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10 individually and on behalf of all others similarly situated

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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PETER ZAYERZ, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

KIEWIT INFRASTRUCTURE WEST
CO.; and DOES 1 through 20, inclusive,

Defendants.

Case No. BC620938

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Breach of Contract;
2. Failure to Pay Prevailing Wages;
3. Failure to Pay Overtime Wages;
4. Failure to Provide Meal Periods;
5. Failure to Provide Rest Periods;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Within the Required Time and Upon Separation of Employment;
8. Failure to Reimburse All Necessary Business Expenses;
9. Recovery under Public Works Payment Bond;
10. Violation of Business and Professions Code §§ 17200, *et seq.*; and
11. Enforcement of Labor Code § 2698 *et. seq.* ("PAGA").

1 Plaintiff Peter Zayerz, individually and on behalf of others similarly situated, and on behalf
2 of the general public, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Peter Zayerz ("Plaintiff") brings this putative class action and representative
5 action against Defendant Kiewit Infrastructure West Co. ("Kiewit") and DOES 1 through 20,
6 inclusive (collectively, "Defendants") on behalf of himself individually and a purported class of
7 certain current and former employees of Defendants, encompassed within the Class definition set
8 forth herein.

9 2. Plaintiff and class members were employed by Defendants, and performed work for
10 Defendants at various construction job sites throughout California. Plaintiff and class members
11 worked primarily on public works jobs, but also on private jobs.

12 3. Plaintiff is informed and believes, and thereon alleges, that Defendants have
13 increased their profits by violating state wage and hour laws by, among other things:

- 14 (a) Failing to pay Plaintiff and class members the prevailing wage rate in
15 Southern California for their category of work;
- 16 (b) Failing to pay the appropriate overtime rate to Plaintiff and class members on
17 public projects and non-public projects;
- 18 (c) Failing to pay Plaintiff and class members overtime wages when they worked
19 over eight (8) hours per day and/or over forty (40) hours per week;
- 20 (d) Failing to provide meal periods or compensation in lieu thereof to Plaintiff
21 and class members;
- 22 (e) Failing to authorize or permit rest breaks or provide compensation in lieu
23 thereof to Plaintiff and class members;
- 24 (f) Failing to provide accurate itemized wage statements to Plaintiff and class
25 members;
- 26 (g) Failing to pay all wages due upon separation of employment to Plaintiff and
27 class members; and
28

(h) Failing to reimburse Plaintiff and class members for all necessary business expenses.

4. These claims are brought as violations of California's Labor Code and also unfair, unlawful, or fraudulent business practices, within the meaning of the Unfair Competition Law found at Business and Professions Code sections 17200, *et seq.*

5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of himself and all other members of the general public similarly situated in California to recover, among other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, 1771, 1774, 1810-1815, 2800, 2802, 2698 *et. seq.*, 3247-3252, and 3098.

6. By this Complaint, Plaintiff also seeks to enforce claims made against construction bonds issued by SURETY INSURERS and assert claims for penalties based on the way they processed their verified claims.

THE PARTIES

7. Plaintiff is informed and believes, and thereon alleges, that Kiewit Infrastructure West Co. was and is doing business in Los Angeles, California as a contractor, including work on public works construction projects throughout California. At all times hereinafter mentioned, Kiewit Infrastructure West Co. was and is an employer as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are engaged throughout this county and the State of California.

8. Presently unknown Defendants DOES 1-20 refer to two categories of actors:

a. DOES 1-10 are partners, agents, owners, shareholders, managers or employees of Kiewit, at all relevant times. Kiewit and DOES 1-10 shall be referred to hereinafter as "KIEWIT".

b. DOES 11-20 shall be referred to hereinafter as "SURETY INSURERS", and are various entities that issued surety and/or construction bonds, including Contractor's bonds, on some or all of the jobs in which Plaintiff and class members performed labor, were not paid correctly, and on which timely verified claims were made.

