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LEGAL PROCESS #12

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10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SACRAMENTO

13 GUSTAVO RAMIREZ, LUIS ALBERTO)
14 MARTINEZ, JOSE VILLAGRAN PALACIOS,)
15 ALEJANDRO SEGURA PALACIOS,)
16 OBDULIO SANDOVAL REYES, JERSON)
17 GEOVANNY HERNANDEZ, and CRUZ)
18 NAVARRO RIOS, on behalf of themselves, on)
19 behalf of the general public and on behalf of all)
20 others similarly situated,

21 Plaintiffs,

22 vs.

23 FINISHERS CORPORATION OF)
24 CALIFORNIA, INC., J.R. ROBERTS)
25 CORPORATION, BROWN CONSTRUCTION)
26 INC. and DOES 1 through 50, inclusive,

27 Defendants.

Case No. 05AS03589

CLASS ACTION COMPLAINT FOR
UNFAIR BUSINESS PRACTICES,
VIOLATIONS OF LABOR CODE,
INJUNCTION, AND ATTORNEY'S FEES

BY FAX

28 I. INTRODUCTION

This is an action brought by Plaintiffs GUSTAVO RAMIREZ, LUIS ALBERTO MARTINEZ, JOSE VILLAGRAN PALACIOS, ALEJANDRO SEGURA PALACIOS, OBDULIO SANDOVAL REYES, JERSON GEOVANNY HERNANDEZ, and CRUZ NAVARRO RIOS (hereafter "Plaintiffs") on behalf of themselves, on behalf of the general public and on behalf of all others similarly situated, against Defendant FINISHERS CORPORATION OF CALIFORNIA,

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1 ascertainable. Defendant violated the rights of these individuals by their failure to properly pay the
2 correct prevailing wages and follow various labor laws.

3 13. The claims of Plaintiffs are typical of those of the class, as Plaintiffs now suffer and
4 have suffered in the past from the same violations of the law as the class. Plaintiffs have retained
5 competent counsel to represent themselves and the class, and Plaintiffs will fairly and adequately
6 represent the interests of the class.

7 **IV. FACTUAL ALLEGATIONS**

8 14. Defendant FINISHERS CORPORATION OF CALIFORNIA, INC is a construction
9 company that specializes in various carpentry work, including but not limited to drywall work and
10 lathing and plastering.

11 15. Defendant Finishers is headquartered in Tigard Oregon, and provides carpentry
12 services throughout California, including Sacramento County.

13 16. Defendant Finishers have C-9 (Drywall) and C-35 (Lathing and Plastering) licenses
14 issued by the California Contractors State License Board. Defendant Finishers' license, however,
15 is currently inactive.

16 17. Since at least 2001, Plaintiffs and the class have performed various construction
17 services for Defendant Finishers on a range of private and public works construction jobs.

18 18. Within the last four years, Defendant has performed labor at various projects,
19 including but not limited to:

- 20 (a) Food and Agriculture Building Renovation, State of California;
- 21 (b) UC Merced, Garden Suites; and
- 22 (c) White Rock Village Apartments;

23 19. Defendant J.R. was the general contractor at the prevailing wage project at the
24 Department of Food and Agriculture building renovation for the State of California. Defendant
25 J.R. Roberts contracted with Defendant Finishers to perform drywall and other carpentry work.

26 20. Defendant Brown Construction was the general contractor at the prevailing wage
27 project at the White Rock Village Apartments. Defendant Brown contracted with Defendant
28

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Finishers to perform drywall and other carpentry work.

2 21. Defendant Finishers paid Plaintiffs and the class on an hourly basis.

3 22. Defendant failed to pay Plaintiffs and the class the correct prevailing wage rates.
4 Defendant employed an unlawful practice where it would defraud Plaintiffs and the class of the
5 correct prevailing wage rates. In this practice, Defendant would record less hours on the certified
6 payroll records and pay stubs than Plaintiffs and the class actually worked. By recording less hours
7 than Plaintiffs and the class actually worked, Defendants gave the impression that it was paying the
8 correct prevailing wage rate when in fact it was paying a rate far below that required by law. For
9 example, an employee may work 40 hours at a project where the correct wage rate is \$36.49 per
10 hour. In order to cheat the employee, and give the impression it was paying the correct rates,
11 Defendant would report only 20 hours of work on the certified payroll records and on the
12 employees pay stubs. This gave the effect of reducing the employee's hourly rate in half. Through
13 this unlawful business practice, Defendant defrauded Plaintiffs and the class of the prevailing wage
14 rates required by law.

15 23. Defendant failed to pay Plaintiffs and the class the appropriate overtime rates for
16 work performed beyond eight (8) hours in a day, or forty (40) hours in a week.

17 24. Defendant ordered and/or encouraged Plaintiffs and the class to lie about their rate
18 of pay. Defendant instructed them to respond that each earned the required prevailing wage rate
19 when asked by anybody. Defendant told them that they were not to disclose their true hourly rate.

