10,

22 Defendants.

Case No.: 5:18-cv-06761-BLF  
Assigned to Hon. Beth Labson Freeman

**DECLARATION OF KEITH MENDES IN  
SUPPORT OF DEFENDANT CSI  
ELECTRICAL CONTRACTORS, INC.’S  
REPLY BRIEF IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Date: April 8, 2021  
Time: 9:00 a.m.  
Ctrm: 3

State Complaint Filed: July 30, 2018  
State First Amended  
Complaint Filed: October 1, 2018  
Removal Filed: November 7, 2018

**DECLARATION OF KEITH L. MENDES**

I, Keith L. Mendes, do hereby declare as follows:

1. I am over the age of 18 years. I have personal knowledge of each of the matters set forth below and, if called and sworn as a witness, I could and would testify competently to these facts.

2. I am an Associate Director with Berkeley Research Group ("BRG"), a firm that provides sophisticated analyses and consulting in matters involving economics, statistics, and finance. I earned my Bachelor of Arts degree in Economics (cum laude, with honors) from Claremont McKenna College. I am also a CFA® Charterholder.

3. I have consulted in matters involving intellectual property, valuations, wage and hour class claims, issues related to wrongful termination, business interruption, and calculation of complex damages. I have experience in a variety of fields including, but not limited to, transportation, agriculture, commercial banking, healthcare, entertainment, food service industry, real estate, retail sales, semiconductor technology, telecommunications systems, and mobile phone technology. My project experience includes, but is not limited to, building and maintaining databases, constructing complex damage/financial models using sensitivity analysis, forecasting, survey design/administration, and calculation of economic damages.

4. I have been published and submitted expert testimony regarding the determination of the appropriate "cram-down" interest rate in a bankruptcy setting. I have also submitted declarations, expert reports, and testified at both deposition and trial involving the calculation of damages related to minimum wage compensation, overtime pay, premiums for missed rest breaks and meal periods, and other statutory penalties. In addition, I have been qualified as an expert in Federal and California State Courts to analyze timekeeping records and other related data in wage and hour matters. Lastly, I have taught CFA® preparatory classes in Quantitative Methods and Economics.

5. A true and correct copy of my curriculum vitae, which also includes my publication and testimony history, is attached hereto as Appendix A. BRG is compensated for my time in this matter at a rate of \$430 per hour.

1           6.       I have been asked by counsel for Defendant CSI Electrical Contractors, Inc. (“CSI”)
2 to review badge records maintained by First Solar for CSI employees, Milco National Constructors
3 (“Milco”) employees, and California Compaction employees who worked on the Cal Flats Solar
4 Project (“Project”).

5           7.       Based on the badge records, CSI employees’ badges were scanned from March 15,
6 2017 until March 20, 2019; Milco employees’ badges were scanned from May 4, 2018 until March
7 20, 2019; and California Compaction employees’ badges were scanned from May 1, 2018 until
8 August 31, 2018. Considering each employee’s badge records for each day on the Project as a
9 badging event, there were more than 58,000 separate badging events recorded on the Project from
10 May 7, 2018 until March 20, 2019.

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I, Keith L. Mendes, hereby declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on this 24th day of March, 2020.

  
\_\_\_\_\_  
KEITH L. MENDES



# **APPENDIX A**



## Appendix A

### Curriculum Vitae

**KEITH L. MENDES, CFA**  
BERKELEY RESEARCH GROUP, LLC  
2029 Century Park East, Suite 1250  
Los Angeles, CA 90067

Direct: (310) 499-4825  
kmendes@thinkbrg.com

### SUMMARY

Keith Mendes has consulted in matters involving intellectual property, valuations, wage and hour class claims, issues related to wrongful terminations, business interruption, and calculation of complex damages. Mr. Mendes has experience in a variety of fields including, but not limited to, transportation, agriculture, commercial banking, healthcare, entertainment, food service industry, real estate, retail sales, semiconductor technology, telecommunications systems, mobile phone technology, and digital rights management. His project experience includes building and maintaining databases, constructing complex damage/financial models using sensitivity analysis, forecasting, and calculation of economic damages.

Mr. Mendes has been published and submitted an expert report regarding the determination of the appropriate “cram-down” interest rate in a bankruptcy setting. He also has testimony experience at both deposition and trial. In addition, he has presented at mediation and supported expert testimony at all steps in the production of expert reports. Prior to joining BRG in 2010, Mr. Mendes spent two years at Economic Analysis and six years at LECG in a variety of positions.

### EDUCATION

B.A., Economics, Claremont McKenna College, 2002 (Cum Laude, With Honors)

### CREDENTIALS

CFA® Charterholder – January 2014

### PRESENT EMPLOYMENT

Berkeley Research Group, LLC  
Associate Director  
2016 – Present

Senior Managing Consultant  
2012 – 2015

Managing Consultant  
2010 – 2011



## PREVIOUS POSITIONS

LECG, LLC  
Associate, Senior Associate, Consultant, Senior Consultant  
2004 – 2010

Economic Analysis, LLC  
Research Associate  
2002 – 2004

## PROFESSIONAL AFFILIATIONS

CFA Institute, Member  
CFA Society of Los Angeles, Member

## AWARDS AND HONORS

Most Outstanding Senior Thesis in Economics, 2002

## PUBLICATIONS

“Determining the Appropriate Interest Rate Under Till in a Bankruptcy Case,” *California Journal of Bankruptcy*, Volume 31, Number 2, 2011.

## EXPERT ENGAGEMENTS

Jean Emmanuel Pierre-Louis, et al. v. Baggage Airline Guest Services, Inc.  
United States District Court, Southern District of Florida, Fort Lauderdale Division  
Deposition (December 2019). Supplemental Report (November 2019). Expert Report (November 2019).

Asia Ricks v. Yard House, USA, Inc.  
Superior Court of the State of California, for the County of Los Angeles  
Deposition (March 2019). Declaration (January 2019).

Jennifer Pae, et al. v. Fox Restaurant Concepts, LLC  
United States District Court, Central District of California  
Declaration (October 2017).

Amber Stewart v. Hat World, Inc.  
Superior Court of the State of California, for the County of San Mateo.  
Trial Testimony (November 2017). Third Amended Report (November 2017). Deposition (September 2017).  
Second Amended Report (September 2017). Deposition (August 2017). Amended Expert Report (August 2017).  
Expert Report (July 2017).

Jesse Alvarez, et al. v. Autozone, Inc.  
Superior Court of the State of California, for the County of San Bernardino.  
Declaration (July 2017).



Viola Hubbs, et al. v. Big Lots Stores, Inc.

United States District Court, Central District of California.

Deposition (August 2018). Rebuttal Expert Report (June 2018). Expert Report (May 2018). Declarations (January 2018 and February 2018). Supplemental Declaration (April 2017). Declaration (February 2017).

Anthony Jordan, et al. v. NCI Group, Inc.

United States District Court, Central District of California – Southern Division.

Declaration (February 2017).

Sergio Lopez, et al. v. H.J. Heinz Company, L.P.

United States District Court, Southern District.

Declaration (May 2018). Declaration (April 2018). Declaration (January 2017).

Terry Snipes Sr., et al. v. Dollar Tree Distribution, Inc.

United States District Court, Eastern District of California.

Declaration (December 2016).

Enrique Valdez, et al. v. Kraft Heinz Foods Company

Superior Court of the State of California, County of Los Angeles.

Declaration (November 2016).

Jose Sorto and Pablo Funes, et al. v. Junior's Restaurant, Inc.

Superior Court of the State of California, County of Los Angeles.

Declaration (October 2016).

Jason Manas, et al. v. Kenai Drilling Limited

Superior Court of the State of California, County of Los Angeles.

Deposition (October 2016). Declaration (July 2016).

Rodney Hoffman, et al. v. Blattner Energy, Inc.

United States District Court, Central District of California.

Deposition (October 2015). Declaration (September 2015).

Angela Cruz, et al. v. MM 879, Inc., et al.

Superior Court of the State of California, County of Fresno.

Declaration (September 2015).

In re Trudy Kalush, an individual, Debtor and Debtor-in-Possession

United States Bankruptcy Court Central District of California, Santa Ana Division.

Report (August 2012). Declaration (August 2012).

Ruben Pablo, Bonnie Coursey, and John Bahr v. Servicemaster Global Holdings, Inc.

United States District Court, for the Northern District of California.

Trial (October 2011). Deposition (October 2011).

Richard Kruper v. Timothy Pitts and CenSource, Inc.

Superior Court of the State of California, for the County of Orange.

Deposition (December 2010).



## SELECTED CONSULTING EXPERIENCE

### Intellectual Property

Estimated effective per unit royalty rates given the terms of lump sum agreements.

Created a series of models that estimated maximum willingness to pay, reasonable royalty rates, and damages based on the marginal profits earned by the parties from utilizing the patents-in-suit.

Calculated damages using lost profits and reasonable royalty rates based on permutations of market delay and/or reduced market share upon market entry

Constructed a series of models calculating reasonable royalty rates and corresponding damages for numerous defendant and product type combinations.

Built a damage model calculating the difference in present value of lost profits based on a series of sensitivities (which included length of delay, projection methodology, assumed growth rates, and discount rates).

Built a lost profits damage model incorporating a variety of sensitivities pertaining to assumed product delay, seasonal sales history, product type, and customer.

Constructed and maintained database of relevant sales information using deposition testimony and datafiles of various formats and deposition testimony.

Provided on-site support for expert witness and 30(b)(6) witness depositions.

### Finance and Valuation

Determined the appropriate “cram-down” interest rate in a bankruptcy setting for both lenders and debtors. Collateral types include multi-family housing, undeveloped land, and hotel/motel lodging.

Used regression analysis to determine lost revenue and profits incurred by a series of imaging centers due the impact of a natural disaster

Assisted in the determination of the appropriate prejudgment interest methodology and the calculation of the specific rates.

Assisted in the determination of the appropriate interest using the “Prudent Investor Rule” in a series of inverse condemnation matters. Also assisted in the evaluation of a series of holdings/portfolios against the principles of the Prudent Investor Rule.

Calculated damages for a class of patrons based on the number of the membership dues paid and benefits used mitigated by the benefits that otherwise would not have accumulated in a but-for world with a shorter membership periods. Analyzed and adjusted the valuation presented by the opposing expert.

Helped determine the appropriate market rent ex-post based on the assumption that the developer did not produce a shopping center consistent with promised specifications. Analyzed expected generated trips, store performance (revenue, foot traffic, profit) by itself and relative to others in the region, and historical shopping center premiums.



Estimated values of privately held businesses utilizing discounted cash flow (DCF) and comparables analyses. Industries include external sign manufacturing, health food, oilfield services, promotion of live events, and restaurants.

Assessed the potential financial loss associated with tenants defaulting on leases. Estimated replacement income, including probability of early lease termination, and additional expenses.

Evaluated the financial solvency of lending institutions using required reserve ratios. Compared the historical trend of the ratios of solvent institutions against those which had failed.

Estimated lost sales using econometric and statistical techniques.

Traced, re-built, and documented valuation models to identify the main underlying assumptions.

Conducted a forensic accounting investigation to verify expenses and perform a valuation of the company on a regional basis. Conducted a sensitivity analysis to see the impact on each region's value based on different cost allocation methodologies.

### **Labor**

Submitted multiple expert reports where I identify shifts timekeeping/payroll records identify meal period timestamps and calculate updated wages incorporating all of the meal period time that had been removed from employees' hours. Testified in deposition.

Submitted a declaration where I conduct a meal period analysis using timekeeping records to identify shifts with missed, late and short meal periods. I cross-referenced my results against a database of paid premiums and job codes. I also used payroll records to determine which employees received tips and identify pay periods where certain positions received overtime pay. Testified in deposition.

Submitted a declaration where I calculated the number of shifts of specific lengths and identified the unique employees who worked those shifts. I also restricted to the analysis to employees who appeared in multiple employee lists.

Submitted multiple expert reports where I analyzed Plaintiff's timekeeping records related to hours worked, meal periods, and rest breaks on a daily basis; I cross-referenced Plaintiff's cell phone records against the timekeeping records; and I identified the overlap in daily schedule between the Plaintiff and other employees working the store. Testified in deposition and trial.

Submitted a declaration where I compiled databases for timekeeping and wage records; I analyzed Plaintiff's claims related to meal periods premiums, rest break premiums, split shifts, and reporting time pay.

Submitted multiple declarations and expert reports where I compiled databases for timekeeping, wage, and security alarm records; I estimated unpaid time based on timekeeping and security records; identified employees who worked overnight shifts; identified instances where the regular rate of pay did not include adjustments for incentive pay; identified shifts of various characteristics; analyzed the timekeeping records for missed, late, and short meal periods; and identified weeks where hours worked exceeded hours paid. Testified in deposition.

Submitted a declaration where I opined on the types of documents I would need and how I would use them to estimate premiums associated with meal period and rest break violations.



- Submitted a declaration that reconciled timekeeping and wage data to estimate the number of employees who worked at various locations, regular hourly rates of pay, and quantify shifts of various lengths.
- Submitted a declaration where I reviewed various sources of data and described the process by which I would calculate damages related to time worked vs. time paid, regular rate of pay, and time worked off-the-clock.
- Submitted a declaration that reconciled multiple sources of timekeeping and wage data to estimate the number of employees who worked at various locations, the number of pay periods worked by each employee, regular hourly rates of pay, and net difference between hours worked and hours paid.
- Submitted a declaration where I estimated the number of days with various meal period violations. I also reconciled the difference between the number of hours worked vs. hours paid and the difference between meal period hours worked vs. recorded.
- Submitted a declaration describing the process in which I would assemble multiple databases and the methodology to perform various calculations. Testified in deposition.
- Submitted a declaration evaluating the contents of various databases and estimating the number of days individuals worked where temperatures exceeded various thresholds. Testified in deposition.
- Submitted a declaration which illustrated the methodologies that could be used to calculate damages for a variety of subclasses. Damage categories included minimum wage for hours worked off-the-clock, missed rest periods, missed meal breaks, plus penalties associated with inaccurate wage statements and waiting time.
- Estimated overtime wages based on calculation of total hours worked per week and employee type classification. Estimated damages for unpaid overtime, inaccurate wage statements, and waiting time penalties under various class periods. Testified in deposition and trial.
- Reconciled databases of finalized timekeeping records and timekeeping edits and calculated potential meal period premiums associated with each source. Combined timekeeping records and payroll records to calculate potential incremental overtime associated with specific non-discretionary bonuses.
- Used timekeeping, payroll, and badge records to estimate the number of additional hours spent driving from jobsite point of entry to construction area. Classified hours as regular, overtime, and double time and calculated additional wages plus associated penalties. Estimated the share of shifts where an employees used the available bus.
- Estimated the amount of unpaid overtime associated with multiple sources of incentive based pay.
- Participated in the design of a survey used to measure the frequency with which employees experienced security checks before leaving the premise of a retail location, the duration of time from clock-out until the security check, and the amount of money spent on purchases of clothing for dress code requirements.
- Participated in the design of a survey used to measure the frequency with which employees took rest breaks. Used the results of the survey along with production of timekeeping and wage data to determine class wide damages.
- Participated in the design of a survey used to capture information regarding employee time spent performing various tasks. Applied the results of the survey to historical data to assess to share of time spent performing sales related activities for a portion of a class.



Helped determine the most preferred recruiting methodology, hiring source, and extent of employee overlap between defendants. Also compared employee wages against regional and national metrics based on job description and occupation codes.

Assisted in a number of overtime related matters. Duties included calculation of total hours worked, overtime hours, hours worked “off the clock”, determination of missed meal breaks and the associated penalties, waiting time penalties, and inaccurate wage statement penalties.

Estimated a continuation of wages for employees if their employment had not been terminated and potential replacement wages. Estimates were based on regional data, employee specific details, and the potential for early retirement and/or unemployment.

### **Healthcare**

Assisted in the calculation of “but-for” payments a hospital chain would have received if its cost figures were corrected. Created a monte-carlo simulation of annual government payments based on multiple variables and an array of fixed values for each specific variable. Performed a cluster analysis that grouped hospitals together based on multiple characteristics.

Analyzed the potential impact of pharmaceutical patents. Used sensitivity analysis to allow for changes of input variables such as market size, pricing scheme, exogenous macro-related factors, etc.

### **Other**

Created hedonic pricing models to identify the major determining factors for product pricing.

Assisted in the calculation of damages associated with wrongfully collecting service charges. Used regression analysis to backcast potential damages for a time period in which the plaintiff did not have accurate records.

Assisted a city attorney in calculating both the number of violations and damages associated with violating occupant rights at multiple hotels.

January 2020



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**PROOF OF SERVICE**

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On **March 25, 2021**, I served a copy of the following document(s) described below on the interested parties in this action, as follows:

**DECLARATION OF KEITH MENDES IN SUPPORT OF DEFENDANT CSI ELECTRICAL CONTRACTORS, INC.'S REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

**BY U.S. MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**BY OVERNIGHT MAIL:** By placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically served the documents on the date shown below to the e-mail addresses of the person listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

**ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

**FEDERAL:** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

Executed on **March 25, 2021**, at Los Angeles, California.



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Lillian Marquez

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**SERVICE LIST**

<p>Lonnie Clifford Blanchard, III The Blanchard Law Group, APC 5211 East Washington Blvd., No. 2262 Commerce, CA 90040 Tel.: (213) 599-8255 Fax: (213) 402-3949 Email: lonnieblanchard@gmail.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>Peter Roald Dion-Kindem The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 Tel.: (818) 883-4900 Fax: (818) 338-2533 Email: peter@dion-kindemlaw.com</p>	<p>Attorneys for Plaintiff, George Huerta</p>
<p>James A. Bowles Hill Farrer &amp; Burrill LLP One California Plaza 300 S. Grand Avenue, 37<sup>th</sup> Floor Los Angeles, CA 90071 Tel.: (213) 621-0812 Fax: (213) 624-4840 Email: jbowles@hillfarrer.com</p>	<p>Attorneys for Defendant, Milco National Construction, Inc.</p>
<p>Daphne Mary Anneet Burke, Williams Sorensen, LLP 444 S. Flower Street Suite 2400 Los Angeles, CA 90071 Tel.: (213) 236-0600 Fax: (213) 236-2700 Email: dnneet@bwslaw.com</p>	<p>Attorneys for Plaintiff, California Compaction Corporation</p>



PETER R. DION-KINDEM (SBN 95267)  
THE DION-KINDEM LAW FIRM  
PETER R. DION-KINDEM, P. C.

2945 Townsgate Road, Suite 200  
Westlake Village, CA 91361  
Telephone: (818) 883-4900  
Email: [peter@dion-kindemlaw.com](mailto:peter@dion-kindemlaw.com)

LONNIE C. BLANCHARD, III (SBN 93530)  
THE BLANCHARD LAW GROUP, APC  
5211 East Washington Blvd. # 2262  
Commerce, CA 90040  
Telephone: (213) 599-8255  
Fax: (213) 402-3949  
Email: [lonnieblanchard@gmail.com](mailto:lonnieblanchard@gmail.com)

Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Plaintiff's Request for Judicial Notice in  
Opposition to Defendant CSI Electrical  
Contractors, Inc.'s Motion for Partial  
Summary Judgment**

Date: April 8, 2021  
Time: 9:00 a.m.  
Crtrm: 3

**Plaintiff's Request for Judicial Notice in Opposition to Defendant CSI Electrical Contractors,  
Inc.'s Motion for Partial Summary Judgment**

Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiff George Huerta requests that the Court take judicial notice of the following documents:

1. Heather Heart’s Declaration, specifically ER:439, ¶ 11, attached as Exhibit J-7 to Todd K. Boyer’s Declaration in Support of Defendant Apple Inc.’s Motion for Summary Judgment which was filed in *Frlekin* and referred to in the briefing in the Ninth Circuit Court of Appeal, *Frlekin, et al. v. Apple, Inc.*, Case No. 15-17382. A true and correct copy is attached hereto as **Exhibit 1**.
2. Cameron McChesney’s Declaration, specifically ER:469, ¶¶ 6-7, attached as Exhibit J-13 to Todd K. Boyer’s Declaration in Support of Defendant Apple Inc.’s Motion for Summary Judgment which was filed in *Frlekin* and referred to in the briefing in the Ninth Circuit Court of Appeal, *Frlekin, et al. v. Apple, Inc.*, Case No. 15-17382. A true and correct copy is attached hereto as **Exhibit 2**.
3. Ellyse Pinney’s Declaration, specifically ER:481, ¶ 10, attached as Exhibit J-16 to Todd K. Boyer’s Declaration in Support of Defendant Apple Inc.’s Motion for Summary Judgment which was filed in *Frlekin* and referred to in the briefing in the Ninth Circuit Court of Appeal, *Frlekin, et al. v. Apple, Inc.*, Case No. 15-17382. A true and correct copy is attached hereto as **Exhibit 3**.

Federal Rule of Evidence 201 permits the Court to take judicial notice of “matters of public record.” (*MGIC Indem. Corp. v. Weisman* (9th Cir. 1986) 803 F.2d 500, 504.)

Dated: March 18, 2021

THE DION-KINDEM LAW FIRM

BY:           /s PETER R. DION-KINDEM            
PETER R. DION-KINDEM, P.C.  
PETER R. DION-KINDEM  
Attorney for Plaintiff George Huerta

# Exhibit 1



1 me at work.

2 8. At the Third Street Promenade store, bag checks have been inconsistent. I almost  
3 never go through a bag check currently. I probably have not been through a bag check since October  
4 2014. When I first started at Third Street, I underwent bag checks about 65% of the time. But even  
5 then, I often walked out of the store at the end of my shift with my bag without having it checked,  
6 without any consequences.

7 9. At the Century City store, bag checks were very inconsistent. I underwent a bag  
8 check about 25% of the time, even though I brought my purse every day. I often left the store at the  
9 end of my shift with my bag without having it checked, without any consequences.

10 10. At the Manhattan Village store, I went through a bag check about 70% of the time.  
11 There were many times I left the store with my bag without having it checked, without any  
12 consequences.

13 11. At all of the stores I've worked at, the bag checks take place on the sales floor (front  
14 of the house). The bag check process usually takes about 10 seconds or less. I open my bag and a  
15 manager looks in. No one touches anything in my bag. I have never touched anything in anyone's  
16 bag when I do a check.

17 12. In my experience, it's easy to find a manager to check a bag. At Third Street, we  
18 have three to six managers on the floor at any time. At Century City, we generally had three  
19 managers on the floor. At all of the stores I've worked at, the entire process from clocking out, to  
20 getting my bag, finding a manager, getting the bag check, and leaving the store, has taken less than a  
21 minute. Sometimes I stop to chat with another manager before I leave, but that is the only reason for  
22 any delay in leaving.

23 13. I've never had to wait in line for a bag check or technology check, and I've never  
24 seen other employees wait in line for bag checks or technology checks. I have seen times when an  
25 employee comes up to have his or her bag checked by a manager who's busy talking to a customer.  
26 The manager looked away from the customer for a few seconds to check the bag and then sent the  
27 employee on his or her way.

28 14. As a manager, I check employees' bags if they ask me to. If I'm with a customer and

1 an employee comes up for a bag check, I stop talking with the customer for a few seconds to check  
2 the bag. I don't have employees wait for me.

3 15. Employees are free to leave without any kind of check if they don't have a bag or  
4 Apple technology. During my time at the Third Street Promenade and Century City stores, we do  
5 and did not strictly adhere to the bag or technology check policies so even if an employee has  
6 personal Apple technology and does not have a bag, they are not subject to any kind of check. We  
7 assume "positive intent" with our employees in that we do not assume they are stealing from the  
8 store. Some employees have their bag checked out of habit. Others just skip the process altogether  
9 and walk out without having their bag checked.

10 16. In all of the stores I've worked in, I've seen a lot of employees with bags leave the  
11 store without getting a bag check or technology check. This is very common. Nothing happens to  
12 the employees with bags who walk out without a bag checked. I don't know of any employee ever  
13 being disciplined for not undergoing a bag or technology check.

14 17. I've never had a manager check my coat or clothing, nor have I ever checked  
15 anyone's coat or clothing.

16 18. I've owned an iPhone since 2007, and bring it to work with me every day. I don't  
17 bring any personal Apple technology other than my iPhone to work. I bring my iPhone to work  
18 because I use it for communicating with family friends, personal email, and for other personal uses.  
19 I do not use it for work purposes. The only time I ever went through technology checks of my  
20 iPhone was for about two weeks at the Century City store. Since then, it has never been checked at  
21 either the Century City store or Third Street Promenade store. I don't even have a current personal  
22 technology card.

23 19. There have been employees at all of the stores I've worked at who didn't own  
24 personal Apple technology, or if they did, they didn't bring it work. Apple provides all employees  
25 with what they need to do their job, so there is no need for them to bring anything to work other than  
26 their Apple t-shirt. We are no longer required to wear a lanyard since November 2014. The Apple t-  
27 shirt is the only thing employees are required to bring to work. When we were required to wear  
28 lanyards, many employees leave their lanyards at work in their business card box. I used to leave



1 my lanyard at work.