9. The true names and capacities, whether individual, corporate, associate, or otherwise of DOES 1-20 are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to show their true names and capacities when they have been ascertained, pursuant to California Code of Civil Procedure § 474.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, KIEWIT, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all KIEWIT entities were in accordance with, and represent, the official policy of KIEWIT.

11. At all relevant times, KIEWIT, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, KIEWIT, and each of them, aided and abetted the acts and omissions of each and all the other KIEWIT entities in proximately causing the damages herein alleged.

12. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

13. Plaintiff Peter Zayerz is a resident of California. Plaintiff was employed by Defendants during the relevant time period.

JURISDICTION AND VENUE

14. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

15. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

16. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction

1 over them by the California courts consistent with traditional notions of fair play and substantial
2 justice.

3 17. Venue is proper in this Court because, upon information and belief, Defendants
4 reside, transact business or have offices in this county and the acts and omissions alleged herein took
5 place in this county.

6 **CLASS ACTION ALLEGATIONS**

7 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself
8 and all other members of the general public similarly situated who were affected by Defendants'
9 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

10 19. All claims alleged herein arise under California law for which Plaintiff seeks relief
11 authorized by California law.

12 20. Plaintiff's proposed class consists of and is defined as follows:

13 All current and former non-exempt employees employed by KIEWIT
14 within four years prior to the filing of the Complaint to the present and
continuing.

15 **Waiting Time Subclass**

16 All class members who separated their employment from KIEWIT within
17 three years prior to the filing of this action to the present and continuing.

18 21. Members of the class and subclass described above will be collectively referred to as
19 "class members." Plaintiff reserves the right to re-define the above class and subclass and add
20 additional subclasses as appropriate based on investigation, discovery and specific theories of
21 liability.

22 22. There are common questions of law and fact as to the classes and subclass that
23 predominate over any questions affecting only individual members including, but not limited to:

- 24 (a) Whether KIEWIT breached various public sector contracts, for which
25 Plaintiff and class members were third-party beneficiaries, by failing to pay
26 Plaintiff and class members prevailing wages under Labor Code section 1770
27 *et seq.*;

- 1 (b) Whether KIEWIT failed to pay Plaintiff and class members the prevailing
2 wage rate in Southern California for their category of work;
- 3 (c) Whether KIEWIT required Plaintiff and class members to work over eight (8)
4 hours per day and/or over forty (40) hours per week and failed to pay overtime
5 wages;
- 6 (d) Whether KIEWIT deprived Plaintiff and class members of timely meal
7 periods or required Plaintiff and class members to work through meal periods;
- 8 (e) Whether KIEWIT deprived Plaintiff and class members of rest breaks or
9 required Plaintiff and class members to work through rest breaks without
10 compensation;
- 11 (f) Whether KIEWIT failed to provide accurate itemized wage statements to
12 Plaintiff and class members;
- 13 (g) Whether KIEWIT failed to keep true and accurate time records for Plaintiff
14 and class members;
- 15 (h) Whether KIEWIT failed to timely pay all wages due to Plaintiff and class
16 members upon termination or within 72 hours of resignation;
- 17 (i) Whether KIEWIT failed to reimburse Plaintiff and class members for all
18 necessary business expenses;
- 19 (j) Whether KIEWIT's conduct was willful or reckless; and
- 20 (k) Whether KIEWIT engaged in unfair business practices in violation of
21 Business and Professions Code §§ 17200, *et seq.*

22 23. There is a well-defined community of interest in this litigation and the proposed class
23 and subclass are readily ascertainable:

- 24 (a) Numerosity: The members of the class and subclass are so numerous that
25 joinder of all members is impractical. Although the members of the class and
26 subclass are unknown to Plaintiff at this time, on information and belief, the
27 class is estimated to be greater than one hundred (100) individuals. The
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identities of the class and subclass are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the class and subclass, because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiff will fairly and adequately represent and protect the interests of all members of the class and subclass because it is in his best interests to prosecute the claims alleged herein to obtain full compensation and penalties due him and the class and subclass. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorney's fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class and subclass. If appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as a class action.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to

1 assert their rights out of fear of direct or indirect retaliation. Former
2 employees are fearful of bringing actions because they believe their former
3 employers might damage their future endeavors through negative references
4 and/or other means. Class actions provide the class members who are not
5 named in the complaint with a type of anonymity that allows for the
6 vindication of their rights at the same time as affording them privacy
7 protections.