20 25. Defendant failed to give Plaintiffs and the class rest and lunch periods in violation
21 of the IWC Order and the Labor Code.

22 26. Defendant failed to pay Plaintiffs' and the class wages due in violation of Labor
23 Code § 204, triggering penalties under Labor Code § 203.

24 27. Defendant failed to provide pay stubs which accurately recorded all hours worked,
25 the correct wage rates, and the correct deductions in violation of Labor Code § 226 and 226.3.

26 28. As a result of the above-identified practices, Plaintiffs and the class have lost wages
27 earned and due.

1 29. Plaintiffs and the class were not paid all wages owed to them on their final
2 paycheck as required by law because Defendants have never paid them the correct prevailing
3 wages owed. Defendant Finishers' failure to pay Plaintiffs all wages at separation violates
4 California Labor Code, section 201, 202, and 203.

5 30. All conduct herein alleged against Defendant was knowing, willful, fraudulent and
6 oppressive so as to give rise to exemplary damages under California Civil Code section 3294.

7 **FIRST CAUSE OF ACTION**

8 **(California Business And Professions Code § 17200)**
9 **Defendant Finishers Only**

10 31. Plaintiffs reallege and incorporate paragraphs 1 through 30, inclusive, as thoroughly
11 set forth fully herein.

12 32. California Business and Professions Code Section 17200 et seq. prohibits unfair
13 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.¹

14 33. Beginning at an exact date unknown to Plaintiffs, but at least since the statute of
15 limitations in this action, Defendant committed unfair, unlawful and/or fraudulent acts as defined
16 by California Business & Professions Code Section 17200. These acts are detailed at paragraphs
17 18 to 29 above, and fully incorporated herein.

18 34. Defendant has a pattern and practice of engaging in unlawful, unfair, and fraudulent
19 business practices including, but not limited to, violations of:

- 20 (a) Labor Code Sections 201, 202, 203 (payment at discharge);
- 21 (b) Labor Code Sections 204, 218.5 (payment of wages);
- 22 (c) Labor Code Section 204.3, 510; (overtime compensation);
- 23 (d) Labor Code Sections 226 and 226.3; (inaccurate wage statements);
- 24 (e) Labor Code Sections 226.7, 512 (meal and rest periods);
- 25 (f) Labor Code Sections 1174 and 1174.5 (inaccurate records);
- 26 (g) California Industrial Welfare Commission Orders (hereinafter referred to as

27 ¹ Hereafter, all mentions of the "Business and Professions Code" refer to the *California* Business and Professions
28 Code, unless otherwise indicated.

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1 "TWC Order"), including ; Wage Orders 16 (minimum wage; overtime;
2 record-keeping; tools and uniforms; and meal and break period provisions);

3 (h) Labor Code Sections 1720, 1771, 1773, 1773.1, 1774, 1775 (prevailing
4 wages);

5 (i) Labor Code Sections 1174, 1174.5, 1776, 1812 (failure to maintain accurate
6 records); and

7 (j) Fraud (Civil Code sections 1572 and 1573)

8 35. The violation of these laws serve as unlawful predicate acts for purposes of
9 Business and Professions Code Section 17200, and remedies are provided therein under Business
10 and Professions Code Section 17203.

11 36. The acts and practices described in this Complaint constitute unlawful, unfair
12 and/or fraudulent business practices, and/or unfair competition, within the meaning of Business
13 and Professions Code Section 17200 et seq.

14 37. As a direct and proximate result of the aforementioned acts, Defendant received and
15 continue to hold ill-gotten gains belonging to Plaintiffs, and the class, in that Defendant has
16 profited in that amount from their unlawful practices.

17 38. Business and Professions Code Section 17203 provides that the Court may restore
18 to any person interest in any money or property which may have been acquired by means of such
19 unfair competition and order disgorgement of all profits gained by Defendant by operation of the
20 practices alleged therein. Plaintiffs, and the class, are entitled to restitution pursuant to Business
21 and Professions Code Sections 17203 and 17208 for all wages and civil penalties unlawfully
22 withheld from them during the four years prior to the filing of this Complaint. Plaintiffs will, upon
23 leave of the Court, amend this Complaint to state such amounts when they become ascertained.

24 39. Plaintiffs' success in this action will enforce important rights affecting the public
25 interest, and in that regard, Plaintiffs sue on behalf of the public as well as on behalf of themselves
26 and others similarly situated. Plaintiffs seek and are entitled to unpaid wages, unpaid overtime,
27 and injunctive relief because of Defendant' failure to pay statutory required wages.

1 40. Injunctive relief is necessary and appropriate to prevent Defendant from repeating
2 their wrongful business practices alleged above. Moreover, in order to prevent Defendant from
3 profiting and benefiting from their wrongful and illegal acts, an order requiring Defendant to
4 disgorge all of the profits and gains that it has reaped through its contracts with private entities is
5 appropriate and necessary.