2 20. I usually bring my shirt in my purse but I could carry it in my hand or wear it under  
3 other clothes if I wanted to. I don't have to have a bag to carry my shirt to work.

4 21. I have never complained to anyone about bag and personal technology checks. Nor  
5 have I ever witnessed any employee complain about bag or personal technology checks.

6 22. As a manager, I have never been evaluated or audited on whether I consistently  
7 perform or enforce Apple's bag and technology check policy. I am not aware of any of the stores I  
8 worked in being evaluated or audited on whether it consistently performs bag or technology checks.

9 23. I believe I have been compensated for all of the time I have worked for Apple. There  
10 is no time that I have worked that Apple has not paid me for. I also have been paid overtime for all  
11 overtime I have worked.

12 24. I worked with Amanda Frlekin at Century City. I don't recall ever checking her bag  
13 or any Apple technology she had. I didn't find her to be an honest person. For example, she stated  
14 on her resume that she went to a high school that did not appear to have existed and stated that she  
15 was captain of the cheerleading team when later she said she was homeschooled. She was often  
16 unexpectedly absent and late for work. She also called another manager a derogatory term on an  
17 EasyPay device, which was also highly inappropriate.

18 25. I also worked with Debbie Speicher. I never saw her go through a bag or technology  
19 check. She kept her bag with her in the business office because it was not connected to the store.  
20 When she left work, she would often exit through the rear exit from the remote business office and  
21 never go through the store itself. I find it unlikely that she would have had a bag or technology  
22 check very often, if ever.

23 26. Before beginning the interview that ultimately resulted in this declaration, I reviewed  
24 and signed the Voluntary Interview Consent Form that is attached as Exhibit A. The interview was  
25 conducted by Apple's attorney in accordance with the Consent Form.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on February 5, 2015 at Santa Monica, California.

  
HEATHER HART

# Exhibit 2

**DECLARATION OF CAMERON MCCHESENEY**

I, Cameron McChesney, hereby declare:

1. I work for Apple as a Lead Genius at its Higuera Street store in San Luis Obispo, California. I've worked for Apple since July 2010. I started as a part time Specialist, then became a full time Specialist in February 2011, then became a Genius in February 2012, then became a Lead Genius in January 2013.

2. I've worked at the Higuera Street store the entire time I've worked for Apple, except for short visits at the Fashion Valley, Fashion Island, Americana at Brand, Valencia Town Center, and State Street stores. Each visit was a few days at a time.

3. I work about 40 hours per week, sometimes a little bit more than that. I usually work 8 hours per day, 5 days per week. My days off vary, but I always work either 9 a.m. to 6 p.m., or 10 a.m. to 7 p.m. shifts. There are generally between 10-15 employees who start their shift at the same time as me. There are generally about 4-5 other employees who finish their shift at the same time. Not as many employees finish at the same time because many of the employees starting at the same time as me are part time and have shorter shifts.

4. I bring a backpack to work every day. I mainly bring a bag because I ride my bike to work, so I want to have a bag with me to carry anything I want to have with me at work. I usually carry my Apple t-shirt and personal things like my wallet, sunglasses, keys, bike lock, and occasionally a book or my iPad. Every once in a while I bring my personal laptop. My Apple shirt is the only work-related item I carry in my bag. When I ride my bike I always carry my Apple shirt in my bag. When I drive, I can keep things in my car and I can wear my shirt under other clothes and don't have to worry about it getting dirty. I have carried my Apple shirt into the store or worn it under clothes when I drove to work.

5. I could get by without bringing a bag if I wanted to. In fact, there are days I don't bring a bag into the store and there was a period of about a year that I didn't bring a bag to work at all. When I didn't bring a bag to work, I didn't have to undergo bag checks and I just walked out of the store after clocking out. Over my career, I'd estimate I brought a bag 70% of the time.

1           6.       When I leave the store with my bag at lunch or at the end of my shift, I  
2 usually have my bag checked by a manager. A few times a month I walk out of the store with a bag  
3 without having a check. This is when I'm in a hurry or when a manager just waves me on.  
4 Sometimes a manager is busy talking to a customer and just waves me on to walk out without a  
5 check. The longest I've waited for a manager to become available is about one minute.

6           7.       The bag check itself takes at most 15-30 seconds. I open my bag and the  
7 manager glances in. The manager doesn't touch anything in the bag.

8           8.       I have to wait for a bag check about once a week, usually for about 15-30  
9 seconds, either because the managers are busy talking to customers or there are other employees  
10 getting their bags checked. I've never had to wait in a long line for a bag check or seen long lines  
11 for bag checks. The most employees I've ever waited behind is 3-4 employees, but that is unusual.  
12 When there are multiple employees waiting for check the manager will usually check all of the  
13 employees at the same time. The longest I've waited for a bag check was 1.5 minutes.

14           9.       I'd estimate that 40-50% of employees regularly bring bags to work. There  
15 are employees who don't bring bags. If an employee doesn't bring a bag, then the employee doesn't  
16 have to have a bag checked or check in with a manager.

17           10.      I estimate that about 65% of employees drive to work.

18           11.      I own an iPhone that I bring with me to work every day. I also bring an iPad a  
19 few times a month. I bring a MacBook Air a few times a year. I used to have a technology card for  
20 my Apple devices, but I haven't updated it in about a year and a half because store management  
21 rarely performs technology checks.

22           12.      There was a one-week period when managers performed technology checks  
23 by matching the serial numbers of employees' Apple devices with their personal technology cards.  
24 This was around June 2013. The technology checks took 1-2 minutes. Other than that one-week  
25 period, I haven't had any of my personal technology checked. When I bring my iPad, I just show it  
26 to the manager when I have my bag checked. It has a customized cover, so it's easily recognizable  
27 as mine. I never have to verify serial numbers on my personal Apple device with my technology  
28 card.


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13. I don't need to use my personal Apple technology to do my job. I bring my Apple technology to work for personal use. I bring my iPhone to work so that I can communicate with friends and family, and for entertainment. I bring my iPad to do school reading on my breaks. I bring my MacBook for the same reason, when I have an assignment that is not compatible with my iPad

14. I've never had a manager check my coat or clothing pockets.

15. Before beginning the interview that ultimately resulted in this declaration, I reviewed and signed the Voluntary Interview Consent Form that is attached as Exhibit A. The interview was conducted by Apple's attorney in accordance with the Consent Form.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on February 4, 2015 at San Luis Obispo, California.

  
\_\_\_\_\_  
CAMERON MCCCHESNEY

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# Exhibit 3

up

**DECLARATION OF ELLYSE PINNEY**

I, Ellyse Pinney, declare as follows:

1. I currently work for Apple as a Specialist at the San Francisco Flagship store in San Francisco, California. I have been in this position for about 18 months, since about July 8, 2013.

2. I am a Specialist on the Corps Team, so I am responsible for the normal procedures, like opening and closing the store, answering customer questions, and things like that. I am paid on an hourly basis. I clock in at the beginning of my shift and clock out at the end of my shift. I normally work five days a week, normally either from 7 a.m. to 4 p.m. or from 2 p.m. to 11 p.m.

3. I normally carry a messenger bag to work. At the San Francisco store, there are lockers in the store and additional lockers in a remote break room, a couple minutes' walk from the store. I normally put my bag in the lockers within the store. On a launch day, I usually put my bag in the remote break room. I also sometimes put my bag in the remote break room on occasions where I have brought a lunch that needs to be refrigerated.

4. Personal iPhones (if we choose to bring them) are not checked at the San Francisco Store. If I bring an iPad, I show my technology card to the guard when I leave the store. If I purchase Apple merchandise, I show the receipt to the guard when I leave the store. And I will open my bag for the guard when I leave the store. The guard never checks my pants pockets or my coat or jacket. And the guard never sticks his hand into my bag or touches any of my belongings.

5. On the occasions where I put my bag in the remote break room and therefore don't have any bag with me in the store, I just walk by the security guard and put my hands up to show that I don't have anything to check. I don't have to wait in line if I'm not carrying a bag or anything else subject to being checked. On multiple occasions, I have simply passed by the security guard when I don't have anything subject to being checked, when the guard was checking someone else.

6. I usually clock in and clock out using the iPod Touch devices downstairs. Sometimes if I bring my lunch, then I clock in at the remote break room because then I would put my lunch in the refrigerator there and I would eat my lunch there. It's my choice where to clock in and clock out (within the store or at the remote break room).

7. In my messenger bag, I usually have my iPhone, a Kindle (to read on the way to and



ap

1 from work), wallet, keys, water bottle, and sometimes my lunch. Every once in a while I bring my  
2 iPad, so I can watch Netflix if I have free time.

3 8. I know other employees who either don't have an iPhone or don't bring it to work. I  
4 don't have to own an iPhone or bring it to work. I also don't have to bring any other personal Apple  
5 technology to work. All technology I need to perform my job is here at the store and available to  
6 me. Bringing my iPhone to work – and, occasionally, bringing my iPad – is purely my choice.

7 9. The check process itself takes no more than 5 seconds.

8 10. There usually aren't any lines, because there usually aren't large groups of employees  
9 leaving at the same time. The longest line I've ever experienced had two or three people in it. The  
10 longest time, in total, including all waiting and check time, that I've ever experienced in a bag check  
11 is about 30 seconds. This (30 seconds' duration) would be exceedingly rare.

12 11. On days when I did not bring a bag into the store, I did not have to undergo a bag  
13 check or personal technology check. If I don't bring a bag or Apple technology into the store, or if I  
14 only bring my iPhone to work, I don't have to undergo a check because there is nothing to check. If  
15 I didn't have a bag or Apple technology, or if I just have my iPhone, I am able to simply leave the  
16 store, without waiting in line for the guard. I've never seen another employee who did *not* bring a  
17 bag or personal Apple technology have to wait in line to check out with the security guard. If an  
18 employee doesn't have a bag or personal Apple technology (beyond an iPhone, which is not subject  
19 to being checked) the employee can simply leave the store.

20 12. Although I bring a bag, I know several other employees who rarely or never bring  
21 bags. Specialists James Jackson, Ian Douglas, and Rafi Brobst are a few that come to mind.

22 13. I haven't ever had difficulty finding a security guard to conduct a bag check or  
23 personal technology check. I've never had to wait for a manager to become available to do a bag or  
24 personal technology check – because managers do not perform checks here at the San Francisco  
25 store.

26 14. The bag and personal technology checks do not bother me at all because they only  
27 last a matter of seconds. The fact that the checks exist also allow me the convenience of bringing  
28 my bag and personal Apple technology to work.

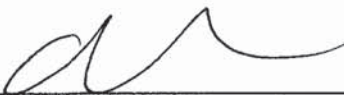
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1           15. I have never complained to anyone about bag checks.

2           16. I believe I have been compensated for all of the time I have worked for Apple. There  
3 is no time that I have worked that Apple has not paid me for. I also have been paid overtime for all  
4 overtime I have worked. In fact, Apple is the best place that I've ever worked (and I've worked in  
5 several other retail jobs), in terms of getting paid for every minute of time that I've worked. I don't  
6 need to get pre-approval, for example, to work or get paid for overtime.

7           17. Before beginning the interview that ultimately resulted in this declaration, I reviewed  
8 and signed the Voluntary Interview Consent Form that is attached as Exhibit A. The interview was  
9 conducted by Apple's attorney in accordance with the Consent Form.

10           I declare under penalty of perjury under the laws of the United States and the State of  
11 California that the foregoing is true and correct. Executed on January 24, 2015 at San Francisco,  
12 California.

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ELLYSE PINNEY

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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Plaintiff’s Memorandum of Points and  
Authorities in Opposition to Defendant CSI  
Electrical Contractors, Inc.’s Motion for  
Partial Summary Judgment**

Date: April 8, 2021

Time: 9:00 a.m.

Crtrm: 3

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1 **I. INTRODUCTION**

2 Defendant CSI Electrical Contractors, Inc.’s (“CSI”) motion for partial summary judgment must  
3 be denied. CSI has not carried its burden in proving that there are no triable issues of material fact and  
4 that it is entitled to judgment as a matter of law as to the issues in dispute. Plaintiff has presented  
5 evidence sufficient to create triable issues of fact as to whether CSI sufficiently controlled Plaintiff  
6 during the Security Entrance Time, the Security Exit Time and the Access Road Travel Time so as to  
7 make such time compensable “hours worked” under California law or whether the Security Time was  
8 time during which CSI “suffered or permitted” Plaintiff to work. CSI also fails to establish as a matter  
9 of law that the Security Gate where the mandatory security entrance and exit process occurred was *not*  
10 the first location where the employees’ presence was required for purposes of Rule 5(A) of Wage  
11 Order 16. Moreover, Plaintiff has proffered undisputed evidence that the Security Gate were the  
12 security process occurred *was* the first location where the employees’ presence was required for  
13 purposes of Rule 5(A) of Wage Order 16. At a minimum there is a triable issue of fact as to this issue.

14 CSI’s attack on Plaintiff’s hours worked claim during meal periods is based on the alleged  
15 existence of a valid CBA under which Plaintiff supposedly worked. CSI, however, has not established  
16 with admissible evidence the existence of a CBA to which CSI was a party or that Plaintiff was subject  
17 to such CBA and thus has failed to demonstrate that any CBA exemption even applies to Plaintiff.  
18 CSI’s argument is also based on the blatantly contrived and erroneous premise that Plaintiff’s right to  
19 be paid for hours worked is derivative or dependent on the meal period laws. It is not, but rather is  
20 based on the statutory right to be paid for all hours worked, which right is not exempted by any meal  
21 period laws.

22 **II. THE APPLICABLE STANDARD FOR SUMMARY JUDGMENT MOTIONS**

23 In ruling on a summary judgment motion, the facts and inferences are viewed in the light most  
24 favorable to the non-moving party. (Fed.R.Civ.P. 56(c); *Matsushita Elec. Indus. Co., Ltd. v. Zenith*  
25 *Radio Corp.* (1986) 475 U.S. 574, 586–590 [106 S.Ct. 1348, 1356–1357, 89 L.Ed.2d 538].) A fact  
26 issue is “genuine” when the evidence is such that “a reasonable jury could return a verdict for the  
27 nonmoving party.” (*Villiarimo v. Aloha Island Air, Inc.* (9th Cir. 2002) 281 F.3d 1054, 1061.) “If under  
28 any reasonable construction of the evidence and any acceptable theory of law [the plaintiff] could be



1 entitled to prevail, a summary judgment against him cannot be sustained.” (*Anderson v. American*  
2 *Auto. Ass’n* (9th Cir. 1972) 454 F.2d 1240, 1242.)

3 **III. THE DECISION IN *GRIFFIN* IS NOT BINDING ON PLAINTIFF IN THIS ACTION.**

4 CSI’s argument that the *Griffin* decision somehow bars Plaintiff’s claim in this case reflects a  
5 fundamental misunderstanding of the law of collateral estoppel and *res judicata*. *Res judicata*, or claim  
6 preclusion, “provides that ‘a final judgment on the merits bars further claims by parties or their privies  
7 based on the same cause of action.’” (*In re Schimmels* (9th Cir. 1997) 127 F.3d 875, 881 (quoting  
8 *Montana v. U. S.* (1979) 440 U.S. 147, 153 [99 S.Ct. 970, 973, 59 L.Ed.2d 210].) The related doctrine  
9 of collateral estoppel, or issue preclusion, provides that “when an issue of ultimate fact has once been  
10 determined by a valid and final judgment, that issue cannot again be litigated between the same parties  
11 in any future lawsuit.” (*Ashe v. Swenson* (1970) 397 U.S. 436, 443 [90 S.Ct. 1189, 1194, 25 L.Ed.2d  
12 469].) Because Huerta was not a party in *Griffin*, the rules of claim preclusion or issue preclusion do  
13 not apply. CSI’s citation to the alleged “dispositive” unpublished memorandum decision in *Griffin v.*  
14 *CSI Electric Company*, Case No. 17-cv-03778 is also completely inappropriate. Such decisions “are not  
15 precedent.” (Circuit Rule 36-3(a).)

16 If CSI’s argument were accepted, then if 900 plaintiffs brought separate toxic tort actions against  
17 Defendant A and one of them went to trial and lost based on a finding that Defendant A was not liable  
18 to that plaintiff, such decision would be binding on any other plaintiffs who sued Defendant B on the  
19 same type of claim. This, of course, is not the law and would violate fundamental principles of due  
20 process. (*Cf Kinney Shoe Corp. v. Vorhes* (9th Cir. 1977) 564 F.2d 859, 862 *abrogated on other*  
21 *grounds by Hoffmann-La Roche Inc. v. Sperling* (1989) 493 U.S. 165 [110 S.Ct. 482, 107 L.Ed.2d 480]  
22 (in FLSA opt-in action, no member of the class is either bound by the class action adjudication or  
23 barred from filing an individual claim within the limitations period unless he opts to become a party).)  
24 If the plaintiff in *Durham* were to prevail against Sachs on any of its claims in *Durham*, CSI would  
25 certainly dispute that the *Durham* decision was binding on it in this case and that CSI was liable as a  
26 matter of law to Huerta because Sachs had been found liable in *Durham*.

1 **IV. CSI HAS NOT DEMONSTRATED THAT PLAINTIFF’S CLAIMS FOR “HOURS WORKED” AT ISSUE IN**  
 2 **THIS MOTION FAIL AS A MATTER OF LAW.**

3 Paragraph 4 of Wage Order No. 16 provides that employers shall pay to each employee certain  
 4 minimum wages “*for all hours worked.*” Paragraph 2(J) of Wage Order No. 16 defines “hours worked”  
 5 which is defined as “the time during which an employee is subject to the control of an employer, and  
 6 includes all the time the employee is suffered or permitted to work, whether or not required to do so.”  
 7 Plaintiff alleges that all the time he spent waiting for and going through the Security Gate where the  
 8 security process occurred at the beginning of the day until he left the Solar Site through the Security  
 9 Gate was time he was under CSI’s control and was therefore compensable under California law. (FAC,  
 10 ¶¶ 30-37.) CSI seeks partial summary judgment on various issues as to certain portions of such time.  
 11 CSI’s Notice is vague and ambiguous as to exactly what issues CSI seeks to adjudicate, but it appears  
 12 to attack the time spent waiting for and going through the mandatory entrance security process  
 13 (“Entrance Security Time”), the time spent waiting for and going through the mandatory exit security  
 14 process (“Exit Security Time”), and the time spent driving from the Security Entrance to the parking  
 15 lots and back (“Drive Time”). As Plaintiff discusses below, CSI has offered no admissible evidence  
 16 rebutting as a matter of law Plaintiff’s allegations that such time was time he was under CSI’s control  
 17 and therefore compensable “hours worked” under California law. There are, at a minimum, triable  
 18 issues of material fact whether any of these times constitute “hours worked.”

18 **A. The Mandatory Security Entrance and Exit Process**

19 **1. The Security Gate to the Solar Site**

20 The California Flats Solar Project (“Solar Site”) is located on the privately-owned Jack Ranch.  
 21 There is only one entrance to the Solar Site that workers could use, which is a guarded security gate  
 22 (the “Security Gate”). The Security Gate during Phase 1 of the Project was originally located on  
 23 Turkey Flats Road (“Access Road”) just after the intersection of the Access Road and Highway 41.  
 24 Later, during Phase 2, when CSI was involved, it was moved from the original location closer to the  
 25 parking lots. (Huerta, ¶¶ 8-10.) (Hereinafter, all references to the Security Gate will be to the Security  
 26 Gate where the mandatory entrance and exit security processes occurred.)  
 27  
 28

## 2. The Mandatory Security Entrance Process

To work on the Site, the first place the CSI workers were required to be at the beginning of the day was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site. CSI workers could not go beyond the Security Gate without going through the mandatory entrance security process. If a worker forgot or lost his or her security badge, the worker could not enter the Solar Site without special permission. (Huerta, ¶¶ 17-20; Clarno, ¶¶ 14-16; Garcia, ¶¶ 14-15; Tucker, ¶¶ 16-18.)

At the Security Gate, there was normally one and sometimes two security guards who conducted the mandatory security entrance process. To conduct the mandatory entrance and exit security process, the security guard or guards would stop each vehicle to check for security badges of the passengers. For both entering and exiting the Solar Site, when there were two security guards inspecting and scanning in security badges, the security guards would each stand on a side of the vehicle to inspect and scan in security badges. At other times, one security guard would stay in the guard shack while the other security guard inspected the vehicles and scanned the security badges alone. The passengers in the vehicles would roll down their windows and hand the security badges to the security guard for inspection and scanning. The number of security badges in each vehicle was required to match the number of passengers in each vehicle. For both entering and exiting the Solar Site, sometimes the drivers would present all the badges to the security guard at once. Other times they did not, and the security guards would go to each window of the vehicle where the passengers were sitting and inspect and scan their security badges. Each security badge was inspected and scanned individually by the security guards. The security guards would inspect and scan each worker's security badge in each vehicle before letting them pass through the Security Gate. (Huerta, ¶¶ 21-23; Clarno, ¶¶ 18-21; Garcia, ¶¶ 17-22; Tucker, ¶¶ 20-25.) If passengers in a vehicle did not have security badges, the security guards would pull the vehicle out of line, would make the vehicle park on the side of the road, and would require any passengers who did not have their scan-in badges to go into the guard shack to be cleared to pass through the Security Gate. If workers lost their badges and needed replacement badges, the workers were required to check in at the security guard shack every day and had to sign in or sign out at the guard shack or get a temporary badge until they replaced the lost badges. Once any passengers

1 who did not have security badges were cleared to pass through the Security Gate, the vehicle was  
2 allowed to get back in line, pass through the Security Gate, and proceed on the Access Road to the  
3 parking lots. (Huerta, ¶ 24; Clarno, ¶¶ 22-23; Garcia, ¶¶ 23-24; Tucker, ¶¶ 26-27.) The security guards  
4 had the right to look inside and search any worker vehicle at any time. (Huerta, ¶ 26; Clarno, ¶ 25;  
5 Garcia, ¶ 26; Tucker, ¶ 29.) Workers witnessed the security guards looking into their vehicles and truck  
6 beds during the entrance and exit process at the Security Gate.

7  
8 There was always a long line of vehicles waiting to go through the Security Gate, including buses  
9 carrying workers, in the morning. (Huerta, ¶ 30.) While CSI workers were waiting in the long lines to  
10 go through the Security Gate and while they were going through all the steps of the security process to  
11 enter and exit the Solar Site, the workers were restricted by, confined by, and under the control of CSI.  
12 During the entrance Security process, they could not use the time effectively for their own purposes,  
13 such as running errands or getting something to eat or doing other things that they could normally do if  
14 they were not restricted by, confined by, and controlled by the long lines and security process to enter  
15 Solar Site. (Huerta, ¶ 31; Clarno, ¶ 26; Garcia, ¶ 28; Tucker, ¶ 31.)

16 **B. Rules regarding entering the Solar Site and the Access Road**

17 Workers could not enter the Solar Site and drive on the Access Road until the Solar Site was  
18 opened by the security guards. They were not allowed to enter the Solar Site until the sun had come up  
19 and the biologists had cleared the Solar Site to be opened. (Huerta, ¶ 32; Clarno, ¶ 27; Garcia, ¶ 29;  
20 Tucker, ¶ 32.) Workers had to be off the Solar Site by a certain time. (Huerta, ¶ 62; Clarno, ¶ 54;  
21 Garcia, ¶ 55; Tucker, ¶ 60.) If they left too early, drove too fast, or arrived at the Security Gate too  
22 early at the end of the day, they could be suspended or terminated. (Huerta, ¶ 64; Clarno, ¶ 56; Garcia,  
23 ¶ 57; Tucker, ¶ 62.)

24 **1. Workers were monitored while on the Access Road.**

25 CSI personnel monitored the workers while they were driving on the Access Road. (Huerta, ¶ 36;  
26 Clarno, ¶ 30; Garcia, ¶ 31; Tucker, ¶ 35.) From the time that workers went through the Security Gate in  
27 the morning until they went out of the Security Gate at the end of the workday, they were subject to all  
28 the Solar Site's rules and could be terminated at any time for violating them. (Huerta, ¶ 37; Clarno, ¶  
31; Garcia, ¶ 32; Tucker, ¶ 36.) Workers were subject to having their bodies, personal property and

1 vehicles searched at any time that they were inside the Security Gate or on the Access Road. Workers  
2 were also subject to drug and alcohol testing at any time that they were inside the Security Gate or on  
3 the Access Road. (Huerta, ¶ 39; Clarno, ¶ 33; Garcia, ¶ 34; Tucker, ¶ 38.)