8 **GENERAL ALLEGATIONS**

9 24. At all relevant times mentioned herein, KIEWIT employed Plaintiff and other persons
10 as non-exempt employees.

11 25. At all relevant times mentioned herein, KIEWIT engaged in work at various
12 construction projects in California, many of which were public works projects funded by the State
13 of California and/or political subdivisions of the State of California.

14 26. KIEWIT employed Plaintiff from August 2012 until December 2015 as a heavy
15 equipment operator. During that time, Plaintiff performed labor for KIEWIT'S construction projects
16 at:

- 17 a. The main water plant in Huntington Beach ("Huntington Beach Water Plant"); and
18 b. The water system between Huntington Beach and Newport Beach ("PCH Water
19 Treatment").

20 27. Plaintiff is informed and believes and thereon alleges that these construction projects
21 were funded by the State of California.

22 28. At all relevant times mentioned herein, KIEWIT was the entity that was or is the
23 contractor and is the holder of contractor bonds intended to insure that Plaintiff and public works
24 class members were compensated for labor for which they were not properly compensated.

25 29. KIEWIT continues to employ non-exempt hourly paid workers, and workers on
26 public works within California.

27 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who

1 were knowledgeable about California wage and hour laws, employment and personnel practices and
2 the requirements of California law.

3 **FIRST CAUSE OF ACTION**

4 **BREACH OF CONTRACT- THIRD PARTY BENEFICIARY**

5 (Against Defendants KIEWIT)

6 31. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 32. California Civil Code section 1559 provides that a person who is not a party to a
9 contract may nevertheless enforce it if the contract was made expressly for his benefit.

10 33. Defendants and the State of California (including political subdivisions of the State
11 of California) intended to benefit Plaintiff and class members when they agreed that, as a condition
12 of entering into contracts with the State of California for constructing public buildings or public
13 works, Defendants would comply with California's prevailing wage law, California Labor Code
14 sections 1720 to 1815.

15 34. It is "fairly self-evident that the prevailing wage law was enacted to benefit
16 employees as a class by requiring the payment of prevailing wages on public works. [Citations.]
17 Since employees working on the public works projects are the intended beneficiaries of this
18 provision, they are third party beneficiaries of the contract between the public agency and the
19 contractor." *Department of Industrial Relations v. Fidelity Roof Co.*, 60 Cal.App.4th 411, 425-426
20 (1997); *see also Amaral*, 163 Cal.App.4th at 1193-1194.

21 35. Because Defendants failed to pay Plaintiff and class members at the legally mandated
22 hourly rate set forth in California's prevailing wage law, Defendants violated California Civil Code
23 section 1559.

24 36. As a direct and proximate result of Defendants' conduct as alleged herein, Plaintiff
25 and class members have suffered monetary damages in an amount equal to their unpaid wages, plus
26 interest thereon.

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FAILURE TO PAY AT LEAST STRAIGHT-TIME PREVAILING WAGES ON PUBLIC WORKS PROJECTS

37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

39. At all times mentioned herein, KIEWIT was subject to the prevailing wage laws of the State of California pursuant to Labor Code § 218.5.

41. At all relevant times herein mentioned, KIEWIT knowingly failed to pay to Plaintiff and the Employees all prevailing wages for the hours they worked. KIEWIT's failure to pay prevailing wages to Plaintiff and the Employees is a violation of California's minimum wage law, California Labor Code section 1194. "It is well established that California's prevailing wage law is a minimum wage law." *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 778 (2002). "[B]ecause the prevailing wage law is a minimum wage law mandated by statute and serves important public policy goals, section 1 194 provides an employee

1 with a private statutory right to recover unpaid prevailing wages from an employer who fails to pay
2 that minimum wage." *Id.* at 779; *accord, Reyes v. Van Elk, Ltd.*, 148 Cal.App.4th 604, 612 (2007).