6 41. Plaintiffs herein take upon themselves the enforcement of these laws and lawful
7 claims. There is a financial burden incurred in pursuing this action and it would be against the
8 interests of justice to penalize Plaintiffs by forcing them to pay attorney's fees from the recovery in
9 this action. Therefore, attorney's fees are appropriate pursuant to Code of Civil Procedure Section
10 1021.5

11 Wherefore, Plaintiffs pray judgment as set forth herein below.

12 **SECOND CAUSE OF ACTION**
13 **(Labor Code §§ 1771, 1773.1 and 1774)**
14 **(Violations of Prevailing Wage Law)**

15 **Defendant Finishers Only**

16 42. Plaintiffs and the class reallege and incorporate paragraphs 1 through 41, inclusive,
17 as though fully set forth herein.

18 43. Labor Code section 1771 provides:

19 Except for public works projects of one thousand dollars (\$1,000) or less,
20 not less than the general prevailing rate of per diem wages for work of a
21 similar character in the locality in which the public work is performed, and
22 not less than the general prevailing rate of per diem wages for holiday and
23 overtime work fixed as provided in this chapter, shall be paid to all workers
24 employed on public works.

25 44. Labor Code section 1773.1(a), in part, provides:

26 Per diem wages shall be deemed to include employer payments for health
27 and welfare, pension, vacation, travel, subsistence, and apprenticeship or
28 other training programs authorized by Section 3093, so long as the cost of
training is reasonably related to the amount of the contributions, and similar
purposcs, when the term "per diem wages" is used in this chapter or in any
other statute applicable to public works.

45. Labor Code section 1774 provides:

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The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

46. Defendant failed to pay Plaintiffs and the class all prevailing wages earned in their employment, as required by Labor Code section 1771, 1773.1(a) and 1774. Defendant's failure to pay prevailing wages include, but are not limited to: failing to pay the pre-established prevailing wage rate for the locality, and failing to pay the correct fringe benefits.

47. Plaintiffs seek to recover attorney's fees and costs under Labor Code section 218.5. which states in relevant part:

In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.

Wherefore, Plaintiffs pray judgment as set forth herein below.

**THIRD CAUSE OF ACTION
(California Labor Code § 226)**

(Itemized Wage Statements)

Defendant Finishers Only

48. Plaintiffs and the class aggrieved by the below described actions, reallege and incorporate paragraphs 1 through 47, inclusive, as though fully set forth herein.

49. Labor Code section 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Failure to do so constitutes a misdemeanor under Labor Code section 226.6.

50. In addition, Labor Code 226(b) provides that:

1 Any employee suffering injury as a result of a knowing and intentional
2 failure by an employer to comply with subdivision (a) shall be entitled to
3 recover all actual damages or one hundred dollars (\$100), whichever is
4 greater, plus costs and reasonable attorney fees.

51. Labor Code section 226.3 provides:

6 Any employer who violates subdivision (a) of Section 226 shall be subject
7 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
8 employee per violation in an initial citation and one thousand dollars
9 (\$1,000) per employee for each violation in a subsequent citation, for which
10 the employer fails to provide the employee a wage deduction statement or
11 fails to keep the records required in subdivision (a) of Section 226. The
12 civil penalties provided for in this section are in addition to any other
13 penalty provided by law. In enforcing this section, the Labor Commissioner
14 shall take into consideration whether the violation was inadvertent, and in
15 his or her discretion, may decide not to penalize an employer for a first
16 violation when that violation was due to a clerical error or inadvertent
17 mistake.

52. As a direct and proximate result of Defendant's failure to pay Plaintiffs and the
18 class the wages mandated by law, none of the statements provided by Defendant to Plaintiffs and
19 the class have accurately reflected the applicable pay rates, actual gross wages earned, or net wages
20 earned. Plaintiff is entitled to penalties and damages.

53. Defendant knew or should have known that the information it provided on the
21 itemized wage statements and its payroll records was incorrect. Thus, Defendant intentionally
22 provided inaccurate itemized wages statements to its employees, and inaccurate certified payroll
23 records to the State of California, its political subdivision, and/or other bodies which award Public
24 Works contracts.

Wherefore, Plaintiffs pray judgment as set forth herein below.

25 FOURTH CAUSE OF ACTION

26 (Labor Code §§ 226.7, 512, 2926, 2927 and 218.5
27 IWC Wage Orders, Failure To Provide Meal and Rest Breaks)

28 Defendant Finishers Only

54. Plaintiffs and the class reallege and incorporate paragraphs 1 through 52, inclusive,
as though fully set forth herein and specifically allege that Defendant has violated the Labor Code
and IWC Wage Orders set forth herein below.

1 55. In relevant part, Labor Code section 512 provides:

2 (a) An employer may not employ an employee for a work period of more
3 than five hours without a meal period of not less than 30 minutes, except
4 that if the total work period per day of the employee is no more than six
5 hours, he meal period may be waived by mutual consent of the employer and
6 employee.