4 **2. The rules of the Solar Site were applied to the Access Road.**

5 Workers were told that all the job site rules applied to the workers once they entered the Security  
6 Gate until they left the Security Gate. (Huerta, ¶ 37; Clarno, ¶ 31; Garcia, ¶ 32; Tucker, ¶ 36.) These  
7 rules included, among other rules, safety and personal protective equipment rules, discrimination rules,  
8 anti-harassment rules, environmental rules, alcohol and drug policies, rules related to being subject to  
9 searches for alcohol, drugs and other things, no smoking, no practical jokes, no horseplay rules, no  
10 gambling rules, no photography, no loud music and other rules. (Huerta, ¶ 41.) Many of these rules  
11 were confirmed in an employee pamphlet for the Site. (See Cal Flats Solar Environmental Handout,  
12 Exh. 4 to the Dion-Kindem Decl.)

13 **3. The specific rules of the Access Road**

14 Workers were also told about specific “rules of the road” that applied to the Access Road. These  
15 rules were in addition to signs that were posted before and after workers entered the Security Gate and  
16 in materials that they were given for the job site. (Huerta, ¶ 38; Clarno, ¶ 32; Garcia, ¶ 33; Tucker, ¶  
17 35.) Workers were suspended or terminated for things they did wrong on the Access Road, such as  
18 exceeding the speed limit. Some of these rules are described in detail below.

19 **Speed limits.** There were signs with low speed limits (5 to 20 mph) posted on the Access Road.  
20 CSI personnel monitored workers’ activities and the speeds of vehicles on the Access Road. There  
21 were also speed radar machines and cameras installed along the Access Road, including digital signs  
22 that would show workers how fast they were going. If workers violated the speed limits or “rules of the  
23 road” or other job Solar Site rules, they would be suspended or terminated. (Huerta, ¶¶ 44-45; Clarno, ¶  
24 38; Garcia, ¶ 39; Tucker, ¶¶ 43-44.)

25 **Passing.** Workers were not allowed to pass another moving vehicle for any reason -- except when  
26 a car had broken down or pulled over to the side of the road. (Huerta, ¶ 47; Clarno, ¶ 40; Garcia, ¶ 41;  
27 Tucker, ¶ 46.)  
28

1           **Animals.** Workers were not allowed to disturb the cattle or local wildlife in any way while  
2 driving on the Access Road. If they saw animals on or near the Access Road, they had to let them do  
3 whatever they needed to do and were not allowed to do anything to try to get them to move off the  
4 Access Road. They had to slow down or stop their vehicles and just stay in their vehicles and wait for  
5 the animals to move away from the road. Workers were not allowed to touch or feed anything to the  
6 local wildlife or cattle on the Solar Site or along the Access Road. Workers were not supposed to honk  
7 their horns while driving on the Access Road because the horns could disturb the local wildlife and the  
8 cattle. Workers were not allowed to play loud music that could be heard outside the vehicle while they  
9 were on the Access Road because the noise from the music could also disturb the local wildlife and the  
10 cattle. (Huerta, ¶¶ 49-50; Clarno, ¶¶ 42-43; Garcia, ¶ 43-44; Tucker, ¶¶ 48-49.) Workers could not wear  
11 ear buds or ear pods while driving on the Access Road. (Huerta, ¶ 51.)

12           **Smoking.** Workers were told that they were not allowed to smoke either *inside or outside of*  
13 *their vehicles while they were driving on the Access Road* or inside or outside of their vehicles in the  
14 parking lot. They were told that they could only smoke in designated smoking areas. (Huerta, ¶ 53;  
15 Clarno, ¶ 45; Garcia, ¶ 46; Tucker, ¶ 51.)

16           **Staying on and Stopping on the Access Road.** Once workers were released to drive on the  
17 Access Road in the morning and at the end of the day, they were required to drive directly on the  
18 Access Road to their assigned parking lot in the morning and from their assigned parking lot back to  
19 the Security Gate at the end of the day and were required to stay on the Access Road. (Huerta, ¶ 54;  
20 Clarno, ¶ 46; Garcia, ¶ 47; Tucker, ¶ 52.) Workers were required to strictly follow the “rules of the  
21 road” and keep the flow of traffic constantly moving on the Access Road. Except for emergencies,  
22 workers were not allowed to stop on the Access Road at any places that we were not specifically  
23 designated to stop at. (Huerta, ¶ 55; Clarno, ¶ 47; Garcia, ¶ 48; Tucker, ¶ 53.) If workers had to get out  
24 of their vehicles for any reason, they were not allowed to go outside of the boundary fences, stakes and  
25 ribbons that ran about 15 feet or so along the sides of the Access Road. If they had to get out of their  
26 vehicles along the Access Road for any reason, they could not disturb the environment, such as  
27 trampling or disturbing any plants. (Huerta, ¶ 56; Clarno, ¶ 48; Garcia, ¶ 49; Tucker, ¶ 54.)  
28

1 After going through mandatory security entrance process at the Security Gate in the morning and  
2 while driving on the Access Road to the parking lots, and while driving on the Access Road at the end  
3 of the day, workers were confined to the Solar Site and to the vehicle in which they rode and could not  
4 use the time effectively for their own purposes, such as running errands or getting something to eat or  
5 doing other things that they could normally do outside the Solar Site. Workers were not paid for the  
6 time on the Access Road or between the Security Gate and the parking lots. (Huerta, ¶¶ 57-58; Clarno,  
7 ¶¶ 49-50; Garcia, ¶¶ 50-51; Tucker, ¶¶ 55-56.)

### 8 C. The Mandatory Exit Security Process

9 To exit the Solar Site, all workers had to drive to the Security Gate on the Access Road and wait  
10 for their turn to go through the exit security process at the Security Gate. When they were traveling  
11 from the parking lots to the Security Gate at the end of the day, they could not pass other vehicles and  
12 had to wait in line for their turn to go through the exit security process, vehicle-by-vehicle, at the  
13 Security Gate. When a vehicle got to the front of the line at the Security Gates at the end of the day, the  
14 vehicle needed to stop at the Security Gate and wait until a security guard conducted the exit security  
15 process. They were required to roll down their windows and present their security identification badges  
16 for review and scanning by a security guard. All drivers and passengers in a vehicle had to do the same  
17 thing. The workers were not allowed to leave the Solar Site until they completed the exit security  
18 process at the Security Gate and the security guards allowed them to pass through the Security Gate  
19 and leave the Solar Site. (Huerta, ¶ 59; Clarno, ¶ 51; Garcia, ¶ 52; Tucker, ¶ 57.)

20 If a worker did not have his or her security identification badge at the time that he or she wanted  
21 to exit the Solar Site through the Security Gate, the worker had to pull out of line and go into the  
22 security guard shack at the Security Gate to be released before being allowed to exit the Solar Site.  
23 (Huerta, ¶ 60; Clarno, ¶ 52; Garcia, ¶ 53; Tucker, ¶ 58.)

24 During the exit security process, security guards looked inside the workers' vehicles through the  
25 windows. They also inspected the bed of any pickup trucks. When the vehicles had more than one  
26 person, security guards looked into the vehicles to see how many people were in the vehicles and  
27 confirmed that the identification badges matched the people in the vehicles. (Huerta, ¶ 61; Clarno, ¶ 53;  
28 Garcia, ¶ 54; Tucker, ¶ 59.)

1 It was the policy of the Solar Site that the security guards were required to look into the vehicles  
2 and truck beds during the exit process. The California Flats Solar, LLC, Site Health & Safety Plan,  
3 Attachment D, Security Plan for the Site provides as follows:

4 2. Security Guards

5 Vehicle Inspections - Security personnel will consistently inspect any vehicle that has entered  
6 the project site upon exiting. Security is required to check back seats, back of trucks, and  
7 periodically to check trunks of cars. ... (Dion-Kindem Decl., Exh. 2; (emphasis added).)

8 CSI's PMK confirmed that the California Flats Solar, LLC, Site Health & Safety Plan was  
9 provided by First Solar to CSI for the project. (McGinley Depo., 84:23-86:3.) This document was  
10 produced by First Solar in discovery in this litigation. (Dion-Kindem Decl., Exh. 2.) In addition, the  
11 contract between CSI and First Solar incorporates this Site Health and Safety Plan as an exhibit and  
12 requires that CSI comply with all aspects of that plan. (See CSI and First Solar Contract, ¶3.9, page 8,  
13 Bate No. 000116 attached the Dion-Kindem Decl., Exh. 3.)

14 At the end of the day, the line waiting to get out of the Solar Site at the Security Gate was even  
15 longer than the line to get into the Solar Site at the Security Gate at the beginning of the day. Hundreds  
16 of Solar Site workers would be leaving at around the same time. The work stopping time for virtually  
17 all the CSI workers was the same and they were required to be off the Solar Site by a certain time.  
18 Because of the number of vehicles leaving at once and because of the configuration of the Security  
19 Gate, the time it took workers to wait in line and go through the exit security process could be 30  
20 minutes or more. Waiting in line to exit the Solar Site was part of the exit security process every day.

21 It could take up to a minute or more per vehicle to go through the security exit process after the  
22 workers finished waiting in the long line. (Huerta, ¶ 63; Clarno, ¶ 55; Garcia, ¶ 56; Tucker, ¶ 61.)

23 It was CSI's policy that any workers who arrived at the Security Gate and attempted to exit the  
24 Solar Site through the exit security process too early at the end of the workday could be disciplined or  
25 terminated. Some CSI workers did in fact arrive at the Security Gate at the end of the workday and  
26 attempted to exit the Security Gate too early and were terminated. (Huerta, ¶¶ 64-65; Clarno, ¶ 56;  
27 Garcia, ¶¶ 57-58; Tucker, ¶¶ 62-63.)



1 During the time that workers were waiting in line to exit the Security Gate and while undergoing  
 2 the exit security process, workers were under CSI's control because they were confined to and could  
 3 not leave the Solar Site until they went through the exit security process and were required to follow  
 4 the policies, processes and rules required by CSI to exit through the Security Gate. Also, after workers  
 5 got in line to exit the Security Gate, there was nothing they could do other than wait in the vehicle in  
 6 which they were riding to complete the security process and could not use the time effectively for their  
 7 own purposes. For example, they could not: (a) pass any vehicles ahead of them; (b) leave the Solar  
 8 Site; (c) run any personal errands; (d) leave the Solar Site to get something to eat; (e) perform any  
 9 personal activities outside of my vehicle; and (f) could not move my vehicle until the security guards  
 10 had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site. (Huerta, ¶ 66; Clarno, ¶ 57;  
 11 Garcia, ¶ 59; Tucker, ¶ 64.)

12 **V. THE SECURITY TIME SPENT BY PLAINTIFF AND CLASS MEMBERS WAITING FOR AND**  
 13 **UNDERGOING THE MANDATORY SECURITY ENTRANCE PROCESS CONSTITUTES "HOURS**  
 14 **WORKED" UNDER CALIFORNIA LAW.**

15 Plaintiff alleges and has presented evidence that the time spent waiting for and passing through  
 16 the mandatory entrance security process was time workers were under CSI's control and that they  
 17 could not use the time effectively for their own purposes. (1AC, ¶¶ 30-35.) CSI offers no evidence to  
 18 support its contention that workers were *not* under CSI's control during this time. In *Cervantez v.*  
 19 *Celestica Corp.* (C.D. Cal. 2009) 618 F.Supp.2d 1208, 1216, the district court held that time spent  
 20 going through a mandatory entry security process constituted hours worked under California law. The  
 21 district court reasoned:

22 First, Defendants require Plaintiffs to pass through the security screening before they may enter  
 23 the Celestica facility. This is an express means of control Defendants exercise over Plaintiffs.

24 Furthermore, Plaintiffs necessarily must arrive at work early, even if not at a specific time, to  
 25 pass through security, clock in, and walk in their work stations so they can start working at the  
 26 beginning of their shift. If a plaintiff chooses to leave the security line or exit the facility, only  
 27 to submit again to security screening, she runs the risk of being late and being docked pay. This  
 28

1 is a realistic consideration for an employee and shows Defendants control Plaintiffs from the  
2 moment they enter the security line. (*Id.*, at 1216.)

3 **VI. THE SECURITY TIME SPENT BY PLAINTIFF AND CLASS MEMBERS WAITING FOR AND**  
4 **UNDERGOING THE MANDATORY SECURITY EXIT PROCESS CONSTITUTES “HOURS WORKED”**  
5 **UNDER CALIFORNIA LAW.**

6 In *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1047 [258 Cal.Rptr.3d 392, 398–399, 457 P.3d  
7 526, 531–532], *reh’g denied* (May 13, 2020), the Court held that Apple employees who were required  
8 to wait for and go through a security exit process after they clocked out for the day were entitled to be  
9 paid for such time. The Court held:

10 . . . Apple employees are clearly under Apple’s control while awaiting, and during, the exit  
11 searches. Apple controls its employees during this time in several ways. First, Apple requires  
12 its employees to comply with the bag-search policy under threat of discipline, up to and  
13 including termination. *Second, Apple confines its employees to the premises as they wait for*  
14 *and undergo an exit search. Third, Apple compels its employees to perform specific and*  
15 *supervised tasks while awaiting and during the search.* This includes locating a manager or  
16 security guard and waiting for that person to become available, unzipping and opening all bags  
17 and packages, moving around items within a bag or package, *removing any personal Apple*  
18 *technology devices for inspection, and providing a personal technology card for device*  
19 *verification.* (Emphasis added.)

20 Under *Frlekin*, the time CSI employees spent waiting in for and going through the mandatory exit  
21 security process while they were confined to the Site (“the Exit Security Time”) was time they were  
22 clearly under CSI’s control and could not use the time effectively for their own purposes and therefore  
23 constituted “hours worked” for which they were entitled to be paid.

24 **A. As with Apple’s employees, CSI’s employees were confined to the Site and could not**  
25 **conduct any personal activities outside of the Site without undergoing the mandatory**  
26 **exit security process.**

27 There is no dispute that CSI’s employees were confined to the Site as they waited for and  
28 underwent the mandatory security exit process. Moreover, as discussed above, while confined Site as  
they were waiting in the exit security line and going through the exit security process, they were not  
free to conduct any personal business outside of the Site or use the time effectively for their own

1 purposes. As the Supreme Court recognized in *Frlekin*, this is a clear element of control that makes  
 2 time waiting for and going through a mandatory exit security process compensable.

3 Other California district courts have recognized the compensability of time waiting for and  
 4 undergoing exit security checks. In *Cervantez v. Celestica Corp.* (C.D. Cal. 2009) 618 F.Supp.2d 1208,  
 5 1216, the district court held that time spent going through entrance and exit security screening  
 6 constituted “hours worked” under California law. With respect to the exit security time, the district  
 7 court in *Cervantez* granted summary judgment for the plaintiffs, reasoning:

8 As the Court stated in its July 30 Order, Plaintiffs “have no choice about when to arrive at the  
 9 security line at the end of the shift. Like the plaintiffs in *Morillion*, Plaintiffs are under the  
 10 control of their employers while in the security line at the end of the shift: they cannot choose  
 11 to leave the premises without going through the line, nor can they choose to run a personal  
 12 errand before going through the line. . . . (July 30 Order, 253 F.R.D. at 571–72.)

13 . . .

14 According to Celestica, the confines of a factory building allow the class members to engage in  
 15 many more activities than would a moving shuttle, as in *Morillion*. (*Id.*) ***This slight difference***  
 16 ***where the employees are confined is unimportant; Defendants confine their employees to the***  
 17 ***Celestica facility and their activities are restricted as a result. In other words, the class***  
 18 ***members are under the control of their employer during this post-shift period.*** (*Morillion*, 22  
 19 Cal.4th at 586, 94 Cal.Rptr.2d 3, 995 P.2d 139.) (Emphasis added.)

20 In *Pelz v. Abercrombie and Fitch Stores, Inc.* (C.D. Cal., June 4, 2015, No. CV146327DSFJPRX)  
 21 2015 WL 12712298, at \*2, the district court also held that the time spent in a mandatory exit security  
 22 process was compensable:

23 Similar to the employer in *Morillion*, whose transportation policy prohibited its agricultural  
 24 workers from using that time effectively for their own purposes, ***Abercrombie’s bag check***  
 25 ***policy requires employees to remain in the store until they pass through an inspection—a***  
 26 ***wait that Plaintiffs claim may last as long as long thirty minutes. . . . This is time that***  
 27 ***Plaintiffs could not, for instance, buy a sandwich at a neighboring shop or attend to any***  
 28

1            *personal activity that requires being outside of Abercrombie’s store*. In other words, the  
2            relevant facts in this case appear materially indistinguishable from those at issue in Morillion  
3            and permit only one reasonable conclusion: *Plaintiffs were under Abercrombie’s control*  
4            *during off-the-clock bag check waiting periods and the time is compensable*. (Emphasis  
5            added.)

6            **B. As with Apple’s employees, CSI’s employees were required to perform specific tasks**  
7            **with respect to the exit security process.**

8            As was the case with Apple’s employees in *Frlekin*, CSI’s employees were “controlled” by being  
9            required to perform the specific and tasks of waiting in line, driving their vehicles through the line,  
10           locating their badges and showing them to the exit security personnel. They also had to leave the line if  
11           they did not have their security badges and were also required to allow their vehicles to be searched,  
12           some of which were. It is noteworthy that the security exit process in *Frlekin* included the requirement  
13           that employees, *even if they had no bags to be searched*, were required to show any personal  
14           technology they were carrying in order to leave and have this verified against a personal technology  
15           log. The guidelines instructed Apple managers to . . . “[a]sk the employee to remove any type of item  
16           that Apple may sell,” and “[b]e sure to verify the serial number of the employee’s personal technology  
17           against the personal technology log.” (*Frlekin*, at 1044.)

18           The requirement by Apple that an employee locate and show his or her personal technology  
19           device and have it verified by exit security personnel against a technology log is not meaningfully  
20           different than the requirement that CSI’s employees roll down their windows, locate and show their  
21           badges, have them verified by security personnel, and go to the guard shack and get permission to leave  
22           if they could not locate their badge.

23           The fact that the badging process in this case lasted about a minute does not mean the time was  
24           not compensable. In *Frlekin*, for example, some employees testified that the actual bag search took  
25           mere seconds. (See Declarations filed in *Frlekin*, Exhibits 1-3 to Request for Judicial Notice.) The  
26           Court nonetheless held that such time was compensable. In *Heredia v. Eddie Bauer LLC* (N.D. Cal.,  
27           Jan. 10, 2018, No. 16-CV-06236-BLF) 2018 WL 369032, at \*3, the plaintiff conceded that the actual  
28           security inspection “lasted less than one minute,” not including the waiting time. There is no

1 meaningful distinction between being confined to an employer’s secured premises and having to wait  
2 to have a bag searched for a few seconds as in *Frlekin* in order to leave and CSI’s employees being  
3 confined to Solar Site and having to wait to have a badge scanned (which scanning took about a  
4 minute) in order to leave. The times of both are times that the workers are indisputably under the  
5 employer’s control.

6 **VII. BECAUSE CSI CONTROLLED PLAINTIFF AND CLASS MEMBERS AFTER THEY ENTERED THE**  
7 **SECURITY GATE AND DROVE ON THE ACCESS ROAD TO AND FROM THE PARKING LOTS AND**  
8 **THEY COULD NOT USE SUCH TIME EFFECTIVELY FOR THEIR OWN PURPOSES, THE TIME**  
9 **CONSTITUTED “HOURS WORKED.”**

10 After the workers entered the Site through the Security Gate and drove to and from the parking  
11 lots on the Access Road, they were under CSI’s control and could not effectively use such time  
12 effectively for their own purposes such as running personal errands outside of the Site. CSI workers  
13 were required to stay on the Solar Site during the entire workday from the beginning of the workday to  
14 the end of the workday. (Huerta, ¶ 67; Clarno, ¶ 58; Garcia, ¶ 60; Tucker, ¶ 65.) This time is  
15 compensable under reasoning of the Court in *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 (94  
16 Cal.Rptr.2d 3, 995 P.2d 139), *as modified* (May 10, 2000). In *Morillion*, plaintiff agricultural workers  
17 sued for compensation for time they spent waiting for employers’ buses and riding those buses to and  
18 from the fields each day. (*Id.* at 579.) The Court held that riding buses to and from the fields each day  
19 as required by the employer constituted time over which the employer “controlled” the workers and  
20 that such “travel time is compensable” under the California Labor Code. (*Id.* at 585, 595.) The Court  
21 held that “an employee who is subject to an employer’s control does not have to be working during that  
22 time to be compensated....” (*Id.*, at 582.) The Court held that control was demonstrated by the fact that  
23 the workers could not use the time effectively for their own purposes, such as dropping off their  
24 children, stopping for breakfast or running other errands. (*Id.* at 586.) The Court also held that the  
25 employer subjected its employees to its control by “determining when, where, and how they are to  
26 travel.” (*Id.* at 588.)

27 Here, CSI determined *when*, *where* and *how* employees were to travel between the Security Gate  
28 and the parking lots. Workers can only travel on the Site from sunrise to sunset and after the Access  
Road is cleared by biologists. Workers can only travel on the Access Road. CSI controls “how” the

1 workers must travel – they are limited in how fast they can go, whether they can stop, whether they can  
2 pass other vehicles, and other limitations discussed above. Most importantly, while on the Access  
3 Road, they cannot use the time effectively for their own personal purposes.

4 The control exercised by CSI over its workers is essentially the same as that exercised by the  
5 employer in *Morillion*. CSI’s workers were confined to the Access Road just as the *Morillion* workers  
6 were confined to the buses. CSI’s workers were also required to use a *specific route* on private land  
7 after entering the secured Site and were subject to stringent controls over what they could do while on  
8 the Access Road. Indeed, if the workers in *Morillion* were allowed to use their own personal  
9 transportation to get to the fields but were confined to and required to follow only one specific route on  
10 the employer’s property and were subjected to all kinds of rules in using such designated route and  
11 could not use the time on that route effectively for their personal purposes, there is no question that  
12 they would be under their employer’s control and therefore entitled to compensation for such travel  
13 time.

14 This Court in *Griffin* referred to a hypothetical involving an isolated building on a private campus  
15 with a single accessway, but this hypothetical is incomplete. If employees in such hypothetical cannot  
16 do anything effectively for their own purposes outside of the “private campus” while confined to the  
17 campus without going through an exit security process, then while workers are on the single  
18 accessway, they cannot use such time effectively for their own personal purposes. This case does not  
19 involve travel “to find a parking space or walk to an elevator.” Thus, the *ipse dixit* assertion by Sachs  
20 and the Court in *Griffin* that “travel on an employer’s premises to find a parking space or walk to an  
21 elevator or certain department is generally not compensable” (*Griffin v. Sachs Electric Company* (N.D.  
22 Cal. 2019) 390 F.Supp.3d 1070, 1087, *aff’d* (9th Cir. 2020) 831 Fed.Appx. 270) is not only irrelevant,  
23 but unsupported by any cited authority. If this travel is time during which the employees cannot use  
24 effectively for their purposes, under *Morillion* it is compensable.

25 **VIII. AT A MINIMUM, WHETHER THE SECURITY TIME AND THE DRIVE TIME WAS TIME DURING**  
26 **WHICH CSI “CONTROLLED” PLAINTIFF IS AN ISSUE OF FACT FOR THE JURY.**

27 Whether CSI sufficiently controlled its employees during the Entrance and Exit Security Time  
28 and Travel Time on the Access Road to make such time compensable under California law is at a

1 minimum an issue of fact. (*See Oliver v. Konica Minolta Business Solutions U.S.A., Inc.* (2020) 51  
 2 Cal.App.5th 1 [264 Cal.Rptr.3d 248, 51 Cal.App.5th 1].) In *Oliver*, service technicians who were  
 3 required to drive their personal vehicles containing their employer’s tools and parts to customer sites to  
 4 make repairs to copiers and other machines filed a wage and hour class action against their employer  
 5 seeking payment of wages for time spent commuting to the first work location of the day, home from  
 6 their last appointment and mileage reimbursement. The Superior Court granted the employer’s motion  
 7 for summary judgment and the service technicians appealed. The Court of Appeal reversed, holding  
 8 that genuine issues of material fact existed as to whether the employees were sufficiently under the  
 9 employer’s control that precluded summary judgment.

10 Here, CSI has not demonstrated as a matter of law that Plaintiff and class members *could* use the  
 11 time they were waiting for and going through the mandatory entrance and exit security process and  
 12 driving on the Access Road while confined to the Solar Site “effectively for their own purposes.”