3 42. Accordingly, Plaintiff and the other members of the Class are entitled to recover
4 prevailing wages for hours worked for Defendants under California Labor Code section 1194.

5 43. Plaintiff is informed and believes, and thereon alleges, that the per diem wages and
6 prevailing wages required to be paid pursuant to Labor Codes §§ 1194, 1771 and 1774 are set forth
7 in annual and semi-annual bulletins published by the California Department of Industrial relations.

8 44. Each of the Plaintiff's and class members' employment periods, hours worked, and
9 trade classifications are based on their individual employment. Plaintiff's employment as a laborer
10 included carrying out various construction assignments, driving heavy machinery, and conducting
11 irrigation. Plaintiff and class members' assignment on the projects arose out of the contractual
12 relationship of Defendant KIEWIT with each of the State of California entities and/or political
13 subdivisions of the State of California that awarded the contract.

14 45. During the relevant time period, Defendants regularly failed to pay at least minimum
15 wages to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and
16 1197, including, but not limited to, time that KIEWIT required Plaintiff and class members to work
17 off-the-clock. For example, KIEWIT would frequently require Plaintiff and class members to work
18 off-the-clock, without providing any compensation to Plaintiff and class members for this time. To
19 the extent this does not qualify as overtime, KIEWIT failed to pay Plaintiff and class members
20 minimum wage for hours when Kiewit required that they arrive at the work site early, but did not
21 begin to pay them until later in the day, among other things.

22 46. Plaintiff is informed and believes, and thereon alleges that KIEWIT, and each of
23 them, violated Labor Code §§ 1994, 1771 and 1774, specifically by failing and refusing to comply
24 with the statutory duty to pay Plaintiff and class members' prevailing wages as required by the
25 contracts and by statute, or ensure that Plaintiff and class members were paid prevailing wages as
26 required by the contracts and by statute. Pursuant to these sections, Plaintiff and class members are
27 entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs
28 and attorneys' fees.

1 47. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 48. Plaintiff and class members are therefore entitled to and request an award of penalties
4 and prejudgment interest on the unpaid wages set forth herein.

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

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES, INCLUDING THE HOURLY PREVAILING WAGE RATE**
9 **FOR HOLIDAY AND OVERTIME WORK PERFORMED ON PUBLIC WORKS**
10 **PROJECTS**

11 (Violation of Labor Code §§ 204, 510, 1771, 1774, 1815, Against Defendants KIEWIT)

12 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 51. At all times relevant mentioned herein, Plaintiff and class members were employed
15 by KIEWIT on various public works projects which were and are subject to the California Prevailing
16 wage Law pursuant to Labor Code §§ 1771, 1774, and 1815, regarding work undertaken on public
17 construction projects.

18 52. Pursuant to Labor Code §§ 1771, 1774, and 1815, all workers, including Plaintiff and
19 class members employed on public works projects, shall be paid for their work on the public works
20 projects not less than the general prevailing rate of per diem wages for holiday and overtime work.

21 53. Said prevailing wage rates are disseminated by the State of California's Department
22 of Industrial Relations and pursuant to California laws and regulations all contractors in the
23 execution of a public works construction project are mandated by law to pay these minimum wages.

24 54. At all times relevant mentioned herein, KIEWIT was subject to the California
25 Prevailing Wage Law, including Labor Code §§ 1771, 1774, and 1815, regarding work undertaken
26 on public works projects.

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55. At all times relevant mentioned herein, pursuant to §§ 204, 510, 1194, 1771, 1774, and 1815, Plaintiff and class members were entitled to paid not less than the general prevailing rate of per diem wages for holiday and overtime performed on public works projects.