5 56. Labor Code section 226.7 effective January 1, 2001 provides:

6 (a) No employer shall require any employee to work during any meal or rest
7 period mandated by an applicable order of the Industrial Welfare
8 Commission.

8 (b) If an employer fails to provide an employee a meal period or rest period
9 in accordance with an applicable order of the Industrial Welfare
10 Commission, the employer shall pay the employee one additional hour of
11 pay at the employee's regular rate of compensation for each work day that
12 the meal or rest period is not provided.

11 57. The IWC Wage Order 16, in relevant part, states:

12 **10. Meal Periods.**

13 (A) No employer shall employ any person for a work period of more than
14 five (5) hours without a meal period of not less than 30 minutes, except that
15 when a work period of not more than six (6) hours will complete the day's
16 work the meal period may be waived by mutual consent of employer and
17 employee. (See Labor Code Section 512.)

18 (B) An employer may not employ an employee for a work period of more
19 than ten (10) hours per day without providing the employee with a second
20 meal period of not less than 30 minutes, except that if the total hours worked
21 is no more than 12 hours, the second meal period may be waived by mutual
22 consent of employer and employee only if the first meal period was not
23 waived. (See Labor Code Section 512.)

20 **12. Rest Periods.**

21 (A) Every employer shall authorize and permit all employees to take rest
22 periods, which insofar as practicable shall be in the middle of each work
23 period. Nothing in this provision shall prevent an employer from staggering
24 rest periods to avoid interruption in the flow of work and to maintain
25 continuous operations, or from scheduling rest periods to coincide with
26 breaks in the flow of work that occur in the course of the workday. The
27 authorized rest period time shall be based on the total hours worked daily at
28 the rate of ten (10) minutes net rest time for every four (4) hours worked, or
major fraction thereof. Rest periods shall take place at employer designated
areas, which may include or be limited to the employees' immediate work
area.

(D) If an employer fails to provide an employee a rest period in accordance
with the applicable provisions of this order, the employer shall pay the

1 employee one (1) hour of pay at the employee's regular rate of compensation
2 for each workday that the rest period is not provided. In cases where a valid
3 collective bargaining agreement provides final and binding mechanism for
resolving disputes regarding enforcement of the rest period provisions, the
collective bargaining agreement will prevail.

4 58. Where Plaintiffs and the class worked more than 6 hours per workday, Defendant
5 failed to provide Plaintiffs and the class a rest or meal periods. In addition to those violations
6 alleged above, by these violations, Defendant has also violated Sections 2926, 2927 and 218.5 of
7 the California Labor Code by refusing to allow workers to have rest breaks or lunch breaks.

8 Wherefore, Plaintiffs pray judgment as set forth herein below.

9 **FIFTH CAUSE OF ACTION**

10 **(California Labor Code §§ 201, 202, 203, 208, 2926 – Wages Due Upon Discharge)**

11 **Defendant Finishers Only**

12 59. Plaintiffs and the class reallege and incorporate paragraphs 1 through 58, inclusive,
13 as though fully set forth herein.

14 60. California Labor Code Sections 201 and 202 require Defendant to pay its employees
15 all wages due immediately upon discharge or by a quitting employee. California Labor Code
16 Section 203 provides that if an employer willfully fails to timely pay such wages the employer
17 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
18 full or an action is commenced. The penalty cannot exceed 30 days of wages.

19 61. Plaintiffs and certain class members were not paid all wages upon discharge or upon
20 quitting. Therefore, Plaintiffs and all persons similarly situated are entitled to unpaid
21 compensation, but to date have not received such compensation.

22 62. As a consequence of Defendant's willful conduct in not paying compensation for all
23 hours worked, Plaintiffs and certain class members are entitled to 30 days wages as penalty under
24 Labor Code Section 203, together all applicable penalties as well as interest thereon and attorney's
25 fees and costs. In addition to those violations alleged above, by these violations, Defendant has
26 also violated Sections 2926, 2927 and 218.5 of the California Labor Code by failing to pay its
27 employees all wages due and owed at separation.

Wherefore, Plaintiffs pray judgment as set forth below.

SIXTH CAUSE OF ACTION

(California Labor Code §§ 510, 1194 and 1197.1, Overtime Wages)

Defendant Finishers Only

63. Plaintiffs and the class reallege and incorporate paragraphs 1 through 62, inclusive, as thoroughly set forth herein.

64. Effective January 1, 2000 Labor Code Section 510 was amended to provide:

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires and employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

65. IWC Wage Order 16 provides:

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

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

66. Defendant's failed to pay for overtime compensation for weeks where Plaintiffs, and the class worked in excess of 40 hours in the workweek and for days when Plaintiffs, and the

1 class, worked over 8 hours in a workday.