13 Indeed, as in *Frlekin* and *Morillion*, there is no dispute that they could *not* do so.

14 **IX. PLAINTIFF WAS “SUFFERED OR PERMITTED TO WORK” DURING THE MANDATORY ENTRANCE**  
 15 **AND EXIT SECURITY PROCESS.**

16 Wage Order 16 does not define “work.” In common usage, “work” means any “activity in which  
 17 one exerts strength or faculties to do or perform something.” (*Merriam-Webster’s Collegiate*  
 18 *Dictionary* (11th ed.)) It also means “exertion to attain an end, especially as controlled by and for the  
 19 benefit of an employer; labor.” (*Black’s Law Dictionary* (10th ed. 2014).) (*Cf Tennessee Coal, Iron &*  
 20 *R. Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590, 598 [64 S.Ct. 698, 703, 88 L.Ed. 949] (“work”  
 21 includes “physical or mental exertion (whether burdensome or not) controlled or required by the  
 22 employer and pursued necessarily and primarily for the benefit of the employer”). “Work” as a verb  
 23 means activities an employer may suffer or permit an employee to perform. (*Cleveland v.*  
 24 *Groceryworks.com, LLC* (N.D. Cal. 2016) 200 F.Supp.3d 924, 954.) (*See, e.g., Betancourt v.*  
 25 *Advantage Human Resourcing, Inc.* (N.D. Cal., Sept. 3, 2014, No. 14-CV-01788-JST) 2014 WL  
 26 4365074, at \*7 (interviewing required by an employer is “work”); *Sullivan v. Kelly Services, Inc.* (N.D.  
 27 Cal., Oct. 16, 2009, No. C 08-3893 CW) 2009 WL 3353300, at \*6 (“Plaintiff was suffered or permitted  
 28 to work during the time she interviewed with Defendant’s customers”).)

1 The activities CSI requires of its workers for the security process in this case meet this plain-  
2 language definition of “work.” They involve “exertion” or “effort” required by CSI, including  
3 complying with security personnel’s directions, driving a vehicle in the security line, rolling down  
4 windows, locating and displaying identification cards, allowing vehicles to be searched, and moving  
5 vehicles as directed by security personnel. The security checks “attain an end,” including confirming  
6 that employees are properly authorized to enter the Site and, with respect to the exit security process,  
7 that workers have not taken any equipment or supplies. This clearly benefits CSI by deterring and  
8 preventing theft. Moreover, employees were indisputably controlled during the security checks.  
9 (*Frlekin*, at 1047.) These activities are therefore compensable “work.” At a minimum, whether the  
10 activities required to be performed by the workers during the security checks constitute “work” is an  
11 issue of fact, precluding summary judgment in CSI’s favor.

12 **X. CSI HAS NOT DEMONSTRATED THAT PLAINTIFF’S CLAIM BASED ON SECTION 5(A) OF THE**  
13 **WAGE ORDER FAILS AS A MATTER OF LAW.**

14 Paragraph 5(A) of Wage Order 16 provides: “(A) All employer-mandated travel that occurs  
15 *after the first location where the employee’s presence is required by the employer* shall be  
16 compensated at the employee’s regular rate of pay or, if applicable, the premium rate that may be  
17 required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.”  
18 Plaintiff contends that the Security Gate where the mandatory entrance security process occurred was  
19 the first location where the employees’ presence was required by CSI in order to enter and work at the  
20 Site. They were instructed that the first place they were required to be at the beginning of the day in  
21 order to work was the Security Gate to line up and go through the mandatory entrance security process  
22 and drive on the Access Road to the parking lots of the Solar Site. Unless they went through the  
23 security entrance process, they could not work on the Site. (Huerta, ¶¶ 11, 17; Clarno, ¶¶ 9, 14; Garcia,  
24 ¶¶ 9, 14; Tucker, ¶¶ 11, 16.) Plaintiff’s evidence demonstrates the complicated nature of how the Site  
25 was secured and how restricted the Security Gate was at the beginning of the workday and clearly  
26 confirms that it was the first location at which the workers’ presence was required. Moreover, the fact  
27 that no worker meetings occurred at the Security Gate is irrelevant. The only thing the workers in  
28 *Morillion* were required to do was meet at a designated departure point location, park their cars, and get



1 on the bus. (*Morillion v. Royal Packing Co.* (Cal. Ct. App. 1998) 77 Cal.Rptr.2d 616, 618, *review*  
 2 *granted and opinion superseded* (Cal. 1998) 80 Cal.Rptr.2d 752 [968 P.2d 463], *as modified* (May 10,  
 3 2000), *rev'd* (2000) 22 Cal.4th 575 [94 Cal.Rptr.2d 3, 995 P.2d 139].)

4 CSI offers no evidence as to any *other* location that the employees' presence was first required  
 5 and has thus failed to sustain its burden on this motion. (*See* Arnold Decl.) Moreover, whether the  
 6 Security Gate was the "first location where the employee's presence is required" for purposes of  
 7 Paragraph 5(A) of the Wage Order is at a minimum a factual issue for the jury to decide and summary  
 8 judgment therefore cannot be granted on the issue.

9 **XI. CSI'S ATTACK ON PLAINTIFF'S "HOURS WORKED" CLAIM DURING MEAL PERIOD FAILS.**

10 **A. CSI has not established as a matter of law that Plaintiff was subject to any Collective**  
 11 **Bargaining Agreement.**

12 CSI has not offered any admissible evidence that Plaintiff worked under any qualifying CBA.  
 13 The only "evidence" that CSI offers to support its claim that Plaintiff was subject to a qualifying CBA  
 14 are the inadmissible conclusions of Ms. Arnold in her declaration that "George Huerta was a member  
 15 of the Operating Engineers Local 3 and was dispatched to the Project by that union" (Arnold, ¶ 10) and  
 16 that "George Huerta's employment on the Project was governed by two collective bargaining  
 17 agreements . . ." (Arnold, ¶ 11.) CSI also offers the alleged dispatch documents to California  
 18 Compaction and Milco Construction. (Exhibit C to Arnold Decl.) Ms. Arnold has not demonstrated her  
 19 personal knowledge of Mr. Huerta's supposed membership in the union. Moreover, the dispatch  
 20 documents have not been properly authenticated by Ms. Arnold. The statements are also clearly  
 21 inadmissible hearsay as they are offered for the truth of what they purport to reflect (Fed. Rules Evid.,  
 22 rule 801) and Ms. Arnold has not offered any admissible evidence required under Fed. Rules Evid.,  
 23 rule 803(6) to establish that they fall within the business records exception of such Rule. In addition,  
 24 Exhibit D, which is supposedly the Operating Engineers Master Agreement is facially incomplete,  
 25 indecipherable, and contains no signature pages. Plaintiff therefore objects to her declaration testimony  
 26 and these documents as well as her inadmissible conclusions in paragraph 14 as to what the provisions  
 27 of Exhibit D provide.  
 28

1           **B. Plaintiff’s “hours worked” claim for meal period time is not derivative or dependent**  
2           **on the meal period provisions of Labor Code Section 310 or section 10 of Wage Order**  
3           **16.**

4           An employee’s right to be paid minimum wages is provided for in Labor Code section 1194(a).  
5           Consistent with this Labor Code provision, section 4 of Wage Order 16 requires “[e]very employer” to  
6           pay a specified minimum wage to its employees “per hour for all hours worked ...” (Wage Order 16, §  
7           4.) “Hours worked” for purposes of Wage Order 16 is defined as “the time during which an employee  
8           is subject to the control of an employer, and includes all the time the employee is suffered or permitted  
9           to work, whether or not required to do so.” (Wage Order 16, § 2(J).) Thus, an employee’s right to be  
10          paid for all hours worked exists *independently* of any right to meal periods and is *not derivative* of the  
11          employee’s meal period rights. This right would exist even if there were no meal period laws and  
12          Defendant cites no authority holding otherwise.

13          In Plaintiff’s First Amended Complaint, Plaintiff alleges that workers were restricted during meal  
14          periods from leaving their daily work sites. (Complaint, ¶ 31.) Plaintiff contends that because they were  
15          restricted from leaving their daily work areas during the meal periods, they were under CSI’s control  
16          during the meal periods and that the time of their meal periods constitutes “hours worked” under  
17          California law for which they were entitled to be paid. Plaintiff alleges that he was not paid for such  
18          time (¶ 32) and seeks to recover such wage pursuant to Section 1194 and Paragraph 4 of Wage Order  
19          16. (¶ 33.)

20          CSI contends that Plaintiff was subject to a Collective Bargaining Agreement and that CSI  
21          therefore does not have to pay Plaintiff for the time of Plaintiff’s meal periods that constitutes “hours  
22          worked” under California law. Thus, under CSI’s argument, because there is a CBA under which  
23          Plaintiff worked, CSI could require Plaintiff to work during the entire meal period and would not have  
24          to pay Plaintiff any wages for such “hours worked.” This is nonsense. Under California law and Wage  
25          Order 16, Plaintiff is entitled to compensation for all “hours worked,” and CSI cites no statute or Wage  
26          Order provision that provides otherwise. The fact that the time of such “hours worked” occurred during  
27          a meal period does not insulate an employer from paying for such hours worked. (*See Gutierrez v.*  
28          *Brand Energy Services of California, Inc.* (2020) 50 Cal.App.5th 786, 796–797 [264 Cal.Rptr.3d 173,

1 179, 50 Cal.App.5th 786, 796–797], *as modified on denial of reh’g* (July 2, 2020), *review denied* (Sept.  
2 9, 2020).)

3 In *Gutierrez*, the employee contended that he was entitled to be paid for mandatory travel time on  
4 employer-provided transportation to and from the work site. The employer contended that section 5(D)  
5 of Wage Order 16 permits union-represented employees and their employers to opt out of paying *any*  
6 *compensation* for travel time that would otherwise be compensable under *Morillion* and section 5(A).  
7 According to the employer, the language of section 5(D) supported its position that “employees whose  
8 employment is governed by a construction industry CBA is not required to be paid for travel time at  
9 *any* rate, because the ‘section’ [5(A)] requiring compensation for such time ‘does not apply’ if a CBA  
10 expressly so provides.” (*Id.*, at 798.)

11 The Court of Appeal disagreed and reversed the trial court’s grant of summary judgment for the  
12 employer, holding that there was no applicable statutory exception to pay for hours worked under these  
13 circumstances and that the Wage Order exception could not negate the employee’s right to  
14 compensation for all hours worked. The Court reasoned:

15 [W]e accept plaintiff’s point that Wage Order 16 section 5 does not state that union-  
16 represented employees and employers can opt out of paying any compensation whatsoever for  
17 employer-mandated travel time. . . .

18 Brand’s interpretation of section 5(D) is unsupported by section 5’s plain language, which  
19 limits its own scope to section 5 and says nothing about waiving the right to minimum wage.  
20 Brand’s interpretation also directly conflicts with the express terms of Wage Order 16 sections  
21 1 and 4. These sections, subject to exceptions not applicable here, expressly apply to “all  
22 persons employed in the on-site occupations of construction” (Wage Order 16, § 1) and require  
23 payment of “not less than the applicable minimum wage for all hours worked in the payroll  
24 period” (*id.*, § 4(B)). (*Id.* at 798-799, (emphasis added).)

25 Observing that “where a wage order conflicts with a Labor Code statute, the statute “will prevail  
26 ....” (*Gerard v. Orange Coast Memorial Medical Center, supra*, 6 Cal.5th at p. 448, 240 Cal.Rptr.3d  
27 757, 430 P.3d 1226.)” (*id.* at 799), the Court held that accepting the employer’s position would  
28

1 “undermine Labor Code section 1194, subdivision (a), the statute bestowing on California employees  
2 the right to minimum wage . . .” (*Id.*)

3 Citing numerous cases holdings that Labor Code section 1194(a) precludes employers from  
4 contracting with its employees for a rate of pay less than minimum wage (*id.* at 799-800), the Court  
5 rejected the employer’s reliance on some of the very cases cited by CSI in its current motion, including  
6 *Araquistain v. Pacific Gas & Electric Co.* (2014) 229 Cal.App.4th 227, 238 [176 Cal.Rptr.3d 620, 628]  
7 and *Vranish v. Exxon Mobil Corp.* (2014) 223 Cal.App.4th 103, 111 [166 Cal.Rptr.3d 845, 849],  
8 holding that they were inapposite. (*Id.* at 801-802.)

9 The Court refused to assume that the IWC intended to override the Legislature’s grant of the right  
10 of at least a minimum wage for all hours worked:

11 . . . Would the IWC have acted to override our Legislature’s statutory grant of the right to at  
12 least minimum wage for all hours worked with the bare language in Wage Order 16 section  
13 5(D) that “[t]his section”—meaning only section 5—“shall apply to any employees covered by  
14 a valid [CBA] unless the [CBA] expressly provides otherwise”? We decline to assume the  
15 IWC intended to override this important state right in the absence of actual evidence. (*Id.* at  
16 802.)

17 . . . In light of Wage Order 16’s and the Labor Code’s remedial purposes requiring liberal  
18 construction and their directives to compensate employees at a rate no less than minimum  
19 wage for all hours worked notwithstanding any agreement or customary arrangement to the  
20 contrary (Lab. Code, §§ 1194, 219; Wage Order 16, §§ 1, 4), we conclude section 5(D)  
21 provides no authority for employers and employees to waive all compensation for employer-  
22 mandated travel time. (*Id.* at 804.)

23 The Court’s reasoning in *Gutierrez* applies to CSI’s arguments in this case.

24 **1. Wage Order 16’s meal period provisions do not expressly or impliedly waive an**  
25 **employee’s right to compensation for all “hours worked.”**

26 CSI argues that because the meal period provisions of Section 10(D) of Wage Order 16 do not  
27 apply to an employee covered by a qualifying collective bargaining agreement, this means that an  
28 employer need not pay the employees for hours worked during a meal period as required by Section

1 1194 and Section 4 of the Wage Order. As discussed above, the identical argument with respect to  
 2 mandated travel time was flatly rejected by the Court in *Gutierrez*.

3 Contrary to CSI's contention, there is nothing in Wage Order 16 that contains an express  
 4 exemption from the minimum wage requirements in Labor Code section 1194(a) and Wage Order 16  
 5 section 4 for all hours worked, and CSI has presented no valid basis for inferring such an exemption  
 6 based on the legal scheme as a whole. Section 10(D) provides: "Unless the employee is relieved of all  
 7 duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and  
 8 counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work  
 9 prevents employee from being relieved of all duty and when by written agreement between the parties  
 10 an on-the-job paid meal period is agreed to and complies with Labor Code Section 512."

11 Section 10(E) provides that "Subsections (A), (B), and (D) of Section 10, Meal Periods" do not  
 12 apply to any employee covered by a valid CBA, but section 10(E) does not expressly provide that the  
 13 provisions Labor Code Section 1194 and Section 4 requiring the payment of a minimum wage for all  
 14 "hours worked" do *not* apply if there is a CBA. By its express terms, subsection 10(E) only provides  
 15 that the applicable meal period protections of those specified "meal period" subsections do not apply.  
 16 As the Court noted in *Gutierrez*, ". . . the IWC has demonstrated that it understands how to draft CBA  
 17 exemptions from specific Labor Code requirements, including Labor Code section 1194's minimum  
 18 wage requirement, but it has not done so here. (E.g., Wage Order 16, §§ 3(H)(1) [CBA exemption from  
 19 overtime pay requirements . . . 3(H)(2) [CBA exemption from make-up time requirements], 11(E)  
 20 [CBA exemption from rest break rules].)" (*Gutierrez* at 802.)

21 **2. Plaintiff is *not* alleging or seeking compensation for CSI's violation of**  
 22 **California's meal period laws.**

23 CSI's motion is predicated on the manufactured and faulty premise that intentionally  
 24 misconstrues Plaintiff's "hours worked" claim. *Plaintiff is not alleging that CSI violated its meal*  
 25 *period obligations under Labor Code Section 512 or section 10 of the Wage Order nor is he seeking*  
 26 *meal period premiums for any such violations.* Moreover, contrary to CSI's contention, plaintiff is not  
 27 alleging that the time of his meal break should be compensated "because he was not relieved of all  
 28 duty." (CSI's Memorandum, 11:3-8.) As discussed above, Plaintiff is alleging that the time of his meal

1 periods constitutes “hours worked” because of the control CSI exercised over him during the meal  
2 periods, not that CSI failed to “relieve him of all duty.”

3 CSI claims that “The CBA Meal Period Exemption, as explained above, means that union  
4 employees working under qualifying CBAs are excluded entirely from section 512(a)—the source of  
5 the right to the one-hour of premium pay **and** unpaid wages for not being relieved of all duty during a  
6 meal period.” (Memorandum, 13:7-10 (emphasis added).) But neither section 512(a) nor Section 10 of  
7 the Wage order, which apply only to meal periods, is the “source” of the right to “unpaid wages”  
8 asserted by Plaintiff. Plaintiff’s claim is therefore not “dependent on” or derivative of any meal period  
9 rights but exists independently based on Section 1194 and Section 4 of Wage Order 16. Plaintiff makes  
10 this clear in his First Amended Complaint: “39. In violation of Section 1197 and Paragraph 4 of the  
11 applicable Wage Order, Defendants did not pay class members the wages due them for all hours  
12 worked.”

13 **3. This Court’s decision in *Durham* rests on the faulty premise that Plaintiff’s right**  
14 **to be paid for “all hours worked” is “derivative” of Plaintiff’s meal period**  
15 **rights.**

16 In its decision in *Durham* on the “controlled hours worked” claim for meal period time, this Court  
17 attempted to distinguish the reasoning of the Court in *Gutierrez*: “The reasoning in *Gutierrez* counsels  
18 that this Court should similarly distinguish *Durham*’s claims where, as in *Araquistain*, there is an  
19 express statutory exemption *for the particular right at issue*.” (*Huerta v. CSI Electric Company* (N.D.  
20 Cal., Dec. 23, 2020, No. 18-CV-04506-BLF) 2020 WL 7643125, at \*5.) The Court also concluded that  
21 Plaintiff’s “hours worked” claim was “derivative” of the meal period laws: “Upon careful review of the  
22 parties’ arguments, the Court concludes that the express statutory exemption for CBA-covered  
23 employees who bargain for the terms of their meal periods extends to a *derivative claim* like this one.”  
24 (*Id.*) Here, however, as discussed above, the “right at issue” is not the right to a meal period that  
25 qualifies under Section 512 or section 10 of the Wage Order, *but the right to be paid for all hours*  
26 *worked, which is founded on Section 1194(a) and Section 4 of the Wage Order and exists*  
27 *independently of any meal period rights. Plaintiff would have this claim even if there were no meal*  
28 *period statute or wage order provision regarding meal periods.*

1                   **4. The Court’s decision in *Bono Enterprises, Inc. v. Bradshaw* demonstrates that**  
 2                   **Plaintiff’s “hours worked” theory of relief was based on the wage order**  
 3                   **requirement that employees be paid for all hours worked, not just on meal**  
 4                   **period laws.**

5                   In *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968, 968–72 (38 Cal.Rptr.2d 549)  
 6                   disapproved of on other grounds by *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th  
 7                   557 (59 Cal.Rptr.2d 186, 927 P.2d 296), the Court considered a policy where workers had to remain on  
 8                   the work-site premises during their 30–minute lunch period unless they made prior arrangements. The  
 9                   Court held that the lunch time was compensable “hours worked” under section 4 of the applicable  
 10                  Wage Order, concluding that the *language of Section 4* of the Wage Order was “sufficiently clear to  
 11                  place employers on notice that an employee must be paid for all hours during which he or she is subject  
 12                  to the employer’s control, including meal periods.” (*Id.* at 979.)

13                   **5. The cases cited by CSI and referred to by the Court in *Durham* are inapposite.**

14                  In *Araquistain v. Pacific Gas & Electric Co.* (2014) 229 Cal.App.4th 227, 238 [176 Cal.Rptr.3d  
 15                  620, 628], the plaintiff only asserted a meal period claim. The defendant asserted the statutory defense  
 16                  CBA defense under 512(e) re meal periods. (*Id.* at 231.) The Court identified the question before it as  
 17                  whether the CBA provisions were such to bring the exception of section 512(e) into effect. (*Id.* at 230.)  
 18                  The Court concluded that the CBA did provide for meal periods and that the section 512(e) exempted  
 19                  the employer from the wage order’s meal period requirements. (*Id.* at 238.) The plaintiff was not  
 20                  asserting an “hours worked” claim, and, as the Court held in *Gutierrez*, this case was inapposite to an  
 21                  “hours worked” claim. (*Gutierrez* at 801.)

22                  *Pyara v. Sysco Corporation* (E.D. Cal., July 20, 2016, No. 215CV01208JAMKJN) 2016 WL  
 23                  3916339, at \*1 is also inapposite. In that case the plaintiff had alleged numerous causes of action,  
 24                  including a first cause of action for “wage theft / time shaving” and separate claims for failure to pay  
 25                  overtime and failure to provide meal periods. The Court granted the defendant’s motion for judgment  
 26                  on the pleadings as to the overtime meal period claims, finding that they were statutorily exempt based  
 27                  on the CBA exemptions. (*Id.* at \*3-4.) The Court denied the motion as to the hours worked and rest  
 28                  period claims, holding that they were *not preempted*. As to the hours worked claim, the Court held:  
 “Even if the Court assumed that the rights to overtime, meal periods, and rest periods ‘exist entirely as

1 a result of the CBA,' the right to be paid for all of the hours one works exists independently of the  
 2 CBA. See Cal. Lab. Code § 1194(a).” (*Id.* at \*5.) The Court also recognized that, notwithstanding the  
 3 exemption for overtime and meal periods, the plaintiff could make a claim for unpaid wages for hours  
 4 worked under 1194(a). (*Id.* at \*5.)

5 In *Chavez v. Smurfit Kappa North America LLC* (C.D. Cal., Oct. 17, 2018, No. 2:18-CV-05106-  
 6 SVW-SK) 2018 WL 8642837, a plaintiff subject to a CBA brought claims for unpaid overtime, unpaid  
 7 meal period premiums, and wages not timely paid, *inter alia*. The Court found that Section 514 barred  
 8 the overtime claim and that, because unpaid minimum wage claim was based on the failure to pay  
 9 overtime, it also failed. (*Id.* at \*4.) There was no discussion at all about an “hours worked” claim like  
 10 that asserted by Plaintiff in this action.

11 *Perez v. Leprino Foods Company* (E.D. Cal., Mar. 22, 2018, No. 117CV00686AWIBAM) 2018  
 12 WL 1426561 involved a union worker who sued for overtime. The defendant moved to dismiss the  
 13 overtime claim based on the Section 514 exemption, which the Court granted. There was no discussion  
 14 at all about an “hours worked” claim like that asserted by Plaintiff in this action.

15 In *Vranish v. Exxon Mobil Corp.* (2014) 223 Cal.App.4th 103 [166 Cal.Rptr.3d 845], the Court  
 16 upheld a CBA exemption from the overtime pay requirements in Labor Code section 510 based on  
 17 language in Labor Code section 514. There was no discussion of a claim for “hours worked” like that  
 18 asserted in this case. As the Court held in *Gutierrez*, this case was inapposite to an “hours worked”  
 19 claim. (*Gutierrez* at 801.)

20 Finally, in *Andrade v. Rehrig Pacific Company* (C.D. Cal., Apr. 22, 2020, No.  
 21 CV201448FMORAOX) 2020 WL 1934954, at \*3, the district held that there may be a statutory  
 22 exemption for overtime does not abrogate plaintiff’s rights under § 1194 and an employee is entitled to  
 23 a minimum wage and overtime for all hours he was under the “control” of an employer.

24 Dated: March 18, 2021

THE DION-KINDEM LAW FIRM

25 BY:            /S PETER R. DION-KINDEM  
 26 PETER R. DION-KINDEM, P.C.  
 27 PETER R. DION-KINDEM  
 28 Attorney for Plaintiff George Huerta





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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Declaration of Peter R. Dion-Kindem in  
Opposition to Defendant CSI Electrical  
Contractors, Inc.’s Motion for Partial  
Summary Judgment**

Date: April 8, 2021  
Time: 9:00 a.m.  
Crtrm: 3

I, Peter R. Dion-Kindem, declare:

1. I am an attorney licensed to practice in California. I am co-counsel for Plaintiff George Huerta in this action. I have personal knowledge of the following facts.

**Declaration of Peter R. Dion-Kindem in Opposition to Defendant CSI Electrical Contractors, Inc.’s Motion for Partial Summary Judgment**

- 1 2. True and correct copies of pages from the deposition transcript of Jason McGinley, the  
2 designated Person Most Knowledgeable of Defendant, that was taken in this action are attached  
3 hereto as *Exhibit 1*.
- 4 3. A true and correct copy of the California Flats Solar, LLC, Site Health & Safety Plan,  
5 Attachment D, Security Plan is attached hereto as *Exhibit 2*.
- 6 4. A true and correct copy of CSI and First Solar Contract, ¶3.9 is attached hereto as *Exhibit 3*.
- 7 5. A true and correct copy of the Cal Flats Solar Environmental Handout produced in this litigation  
8 is attached hereto as *Exhibit 4*.

9  
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
11 true and correct.