56. Upon information and belief, KIEWIT paid Plaintiff and class members less than the required prevailing rate of per diem wages for holiday and overtime hours worked as required by , , in violation of Labor Code §§ 204 and 510, and the California Prevailing wage Law.

57. Pursuant to Labor Code §§ 1194, 204, 510, 1771, 1774, and 1815, Plaintiff and class members are entitled to recover the unpaid balance of their earned prevailing rate of per diem wages for holiday and overtime hours worked during the course of their employment with KIEWIT on public works.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS ON PUBLIC WORKS PROJECTS AND NON-PUBLIC WORKS PROJECTS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11, Against
Defendants KIEWIT)

58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

59. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

60. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

61. Labor Code § 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

62. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

63. During the relevant time period, Plaintiff and class members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because they were required to work through their first meal periods and/or were not permitted to take a second meal period.

64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require an employer to pay an employee one additional hour of pay at the employee's regular rate of compensation for each work day that a meal period is not provided.

65. At all relevant times, KIEWIT failed to pay Plaintiff and class members the full meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order.

66. As a result of KIEWIT's failure to pay Plaintiff and class members an additional hour of pay for each day a meal period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PERMIT REST BREAKS

(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12, Against Defendants
KIEWIT)

67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

68. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

69. Section 12 of the applicable IWC Wage Order states "every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of

1 each work period” and the “authorized rest period time shall be based on the total hours worked
2 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless
3 the total daily work time is less than three and one-half (3½) hours.

4 70. During the relevant time period, Plaintiff and class members did not receive a ten
5 (10) minute rest period for every four (4) hours or major fraction thereof worked because they were
6 required to work through their daily rest periods and/or were not authorized to take their rest periods.

7 71. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an
8 employer to pay an employee one additional hour of pay at the employee’s regular rate of
9 compensation for each work day that the rest period is not provided.

10 72. At all relevant times, KIEWIT failed to pay Plaintiff and class members the full rest
11 period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and section
12 12 of the applicable IWC Wage Order.

13 73. As a result of KIEWIT’s failure to pay Plaintiff and class members an additional hour
14 of pay for each day a rest period was not provided, Plaintiff and class members suffered and continue
15 to suffer a loss of wages and compensation.

16 SIXTH CAUSE OF ACTION

17 FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

18 (Violation of Labor Code § 226, Against Defendants KIEWIT)

19 74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 75. Labor Code § 226(a) requires employers to furnish their employees with an accurate
22 itemized wage statement that shows gross wages earned, total hours worked, the number of piece-
23 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all
24 deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the
25 name of the employee and the portion of his or her social security number as required by law, the
26 name and address of the legal entity that is the employer and all applicable hourly rates in effect
27 during the pay period and the corresponding number of hours worked at each hourly rate by the
28 employee.

1 76. During the relevant time period, KIEWIT knowingly and intentionally failed to
2 comply with Labor Code § 226(a) on wage statements provided to Plaintiff and class members.

3 77. As a result of KIEWIT's knowing and intentional failure to comply with Labor Code
4 § 226(a), Plaintiff and class members have suffered injury and damage to their statutorily-protected
5 rights. Specifically, Plaintiff and class members have been injured by KIEWIT's intentional
6 violation of Labor Code § 226(a) because they were denied both their legal right to receive, and their
7 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
8 addition, KIEWIT made it difficult to calculate the amount of wages and compensation owed to
9 Plaintiff and class members. Plaintiff has had to file this lawsuit and will be required to conduct
10 discovery and perform computations in order to analyze whether in fact Plaintiff was paid correctly
11 and the extent of the underpayment, thereby causing Plaintiff to incur expenses and lost time.
12 Plaintiff would not have had to engage in these efforts and incur these costs had KIEWIT provided
13 wage statements accurately showing their regular and overtime rates of pay, among other things.
14 This has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
15 KIEWIT.