2 67. Labor Code section 1194 (a) states:

3 Notwithstanding any agreement to work for a lesser wage, any employee
4 receiving less than the legal minimum wage or the legal overtime
5 compensation applicable to the employee is entitled to recover in a civil
6 action the unpaid balance of the full amount of this minimum wage or
7 overtime compensation, including interest thereon, reasonable attorney's
8 fees, and costs of suit.

6 68. Labor Code sections 1194(a) and 1197.1 provide for a private right of action to
7 recover wages and penalties. Plaintiffs, and the class, seek to recover that civil penalty for the
8 failure to pay minimum wage and failure to pay overtime compensation.

9 69. Plaintiffs seek to recover attorney's fees and costs under Labor Code section
10 1194(a).

11 Wherefore, Plaintiffs prays judgment as set forth herein below.

12 **SEVENTH CAUSE OF ACTION**
13 **(Labor Code §§ 1771, 1773.1 and 1774)**

14 **(Violations of Prevailing Wage Law)**

15 **Defendants Brown Construction and JR Roberts Corp**

16 70. Plaintiffs reallege and incorporate paragraphs 1 through 69, inclusive, as though
17 fully set forth herein.

18 71. Labor Code section 1771 provides:

19 Except for public works projects of one thousand dollars (\$1,000) or less,
20 not less than the general prevailing rate of per diem wages for work of a
21 similar character in the locality in which the public work is performed, and
22 not less than the general prevailing rate of per diem wages for holiday and
23 overtime work fixed as provided in this chapter, shall be paid to all workers
24 employed on public works.

23 72. Labor Code section 1773.1(a), in part, provides:

24 Per diem wages shall be deemed to include employer payments for health
25 and welfare, pension, vacation, travel, subsistence, and apprenticeship or
26 other training programs authorized by Section 3093, so long as the cost of
27 training is reasonably related to the amount of the contributions, and similar
28 purposes, when the term "per diem wages" is used in this chapter or in any
other statute applicable to public works.

1 73. Labor Code section 1774 provides:

2 The contractor to whom the contract is awarded, and any subcontractor
3 under him, shall pay not less than the specified prevailing rates of wages to
4 all workmen employed in the execution of the contract.

5 74. Moreover, California Labor Code, section 1743 makes contractors jointly and
6 severally liable for all amounts due pursuant to a final order ... or judgment". Therefore,
7 contractors are liable for any prevailing wages owed and due to employees of its subcontractors.

8 75. Therefore, Defendants Brown and R.J. Roberts failed to pay Plaintiffs all prevailing
9 wages earned in their employment, as required by Labor Code section 1771, 1773.1(a) and 1774.
10 Defendants' failure to pay prevailing wages include, but are not limited to: failing to pay the pre-
11 established prevailing wage rate for the locality, and failing to pay the correct fringe benefits.

12 76. Plaintiffs seek to recover attorney's fees and costs under Labor Code section 218.5,
13 which states in relevant part:

14 In any action brought for the nonpayment of wages, fringe benefits, or health
15 and welfare or pension fund contributions, the court shall award reasonable
16 attorney's fees and costs to the prevailing party if any party to the action
17 requests attorney's fees and costs upon the initiation of the action.

18 Wherefore, Plaintiffs pray judgment as set forth herein below.

19 PRAYER FOR RELIEF

20 Plaintiffs, and the class, pray judgment as follows:

- 21 1. For preliminary, permanent and mandatory injunctive relief prohibiting Defendant
22 Finishers, their officers, agents, and all those acting in concert with them, from committing in the
23 future those violations of law herein alleged;
- 24 2. For an order imposing all compensatory, statutory and/or civil penalties provided by
25 law or contract;
- 26 3. For an award of restitution and disgorgement of profits, according to proof, under
27 the Labor Code and under Business and Professions Code section 17200 et. seq.;
- 28 4. For an order permitting this action to proceed as a class action;
5. For an award of reasonable attorney's fees as provided by California Labor Code

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section 1194(a), 218.5, and Code of Civil Procedure section 1021.5;

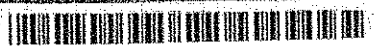
- 6. For an equitable accounting;
- 7. For costs of suit incurred herein; and
- 8. For such other and further relief as this Court deems just and proper.

Dated: August 16, 2005

Respectfully submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: *J. Felix De La Torre*
FELIX DE LA TORRE
Attorneys for Plaintiffs



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

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Sacramento, CA 95814

TELEPHONE NO.: (916) 443-6600

FAX NO. (Optional): 916.442.0244

MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento

STREET ADDRESS: 720 Ninth Street

MAILING ADDRESS: 720 Ninth Street

CITY AND ZIP CODE: Sacramento, CA 95814

BRANCH NAME:

PLAINTIFF/PETITIONER: Gustavo Ramirez, et al.

DEFENDANT/RESPONDENT: Finishers Corporation of California, Inc., et al.