12 Dated: March 18, 2021



13  
14 Peter R. Dion-Kindem

# Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF KERN

- - - - -

George Huerta, an individual, on )  
behalf of himself and all others )  
similarly situated and as a )  
representative plaintiff, )

Plaintiff, )

vs. )

No. 5:18-cv-06761-LHK

First Solar, Inc., a Delaware )  
corporation; California Flats )  
Solar, L.L.C., a Delaware Limited )  
Liability Company; CA Flats Solar )  
130, L.L.C., a Delaware Limited )  
Liability Company; CA Flats Solar )  
150, L.L.C., a Delaware Limited )  
Liability Company; Cal Flats Solar )  
CEI, LLC, a Delaware Limited )  
Liability Company; Cal Flats Solar )  
Holdco, LLC, a Delaware Limited )  
Liability Company; CSI Electrical )  
Contractors, Inc.; Milco National )  
Constructors, Inc.; California )  
Compaction Corporation; and Does 1 )  
through 10, )

Defendants. )

DEPOSITION OF PERSON MOST KNOWLEDGEABLE  
AT CSI ELECTRICAL CONTRACTORS, INC.  
JASON ALLEN MCGINLEY  
TUESDAY, DECEMBER 17, 2019

Job no. 3813413  
Reported by: Cathy A. Reece, RPR, CSR No. 5546  
Pages 1-93

1 Q. Oh.

2 A. This is First Solar's agreement.

3 Q. Right. Well, you said yes. That's why --

4 A. I apologize.

5 Q. That's okay.

6 A. There was some language in there that was  
7 very similar to our contract.

8 So, no, I've never seen this.

9 Q. Okay.

10 A. This is not something that is made public  
11 to CSI.

12 Q. Next in order, 10.

13 (Exhibit 10 was marked for I.D.)

14 MR. DION-KINDEM: Let's go off the record  
15 while you review that.

16 MS. NAKABAYASHI: Okay.

17 (Recess taken.)

18 MR. DION-KINDEM: This will be Exhibit 11.

19 (Exhibit 11 was marked for I.D.)

20 BY MR. DION-KINDEM:

21 Q. Did we talk about 10 yet?

22 A. No.

23 Q. Okay. You have Exhibit 10 in front of  
24 you?

25 A. Yes.

1 Q. Have you ever seen this document before?

2 A. I don't know if this is the exact version  
3 because it is not signed or dated. So I don't know  
4 if it has been changed at all.

5 Q. But is this something that was provided to  
6 CSI by First Solar?

7 A. Yes. I just don't know if it's this exact  
8 document.

9 Q. Okay. Did CSI have a similar site health  
10 and safety plan?

11 MS. NAKABAYASHI: Objection. Beyond the  
12 scope.

13 THE WITNESS: CSI had a -- has a health  
14 and safety plan, yes. I don't know if we had a site  
15 specific plan for this project or not.

16 BY MR. DION-KINDEM:

17 Q. Okay. The safety plan that CSI had was  
18 applicable to the California Flats Solar project?

19 MS. NAKABAYASHI: Objection. Beyond the  
20 scope and calls for speculation.

21 THE WITNESS: I would speculate that it  
22 is.

23 BY MR. DION-KINDEM:

24 Q. Well, don't speculate.

25 Based on your understanding --

1 A. Yes.

2 Q. -- that --

3 A. It would apply.

4 MR. DION-KINDEM: Okay. Has that been  
5 produced, Counsel?

6 MS. NAKABAYASHI: I don't know. Again --

7 MR. DION-KINDEM: I don't think I've seen  
8 it in the documents sent to us.

9 THE WITNESS: It's about that big.

10 BY MR. DION-KINDEM:

11 Q. Let the witness -- let the record reflect  
12 that the witness is holding about eight inches  
13 between his fingers.

14 MS. NAKABAYASHI: I mean, it's certainly  
15 something we can meet and confer about.

16 MR. DION-KINDEM: Okay.

17 MS. NAKABAYASHI: I don't -- I can't  
18 recall off the top of my head if it was requested,  
19 but we can meet and confer --

20 MR. DION-KINDEM: Well, if it related to  
21 this project, I'm sure it was.

22 Q. Let's turn to Exhibit 11.

23 What's your understanding of Exhibit 11?

24 A. My understanding is that this was an  
25 agreement between CSI and the local union to provide

1 STATE OF CALIFORNIA )  
 ) SS.  
2 COUNTY OF LOS ANGELES )  
3

4 I, CATHY A. REECE, CSR No. 5546, a  
5 Certified Shorthand Reporter in and for said County  
6 and State, do hereby certify:

7 That prior to being examined the witness  
8 named in the foregoing deposition by me was duly  
9 sworn to testify to the truth, the whole truth, and  
10 nothing but the truth;

11 That said deposition was taken down by me  
12 in shorthand at the time and place therein named and  
13 thereafter reduced to computerized transcription  
14 under my direction and supervision, and I hereby  
15 certify the foregoing deposition is a full, true and  
16 correct transcript of my shorthand notes so taken.

17 I further certify that I am neither  
18 counsel for nor related to any party to said action  
19 nor in anywise interested in the outcome thereof.

20 IN WITNESS THEREOF, I have hereunto  
21 subscribed my name this 24th day of December,  
22 2019.

23   
24 \_\_\_\_\_

25 CATHY A. REECE, RPR, CSR No. 5546



# Exhibit 2

## ATTACHMENT D SECURITY PLAN

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NOTE: A detailed security plan is provided as a stand-alone document. General security measures are presented in the following sections.

### 1. General

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The security plan is administered by the First Solar Construction department, and will detail guard responsibility, site logistics and site badging/worker identification requirements. Anyone entering or exiting the project site premises must stop at the guard station for processing, which may include badging or other form of identity verification. All individuals employed by the project site or entering the project site are required to present their badges/confirm their identity upon entry and exit of site regardless of the time of day or the frequency they enter or exit. These individuals are required to present their badges/confirm their identity at other times upon request and are responsible to have them available. Guards are required record in the Site Security Log all Visitors and Site Deliveries.

In general, guards direct all new workers to park their vehicle and report to the Safety Trailer for Site Project Orientation and badge receipt.

Guard records person's name and provides list of non-badged names instructed to report to the Safety Trailer to the Project Safety Officer to verify the individual(s) have participated in Site Project Orientation and received a badge.

### 2. Security Guards

---

Safety Wear - Guards are required to wear high visibility safety vests, hard hats, designated footwear, and safety glasses.

Site Gates - Guards are to ensure that gates are only open when vehicles are entering or exiting the site and will be closed at all other times. Only exception is manual gates which will be opened at start of work day and must be manned at all times while open and closed at end of work day.

Vehicle Inspections - Security personnel will consistently inspect any vehicle that has entered the project site upon exiting. Security is required to check back seats, back of trucks, and periodically to check trunks of cars.

Garbage Container Inspections - Site security or a Site Designee is required to periodically inspect garbage and recycling containers.

Security Patrols - Security Patrols are to be performed in a consistent manner as is prudent depending on site conditions and will be performed during inclement weather utilizing an "enclosed" vehicle provided by the site. Security patrols will utilize "check points" for validation of patrols. As part of the security patrols, guards are to inspect pad locks on site gates.

#### Key Removal:

First Solar Vehicles/Equipment - All First Solar unassigned vehicles and equipment keys will be removed from the equipment during non-work related hours.

Subcontractor Vehicles/Equipment - Site Security will ensure that Subcontractors are directed to remove keys from their respective equipment at the end of work shift.

#### Parking Placards:

Parking placards are utilized to identify vehicles w/access into the project site. A Vehicle Authorization List by Subcontractor is provided to Security Guards by the Site Security Coordinator.



### 3. Deliveries

---

Delivery Types:

- General Deliveries are vendors that regularly access the project site such as FedEx, UPS, and catering services. Regularly scheduled delivery service badges are housed at the Guard Post and are scanned in/out by the Guard.
- Material Deliveries are trucks delivering materials to the project site. The Guard scans one of the Truck Delivery badges and completes required information on the Project Site Delivery/Visitor Log. Material Deliveries must execute a Visitor Agreement as they access the project site.
  - When exiting, the Guard checks delivery truck to ensure materials have been removed, scans the associated Truck Delivery Badge and updates log.
  - Delivery times will be set by the Construction Manager. This time may change as determined by the FS Supply Chain/Logistics Representative and the Construction Manager.

### 4. Visitors

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After determining who the visitor(s) represent (e.g. non-site First Solar, OSHA, Inspectors, ETA County, Sales, Union Representatives) along with their First Solar Point of Contact, the guard will announce the visitor to the Construction Office by radio and state the purpose for the visit.

Upon approval, by the Construction Manager or Designee, the visitor information is logged and the guard issues the visitor badge.

A visitor agreement is executed by Non-First Solar Associate Visitors prior to entering site and Witnessed by FS Designated Representative or Construction Manager.

Each visitor is advised that cameras must be checked in at the guard station. Cameras are sealed in a plastic bag at the guard station with owner information stored inside the bag. A notation is made on the log indicating the person who turned over a camera.

The guard radios the Construction Office (Site Security Coordinator or Designee) informing them that a visitor is entering site.

When exiting the work site, the guard collects the badge and completes the log. Cameras are returned to visitors. If Visitor is reoccurring (weekly) to site, they will be issued a Visitor Badge with their picture. Guards are not required to collect pictured visitor badges nightly.

Guards submit the Visitor logs along with Visitor Agreements to Project Document Controls every Monday morning for inclusion in site records.

### 5. Site Logistics/Inception

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**Site Fencing** - Fencing scope commences as soon as access has been granted and will be expedited until perimeter is secure. Construction can allow other work to be delayed due to fence schedule to ensure the site is secure. Site fences are required to be 6 feet high to deter attempted theft of equipment.

**Site Lighting** - All project sites follow OSHA standard relative to lighting entrance ways as soon as possible after access is granted. At sites where no permitting restrictions are in place will be evaluated for area specific lighting as necessary and practical.



# Exhibit 3

Agreement, Exhibit(s) and Annexes hereto (including the Scope of Work at Exhibit A, the Design Documents at Exhibit A-1, the operating plans described in Exhibit D, or any plans, specifications or other documents attached to or expressly incorporated in this Agreement or any Exhibit or sub-exhibit), all Deliverables, Applicable Laws, Permits and Industry Standards. Subcontractor shall promptly advise Contractor of the need for and location of, and shall preserve, all permanent survey construction monuments and benchmarks during its performance of the Work.

**3.3 Project Manager.** Within two (2) Days of Notice to Proceed, Subcontractor shall designate in writing to Contractor a project manager who shall have full responsibility for the execution of the Work and shall act as a single point of contact in all matters on behalf of Subcontractor (the "**Project Manager**"). Contractor reserves the right to reject the Project Manager at any time in writing to Subcontractor. Any change to the person appointed as the Project Manager by Subcontractor shall be subject to Contractor's prior written approval.

**3.4 Utilities and Services.** Install, connect and maintain during its performance under this Agreement all utilities, facilities and services required for the performance of the Work (including those described in Exhibit A); pay, when due, all construction utility usage charges and arrange with local authorities and utility companies having jurisdiction over the Site for the provision of such utilities and for the transition of such usage charges to the Contractor or Owner, as the case may be, upon and after Project Substantial Completion; obtain all supplies, labor, materials, consumables, construction equipment, tools, construction vehicles, other necessary equipment or services, of whatever kind or nature, required for the performance of the Work but which do not form a permanent part of the completed Work.

**3.5 Inspection.** Perform all design coordination, inspection, expediting, quality surveillance and other like services required for performance of the Work, including inspecting the Site, all Equipment and all other equipment, hardware and materials procured by, or delivered to Subcontractor (whether or not forming a permanent part of the completed Work or included in Subcontractor's scope of supply hereunder) that is necessary for Subcontractor to install and construct the Project in accordance with the requirements of this Agreement.

**3.6 Organization.** Maintain staff dedicated to the procurement and construction services required for furnishing and completion of the Work that have the technical and managerial expertise to procure, control, and execute the Work in accordance with the requirements of this Agreement. Maintain a qualified and competent organization at the Site, with adequate capacity and numbers of procurement, construction and start-up personnel, equipment, and facilities to execute the Work in a safe, environmentally sound, timely, and professional manner. Provide Contractor, for its review and approval, the names and resumes of the individuals that Subcontractor proposes as its managers and superintendents that will be located on the Site for construction (including the Project Manager). Subcontractor shall not change any such managers or superintendents without Contractor's prior written approval.

**3.7 Subcontractor Permits.** Obtain, maintain, and pay for all Subcontractor Permits, including any required PV installer licenses for all pertinent personnel as well as the appropriate general contractor, and specialty contractor's license(s) for the jurisdiction in which the Work is being performed. Provide, at Subcontractor's sole cost and expense, all testing, inspections and evaluations required by the applicable Governmental Authority in order to obtain and maintain Subcontractor and Contractor Permits. Provide support to Contractor free of charge by way of reasonable ministerial assistance, providing information, providing drawings, and attending meetings with permitting boards as reasonably requested by Contractor and in connection with obtaining the Contractor Permits.

**3.8 Maintenance of Site.** Maintain the Site clear of debris, waste material and rubbish and dispose of the same in accordance with Applicable Law. Prior to Final Completion, remove from the Site all of its waste materials and all equipment, materials, and supplies not forming a part of the permanent Plant.

**3.9 Site Security and Safety.** At all times while any of Subcontractor's employees, agents or Sub-subcontractors are on the Site, be solely responsible for providing them with a safe place of employment, and Subcontractor shall inspect and promptly take action to correct conditions which cause or may be reasonably expected to cause the Site to be or become an unsafe place of employment for them. Subcontractor shall take all necessary precautions for the safety and security of its employees, Sub-subcontractors, agents, owner representatives and visitors on the jobsite, prevent accidents or injury to individuals on, about, or adjacent to the Site, and take all necessary precautions to prevent loss of, injury, or damage to property at, adjacent to, or on roadways approaching the Site. Subcontractor shall fully comply with all aspects of Contractor's Environmental Health and Safety Plan (as so incorporated, the "**Contractor's EHASP**") in Exhibit D. If any aspects of the Work are not specifically addressed in Contractor's EHASP, Subcontractor shall develop and provide a supplemental Site-specific EHASP addressing such Work ("**Subcontractor's EHASP**"). Subcontractor shall submit Subcontractor's EHASP within five (5) days of the Effective Date. Submission of Subcontractor's EHASP shall not be considered a Change. Subcontractor shall ensure that Subcontractor's EHASP complies with all Applicable Laws and any Site-specific requirements. Contractor shall have five (5) days to review and comment on Subcontractor's EHASP; provided, however, that Subcontractor shall remain solely responsible for performing such Work in accordance with this Agreement. If Contractor provides Subcontractor with reasonable comments and/or revisions with respect to Subcontractor's EHASP, then Subcontractor will revise Subcontractor's EHASP to address and incorporate such, and resubmit Subcontractor's EHASP to Contractor within two (2) Business Days. Such resubmission of Subcontractor's EHASP shall not be considered a Change. Subcontractor shall perform the Work and cause its Sub-Subcontractors to perform the Work, at the Contract Price, in accordance with Contractor's EHASP and Subcontractor's EHASP (collectively, the "**EHASP**"), which shall be deemed incorporated into this Agreement in Exhibit D. As and when required by Owner, and at its sole cost and expense, Subcontractor shall modify Subcontractor's EHASP to conform to Owner's safety requirements. In addition, Subcontractor shall

erect and properly maintain at all times, as required by the conditions and progress of the Work, all safeguards and warnings for the protection of its employees and the general public that are reasonably prudent or required by Applicable Law. If Contractor discovers or becomes aware of any violation of or activity that is inconsistent with the EHASP or any circumstance that in Contractor's discretion is inconsistent with Subcontractor's obligation hereunder to provide a safe place of employment, and upon Contractor providing Notice thereof to Subcontractor and requesting that Subcontractor cease Work (in whole or in part as requested by Contractor), then Subcontractor shall cease Work (in whole or in part) until such time as the circumstance at issue has been resolved to Contractor's satisfaction and Contractor has provided Notice thereof. Contractor's right hereunder is not to be construed as a duty to identify safety issues with Subcontractor's Work, and there are no third party beneficiaries of this Section.

**3.10 Occupational Health and Safety.** Take necessary safety and other precautions to protect property and persons from damage, injury, illness, violence or harassment arising out of or in connection with the performance of the Work, wherever taking place, and shall be responsible for the compliance by all of its agents, employees and Sub-subcontractors with all Applicable Laws governing occupational health and safety.

**3.11 Shipping.** Arrange for timely procurement, testing, and complete shipping and handling of all Equipment necessary or advisable for completion of the Work, including inspections, expediting, quality assurance, shipping, loading, unloading, customs clearance, receiving, security, storage and claims and the receiving, unloading, handling, security and storage of all other equipment, hardware, and materials associated with the Work (whether or not forming a permanent part of the completed Work or included in Subcontractor's scope of supply hereunder) following delivery thereof to the Site in strict accordance with the applicable manufacturer's recommendations.

**3.12 Quality Assurance Programs.** Subcontractor shall develop, establish, document and implement appropriate checking, coordination, and other quality control procedures to assure a quality, well-developed design consistent with the requirements of this Agreement ("**Subcontractor's Quality Plan**"). Subcontractor's Quality Plan shall specifically address all aspects of Subcontractor's Work. Subcontractor shall submit Subcontractor's Quality Plan within five (5) days of the Effective Date. Submission of Subcontractor's Quality Plan shall not be considered a Change. Contractor shall have five (5) days to review and comment on Subcontractor's Quality Plan; provided, however, that Subcontractor shall remain solely responsible for performing such Work in accordance with this Agreement. If Contractor provides any comments with respect to Subcontractor's Quality Plan, then Subcontractor shall incorporate changes into Subcontractor's Quality Plan addressing such comments, and resubmit Subcontractor's Quality Plan to Contractor within two (2) Business Days. Such resubmission of Subcontractor's Quality Plan shall not be considered a Change. Upon acceptance by Contractor, Subcontractor shall perform the Work and cause its Sub-Subcontractors to perform the Work, at the Contract Price, in accordance with Subcontractor's Quality Plan, which shall be deemed incorporated into this Agreement in Exhibit D.

**3.13 Access.** Use only the entrance to the Site designated by Contractor from time-to-time for ingress and egress of all personnel, Equipment, and materials, supplies, and equipment of any kind.

**3.14 Deliverables.** Issue Deliverables for Contractor review or approval in accordance with Exhibit B. If there are procurement "hold" points on Exhibit B, Milestones in Exhibit F, or otherwise required by the Contract Documents, Subcontractor shall not proceed past the "hold" point until it has received written approval from Contractor to do so. If Contractor identifies any errors or omissions with respect to any Deliverable submitted for review, then Subcontractor shall incorporate changes into such Deliverable addressing and remedying the errors and omissions and resubmit the same to Contractor, and such incorporation of changes to address Contractor's comments shall not be considered a Change. In no event shall Contractor's review of a Deliverable constitute acceptance of any condition or other attribute of the Deliverable which is contrary to, or different from, the requirements of this Agreement.

**3.15 Subcontractor Performance Security.** Subcontractor shall cause the Guaranty to be provided to Contractor as of the Effective Date and to be maintained in full force and effect in accordance with the terms thereof through expiry of the Warranty Period. At Contractors' request, Subcontractor shall also provide a performance bond to be maintained in full force and effect in accordance with the terms thereof through expiry of the Warranty Period, in form and substance acceptable to Contractor in Contractor's sole discretion, in an amount equal to the Contract Price (as the same may increase from time to time). Subcontractor shall submit documentation evidencing that its surety (a) is duly authorized to provide surety services in the State of California, (b) maintains a current A.M. Best financial strength and financial size rating category of A-VII or better, and (c) is listed on the current Federal Registrar Circular 570, including evidence of assets and underwriting limitation acceptable to Contractor. If, at Contractor's request, Subcontractor provides a performance bond, then the Contract Price shall [be increased by the amount quoted by Subcontractor for such bond in Subcontractor's bid for the Work / include the cost of such bond].

**3.16 Reserved.**

#### **4. COVENANTS, WARRANTIES AND REPRESENTATIONS**

**4.1 Subcontractor.** Subcontractor represents, warrants and covenants as follows:

**4.1.1 Organization, Standing and Qualification.** It is an organization, duly organized, validly existing and in good standing under the laws of the State of California, and has full power and authority, and is duly licensed, to execute, deliver and perform its obligations hereunder, and is and will be duly qualified and licensed to do business and in good standing under the laws of each other jurisdiction where the failure to be so qualified would have a material adverse effect on its ability to perform its obligations hereunder. Subcontractor also warrants that it has obtained, and will in the future maintain, all Permits required by Applicable Law to perform the Work.

-9-

CA Flats 150 – Balance of Systems – CSI Electrical Contractors, Inc.

May 21, 2018

FIRST SOLAR CONFIDENTIAL INFORMATION

# Exhibit 4

# VALLEY FEVER FACT SHEET

## California Flats Solar Project

The information in this fact sheet summarizes the most current information available from the sources listed below, and is being provided to residents within a three-mile radius of the California Flats Solar Project in Monterey County, California. Additional information about the solar project can be obtained by calling the Monterey County Resource Management Agency at (831) 755-5198.

### What is Valley Fever?

Valley Fever (Coccidioidomycosis or "cocci") is an illness caused by a fungus called *Coccidioides* which lives in the soil and dirt in certain areas. The fungus usually infects the lungs causing flu-like symptoms. Most of the time symptoms get better on their own. More severe forms of the illness are rare but can be very serious and sometimes fatal.

### When and where do people get Valley Fever?

Valley Fever infection can occur year-round and tends to occur in areas with dry dirt and desert-like weather conditions that allow the fungus to grow. Infection generally leads to immunity to future infections. Cases of Valley Fever have been reported from most counties in California. Over 75% of cases have been in people who live in the San Joaquin (Central) Valley. In California, the number of reported Valley Fever cases has increased greatly since 2000, with more than 4,000 cases reported in 2012. Outside of California, Valley Fever is found in some areas of Arizona, Nevada, New Mexico, Utah, and Texas, and parts of Mexico and Central and South America.

Dust suppression and respiratory protection are important control measures for reducing the risk of Valley Fever. N95 filtering facepiece respirators and/or other approved respirators will be made available by your employer to be used where dust cannot be controlled during ground disturbing activities on-site. Where possible, all earth-moving vehicles must utilize closed cabs with HEPA filtered air conditioning.

### How do people get Valley Fever?

People can get Valley Fever by breathing in dust containing a form of the *Coccidioides* fungus called spores which are too small to be seen. Anyone who lives, works, or visits in an area with Valley Fever can be infected. Animals, including pets, can also be infected. Valley Fever is not contagious and cannot be spread from one person or animal to another.



Sources: California Department of Public Health; Monterey County Health Department; San Luis Obispo County Public Health Services; Mandell's Principles and Practice of Infectious Diseases, 7th ed., by John Galgiani.



# VALLEY FEVER FACT SHEET

California Flats Solar Project

## What are the signs and symptoms of Valley Fever?

About 60% of people infected with Valley Fever have no symptoms and will fight off the infection naturally. The people who get sick usually develop a flu-like illness 1-3 weeks after exposure to the *Coccidioides* fungus.

Those who get sick can experience some of the following symptoms:

- ♦ Fever ♦ Muscle or joint aches ♦ Unexplained weight loss ♦ Headaches
- ♦ Tiredness ♦ Cough or chest pain ♦ Rash ♦ Night sweats

These symptoms can last a month or more but most people recover fully. Most people who have been infected become immune and will not get the infection again.

More serious forms of the disease, including pneumonia and infection of the brain, joints, bone, skin, or other organs, are rare. When the infection spreads outside of the lungs, this is called disseminated Valley Fever.

## Are certain people at greater risk for Valley Fever?

Anyone can get Valley Fever, even young and healthy people. People who live, work, or travel in areas with high rates of Valley Fever may be at a higher risk of getting infected than others, especially if they:

- ♦ Participate in recreational activities where dirt and soil are disturbed
- ♦ Work in jobs where dirt and soil are disturbed, including construction, farming, military work, and archaeology.
- ♦ Were not exposed as a child and now work or live in an area where Valley Fever is present.

Some groups are at greater risk for severe and disseminated Valley Fever. These include:

- ♦ Older adults (≥60 years old)
- ♦ African Americans, Filipinos, and Hispanics
- ♦ Pregnant women especially in the later stages of pregnancy
- ♦ Persons with diabetes
- ♦ Persons with conditions that weaken their immune system, such as:
  - ◊ Cancer
  - ◊ Human immunodeficiency virus (HIV) infection
  - ◊ Treatment with chemotherapy or steroids
  - ◊ Organ transplant

CA Flats Hotline 877-228-3331

## Cal Flats Solar Environmental Handout

### Basic Rules for Protecting Plants, Wildlife, and Habitat

- Stay within designated work areas
- Travel only on approved roadways
- Do not approach, handle, or feed wildlife, and immediately report any dead or injured wildlife
- Park only in approved areas—do not pull off the road shoulder
- **Follow posted speed limits and do not pass other vehicles**
- Do not enter Environmentally Sensitive Areas (ESAs) without appropriate approvals and monitors
- Do not enter any wetland, stream, or marsh—all wetlands are barricaded
- Do not litter, including food waste



### WHY RULES

California Flats Solar LLC is committed to protecting animals and their habitat. The federal, state and local laws protecting these species and their habitats are intended to do more than prevent their extinction; the goal is to restore their populations to healthy levels.