16 78. Plaintiff and class members are entitled to recover from KIEWIT the greater of their
17 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an aggregate
18 penalty not exceeding \$4,000 dollars per employee.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES DUE UPON WITHIN THE REQUIRED TIME AND**
21 **UPON SEPARATION OF EMPLOYMENT**

22 (Violations of Labor Code §§ 201, 202 and 203, Against Defendants KIEWIT)

23 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 80. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
27 employee voluntarily leaves her employment, her wages shall become due and payable not later than
28 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous

1 notice of her intention to quit, in which case the employee is entitled to her wages at the time of
2 quitting.

3 81. During the relevant time period, KIEWIT willfully failed to pay Plaintiff and
4 Subclass members all their earned wages upon termination including, but not limited to, proper
5 overtime compensation, either at the time of discharge or within seventy-two (72) hours of their
6 leaving Defendants' employ in violation of Labor Code §§ 201 and 202.

7 82. KIEWIT's failure to pay Plaintiff and former Subclass members who are no longer
8 employed by KIEWIT all their earned wages at the time of discharge or within seventy-two (72)
9 hours of their leaving KIEWIT's employ is in violation of Labor Code §§ 201 and 202.

10 83. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
11 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the
12 wages of the employee shall continue as a penalty from the due date at the same rate until paid or
13 until an action is commenced; but the wages shall not continue for more than thirty (30) days.

14 84. Plaintiff and Subclass members are entitled to recover from KIEWIT the statutory
15 penalty which is defined as Plaintiff and class members' regular daily wages for each day they were
16 not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to Labor Code
17 § 203.

18 EIGHTH CAUSE OF ACTION

19 FAILURE TO REIMBURSE BUSINESS EXPENSES

20 (Violation of Labor Codes §§ 2800, 2802, Against Defendants KIEWIT)

21 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 86. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
24 indemnify his employee for losses caused by the employer's want of ordinary care."

25 87. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties..."

28 88. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the term

1 'necessary expenditures or losses' shall include all reasonable costs, including but not limited to,
2 attorney's fees incurred by the employee enforcing the rights granted by this section."

3 89. During the relevant time period, Plaintiff and class members were required by
4 KIEWIT to purchase their own gear and equipment, for which Defendant failed to reimburse
5 Plaintiff and class members. For example, Plaintiff and class members had to purchase their own
6 jackets, different types of boots depending on the job, glasses, and gloves, among other things.

7 90. During the relevant time period, KIEWIT was required to indemnify and reimburse
8 Plaintiff and class members for all expenditures or losses caused by the employer's want of ordinary
9 care and/or incurred in direct consequent of the discharge of their duties, but failed to indemnify and
10 reimburse in violation of Labor Codes §§ 2800 and 2802.

11 91. As a direct and proximate result, Plaintiff and class members have suffered, and
12 continue to suffer, substantial losses, related to the use and enjoyment of such monies to be
13 reimbursed, lost interest on such monies, and expenses and attorney's fees in seeking to compel
14 KIEWIT to fully perform their obligations under California law, all to their damage in amounts
15 according to proof at the time of trial.

16 NINTH CAUSE OF ACTION

17 RECOVERY UNDER PUBLIC WORKS PAYMENT BOND

18 (Violation of Labor Code §§ 3247-3252, 3098, against Defendants KIEWIT and SURETY
19 INSURERS)

20 92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 93. Plaintiff is informed and believes and based thereon alleges that contemporaneously
23 with the execution of the Contracts for the projects that KIEWIT and SURETY INSURERS, as
24 surety, executed a Payment Bond for Labor and Materials for the purpose of complying with Civil
25 Code §§ 3096 and 3247 through 3252, which was thereafter filed with and approved by the
26 respective State of California entities and/or political subdivisions of the State of California. The
27 bond was conditioned, and provided that if KIEWIT or any of their insured, and each of them, failed
28

1 to pay for any work or labor performed on the aforementioned projects of any kind, that the surety
2 on the bond would pay the same.

3 94. Plaintiff is informed and believes and thereon alleges that as a further condition of
4 the payment bond on the projects, KIEWIT and SURETY INSURERS defendants, and each of them,
5 promised and agreed to pay reasonable attorneys' fees to be fixed by the court in case suit was
6 brought on the bond and undertaking.