FOR COURT USE ONLY

2005 OCT 24 PM 1:03

LEGAL PROCESS #2

KEYD 34

DATE: 1-19-07
CASE NUMBER: 05AS03589
TIME: 2:00

REQUEST FOR Entry of Default Clerk's Judgment
(Application) Court Judgment

TO THE CLERK: On the complaint or cross-complaint filed

a. on (date): August 16, 2005

b. by (name): Gustavo Ramirez, Luis Alberto Martinez, Jose Villagran Palacios, et al

c. Enter default of defendant (names): Finishers Corporation of California, Inc.

d. I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)

e. Enter clerk's judgment

(1) for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)

Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.

(2) under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)

(3) for default previously entered on (date):

Judgment to be entered.

	Amount	Credits acknowledged	Balance
1. Demand of complaint	\$	\$	\$
2. Statement of damages *	\$	\$	\$
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
3. Interest	\$	\$	\$
4. Costs (see reverse)	\$	\$	\$
5. Attorney fees	\$	\$	\$
TOTALS	\$	\$	\$

6. Daily damages were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____

* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

(Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

7. October 24, 2005

Felix De La Torre
(TYPE OR PRINT NAME)

Felix De La Torre
(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY
(1) Default entered as requested on (date): OCT 24 2005
(2) Default NOT entered as requested (state reason):

L. GUTIERREZ

Clerk, by: _____, Deputy

4. Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.). A legal document assistant or unlawful detainer assistant did did not for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):

a. Assistant's name:
b. Street address, city, and zip code:

c. Telephone no.:
d. County of registration:
e. Registration no.:
f. Expires on (date):

5. Declaration under Code of Civil Procedure Section 585.5 (required for entry of default under Code Civ. Proc., § 585(a)). This action

- a. is is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
b. is is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
c. is is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was

- a. not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):
b. mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date): October 24, 2005

(2) To (specify names and addresses shown on the envelopes):

R.W. Perry
Perry & Winegar
7420 Bridgeport Road, Suite 204
Portland, OR 97224

William A. Lichtig
McDonough Holland & Allan PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95814

Jennifer Randlett Madden
Downey Brand LLP
555 Capitol Mall, Tenth Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date: October 24, 2005

Trish Emerson

(TYPE OR PRINT NAME)

[Signature of Trish Emerson]

(SIGNATURE OF DECLARANT)

7. Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$
b. Process server's fees \$
c. Other (specify): \$
d. \$
e. TOTAL \$

f. Costs and disbursements are waived.

g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. Declaration of nonmilitary status (required for a judgment). No defendant named in Item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 24, 2005

J. Felix De La Torre

(TYPE OR PRINT NAME)

[Signature of J. Felix De La Torre]

(SIGNATURE OF DECLARANT)

104932

1 SANDRA RAE BENSON, Bar No. 121324
MATTHEW J. GAUGER, Bar No. 139785
2 J. FELIX DE LA TORRE, Bar No. 204282
WEINBERG, ROGER & ROSENFELD
3 A Professional Corporation
428 J Street, Suite 520
4 Sacramento, CA 95814
Telephone: (916) 443-6600

5 Attorneys for Plaintiffs

6
7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO
10

11
12 GUSTAVO RAMIREZ, LUIS ALBERTO)
MARTINEZ, JOSE VILLAGRAN)
13 PALACIOS, ALEJANDRO SEGURA)
PALACIOS, OBDULIO SANDOVAL)
14 REYES, JERSON GEOVANNY)
HERNANDEZ, and CRUZ NAVARRO RIOS,)
15 on behalf of themselves, on behalf of the)
general public and on behalf of all others)
16 similarly situated,)

17 Plaintiffs,

18 vs.

19 FINISHERS CORPORATION OF)
CALIFORNIA, INC. and DOES 1 through 50,)
20 inclusive,)

21 Defendants.

Case No. 05AS03589

**DECLARATION OF MARCO
HERNANDEZ IN SUPPORT OF
PLAINTIFFS' REQUEST FOR
ENTRY OF JUDGMENT**

) Date: January 17, 2007
) Dept: 53
) Time: 2:00 p.m.
)
22
23

DECLARATION OF MARCO HERNANDEZ

24 I, MARCO HERNANDEZ, declare as follows:

25 1. I am a Field Representative for Carpenters Local Union Number 9109 located at
26 4421 Pell Drive, Suite D, in Sacramento, California.
27

1 2. I have worked as a Field Representative for over three (3) years. My
2 responsibilities as a Field Representative for Carpenters Local Union Number 9109 include the
3 investigation and auditing of public works projects to verify compliance with applicable prevailing
4 wage and other labor laws.

5 3. I am familiar with the facts of this case. Plaintiffs are monolingual Spanish
6 speakers. I am a bilingual English Spanish speaker. I personally interviewed Plaintiffs
7 GUSTAVO RAMIREZ, LUIS ALBERTO MARTINEZ, JOSE VILLAGRAN PALACIOS,
8 ALEJANDRO SEGURA PALACIOS, OBDULIO SANDOVAL REYES, JERSON GEOVANNY
9 HERNANDEZ, and CRUZ NAVARRO RIOS concerning their claims. To determine their work
10 hours and wage rates, I reviewed Plaintiffs' itemized wage statements, work diaries,
11 questionnaires, discovery responses, and the appropriate prevailing wage determinations for
12 drywall installers.