**You are personally liable for your actions and are subject to the penalties:**

Violations of state and federal laws protecting threatened and endangered species can result in penalties of up to \$50,000 and/or one year in jail.



**San Joaquin Kit Fox**

**Status:** Endangered under the Federal Endangered Species Act, Threatened under the California Endangered Species Act

**Habitat:** Grasslands

**Occurrence on the Project Site:** Present in the generating facility area, access road and the utility corridor.

**Description:**

- Resembles a small, lanky dog
- Adults 10 to 12 inches tall
- Body about 12 inches long
- Bushy tail about 12 inches long with a distinctive black tip
- Large ears

**Behavior:**

- Active at night all year long
- Very inquisitive, especially about new disturbances
- Attracted by food litter
- Uses ready-made dens such as culverts and unused pipe or equipment
- Each kit fox may have many dens, commonly excavated from ground squirrels or badgers

**BASIC RULES FOR KIT FOX**

- Stay within designated work areas
- Always look under equipment and vehicles for SJkFs prior to moving.
- Inspect pipes, culverts or similar structures for kit fox before burying, capping, or moving.
- Do not feed SJkF, it could be harmful to you and the animals.
- Never fill or destroy a burrow – kit foxes are protected by both federal and state laws.
- Speed limit in barricaded SJkF areas is 5 mph and NO PASSING. Violation to comply will result in immediate disciplinary action.
- Never touch, kill, harass, trap or corner a SJkF.
- If a SJkF is seen within or near Project Area, notify your supervisor who will notify the Biologist(s).



**California Tiger Salamander**

**Status:** Threatened under the Federal Endangered Species Act, and California Endangered Species Act

**Habitat:** Seasonal wetlands, other temporary standing water.

**Occurrence on the Project Site:** There is only marginal habitat on any of the project components and CTS were not observed during surveys from 2012 to 2014, however were detected nearby in 2015. Therefore, it is possible that some pools or ponds in or near the project components could contain these species in wetter years.

**Description:**

- Large salamander, with stocky body
- Adults 7 to 8 inches long
- Adults black with yellow spots; larvae greenish-grey

**Behavior:**

- Adults spend most of their lives underground in burrows created by other animals.
- Adults migrate at night from upland habitats to aquatic breeding sites during the first major rainfall events of fall and early winter, and return to upland habitats after breeding.
- Eggs hatch after 10 to 14 days. The larval period last 3 to 6 months, depending on the season.

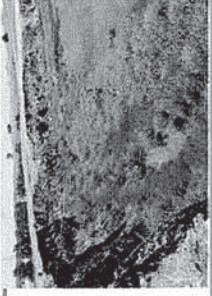
**BASIC RULES FOR TIGER SLAMANDER**

- Stay within designated work areas
- Prior to any ground disturbance, temporary barriers will be constructed on the project site within 0.35 mile of the identified suitable breeding habitat of the project site.
- Any defective barriers are to be reported so repairs are made. A herpetologist shall be present to monitor an activity area and handle a California tiger salamander.

**On-site Waterways, Streams, Wetlands and Marshes**

**Status:** Protected under State and Federal regulations and site permits

**Rules:** Avoid features and 100-foot setbacks unless expressly permitted



**Additional Rare Wildlife**



California red-legged frog



Golden eagle



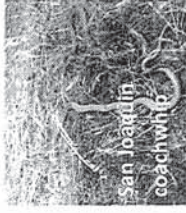
Tri-colored blackbird



Burrowing owl



Western pond turtle



San Joaquin coachwhip



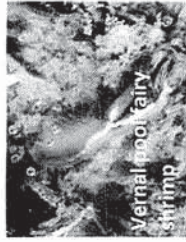
American badger



Bald eagle



Short-eared owl



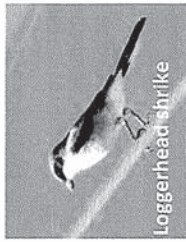
Vernal pool fairy shrimp



Western spadefoot toad



White-tailed kite



Loggerhead shrike



Mountain plover



Northern harrier

*Workers are required to comply with all federal, state, and local laws, as well as permit conditions. Violation of these conditions can result in work stoppage by the regulatory agencies, including Monterey and San Luis Obispo counties.*

# VALLEY FEVER FACT SHEET

California Flats Solar Project

## What are the options/remedies available should you be experiencing symptoms of Valley Fever?

If you think you might have Valley Fever, inform your supervisor immediately and visit your healthcare provider or occupational health clinic—your employer will provide you with the location/contact information for your local clinic. Retaliation against employees who report symptoms of Valley Fever is illegal and will not be tolerated at the California Flats Solar job site.



Since Valley Fever symptoms are similar to those of other illnesses, your provider may order a blood test or other tests, such as a chest x-ray, to help diagnose Valley Fever. Treatment is usually not necessary for mild infections, which often get better on their own. All persons with symptoms, however, should see a healthcare provider who can determine if treatment is needed.

If you are diagnosed with Valley Fever it is very important to follow instructions given by your healthcare provider about treatment, follow-up appointments, and testing.

Contact your local health department or visit the CDPH, the US Centers for Disease Control and Prevention, or the Arizona Valley Fever Center of Excellence websites for more information:

<http://www.cdph.ca.gov/HealthInfo/discond/Pages/Coccidioidomycosis.aspx>

<http://www.cdc.gov/fungal/coccidioidomycosis/>

For more information on Valley Fever, contact your doctor or:

### MONTEREY COUNTY

**Monterey County Health Department**  
Epidemiology & Surveillance Unit, Public Health Bureau  
(831) 755-4698  
[www.mtyhd.org](http://www.mtyhd.org)

### SAN LUIS OBISPO COUNTY

**San Luis Obispo County Public Health Department**  
(805) 781-5500  
<http://www.slcoounty.ca.gov/health/publichealth/commndisease.htm>



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Declaration of Plaintiff George Huerta in  
Support of Opposition to Motion for Partial  
Summary Judgment**

Date: April 8, 2021  
Time: 9:00 a.m.  
Crtrm: 3

1 I, George Huerta, declare:

- 2
- 3 1. I am the Plaintiff in this action. I have personal knowledge of the following facts.
- 4 2. I was employed at the California Flats Solar Project (“Solar Site”) by California Compaction for
- 5 Phase 2 as a Post Pounder starting around February of 2018 until around June of 2018. I was
- 6 then hired by Milco to work for and under the supervision of CSI for Phase 2 as a Forklift
- 7 Operator. CSI personnel supervised my daily work activities and I reported to them.

8 **NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 9 3. I was told by CSI management that all workers were required to attend a new hire orientation
- 10 that was conducted by personnel from CSI. I attended one of those orientations.
- 11 4. At the Solar Site, there were also many other worker meetings that included safety meetings,
- 12 monthly all-hands meetings, and other meetings. These meetings were conducted by a
- 13 combination of personnel from CSI and other contractors.
- 14 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules
- 15 of the Access Road and the rules of the mandatory security entrance and exit process at the Phase
- 16 1 and Phase 2 Security Gates.
- 17 6. At these meetings, the workers and I were told that we were required to follow all the rules of the
- 18 Solar Site. While I worked on the Solar Site, I always tried to follow the rules, and I observed
- 19 other workers following the rules.
- 20 7. The CSI management who conducted the worker meetings throughout the project included CSI
- 21 executives, safety people, general foreman, and superintendents.

22 **THE SOLAR SITE AND SECURITY GATE**

- 23 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate. At
- 24 first when I worked on Phase 2 of the Solar Site, we used the Phase 1 Security Gate to go
- 25 through the security process and later we used the Phase 2 Security Gate to go through the
- 26 security process.
- 27 9. During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and
- 28 Highway 41.



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10. After I started working for CSI on Phase 2 of the project, the Phase 2 Security Gate was moved closer to the parking lots to a location that was about a 10 to 15-minute drive or more from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1 Security Gate was about a 30 to 45-minute drive. Sometimes the drives from the parking lots to the Phase 1 and Phase 2 Security Gates were even longer. Until the Phase 2 Security Gate was created, we used the Phase 1 Security Gate to go through the mandatory security entrance and exit process. After the Phase 2 Security Gate was created, the mandatory security entrance and exit process was moved to the Phase 2 Security Gate.
  11. When the mandatory entrance and exit security process occurred at the Phase 1 Security Gate, I was told by CSI management, by the security office, and by other management that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 1 Security Gate to line up, go through the mandatory security process and enter the Solar Site in order to begin the long drive on the Access Road to the parking lots of the Solar Site.
  12. After the Phase 2 Security Gate was created, I was told by CSI management, by the security office, and by other management that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site. Even after the Phase 2 Security Gate was created, the Phase 1 Security Gate was not opened until a certain time in the morning, until after the sun came up, the biologist had cleared the road and the site had conducted dust control.
  13. I was told by CSI management that the Security Gates (where the mandatory security process occurred) were the only entrances to the Solar Site that we could use to enter the Solar Site. Once we entered the Solar Site, we then traveled along a long, rough, private road to get to the parking lots where we parked our vehicles.
  14. This mandatory entrance and exit security process included waiting in line for up to 5 to 20 minutes or more because the security process caused a bottlenecked, long line of worker vehicles

1 attempting to enter and exit the go through the Security Gate each day. My time waiting in line  
2 in the morning would vary because a biologist would be working on the road, the sun had not  
3 risen, or we workers had to wait for the biologist to clear the road, which added to the time spent  
4 waiting in line. The wait to exit the Solar Site normally took longer because virtually all the  
5 workers on the Solar Site were attempting to leave at the same time. This created a long line and  
6 a lot of waiting time.

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8 15. From the time that the other CSI workers and I entered through the Phase 1 or Phase 2 Security  
9 Gates at the beginning of the day through the time that we left the Solar Site through the Phase 1  
10 or Phase 2 Security Gate at the end of the day, we were subject to a broad range of job Solar Site  
11 rules and restrictions and were monitored for our compliance with such rules and restrictions.  
12 During this time, the other CSI workers and I could not effectively use this time for our own  
13 purposes.

14 16. I was not paid for the time it took me to wait in the long line of vehicles and pass through the  
15 security process at the Phase 1 Security Gate or the Phase 2 Security Gate to enter and exit the  
16 Solar Site each day.

17 **THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS**

18 17. To work on the Solar Site, the first place the other workers and I were required to be was at the  
19 Security Gate where the mandatory security process occurred where we were required to go  
20 through a security process which required us to be security checked and scanned in with our  
21 security badges.

22 18. The worker security badges that were part of the mandatory security entrance and exit process  
23 contained the picture and name of the worker and the company name on them.

24 19. At my new hire orientation and at CSI meetings, I was told by CSI management that CSI's  
25 workers and I could not go beyond the Security Gate where the mandatory security process  
26 occurred without our security badges and without being scanned in or scanned out through the  
27 mandatory security process.  
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20. At my new hire orientation and at CSI meetings, I was told by CSI management that once we passed through the Security Gate where the mandatory security occurred, we always had to have our badges on us until we exited the Security Gate at the end of the day and were scanned out through the mandatory security exit process. I was told that if a worker forgot or lost his or her security badge, the worker could not pass through the Security Gate without special permission.
21. At the Security Gate where the mandatory security process occurred, there was normally one and sometimes two security guards who conducted the mandatory security entrance process. To conduct the mandatory entrance and exit security process, the security guard or guards would stop each vehicle to check for security badges of the passengers. For both entering and exiting the Solar Site, when there were two security guards inspecting and scanning in security badges, the security guards would each stand on a side of the vehicle to inspect and scan in security badges. At other times, one security guard would stay in the guard shack while the other security guard inspected the vehicles and scanned the security badges alone.
22. For both entering and exiting, the security guards required each vehicle to stop at the Security Gate where the mandatory security process occurred so that each passenger could be checked. The passengers in the vehicles would roll down their windows and hand the security badges to the security guard for inspection and scanning. The number of security badges was required to match the number of passengers in each vehicle. The security guards would then scan each worker's security badge in each vehicle before letting them pass through the Security Gate. The mandatory security entrance process was conducted one vehicle at a time using the same procedure.
23. For both entering and exiting the Solar Site, sometimes the drivers would present all the badges to the security guard at once and other times they did not. The security guards would go to each window of the vehicle where the passengers were sitting and inspect and scan their security badges. Each security badge was inspected and scanned individually by the security guards.
24. For both entering and exiting the Solar Site, if passengers in a vehicle did not have security badges, the security guards would pull the vehicle out of line, would make the vehicle park on

1 the side of the road, and would require any passengers who did not have their scan-in badges to  
2 go into the guard shack to be cleared to enter or exit through the Security Gate. If workers lost  
3 their badges and needed replacement badges, the workers were required to check in at the  
4 security guard shack every day and had to sign in or sign out at the guard shack or get a  
5 temporary badge until they replaced the lost badges. Once any passengers who did not have  
6 security badges were cleared to pass through the Security Gate, the vehicle was allowed to get  
7 back in line, pass through the Security Gate, and proceed on the Access Road to the parking lots.

8 25. The same kind of long, bottlenecked line of vehicles also occurred on the way out of the Security  
9 Gate where the mandatory security process occurred at the end of the day. This mandatory exit  
10 security process included waiting in line, which could take up to anywhere between 5 to 20  
11 minutes or more because of the Security Gate's bottlenecked configuration and long line of the  
12 workers attempting to leave at the end of the day, and the inspection and scanning of employees'  
13 badges by the security guards.

14 26. I was told by CSI management that as part of the security entrance and exit process, the security  
15 guards had the right to look inside and search any worker vehicle at any time.

16 27. I drove a pick-up truck and I observed that the security guards would look at the bed of my truck  
17 to make sure there were no tools or anything else improper in there.

18 28. I was told by CSI management that the main reason that the Solar Site would search vehicles at  
19 the Security Gates during the exit security process was because they did not want workers to  
20 steal tools. I was also told that some people took kit foxes or endangered species home, so they  
21 were also checking for that as well.

22 29. At least once, I forgot my security identification badge during the entrance security process and,  
23 when I did, I had to stop at the security guard shack and sign in to get a temporary badge.

24 30. There was always a long line of line of vehicles waiting to go through the Security Gate,  
25 including buses, in the morning.

26 31. During the time that I was waiting in the long lines to go through the security process to enter  
27 and exit the Solar Site and going through all the steps of the security process to enter and exit the  
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1 Security Gate, I believed that I was, and actually was, restricted by, confined by, and under the  
2 control of CSI. During these periods of time, I was confined to the Solar Site and to the vehicle  
3 in which I was riding in and could not run errands outside of the Solar Site, could not go  
4 somewhere to get something to eat, and could not do other things that I could normally do if I  
5 were not restricted by, confined by, and controlled by the long lines and security process to enter  
6 and exit the Solar Site.

7 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**  
8 **BIOLOGISTS CLEARED THE SOLAR SITE**

- 9 32. We workers could not enter the Solar Site and drive on the Access Road until the Solar Site was  
10 opened by the security guards. We were told by CSI management at CSI worker meetings the  
11 time at which the Solar Site was scheduled to open and were periodically updated about any  
12 changes to the scheduled opening times. We were told that we were not allowed to enter the  
13 Solar Site until the sun had come up and the biologists had cleared the Solar Site to be opened  
14 and had added barricades if endangered species were near the roadway or wait for the water  
15 trucks to wet the roadway for dust control.
- 16 33. Although CSI and Solar Site management personnel gave workers a scheduled time when we  
17 could enter the Solar Site, the time that it actually opened varied throughout the year. There were  
18 times when the Solar Site did not open on time and we were required to wait in our vehicles until  
19 it opened. As a result, other workers and I sometimes waited in our vehicles for approximately  
20 10 minutes or more for the sun to come up, for the biologists to clear the Solar Site to be opened,  
21 and for the Phase 1 Security Gate to be opened.

22 **THE ACCESS ROAD**

- 23 34. I was told by CSI management that they wanted all workers to drive vehicles on the Access  
24 Road.
- 25 35. There was no possible way to walk or ride a bicycle from the Security Gate (where the  
26 mandatory security process occurred at the time) to the parking lots in the morning and get to  
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1 work on time or to get from the parking lots to the Security Gates on time at the end of the day  
2 because workers were restricted as to when we were allowed to be on the Solar Site.

3 36. CSI and Solar Site management told us that they were going to monitor us while we were driving  
4 on the Access Road.

5 37. I was told by CSI management at CSI worker meetings that from the time that when we workers  
6 went through the Security Gate (where the mandatory security process occurred at the time) in  
7 the morning until we went out of them at the end of the workday, we were subject to all the Solar  
8 Site's rules, including the rules relating to the Access Road, and could be suspended or  
9 terminated for violating them and that all workers were going to watch us carefully while we  
10 were on the Solar Site and the Access Road.

11 38. I was also told about specific "rules of the road" that applied to the Access Road. These rules  
12 were in addition to signs that were posted before and after we went through the mandatory  
13 security entrance process and entered the Solar Site through the Security Gate (where the  
14 mandatory security process occurred at the time).

15 39. At my new hire orientation and at worker meetings, we were told by CSI management that we  
16 were subject to having our bodies, personal property and vehicles searched by CSI and other  
17 Solar Site management at any time while inside the Security Gates or on the Access Road. We  
18 were also told that we were subject to drug and alcohol testing at any time while inside the  
19 Security Gates or on the Access Road.

20 40. From the time that I entered the Security Gate where the mandatory security process occurred in  
21 the morning until I exited the Security Gate at the end of the day, while I was on the Access  
22 Road, I believed that I was, and actually was, under the control of CSI because of the job Solar  
23 Site rules that we were subject to, because of how much CSI warned us about them, and how the  
24 rules were being enforced. I could also not leave the Solar Site without going through the  
25 mandatory security exit process.

26 41. There were many rules that we were told by CSI and Solar Site management that we had to  
27 follow, including safety and personal protective equipment rules, discrimination rules, anti-  
28

1 harassment rules, environmental rules, alcohol and drug policies, rules related to being subject to  
2 searches for alcohol, drugs and other things, no smoking, no practical jokes, no horseplay rules,  
3 no gambling rules, no photography, no loud music and other rules.

4 **SIGNS ON THE ACCESS ROAD AND AT THE SECURITY GATE ENTRANCE**

5  
6 42. There were signs along the Access Road as well as at and around the Security Gates displaying  
7 numerous instructions. At my new hire orientation and at worker meetings, we were told by CSI  
8 management that we had to obey the instructions on the signs of the Solar Site. I recall that these  
9 instructions, among other things, included things like:

- 10 • be prepared to wear PPE (Personal Protective Equipment) beyond this point;
- 11 • all visitors must check in at the guard shack;
- 12 • must have badge;
- 13 • speed limit;
- 14 • pictures of animals that I was told to look out for and not to interfere with;
- 15 • no smoking;
- 16 • no drugs; and
- 17 • no firearms.

18 43. At my new hire orientation and at worker meetings, we were told by CSI management that we  
19 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the  
20 Solar Site, including from the time that we entered the Security Gates in the morning until the  
21 time that we left the Security Gates at the end of the day.

22 **RULES ABOUT SPEEDING ON THE ACCESS ROAD**

23 44. I recall that there were speed limits signs with speed limits between 5 and 20 miles per hour  
24 posted on the Access Road.

25 45. At my new hire orientation and at worker meetings, we were told by CSI management that they  
26 were monitoring our activities and the speeds of vehicles on the Access Road. We were told that  
27 if we violated the speed limits or “rules of the road” or other job Solar Site rules, we could be  
28 suspended or terminated.

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46. At times on the Access Road, I was often only allowed to drive at 5 to 10 miles per hour because of animals near the road, the conditions of the road, cattle grids, the road being wet because of the Solar Site watering of the road, poor road conditions and other reasons.

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**RULES ABOUT PASSING ON THE ROAD**

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47. During our drive on the Access Road, gaps would form between cars for any number of reasons such as animals on the road, someone's car breaking down, someone driving more slowly than the rest of the cars, or a whole range of the conditions related to the road. Regardless of these gaps, we were told by CSI management that we were not allowed to go above the speed limit or pass another moving vehicle for any reason, except when a car had broken down or pulled over to the side of the road.

**RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD**

48. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on vehicles. Along the Access Road, there were several steel cattle grids that we were required to drive over. Cattle grazed along the Access Road and would frequently be very near or on the road and they interfered with the ability of vehicles to travel on the road.

49. At the new hire orientation and at worker meetings, we were told by CSI management that we were not allowed to disturb the cattle or local wildlife in any way while we were driving on the Access Road. We were told that if we saw animals on or near the Access Road, we had to let them do whatever they needed to do and that we were not allowed to do anything to try to get them to move off the Access Road. We were told that we had to slow down or stop our vehicle and just stay in our vehicles and wait for them to move away from the road. We were told that we mainly had to be careful about cattle and kit foxes, but there were also other animals that we were supposed to watch out for. The presence of animals on or around the road frequently slowed down the drive on the Access Road. Often, the biologists would post signs for kit fox zones on the road and required traffic to slow down to 5 miles per hour in the zones. We were told that we were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or along the Access Road.



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50. At the new hire orientation and at worker meetings, we were told by CSI management that we were not supposed to honk our horns when we were driving on the Access Road because our horns could disturb the local wildlife and the cattle. We were also told that we could not play loud music that could be heard outside our vehicle while we were on the Access Road because the noise from the music could also disturb the local wildlife and the cattle.

51. Workers were also told that they could not wear ear buds or ear pods while driving on the Access Road.

**RULES ABOUT CREATING DUST ON THE ACCESS ROAD**

52. At the new hire orientation and at worker meetings, we were told by CSI management that there were dust control rules related to the Solar Site that required the workers not to create too much dust. We were told that we could not drive on the Access Road in a way that created dust and that we needed to drive slowly if dust was being created. We were told that if we were creating dust, we were driving too fast. We were told that the Solar Site had water trucks that would spray water on the Access Road to prevent too much dust from being created by the vehicles that were driving on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it was muddy and slippery, we had to drive even more slowly because it was more difficult to drive on the Access Road.

**RULES ABOUT SMOKING**

53. We were told that we were not allowed to smoke outside of our vehicles while we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the parking lots. We were told that we could only smoke in designated smoking areas.

**RULES ABOUT STAYING ON THE ACCESS ROAD**

54. At my new hire orientation and at crew meetings, we were told by CSI management that once we were released to drive on the Access Road in the morning and at the end of the day, we had to drive directly on the Access Road to our assigned parking lot in the morning and from our assigned parking lot back to the Security Gates at the end of the day and that we were to stay

1 only on the Access Road. We were told that although there were other intersecting roads along  
2 the Access Road, we were not permitted to go onto any of those roads.

3 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

4 55. At my new hire orientation and in worker meetings, we were told by CSI management that we  
5 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the  
6 Access Road. We were told that except for emergencies, we were not allowed to stop on the  
7 Access Road at any places that we were not specifically designated to stop at.

8 56. At my new hire orientation and at worker meetings, we were told by CSI management that if we  
9 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary  
10 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We  
11 were told that if we had to get out of our vehicles along the Access Road for any reason, we  
12 could not disturb the environment, such as trampling or disturbing any plants.

13 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

14 57. After going through the mandatory security entrance process at the Security Gate in the morning  
15 and while driving on the Access Road to the parking lots and while driving on the Access Road  
16 at the end of the day, we workers were restricted by, confined by, and under the control of CSI.  
17 During this time while we were driving on the Access Road, we were confined to the Solar Site  
18 and to the vehicle in which we were riding and could not use the time effectively for our own  
19 purposes, such as running errands or getting something to eat, or doing other things that we could  
20 normally do outside the Solar Site.

21 58. I was not paid for the drive time on the Access Road or between the Security Gate (where the  
22 mandatory security process occurred at the time) and the parking lots.

23 **THE MANDATORY SECURITY EXIT PROCESS**

24 59. I was told at the Solar Site Orientation and in meetings that at the end of each workday after our  
25 work stop time, it was CSI’s policy that to exit the Solar Site, all workers had to drive to the  
26 Security Gate where the mandatory security process occurred on the Access Road and wait for  
27 their turn to go through the exit security process at the Security Gate. We were told that when we  
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1 were traveling from the parking lots to the Security Gates at the end of the day, we could not  
2 pass other vehicles and had to wait in line for our turn to go through the exit security process,  
3 vehicle-by-vehicle, at the Security Gate. We were told that when a vehicle got to the front of the  
4 line at the Security Gate where the mandatory security process occurred at the end of the day, the  
5 vehicle needed to stop at the Security Gate and wait until a security guard conducted the exit  
6 security process. We were told that we were required to roll down our windows and present our  
7 security identification badges for review and scanning by a security guard. We were told that all  
8 drivers and passengers in a vehicle had to do the same thing. We were told we workers were not  
9 allowed to leave the Solar Site until we completed the exit security process at the Security Gate  
10 and the security guards allowed us to leave the Solar Site.