7 95. Under Civil Code §§ 3248 and 3250, Plaintiff and class members are entitled to an
8 award of reasonable attorneys' fees in the sum to be fixed by the Court, for costs of suit, and for
9 prejudgment interest as set by law.

10 96. Plaintiff and class members "performed actual labor for wages" pursuant to Civil
11 Code § 3098, and are therefore not required to file a preliminary 20-day notice.

12 97. Plaintiff is informed and believes and thereon alleges that there is now due, owing
13 and unpaid from KIEWIT wages for labor performed on the projects by Plaintiff and class members.
14 Plaintiff and class members seek as damages the difference between the amount paid and the
15 prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff and class
16 members claims said damages, together with interest thereon, at the maximum legal rate, according
17 to proof.

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

20 **TENTH CAUSE OF ACTION**

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

22 (Against Defendants KIEWIT)

23 99. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 100. KIEWIT's conduct, as alleged herein, has been and continues to be unfair, unlawful
26 and harmful to Plaintiff, class members and the general public. Plaintiff and class members seek to
27 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
28 § 1021.5.

1 101. KIEWIT's activities, as alleged herein, violate California law and constitute unlawful
2 business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*

3 102. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
4 on the violation of any state or federal law.

5 103. KIEWIT's policies and practices have violated state law in at least the following
6 respects:

- 7 (a) Breaching their contracts with State of California entities and/or political
8 subdivisions of the State of California by failing to pay Plaintiff and class
9 members prevailing wages, as herein alleged;
- 10 (b) Failing to compensate Plaintiff and class members with prevailing wages as
11 herein alleged in violation of Labor Code §§ 1770 *et seq.*, 1197, and 1194;
- 12 (c) Failing to compensate Plaintiff and class members with overtime wages, in
13 violation of Labor Code §§ 1198 and 1815;
- 14 (d) Failing to provide meal periods without paying Plaintiff and class members
15 premium wages for every day said meal periods were not provided in
16 violation of Labor Code §§ 226.7 and 512;
- 17 (e) Failing to authorize or permit rest breaks without paying Plaintiff and class
18 members premium wages for every day said rest breaks were not authorized
19 or permitted in violation of Labor Code § 226.7;
- 20 (f) Failing to provide Plaintiff and class members with accurate itemized wage
21 statements in violation of Labor Code § 226;
- 22 (g) Failing to maintain the employment records of Plaintiff and class members in
23 violation of Labor Code §§ 1174, 1174.5 and 1812;
- 24 (h) Failure to reimburse Plaintiff and class members for all necessary business
25 expenses in violation of Labor Code §§ 2800 and 2802; and
- 26 (i) Failing to timely pay all earned wages to Plaintiff and class members upon
27 separation of employment in violation of Labor Code §§ 201, 202 and 203.
28

1 104. Plaintiff is informed and believes, and thereon alleges, that KIEWIT bid contracts
2 with public entities knowing that KIEWIT did not intend to pay the prevailing wage rate to its
3 workmen.

4 105. Plaintiff is informed and believes, and thereon alleges, that other contractors who bid
5 on these public sector contracts were unsuccessful in securing these contracts due to KIEWIT's
6 ability to outbid them because KIEWIT knew and planned that KIEWIT's actual wage rate to
7 KIEWIT's employees would be considerably less than the other bidders.

8 106. Plaintiff is informed and believes, and thereon alleges, that each and every other
9 bidder was prejudiced as a result of KIEWIT's unlawful business practices and that as a result of
10 these practices Defendants, and each of them, are unjustly enriched.

11 107. Plaintiff is informed and believes, and thereon alleges, that Defendants are unjustly
12 enriched through their failure to pay the prevailing wage rates.

13 108. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
14 members are prejudiced by KIEWIT's unfair trade practices in the KIEWIT's actual wages were
15 reduced below the prevailing wage rate so that KIEWIT could successfully bid on these public entity
16 contracts.