13 4. Plaintiffs were employed by Defendant Finishers Corporation of California and
14 assigned to work at various public works projects, which include the White Rock Apartments in El
15 Dorado Hills, the Department of Food and Agriculture in Sacramento, and the construction of UC
16 Merced. Through a formal request, I obtained copies of the certified payroll records for the White
17 Rock Project, with all names redacted except for payroll period 15, which shows that Plaintiffs
18 Gustavo Ramirez, Cruz Rios, Alejandro Segura and Jose Villagran working at the project.
19 Attached as Exhibit A are true and correct copies of those certified payroll records for the White
20 Rock Apartments project.

21 5. In addition, I personally observed Plaintiffs working at various public works
22 projects including UC Merced, White Rock Apartment in El Dorado County, and the State of
23 California Department of Food and Agriculture in Sacramento.

24 6. I also asked the Plaintiffs to provide me with copies of their itemized wage
25 statements that show the number of hours that Defendant recorded. Plaintiffs did not have
26 complete sets of their itemized wage statements, but provided me with those they had kept. The
27 wage statements stated that Plaintiffs worked only from 8 to 18 hours per week. The Plaintiffs
28

1 informed me that each was working 40 to 60 hours per week. Attached as Exhibit B are true and
2 correct copies of the itemized wage statement for GUSTAVO RAMIREZ. Attached as Exhibit C
3 are true and correct copies of the itemized wage statement for JOSE VILLAGRAN PALACIOS.
4 Attached as Exhibit D are true and correct copies of the itemized wage statement for
5 ALEJANDRO SEGURA PALACIOS. Attached as Exhibit E are true and correct copies of the
6 itemized wage statement for OBDULIO SANDOVAL REYES. Attached as Exhibit F are true and
7 correct copies of the itemized wage statement for JERSON GEOVANNY HERNANDEZ.

8 7. In addition, I asked each Plaintiff to complete a questionnaire used by the State of
9 California, Department of Industrial Relations, to determine if the employer was complying with
10 the prevailing wage laws. Each Plaintiff responded, in part, that Defendant instructed them to tell
11 anybody that asked that they were being paid approximately \$37.00 per hour, and not disclose that
12 their rate of pay was actually \$14 to \$17 per hour. Attached as Exhibit G is a true and correct
13 copy of the questionnaire signed by Plaintiff GUSTAVO RAMIREZ. Attached as Exhibit H is a
14 true and correct copy of the questionnaire signed by Plaintiff LUIS ALBERTO MARTINEZ for
15 the White Rock and UC Merced projects. Attached as Exhibit I is a true and correct copy of the
16 questionnaire signed by JOSE VILLAGRAN PALACIOS for UC Merced and White Rock.
17 Attached as Exhibit J is a true and correct copy of the questionnaire signed by ALEJANDRO
18 SEGURA PALACIOS for White Rock and the Department of Food and Agriculture. Attached as
19 Exhibit K is a true and correct copy of the questionnaire signed by OBDULIO SANDOVAL
20 REYES for the Department of Food and Agriculture, White Rock and UC Merced. Attached as
21 Exhibit L is a true and correct copy of the questionnaire signed by JERSON GEOVANNY
22 HERNANDEZ for the Department of Food and Agriculture and White Rock. Attached as Exhibit
23 M is a true and correct copy of the questionnaire signed by CRUZ NAVARRO RIOS for UC
24 Merced and White Rock.

25 8. I also instructed Plaintiffs to maintain a diary of their actual work hours. I provided
26 Plaintiffs and other workers with blank calendars and asked that each record their work hours,
27 including meal and rest breaks. Each Plaintiff returned their diaries to me, showing that each

1 worked at least 8 hours per day, and often than 40 hours per week. Attached as Exhibit N is a true
2 and correct copy of the work diary provided to me by Plaintiff GUSTAVO RAMIREZ. Attached
3 as Exhibit O is a true and correct copy of the work diary provided to me by LUIS ALBERTO
4 MARTINEZ. Attached as Exhibit P is a true and correct copy of the work diary provided to me by
5 Plaintiff JOSE VILLAGRAN PALACIOS. Attached as Exhibit Q is a true and correct copy of the
6 work diary provided to me by Plaintiff ALEJANDRO SEGURA PALACIOS. Attached as Exhibit
7 R is a true and correct copy of the work diary provided to me by Plaintiff OBDULIO SANDOVAL
8 REYES. Attached as Exhibit S is a true and correct copy of the work diary provided to me by
9 Plaintiff JERSON GEOVANNY HERNANDEZ. Attached as Exhibit T is a true and correct copy
10 of the work diary provided to me by Plaintiff CRUZ NAVARRO RIOS.