11 60. I was told at the Solar Site Orientation and in meetings that, if a worker did not have his or her  
12 security identification badge at the time that he or she wanted to exit the Solar Site through the  
13 Security Gate where the mandatory security process occurred, the worker could not exit the Solar  
14 Site and had to pull out of line and go into the security guard shack at the Security Gate to be  
15 released before being allowed to exit the Solar Site.

16 61. As I was going through the exit security process, I could see security guards looking inside my  
17 vehicle and other vehicles through the windows. They also inspected the bed of my pickup if I  
18 were driving a pickup. When I was riding with other people and when I saw other vehicles with  
19 more than one person, I saw the security guards looking into the vehicles to see how many  
20 people were in the vehicles and confirming that the identification badges matched the people in  
21 the vehicles.

22 62. At the end of the day, the line waiting to get out of the Solar Site at the Security Gate where the  
23 mandatory security process occurred was even longer than the line at the Security Gate at the  
24 beginning of the day. This is because at the end of the day, hundreds of Solar Site workers would  
25 be leaving at around the same time. The work stopping time for virtually all the CSI workers was  
26 the same and we were required to be off the Solar Site by a certain time. I observed and estimate  
27 that there were 50 or more vehicles leaving the Solar Site around the same time each workday.  
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1 Because of the number of vehicles leaving at once and because of the configuration of the  
2 Security Gate, the time it took me to wait in line and go through the exit security process could  
3 be 30 minutes or more depending on where my vehicle was in line to exit. Waiting in line to exit  
4 the Solar Site was part of the exit security process every day.

5 63. I estimate that the security exit process could take up to a minute or more per vehicle after we  
6 finished waiting in the long line.

7 64. At the Solar Site Orientation and in meetings, I was told that it was CSI's policy that any  
8 workers who arrived at the Security Gate where the mandatory security process occurred and  
9 attempted to exit too early at the end of the workday could be disciplined or terminated. I was  
10 also told this by CSI management. For example, regarding the Phase I Security Gate, I was told  
11 that management had a time approximation of how long it took to get out. Management believed  
12 it took 40 minutes to get to that Security Gate, so if you got there 35 minutes or in a half an hour,  
13 they would give you a warning and say you were speeding because you got there too early and, if  
14 it happened again, management would fire you.

15 65. While I worked for CSI, I was told that certain workers did in fact arrive at the Security Gate  
16 where the mandatory security process occurred at the end of the workday and attempted to exit  
17 the Security Gate too early and were terminated.

18 66. During the time that I was waiting in line to exit the Security Gate where the mandatory security  
19 process occurred and while I was going through the exit security process, I felt that I was, and  
20 actually was, under CSI's control because I was confined to and could not leave the Solar Site  
21 until I went through the exit security process and I was required to follow policies, processes and  
22 rules required by CSI to exit through the Security Gate. Also, after I got in line to go through the  
23 Security Gate and while I was going through the exit security process, there was nothing I could  
24 do other than wait in the vehicle in which I was riding to complete the security process and could  
25 not use the time effectively for my own purposes. For example, I could not do any of the  
26 following things: a) I could not pass any vehicles ahead of me, b) I could not leave the Solar Site,  
27 c) I could not run any personal errands, d) I could not leave to get something to eat, e) I could not  
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1 perform any personal activities outside of my vehicle, f) I could not move my vehicle until the  
2 security guards had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

3 **MEAL BREAK LOCATION RULES**

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5 67. I was also told by CSI management at worker meetings that CSI workers were required to stay  
6 on the job Solar Site during the entire workday from the beginning of the workday to the end of  
7 the workday. I was told that workers were required to stay at our daily Installation Sites  
8 (including the assigned lunch area at the Installation Sites) during our meal periods.  
9 68. We were told that we workers were required to eat our lunches at our daily Installation Solar  
10 Sites. I followed those instructions during meal periods and observed other CSI workers follow  
11 those instructions during meal periods.  
12 69. I was never paid for the time that I was on meal breaks.

13 I declare under penalty of perjury under the laws of California and the United States that  
14 foregoing is true and correct.

15 Dated: March 18, 2021

16   
17 \_\_\_\_\_  
18 George Huerta



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Declaration of Kevin Clarno in Support of  
Opposition to Motion for Partial Summary  
Judgment**

Date: April 8, 2021  
Time: 9:00 a.m.  
Crtrm: 3

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I, Kevin Clarno, declare:

- 1. I have personal knowledge of the following facts.
- 2. I was employed at the California Flats Solar Project (“Solar Site”) by Sachs Electric Company (“Sachs”) in Phase 1. I was then hired by CSI for Phase 2 for about 3 months.

**NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 3. I was told by CSI management that all workers were required to attend a new hire orientation that was conducted by personnel from CSI. I attended one of those orientations.
- 4. At the Solar Site, there were also many other worker meetings that included safety meetings, monthly all-hands meetings, and other meetings. These meetings were conducted by a combination of personnel from CSI and other contractors.
- 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules of the Access Road and the rules of the mandatory security entrance and exit process at the Phase 2 Security Gate.
- 6. At orientation and in meetings, the workers and I were told that we were required to follow all the rules of the Solar Site. While I worked on the Solar Site, I always tried to follow the rules and I observed other workers following the rules.
- 7. The CSI management people who conducted the worker meetings throughout the project included CSI executives, safety people, general foreman, and superintendents.

**THE SOLAR SITE AND SECURITY GATE**

- 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate. During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and Highway 41. During the time that I worked for CSI on Phase 2 of the project, the Phase 2 Security Gate had been moved from the previous Phase 1 location and was about a 10-minute drive from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1 Security Gate was about a 30 to 45-minute drive. Sometimes the drives from the parking lots to the Phase 1 and Phase 2 Security Gates were even longer.

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9. I was told by CSI management during my orientation for Phase 2 that the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site
10. I was told by CSI management during my orientation that the Phase 2 Security Gate was the only entrance to the Solar Site that we could use to work on the Solar Site. After we passed through the Phase 2 Security Gate, we then traveled along a long, rough, private road to get to the parking lots where we parked our vehicles.
11. This mandatory entrance and exit security process at the Phase 2 Security Gate included waiting in line for up to 20 minutes because the Security Gate configuration and the security process caused a bottlenecked, long line of worker vehicles attempting to enter and exit the Solar Site each day. The wait to exit the Solar Site through the Phase 2 Security Gate normally took longer because virtually all of the workers on the Solar Site were attempting to leave at the same time. This created a long line and a lot of waiting time.
12. From the time that the other CSI workers and I entered through the Phase 2 Security Gate at the beginning of the day through the time that we left the Solar Site through the Phase 2 Security Gate at the end of the day, we were subject to a broad range of job Solar Site rules and restrictions and were monitored for our compliance with such rules and restrictions. During this time, the other CSI workers and I could not effectively use this time for our own purposes.
13. I was not paid for the time it took me to wait in the long line of vehicles and pass through the security process at the Phase 2 Security Gate to enter and exit the Solar Site each day during my time on Phase 2.

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**THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS**

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14. To work at the Solar Site, the first place the other CSI workers and I were required to be at the beginning of the day in order to work was the Phase 2 Security Gate to line up and go through the mandatory entrance security process and drive on the Access Road to the parking lots of the Solar Site.



- 1 15. The worker security badges that were part of the mandatory security entrance and exit process  
2 contained the worker's picture, name, company, and a bar code ID for scanning.
- 3 16. At my new hire orientation and at CSI meetings, I was told by CSI management that we workers  
4 could not go beyond the Phase 2 Security Gate where we scanned in and out without our security  
5 badges and without being scanned in or scanned out through the mandatory security process. I  
6 was told that if a worker forgot or lost his or her security badge, the worker could not enter the  
7 Solar Site without special permission.
- 8 17. At my new hire orientation and at CSI meetings, I was told by CSI management that once we  
9 entered the Solar Site through the Phase 2 Security Gate where we scanned in and out, we always  
10 had to have our badges so at the end of the day we could be scanned out through the mandatory  
11 security exit process.
- 12 18. At the Phase 2 Security Gate where we scanned in and out, there was normally one and  
13 sometimes two security guards who conducted the mandatory security entrance process for us  
14 workers and our vehicles. Almost all the time, there was only one lane of traffic being processed  
15 by the security guard to enter or exist the Solar Site.
- 16 19. To conduct the mandatory entrance and exit security process, the security guard or guards would  
17 stop each vehicle to check for security badges of the passengers or check for other information if  
18 the vehicle was a vendor vehicle. For both entering and exiting the Solar Site, when there were  
19 two security guards inspecting and scanning in security badges, the security guards would each  
20 stand on a side of the vehicle to inspect and scan in security badges. The passengers in the  
21 vehicles would roll down their windows and hand the security badges to the security guard for  
22 inspection and scanning. The number of security badges in each vehicle was required to match  
23 the number of passengers in each vehicle. The security guards would then scan each worker's  
24 security badge in each vehicle before letting them pass through the Phase 2 Security Gate.
- 25 20. At the Phase 2 Security Gate, there was always a long, bottlenecked line of vehicles waiting to  
26 enter. The mandatory security entrance process was conducted one vehicle at a time using the  
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1 same procedure. In the morning, there were worker vehicles and buses waiting in line to go  
2 through the Phase 2 Security Gate.

- 3 21. For both entering and exiting the Solar Site, sometimes the drivers would present all of the  
4 badges to the security guard at once. Other times they did not, and the security guards would go  
5 to each window of the vehicle where the passengers were sitting and inspect and scan their  
6 security badges. Each security badge was inspected and scanned individually by the security  
7 guards.
- 8 22. For both entering and exiting the Solar Site through the Security Gate where the security process  
9 occurred, if passengers in a vehicle did not have security badges, the security guards would pull  
10 the vehicle out of line, would make the vehicle park on the side of the road, and would require  
11 any passengers who did not have their scan-in badges to go into the guard shack to be cleared to  
12 enter or exit the Solar Site. Sometimes, the security guard would call a foreman and ask him to  
13 come down to the Security Gate and clear you.
- 14 23. Once any passengers who did not have security badges were cleared to pass through the Security  
15 Gate and received a visitor's badge, the vehicle was allowed to get back in line and proceed on  
16 the Access Road.
- 17 24. The same kind of long, bottlenecked line of vehicles also occurred on the way out of the Phase 2  
18 Security Gate (where the security process occurred) at the end of the day. This mandatory exit  
19 security process included waiting in line, which could take up to anywhere between 20 minutes  
20 or more because of the Security Gate's bottlenecked configuration and long line of the workers  
21 attempting to leave the Solar Site at the end of the day and the inspection and scanning of  
22 employees' badges by the security guards. My time in line depended on where my place in line  
23 was and other factors – for example, if there were cattle in the middle of the road. We workers  
24 were told by CSI management that we could not force the cattle off the road and had to wait for  
25 the cattle to pass.
- 26 25. I was told by CSI management at my orientation that as part of the security entrance and exit  
27 process, the security guards had the right to look inside and search any worker vehicle at any  
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1 time. There was also a sign on the Solar Site that said any vehicle on their property is subject to  
2 search and seizure. I was told by CSI management that the security guard had the discretion to  
3 determine which workers to search at the Security Gate.

- 4 26. During the time that I was waiting in the lines to go through the security process to exit the Solar  
5 Site and going through all the steps of the security process to exit the Solar Site, I believed that I  
6 was, and actually was, restricted by, confined by, and under the control of CSI. During these  
7 periods of time, I was confined to the Solar Site and to the vehicle in which I was riding and  
8 could not run errands outside of the Solar Site, could not go somewhere to get something to eat,  
9 and could not do other things that I could normally do if I were not restricted by, confined by or  
10 controlled by the long lines and security process to exit the Solar Site.

11 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**  
12 **BIOLOGISTS CLEARED THE SOLAR SITE**

- 13 27. We were told the time at which the Solar Site was scheduled to open and were periodically  
14 updated about any changes to the scheduled opening times. We were told that we were not  
15 allowed to enter the Solar Site until the sun had come up and the biologists had cleared the Solar  
16 Site to be opened and had added barricades if endangered species were near the roadway or wait  
17 for the water trucks to wet the roadway for dust control. We would then proceed to the Phase 2  
18 Security Gate where the security and badging process took place.

19 **THE ACCESS ROAD**

- 20 28. I was told by CSI management that they wanted all workers to drive vehicles on the Access  
21 Road.  
22 29. There was no possible way to walk or ride a bicycle from the Phase 2 Security Gate to the  
23 parking lots in the morning and get to work on time or to get from the parking lots to the Security  
24 Gate on time at the end of the day because workers were restricted as to when we were allowed  
25 to be on the Solar Site.  
26 30. Solar Site management also monitored us while we were driving on the Access Road. I  
27 remember seeing CSI personnel on the Access Road who were monitoring the behavior of  
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1 workers while they were driving on the road. I also observed speed monitors, both a speed  
2 monitor and security guards with a radar gun, alongside the road, especially near kitfox dens, and  
3 environmentalist patrolling the road.

- 4 31. I was told by CSI personnel at my orientation that from the time that we workers went through  
5 the Phase 2 Security Gate in the morning until we went out of them at the end of the workday,  
6 we were subject to all the Solar Site's rules, including the rules relating to the Access Road, and  
7 could be suspended or terminated for violating them and that all workers were being watched  
8 carefully while we were on the Solar Site and the Access Road
- 9 32. I was also told about specific "rules of the road" that applied to the Access Road. These rules  
10 were in addition to signs that were posted before and after we went through the mandatory  
11 security entrance process and went through the Phase 2 Security Gate. As problems would arise,  
12 the foreman would reiterate certain rules the morning after. For example, if someone was caught  
13 speeding, the speeding would be reiterated in the morning meeting the day after.
- 14 33. At my new hire orientation, we were told by CSI management that we were subject to having our  
15 bodies, personal property and vehicle searched by CSI and other Solar Site management at any  
16 time while inside the Phase 2 Security Gate or on the Access Road. We were also told that we  
17 were subject to drug and alcohol testing at any time while inside the Security Gates or on the  
18 Access Road.
- 19 34. From the time that I entered the Phase 2 Security Gate in the morning until I exited the Security  
20 Gates at the end of the day, I believed that I was under the control of CSI because of the job  
21 Solar Site rules that we were subject to, because of how much CSI warned us about them and  
22 how the rules were being enforced.
- 23 35. There were many rules that we were told by CSI and Solar Site management that we had to  
24 follow, including those discussed below.

25 **INSTRUCTION SIGNS**

- 26 36. There were signs along the Turkey Flats road and around the Security Gates displaying a number  
27 of instructions. At my new hire orientation and at worker meetings, we were told by CSI  
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1 management that we had to obey the instructions on the signs of the Solar Site. I recall that these  
2 instructions, among other things, included things like:

- 3 • all visitors must check in at the guard shack;
- 4 • must have badge;
- 5 • speed limit;
- 6 • pictures of animals that I was told to look out for and not to interfere with;
- 7 • no smoking;
- 8 • no drugs; and
- 9 • no firearms.

10 37. At my new hire orientation and at worker meetings, we were told by CSI management that we  
11 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the  
12 Solar Site, including from the time that we entered the Phase 2 Security Gate in the morning until  
13 the time that we left the Security Gate at the end of the day.

14 **RULES ABOUT SPEEDING ON THE ACCESS ROAD**

15 38. I recall that there were speed limit signs with speed limits between 5 and 20 miles per hour  
16 posted on the Access Road. At my new hire orientation and at worker meetings, we were told by  
17 CSI management that they were monitoring our activities and the speeds of vehicles on the  
18 Access Road. We were told that there were speed radar machines and cameras installed along the  
19 Access Road. At least one of these radar machines was located on the Access Road and had a  
20 digital sign that would tell us how fast we were going. I also saw people using hand-held radar  
21 machines to monitor the speed of workers. We were told that if we violated the speed limits or  
22 “rules of the road” or other job Solar Site rules, we could be suspended or terminated.

23 39. At times on the Access Road, I was often only allowed to drive at 5 miles per hour because of  
24 animals near the road, the conditions of the road, cattle grids, the road being wet because of the  
25 Solar Site watering of the road, poor road conditions and other reasons. We were told that if we  
26 violated any rule around environmental signs we would immediately get fired.

**RULES ABOUT PASSING ON THE ROAD**

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2 40. During our drive on the Access Road, gaps would form between cars for any number of reasons  
3 such as animals on the road, someone’s car breaking down, someone driving more slowly than  
4 the rest of the cars, or a whole range of the conditions related to the road. Regardless of these  
5 gaps, we were told by CSI management that we were not allowed to go above the speed limit or  
6 pass another moving vehicle for any reason, except when a car had broken down or pulled over  
7 to the side of the road.

8 **RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD**

9  
10 41. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on  
11 vehicles. Along the Access Road, there were several steel cattle grids that we were required to  
12 drive over. Cattle grazed along the Access Road and would frequently be very near or on the  
13 road and they interfered with the ability of vehicles to travel on the road.

14 42. At the new hire orientation and at worker meetings, we were told by CSI management that we  
15 were not allowed to disturb the cattle or local wildlife in any way while we were driving on the  
16 Access Road. We were told that if we saw animals on or near the road, we had to let them do  
17 whatever they needed to do and that we were not allowed to do anything to try to get them to  
18 move off the road, such as honk our car horns. We were told that we had to slow down or stop  
19 our vehicle and just stay in our vehicles and wait for them to go away from the road. We were  
20 told that we mainly had to be careful about cattle and kit foxes, but there were also other animals  
21 that we were supposed to watch out for. The presence of animals on or around the road  
22 frequently slowed down the drive on the Access Road. Often, the environmentalist would post  
23 signs for kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the  
24 zones.

25 43. At the new hire orientation and at worker meetings, we were told by CSI management that we  
26 were not supposed to honk our horns when we were driving on the Access Road because our  
27 horns could disturb the local wildlife and the cattle. We were also told that we could not play  
28 loud music that could be heard outside our vehicle while we were on the Access Road because

1 the noise from the music could also disturb the local wildlife and the cattle. We were told that we  
2 were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or  
3 along the Access Road.

4 **RULES ABOUT CREATING DUST ON THE ACCESS ROAD**

5  
6 44. At the new hire orientation and at worker meetings, we were told by CSI management there were  
7 dust control rules related to the Solar Site that required the workers not to create too much dust.  
8 We were told that we could not drive on the Access Road in a way that created dust and that we  
9 needed to drive slowly if dust was being created. We were told that if we were creating dust, we  
10 were driving too fast. We were told that the Solar Site had water trucks that would spray water  
11 on the Access Road to prevent too much dust from being created by the vehicle that were driving  
12 on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it  
13 was muddy and slippery, it was even slower and more difficult to drive on the Access Road.

14 **RULES ABOUT SMOKING**

15 45. We were told that we were not allowed to smoke either inside or outside of our vehicles while  
16 we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the  
17 parking lots. We were told that we could only smoke in designated smoking areas.

18 **RULES ABOUT STAYING ON THE ACCESS ROAD**

19 46. At my new hire orientation, we were told by CSI management that, once we were released to  
20 drive on the Access Road in the morning and at the end of the day, we had to drive directly on  
21 the Access Road to our assigned parking lot in the morning and from our assigned parking lot  
22 back to Turkey Flats Road at the end of the day and that we were to stay only on the Access  
23 Road. We were told that although there were other intersecting roads along the Access Road, we  
24 were not permitted to go onto any of those roads.

25 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

26 47. At my new hire orientation and in worker meetings, we were told by CSI management that we  
27 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the  
28 Access Road. We were told that except for emergencies, we were not allowed to stop on the

1 Access Road at any places that we were not specifically designated to stop at.

- 2 48. At my new hire orientation and at worker meetings, we were told by CSI management that if we  
3 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary  
4 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We  
5 were told that if we had to get out of our vehicles along the Access Road for any reason, we  
6 could not disturb the environment, such as trampling or disturbing any plants.

7 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

- 8 49. After I went through the mandatory security entrance process and while driving on the Access  
9 Road, I believed that I was, and actually was, restricted by, confined by, and under the control of  
10 CSI. During these periods of time, I was confined to Solar Site and to the vehicle in which I was  
11 riding and could not run errands outside of the Solar Site, could not go somewhere outside of the  
12 Solar Site to get something to eat, and could not do other things that I could normally do outside  
13 the Solar Site while on the Access Road.

- 14 50. I was not paid for the drive time on the Access Road or the time I spent waiting in line to go  
15 through and going through the Phase 2 Security Gate security process during my time on Phase  
16 2.

17 **THE MANDATORY SECURITY EXIT PROCESS**

- 18 51. I was told at the orientation that at the end of each workday after our work stop time, it was  
19 CSI's policy that to exit the Solar Site, all workers had to drive to the Phase 2 Security Gate  
20 (where the security process occurred) on the Access Road and wait for their turn to go through  
21 the exit security process at the Phase 2 Security Gate. We were told that when we were traveling  
22 from the parking lots to the Phase 2 Security Gate at the end of the day, we could not pass other  
23 vehicles and had to wait in line for our turn to go through the exit security process, vehicle-by-  
24 vehicle at the Phase 2 Security Gate. We were told that when a vehicle got to the front of the line  
25 at the Phase 2 Security Gate at the end of the day, the vehicle was required to stop at the Phase 2  
26 Security Gate (where the security process occurred) and wait until a security guard conducted the  
27 exit security process. We were told that we were required to roll down our windows and present  
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1 our security identification badges for review and scanning by a security guard. We were told that  
2 all drivers and passengers in a vehicle had to do the same thing. We were told that we workers  
3 were not allowed to leave the Solar Site until we completed the exit security process at the Phase  
4 2 Security Gate and the security guards allowed us to leave the Solar Site.

5 52. I was told at the Solar Site Orientation and in meetings that if a worker did not have his or her  
6 security identification badge at the time that he or she wanted to exit the Solar Site through the  
7 Phase 2 Security Gate (where the security process occurred), the worker could not exit the Solar  
8 Site and had to pull out of line and go into the security guard shack at the Security Gate to be  
9 released before being allowed to leave.

10 53. As I was going through the exit security process, I could see security guards looking inside my  
11 vehicle and other vehicles through the windows. When I was riding with other people and when I  
12 saw other vehicles with more than one person, I saw the security guards looking into the vehicles  
13 to see how many people were in the vehicles and confirming that the identification badges  
14 matched the people in the vehicles.

15 54. At the end of the day, the line waiting to get out of the Solar Site at the Phase 2 Security Gate  
16 was even longer than the line to get into the Solar Site at the Security Gate at the beginning of  
17 the day. This is because at the end of the day, hundreds of Solar Site workers would be leaving at  
18 around the same time. The work stopping time for virtually all of the CSI workers was the same  
19 and we were required to be off the Solar Site by a certain time. I observed and estimate that there  
20 were many more than 25 vehicles leaving the Solar Site around the same time each workday.  
21 Because of the number of vehicles leaving at once and because of the configuration of the Phase  
22 2 Security Gate, the time it took me to wait in line and go through the exit security process to  
23 leave the Solar Site could be 20 minutes or more depending on where my vehicle was in line to  
24 exit. Waiting in line to go through the exit security process occurred every day I worked there.

25 55. I estimate that the security exit process could take up to a minute or so per vehicle, depending on  
26 the number of passengers in the vehicle, to go through the security exit process after we finished  
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1 waiting in the long line. If a van full of people were being scanned in, then the process could take  
2 several more minutes for that vehicle alone.

3 56. In CSI meetings, I was told that it was CSI's policy that any workers who arrived at the Phase 2  
4 Security Gate and attempted to exit the Solar Site through the exit security process too early at  
5 the end of the workday could be disciplined or terminated.-While I worked for CSI, I was told  
6 that certain workers did in fact arrive at the Phase 2 Security Gate at the end of the workday and  
7 attempted to exit the Security Gate too early and were terminated.

8 57. During the time that I was waiting in line to exit the Phase 2 Security Gate (where the security  
9 process occurred) and while I was going through the exit security process, I felt that I was, and  
10 actually was, under CSI's control because I was confined to and could not leave the Solar Site  
11 until I went through the exit security process, I was required to follow policies, processes and  
12 rules required by CSI to exit the Solar Site through the Phase 2 Security Gate, and because I was  
13 restricted as to what I could and could not do while I waited in line for and went through the exit  
14 security process. For example, while I was waiting in line and confined to the Solar Site and  
15 going through the exit security process, there was nothing that I could do other than wait in the  
16 vehicle in which I was riding to complete the process. For example, I could not do any of the  
17 following things: a) I could not pass any vehicles ahead of me, b) I could not leave the Solar Site,  
18 c) I could not run any personal errands, d) I could not leave to get something to eat, e) I could not  
19 perform any personal activities outside of my vehicle, f) I could not move my vehicle until the  
20 security guards had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

21 **MEAL BREAK LOCATION RULES**

22 58. I was told by CSI management and my foreman at worker meetings that CSI workers were  
23 required to stay on the job during the entire workday from the beginning of the workday to the  
24 end of the workday. I was told that workers were required to stay at our daily Installation Sites  
25 during our meal periods. We were told that we workers were required to eat our lunches at our  
26 daily Installation Solar Sites. I followed those instructions during meal periods and observed  
27 other CSI workers follow those instructions during meal periods.  
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59. I was never paid for the time that I was on meal breaks.