17 109. KIEWIT intentionally avoided paying Plaintiff and class members' wages and
18 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
19 undercut their competitors and establish and gain a greater foothold in the marketplace.

20 110. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
21 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
22 during a period that commences four years prior to the filing of the Complaint; an award of attorney's
23 fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

24 **ELEVENTH CAUSE OF ACTION**

25 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

26 (Violation of Labor Code §§ 2698, *et seq.*, against Defendants KIEWIT)

27 111. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 112. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees for
4 violation of the code may, as an alternative, be recovered through a civil action brought by an
5 aggrieved employee on behalf of himself and other current or former employees pursuant to the
6 procedures specified in Labor Code § 2699.3.

7 113. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
9 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
11 period in which Defendants violated these provisions of the Labor Code.

12 114. KIEWIT’s conduct violates numerous Labor Code sections including, but not
13 limited to, the following:

- 14 a. Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1198, 1770 *et seq.*,
15 and 1815 for failure to timely pay all earned wages (including minimum wages,
16 prevailing wages and overtime wages) owed to Plaintiff and other aggrieved
17 employees during employment and upon separation of employment as herein alleged;
- 18 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
19 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
20 meal periods as herein alleged;
- 21 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and
22 other aggrieved employees and failure to pay premium wages for missed rest periods
23 as herein alleged;
- 24 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
25 statements to Plaintiffs and other aggrieved employees as herein alleged;
- 26 e. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and class
27 members for necessary business expenses; and
28

1 f. Violation of Labor Code §§ 1174, 1174.5, and 1812 for failure to maintain accurate
2 records.

3 115. Further, Labor Code § 558(a) provides “any employer or other person acting on
4 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
5 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
6 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
7 pay period for which the employee was underpaid in addition to an amount sufficient to recover
8 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
9 employee for each pay period for which the employee was underpaid in addition to an amount
10 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
11 the affected employee.” Labor Code § 558(c) provides “the civil penalties provided for in this
12 section are in addition to any other civil or criminal penalty provided by law.”

13 116. As set forth above, Defendants have violated numerous provisions of the Labor Code
14 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiffs seek
15 the remedies set forth in Labor Code § 558 for themselves, the underpaid employees, and the State
16 of California.

17 117. Plaintiff is an “aggrieved employees” because they were employed by the alleged
18 violator and had one or more of the alleged violations committed against them, and therefore are
19 properly suited to represent the interests of all other aggrieved employees.

20 118. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to
21 Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other
22 aggrieved employees under PAGA.

23 119. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
24 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
25 aggrieved employee per pay period for each subsequent violation.

26 120. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and class members
27 are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code
28 sections cited above.

1 121. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
2 herein.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief and
5 judgment against Defendants, jointly and severally, as follows:

6 1. For certification of the proposed Class and Subclass and any other appropriate
7 subclasses under California Code of Civil Procedure § 382;

8 2. For appointment of Peter Zayerz as the class representative;

9 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

10 4. For general damages;

11 5. For special damages;

12 6. For statutory penalties to the extent permitted by law, including those pursuant to the
13 Labor Code and IWC Wage Orders;

14 7. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

15 8. For an order requiring Defendants to restore and disgorge all funds to each employee
16 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
17 and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et*
18 *seq.*;

19 9. For an award of damages in the amount of unpaid compensation including, but not
20 limited to, unpaid wages, benefits and penalties;

21 10. For pre-judgment interest;

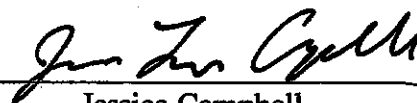
22 11. For reasonable attorney's fees, costs of suit and interest to the extent permitted by
23 law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194; and

24 12. For such other relief as the Court deems just and proper.

25 Dated: July 19, 2016

AEGIS LAW FIRM, PC

26 By: _____



Jessica Campbell

Attorneys for Plaintiff Peter Zayerz