11 9. I obtained a copy of the General Prevailing Wage Determination of the Director of
12 Industrial Relations, State of California, to determine the correct rate for a Drywall Installer.
13 According to the Determination, each Plaintiff should have been paid at \$39.01 for regular hours
14 worked, and \$51.28 for overtime hours. Attached as Exhibit U is a true and correct copy of the
15 Prevailing Wage Determination.

16 10. For each public works project, I calculated the amount of wages that each person
17 should have earned based on the number of regular hours and overtime hours worked (as reported
18 by Plaintiffs). From that amount, I deducted the amount of wages that Plaintiffs actually received
19 from Defendant. The difference between the two amounts is the wages owed to Plaintiffs. I
20 prepared accountings/calculations of the wages owed to each Plaintiff from Defendant's failure to
21 pay them for all hours worked and the appropriate prevailing wages.

22 11. Attached as Exhibit V is a true and correct copy of the accounting performed on the
23 earnings of Plaintiff GUSTAVO RAMIREZ. The amount of unpaid wages owed to Mr. Ramirez
24 is \$26,148.32.

25 12. Attached as Exhibit W is a true and correct copy of the accounting performed on the
26 earnings of Plaintiff LUIS ALBERTO MARTINEZ. The amount of unpaid wages owed to Mr.
27 Martinez is \$35,413.15.

1 13. Attached as Exhibit X is a true and correct copy of the accounting performed on the
2 earnings of Plaintiff JOSE VILLAGRAN PALACIOS. The amount of unpaid wages owed to Mr.
3 Palacios is \$36,949.93.

4 14. Attached as Exhibit Y is a true and correct copy of the accounting performed on the
5 earnings of Plaintiff ALEJANDRO SEGURA PALACIOS. The amount of unpaid wages owed to
6 Mr. Palacios is \$32,942.38.

7 15. Attached as Exhibit Z is a true and correct copy of the accounting performed on the
8 earnings of Plaintiff OBDULIO SANDOVAL REYES. The amount of unpaid wages owed to
9 \$25,423.10.

10 16. Attached as Exhibit AA is a true and correct copy of the accounting performed on
11 the earnings of Plaintiff JERSON GEOVANNY HERNANDEZ. The amount of unpaid wages
12 owed to \$45,190.02.

13 17. Attached as Exhibit BB is a true and correct copy of the accounting performed on
14 the earnings of Plaintiff and CRUZ NAVARRO RIOS. The amount of unpaid wages owed to
15 42216.13.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Dated: January 16, 2007

18
19 By: 
20 MARCO HERNANDEZ

21
22
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Exhibit A

STATEMENT OF COMPLIANCE

Date: 9-7-04

I, Chris Troxel President do hereby state:
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by Finishers Corp of CA
(Contractor or subcontractor)
on the White Rock Village Apt; that during the payroll period commencing on the 23rd day of
(Building or work)
Aug, 2003 and ending the 24th day of Aug, 2004. All persons employed on said project have been
paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf
of said Finishers Corp of CA from the full weekly wages earned by any person and that no
(Contractor or subcontractor)
deductions have been made either directly or indirectly from the full wages earned by any persons, other than
permissible deductions as defined in Regulations, Par 3 (29 CFR Subtitle A), issued by the Secretary of Labor under
the Copeland Act, as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described
below:

- (2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.
- (3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.
- (4) That:
- (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS
 In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4c below.
 - (b) WHERE FRINGE BENEFITS ARE PAID IN CASH
 Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4c below.
 - (c) EXCEPTIONS:

Remarks:

Chris Troxel, President
Name & Title

[Signature]
Signature

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 16 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

STATEMENT OF COMPLIANCE

Form Approved
OMB No. 0704-0213
Expires May 31, 1997

Public reporting burden for this collection of information is estimated to average 16 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0213), Washington, DC 20503

1. PAYROLL NUMBER <p style="text-align: center;">22</p>	2. PAYROLL PAYMENT DATE (YYMMDD) <p style="text-align: center;">04-08-20</p>	3. CONTRACT NUMBER <p style="text-align: center;">289-09250.5</p>	4. DATE (YYMMDD) <p style="text-align: center;">04-08-23</p>
--	---	--	---

I, Chris Troxel President do hereby state.
(Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by Finishers Corp of CA
(Contractor or subcontractor)
on the Food & Ag Renovation (Building or work); that during the payroll period commencing on the 9th day of Aug, 192004 and ending the 15th day of Aug, 192004 all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said Finishers Corp of CA (Contractor or subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

- (4) That:
- (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS
 In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.
 - (b) WHERE FRINGE BENEFITS ARE PAID IN CASH
 Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (Craft)	EXPLANATION

5. REMARKS

6. NAME (Last, First, Middle Initial) <p style="text-align: center;">Troxel, Chris</p>	7. TITLE <p style="text-align: center;">President</p>	8. SIGNATURE
---	--	------------------

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.