I declare under penalty of perjury under the laws of California and the United States that foregoing is true and correct.

Dated: 3/18/2021

DocuSigned by:  
*Kevin Clarno*  
2390DEAADA88451...  
Kevin Clarno



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Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself  
and all others similarly situated and as a  
representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation;  
California Flats Solar, LLC, a Delaware Limited  
Liability Company; CA Flats Solar 130, LLC, a  
Delaware Limited Liability Company; CA Flats  
Solar 150, LLC, a Delaware Limited Liability  
Company; Cal Flats Solar CEI, LLC, a Delaware  
Limited Liability Company; Cal Flats Solar  
Holdco, LLC, a Delaware Limited Liability  
Company; CSI Electrical Contractors, Inc.; Milco  
National Constructors, Inc.; California  
Compaction Corporation; and Does 1 through 10,

Defendants.

**Case No. 5:18-cv-06761-BLF  
CLASS ACTION**

**Declaration of Erick Tucker in Support of  
Opposition to Motion for Partial Summary  
Judgment**

Date: April 8, 2021  
Time: 9:00 a.m.  
Crtrm: 3

1 I, Erick Tucker declare:  
2

- 3 1. I have personal knowledge of the following facts.  
4 2. I was employed at the California Flats Solar Project (“Solar Site”) by Sachs Electric Company  
5 (“Sachs”) as a wireman beginning in or around November of 2016 through the middle of June of  
6 2017. During that time, I was assigned by Sachs’s management to step in as a foreman when my  
7 crew foreman was absent. I was then hired by CSI for Phase 2 of the project starting around  
8 September 2018.

9 **NEW HIRE ORIENTATION AND WORKER MEETINGS**

- 10 3. I was told by CSI management that all workers were required to attend a new hire orientation  
11 that was conducted by personnel from CSI. I attended one of those orientations.  
12 4. At the Solar Site, there were also many other worker meetings that included safety meetings,  
13 monthly all-hands meetings, and other meetings. These meetings were conducted by a  
14 combination of personnel from CSI and other contractors.  
15 5. At these meetings, the other workers and I were told about the Solar Site rules including the rules  
16 of the Access Road and the rules of the mandatory security entrance and exit process at the Phase  
17 2 Security Gate.  
18 6. At these meetings, the workers and I were told that we were required to follow all the rules of the  
19 Solar Site. While I worked on the Solar Site, I always tried to follow the rules and I observed  
20 other workers following the rules.  
21 7. The CSI management people who conducted the worker meetings throughout the project  
22 included CSI executives, safety people, general foreman, and superintendents.

23 **THE SOLAR SITE AND SECURITY GATE**

- 24 8. The Solar Site consisted of a large area of land surrounded by a fence with a Security Gate.  
25 9. During Phase 1, the Security Gate was located near the intersection of Turkey Flats Road and  
26 Highway 41.  
27 10. During the time that I worked for CSI on Phase 2 of the project, the Phase 2 Security Gate had  
28 been moved from the previous Phase 1 location and was about a 10 to 15-minute drive or more

1 from the parking lots. Prior to the creation of the Phase 2 Security Gate, the Phase 1 Security  
2 Gate was about a 30 to 45-minute drive. Sometimes the drives from the parking lots to the Phase  
3 1 and Phase 2 Security Gates were even longer.

4 11. I was told by CSI management during my orientation for Phase 2 that the first place the other  
5 CSI workers and I were required to be at the beginning of the day in order to work was the Phase  
6 2 Security Gate to line up and go through the mandatory entrance security process and drive on  
7 the Access Road to the parking lots of the Solar Site.

8 12. I was told by CSI management during my orientation that the Phase 2 Security Gate was the only  
9 entrance to the Solar Site that we could use to work on the Solar Site. After we passed through  
10 the Phase 2 Security Gate, we then traveled along a long, rough, private road to get to the  
11 parking lots where we parked our vehicles.

12 13. This mandatory entrance and exit security process at the Phase 2 Security Gate included waiting  
13 in line for up to 5 to 20 minutes or more because the Security Gate configuration and the security  
14 process caused a bottlenecked, long line of worker vehicles attempting to enter and exit the Solar  
15 Site each day. The wait to exit the Solar Site through the Phase 2 Security Gate normally took  
16 longer because virtually all of the workers on the Solar Site were attempting to leave at the same  
17 time. This created a long line and a lot of waiting time.

18 14. From the time that the other CSI workers and I entered through the Phase 2 Security Gate at the  
19 beginning of the day through the time that we left the Solar Site through the Phase 2 Security  
20 Gate at the end of the day, we were subject to a broad range of job Solar Site rules and  
21 restrictions and were monitored for our compliance with such rules and restrictions. During this  
22 time, the other CSI workers and I could not effectively use this time for our own purposes.

23 15. I was not paid for the time it took me to wait in the long line of vehicles and pass through the  
24 security process at the Phase 2 Security Gate to enter and exit the Solar Site each day.  
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**THE MANDATORY SECURITY ENTRANCE AND EXIT PROCESS**

- 1
- 2 16. To work at the Solar Site, that the first place the other CSI workers and I were required to be at
- 3 the beginning of the day was the Phase 2 Security Gate to line up and go through the mandatory
- 4 entrance security process and drive on the Access Road to the parking lots of the Solar Site.
- 5 17. The worker security badges that were part of the mandatory security entrance and exit process
- 6 contained the picture and name of the worker and the company name on them.
- 7 18. At my new hire orientation and at CSI meetings, I was told by CSI management that we workers
- 8 could not go beyond the Phase 2 Security Gate where we scanned in and out without our security
- 9 badges and without being scanned in or scanned out through the mandatory security process. I
- 10 was told that if a worker forgot or lost his or her security badge, the worker could not enter the
- 11 Solar Site without special permission.
- 12 19. At my new hire orientation and at CSI meetings, I was told by CSI management that once we
- 13 entered the Solar Site through the Phase 2 Security Gate where we scanned in and out, we always
- 14 had to have our badges so at the end of the day we could be scanned out through the mandatory
- 15 security exit process.
- 16 20. At the Phase 2 Security Gate where we scanned in and out, there was normally one and
- 17 sometimes two security guards who conducted the mandatory security entrance process for us
- 18 workers and our vehicles. Almost all the time, there was only one lane of traffic being processed
- 19 by the security guard to enter or exist the Solar Site. There were almost never two lanes of traffic
- 20 going in the same direction being checked through the Phase 2 Security Gate at the same time.
- 21 This is because the Access road was narrow and, if two lanes of traffic were being processed
- 22 through the Phase 2 Security Gate in the same direction, there was no place for traffic moving
- 23 the opposite direction to go through the security process at the Security Gate.
- 24 21. To conduct the mandatory entrance and exit security process, the security guard or guards would
- 25 stop each vehicle to check for security badges of the passengers or check for other information if
- 26 the vehicle was a vendor vehicle.
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22. For both entering and exiting the Solar Site, when there were two security guards inspecting and scanning in security badges, the security guards would each stand on a side of the vehicle to inspect and scan in security badges.
23. For both entering and exiting the Solar Site, the security guards required each vehicle to stop at the Phase 2 Security Gate where the security process occurred so that each passenger could be checked. The passengers in the vehicles would roll down their windows and hand the security badges to the security guard for inspection and scanning. The number of security badges in each vehicle was required to match the number of passengers in each vehicle. The security guards would then scan each worker's security badge in each vehicle before letting them pass through the Phase 2 Security Gate.
24. At the Phase 2 Security Gate, there was always a long, bottlenecked line of vehicles waiting to enter. The mandatory security entrance process was conducted one vehicle at a time using the same procedure. In the morning, there were worker vehicles and vans waiting in line to go through the Phase 2 Security Gate.
25. For both entering and exiting the Solar Site, sometimes the drivers would present all of the badges to the security guard at once. Other times they did not, and the security guards would go to each window of the vehicle where the passengers were sitting and inspect and scan their security badges. Each security badge was inspected and scanned individually by the security guards.
26. For both entering and exiting the Solar Site through the Security Gate where the security process occurred, if passengers in a vehicle did not have security badges, the security guards would pull the vehicle out of line, would make the vehicle park on the side of the road, and would require any passengers who did not have their scan-in badges to go into the guard shack to be cleared to enter or exit the Solar Site.
27. Once any passengers who did not have security badges were cleared to pass through the Security Gate and received a visitor's badge, the vehicle was allowed to get back in line and proceed on the Access Road.



1 28. The same kind of long, bottlenecked line of vehicles also occurred on the way out of the Phase 2  
2 Security Gate (where the security process occurred) at the end of the day. This mandatory exit  
3 security process included waiting in line, which could take up to anywhere between 10 to 20  
4 minutes or more because of the Security Gate’s bottlenecked configuration and long line of the  
5 workers attempting to leave the Solar Site at the end of the day and the inspection and scanning  
6 of employees’ badges by the security guards. My time in line depended on where my place in  
7 line was and other factors – for example, if there were cattle in the middle of the road. We  
8 workers were told by CSI management that we could not force the cattle off the road and had to  
9 wait for the cattle to pass.

10 29. I was told by CSI management at my orientation that as part of the security entrance and exit  
11 process, the security guards had the right to look inside and search any worker vehicle at any  
12 time. There was also a sign on the Solar Site that said any vehicle on their property is subject to  
13 search and seizure.

14 30. I have seen the security guards search vehicles during the exit security process.

15 31. During the time that I was waiting in the lines to go through the security process to exit the Solar  
16 Site and going through all the steps of the security process to exit the Solar Site, I believed that I  
17 was, and actually was, restricted by, confined by, and under the control of CSI. During these  
18 periods of time, I was confined to the Solar Site and to the vehicle in which I was riding and  
19 could not run errands outside of the Solar Site, could not go somewhere to get something to eat,  
20 and could not do other things that I could normally do if I were not restricted by, confined by or  
21 controlled by the long lines and security process to exit the Solar Site.

22 **RULES ABOUT NOT BEING ON THE SOLAR SITE BEFORE SUNRISE AND UNTIL THE**  
23 **BIOLOGISTS CLEARED THE SOLAR SITE**

24 32. We were told the time at which the Solar Site was scheduled to open and were periodically  
25 updated about any changes to the scheduled opening times. We were told that we were not  
26 allowed to enter the Solar Site until the sun had come up and the biologists had cleared the Solar  
27 Site to be opened and had added barricades if endangered species were near the roadway or wait  
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1 for the water trucks to wet the roadway for dust control. We would then proceed to the Phase 2  
2 Security Gate where the security and badging process took place.

3 **THE ACCESS ROAD**

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5 33. I was told by CSI management that they wanted all workers to drive vehicles on the Access  
6 Road.

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8 34. There was no possible way to walk or ride a bicycle from the Phase 2 Security Gate to the  
9 parking lots in the morning and get to work on time or to get from the parking lots to the Security  
10 Gate on time at the end of the day because workers were restricted as to when we were allowed  
11 to be on the Solar Site.

12  
13 35. Solar Site management also monitored us while we were driving on the Access Road. I  
14 remember seeing CSI personnel on the Access Road who were monitoring the behavior of  
15 workers while they were driving on the road. I also observed speed monitors alongside the road,  
16 especially near kitfox dens, and environmentalist patrolling the road.

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18 36. I was told by CSI personnel at my orientation that from the time that we workers went through  
19 the Phase 2 Security Gate in the morning until we went out of them at the end of the workday,  
20 we were subject to all the Solar Site's rules, including the rules relating to the Access Road, and  
21 could be suspended or terminated for violating them and that all workers were being watched  
22 carefully while we were on the Solar Site and the Access Road

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24 37. I was also told about specific "rules of the road" that applied to the Access Road. These rules  
25 were in addition to signs that were posted before and after we went through the mandatory  
26 security entrance process and went through the Phase 2 Security Gate. As problems would arise,  
27 the foreman would reiterate certain rules the morning after. For example, if someone was caught  
28 speeding, the speeding would be reiterated in the morning meeting the day after.

38. At my new hire orientation, we were told by CSI management that we were subject to having our  
bodies, personal property and vehicle searched by CSI and other Solar Site management at any  
time while inside the Phase 2 Security Gate or on the Access Road. We were also told that we

1 were subject to drug and alcohol testing at any time while inside the Security Gates or on the  
2 Access Road.

3 39. From the time that I entered the Phase 2 Security Gate in the morning until I exited the Security  
4 Gates at the end of the day, I believed that I was under the control of CSI because of the job  
5 Solar Site rules that we were subject to, because of how much CSI warned us about them and  
6 how the rules were being enforced.

7 40. There were many rules that we were told by CSI and Solar Site management that we had to  
8 follow, including those discussed below.

9 **INSTRUCTION SIGNS**

10 41. There were signs along the Turkey Flats road and around the Security Gates displaying a number  
11 of instructions. At my new hire orientation and at worker meetings, we were told by CSI  
12 management that we had to obey the instructions on the signs of the Solar Site. I recall that these  
13 instructions, among other things, included things like:

- 14 • be prepared to wear PPE (Personal Protective Equipment) beyond this point;
- 15 • all visitors must check in at the guard shack;
- 16 • must have badge;
- 17 • speed limit;
- 18 • pictures of animals that I was told to look out for and not to interfere with;
- 19 • no smoking;
- 20 • no drugs; and
- 21 • no firearms.

22 42. At my new hire orientation and at worker meetings, we were told by CSI management that we  
23 were required to wear our PPE (Personal Protective Equipment) at all times when we were on the  
24 Solar Site, including from the time that we entered the Phase 2 Security Gate in the morning until  
25 the time that we left the Security Gate at the end of the day.

26 **RULES ABOUT SPEEDING ON THE ACCESS ROAD**

27 43. I recall that there were speed limits signs with speed limits between 5 and 15 miles per hour  
28 posted on the Access Road.

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44. At my new hire orientation and at worker meetings, we were told by CSI management that they were monitoring our activities and the speeds of vehicles on the Access Road. We were told that there were speed radar machines and cameras installed along the Access Road. At least one of these radar machines was located on the Access Road and had a digital sign that would tell us how fast we were going. I also saw people using hand-held radar machines to monitor the speed of workers. We were told that if we violated the speed limits or “rules of the road” or other job Solar Site rules, we could be suspended or terminated.

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45. At times on the Access Road, I was often only allowed to drive at 5 to 10 miles per hour because of animals near the road, the conditions of the road, cattle grids, the road being wet because of the Solar Site watering of the road, poor road conditions and other reasons.

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**RULES ABOUT PASSING ON THE ROAD**

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46. During our drive on the Access Road, gaps would form between cars for any number of reasons such as animals on the road, someone’s car breaking down, someone driving more slowly than the rest of the cars, or a whole range of the conditions related to the road. Regardless of these gaps, we were told by CSI management that we were not allowed to go above the speed limit or pass another moving vehicle for any reason, except when a car had broken down or pulled over to the side of the road.

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**RULES ABOUT LIVESTOCK AND ENDANGERED ANIMALS ON THE ACCESS ROAD**

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47. The Access Road was a long, rough dirt road that was very difficult to drive on and very hard on vehicles. Along the Access Road, there were several steel cattle grids that we were required to drive over. Cattle grazed along the Access Road and would frequently be very near or on the road and they interfered with the ability of vehicles to travel on the road.

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48. At the new hire orientation and at worker meetings, we were told by CSI management that we were not allowed to disturb the cattle or local wildlife in any way while we were driving on the Access Road. We were told that if we saw animals on or near the road, we had to let them do whatever they needed to do and that we were not allowed to do anything to try to get them to move off the road, such as honk our car horns. We were told that we had to slow down or stop

1 our vehicle and just stay in our vehicles and wait for them to go away from the road. We were  
2 told that we mainly had to be careful about cattle and kit foxes, but there were also other animals  
3 that we were supposed to watch out for. The presence of animals on or around the road  
4 frequently slowed down the drive on the Access Road. Often, the environmentalist would post  
5 signs for kit fox zones on the road and a require traffic to slow down to 5 miles per hour in the  
6 zones.

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8 49. At the new hire orientation and at worker meetings, we were told by CSI management that we  
9 were not supposed to honk our horns when we were driving on the Access Road because our  
10 horns could disturb the local wildlife and the cattle. We were also told that we could not play  
11 loud music that could be heard outside our vehicle while we were on the Access Road because  
12 the noise from the music could also disturb the local wildlife and the cattle. We were told that we  
13 were not supposed to touch or feed anything to the local wildlife or cattle on the Solar Site or  
14 along the Access Road.

15 **RULES ABOUT CREATING DUST ON THE ACCESS ROAD**

16 50. At the new hire orientation and at worker meetings, we were told by CSI management there were  
17 dust control rules related to the Solar Site that required the workers not to create too much dust.  
18 We were told that we could not drive on the Access Road in a way that created dust and that we  
19 needed to drive slowly if dust was being created. We were told that if we were creating dust, we  
20 were driving too fast. We were told that the Solar Site had water trucks that would spray water  
21 on the Access Road to prevent too much dust from being created by the vehicle that were driving  
22 on it. Because of this watering, the Access Road was sometimes muddy and slippery. When it  
23 was muddy and slippery, it was even slower and more difficult to drive on the Access Road.

24 **RULES ABOUT SMOKING**

25 51. We were told that we were not allowed to smoke either inside or outside of our vehicles while  
26 we were driving on the Solar Site or Access Road or inside or outside of our vehicles in the  
27 parking lots. We were told that we could only smoke in designated smoking areas.  
28

**RULES ABOUT STAYING ON THE ACCESS ROAD**

1  
2 52. At my new hire orientation, we were told by CSI management that, once we were released to  
3 drive on the Access Road in the morning and at the end of the day, we had to drive directly on  
4 the Access Road to our assigned parking lot in the morning and from our assigned parking lot  
5 back to Turkey Flats Road at the end of the day and that we were to stay only on the Access  
6 Road. We were told that although there were other intersecting roads along the Access Road, we  
7 were not permitted to go onto any of those roads.

8 **RULES ABOUT STOPPING ON THE ACCESS ROAD**

9 53. At my new hire orientation and in worker meetings, we were told by CSI management that we  
10 must strictly follow the “rules of the road” and keep the flow of traffic constantly moving on the  
11 Access Road. We were told that except for emergencies, we were not allowed to stop on the  
12 Access Road at any places that we were not specifically designated to stop at.

13 54. At my new hire orientation and at worker meetings, we were told by CSI management that if we  
14 had to get out of our vehicles for any reason, we were not allowed to go outside of the boundary  
15 fences, stakes and ribbons that ran about 15 feet or so along the sides of the Access Road. We  
16 were told that if we had to get out of our vehicles along the Access Road for any reason, we  
17 could not disturb the environment, such as trampling or disturbing any plants.

18 **WORKERS WERE CONTROLLED BY CSI WHILE ON THE ACCESS ROAD**

19 55. After I went through the mandatory security entrance process and while driving on the Access  
20 Road, I believed that I was, and actually was, restricted by, confined by, and under the control of  
21 CSI. During these periods of time, I was confined to Solar Site and to the vehicle in which I was  
22 riding and could not run errands outside of the Solar Site, could not go somewhere outside of the  
23 Solar Site to get something to eat, and could not do other things that I could normally do outside  
24 the Solar Site while on the Access Road.

25 56. I was not paid for the drive time on the Access Road or the time I spent waiting in line to go  
26 through and going through the Phase 2 Security Gate security process.  
27  
28

**THE MANDATORY SECURITY EXIT PROCESS**

- 1
- 2 57. I was told at the orientation that at the end of each workday after our work stop time, it was
- 3 CSI's policy that to exit the Solar Site, all workers had to drive to the Phase 2 Security Gate
- 4 (where the security process occurred) on the Access Road and wait for their turn to go through
- 5 the exit security process at the Phase 2 Security Gate. We were told that when we were traveling
- 6 from the parking lots to the Phase 2 Security Gate at the end of the day, we could not pass other
- 7 vehicles and had to wait in line for our turn to go through the exit security process, vehicle-by-
- 8 vehicle at the Phase 2 Security Gate. We were told that when a vehicle got to the front of the line
- 9 at the Phase 2 Security Gate at the end of the day, the vehicle was required to stop at the Phase 2
- 10 Security Gate (where the security process occurred) and wait until a security guard conducted the
- 11 exit security process. We were told that we were required to roll down our windows and present
- 12 our security identification badges for review and scanning by a security guard. We were told that
- 13 all drivers and passengers in a vehicle had to do the same thing. We were told that we workers
- 14 were not allowed to leave the Solar Site until we completed the exit security process at the Phase
- 15 2 Security Gate and the security guards allowed us to leave the Solar Site.
- 16 58. I was told at the Solar Site Orientation and in meetings that if a worker did not have his or her
- 17 security identification badge at the time that he or she wanted to exit the Solar Site through the
- 18 Phase 2 Security Gate (where the security process occurred), the worker could not exit the Solar
- 19 Site and had to pull out of line and go into the security guard shack at the Security Gate to be
- 20 released before being allowed to leave.
- 21 59. As I was going through the exit security process, I could see security guards looking inside my
- 22 vehicle and other vehicles through the windows. When I was riding with other people and when I
- 23 saw other vehicles with more than one person, I saw the security guards looking into the vehicles
- 24 to see how many people were in the vehicles and confirming that the identification badges
- 25 matched the people in the vehicles.
- 26 60. At the end of the day, the line waiting to get out of the Solar Site at the Phase 2 Security Gate
- 27 was even longer than the line to get into the Solar Site at the Security Gate at the beginning of
- 28

1 the day. This is because at the end of the day, hundreds of Solar Site workers would be leaving at  
2 around the same time. The work stopping time for virtually all of the CSI workers was the same  
3 and we were required to be off the Solar Site by a certain time. I observed and estimate that there  
4 were many more than 25 vehicles leaving the Solar Site around the same time each workday.  
5 Because of the number of vehicles leaving at once and because of the configuration of the Phase  
6 2 Security Gate, the time it took me to wait in line and go through the exit security process to  
7 leave the Solar Site could be 10 to 20 minutes or more depending on where my vehicle was in  
8 line to exit. Waiting in line to go through the exit security process occurred every day I worked  
9 there.

- 10 61. I estimate that the security exit process could take up to 2 minutes or more per vehicle to go  
11 through the security exit process after we finished waiting in the long line. If a van full of people  
12 were being scanned in, then the process could take several more minutes for that vehicle alone.
- 13 62. At the Solar Site Orientation and in meetings, I was told that it was CSI's policy that any  
14 workers who arrived at the Phase 2 Security Gate and attempted to exit the Solar Site through the  
15 exit security process too early at the end of the workday could be disciplined or terminated. I was  
16 also told this by fellow co-workers who worked for CSI as well.
- 17 63. While I worked for CSI, I was told by other co-workers that certain workers did in fact arrive at  
18 the Phase 2 Security Gate at the end of the workday and attempted to exit the Security Gate too  
19 early and were terminated.
- 20 64. During the time that I was waiting in line to exit the Phase 2 Security Gate (where the security  
21 process occurred) and while I was going through the exit security process, I felt that I was under  
22 CSI's control because I was confined to and could not leave the Solar Site until I went through  
23 the exit security process, I was required to follow policies, processes and rules required by CSI to  
24 exit the Solar Site through the Phase 2 Security Gate, and because I was restricted as to what I  
25 could and could not do while I waited in line for and went through the exit security process. For  
26 example, while I was waiting in line and confined to the Solar Site and going through the exit  
27 security process, there was nothing that I could do other than wait in the vehicle in which I was  
28



1 riding to complete the process. For example, I could not do any of the following things: a) I  
2 could not pass any vehicles ahead of me, b) I could not leave the Solar Site, c) I could not run  
3 any personal errands, d) I could not leave to get something to eat, e) I could not perform any  
4 personal activities outside of my vehicle, f) I could not move my vehicle until the security guards  
5 had let vehicles ahead of me, vehicle-by-vehicle, exit the Solar Site.

6 **MEAL BREAK LOCATION RULES**

- 7  
8 65. I was told by CSI management and my foreman at worker meetings that CSI workers were  
9 required to stay on the job during the entire workday from the beginning of the workday to the  
10 end of the workday. I was told that workers were required to stay at our daily Installation Sites  
11 during our meal periods.  
12 66. We were told that we workers were required to eat our lunches at our daily Installation Solar  
13 Sites. I followed those instructions during meal periods and observed other CSI workers follow  
14 those instructions during meal periods.  
15 67. I was never paid for the time that I was on meal breaks.

16 I declare under penalty of perjury under the laws of California and the United States that  
17 foregoing is true and correct.

18 Dated: March 18, 2021

19   
20 Erick Tucker