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By: M. Pipe Deputy

McCRACKEN, STEMERMAN, & HOLSBERY, LLP

Sarah Grossman-Swenson, SBN 259792, sgs@msh.law

Kimberley C. Weber, SBN 302894, kweber@msh.law

Emily Jo Coady, SBN 349861, ecoady@msh.law

475 14th Street, Suite 1200

Oakland, CA 94612

Telephone: 415-597-7200

Fax: 415-597-7201

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORCAL CONSTRUCTION INDUSTRY
COMPLIANCE (“NCIC”),

Plaintiff,

v.

SIERRA NATIONAL CONSTRUCTION, INC.,
SIERRA NATIONAL ASPHALT, KIP
SKIDMORE, ILLA JONES-SKIDMORE, and
DOES 1 through 50,

Defendants.

Case No. **24CV019558**

COMPLAINT

1 **INTRODUCTION**

2 1. This action is brought to redress violations of California prevailing wage laws
3 that protect workers employed on publicly-funded construction projects. Plaintiff NorCal
4 Construction Industry Compliance (“NCIC”) is a joint labor-management cooperation
5 committee. NCIC sues for the benefit of operating engineers, cement masons, and laborers who
6 were employed by Defendant Sierra National Construction, Inc., Defendant Sierra National
7 Asphalt, Defendant Kip Skidmore, Defendant Illa Jones-Skidmore (collectively, “Sierra
8 National”) on public works projects in Northern California (“the Employees”). NCIC sues to
9 recover wages Sierra National owes to the Employees, and to enjoin further violations of the
10 prevailing wage law, Labor Code sections 1720, *et seq.*

11 2. California’s prevailing wage laws obligate Sierra National to pay Employees on
12 public works projects at rates set by the Department of Industrial Relations. Prevailing wage
13 laws required Sierra National to pay its Employees a per diem wage comprised of a basic hourly
14 rate and fringe benefits. Employer payments for fringe benefits are a credit against the
15 obligation to pay prevailing per diem wages. In other words, if an employer pays more in fringe
16 benefits, it can pay employees less in wages.

17 3. Under the prevailing wage law, the sum of the hourly wage plus the benefit
18 contributions must equal the prevailing wage. If this sum—as calculated under California law—
19 falls below the prevailing wage, then the employer must make up the difference in additional
20 cash payments.

21 4. In certified payroll records it submitted to public agencies, Sierra National
22 claimed to pay more in fringe benefits than it actually provided to employees. By claiming an
23 inflated health and welfare (“H&W”) credit and vacation credit, Sierra National reduced the
24 hourly cash wage paid to its Employees.

25 5. As a result, Sierra National severely underpaid Employees and failed to meet its
26 obligations to pay the prevailing wage.

27 6. These underpayments were knowing, willful, and deliberate.

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1 **JURISDICTION**

2 22. The Superior Court of the State of California has jurisdiction under California Labor Code §
3 1771.2.

4 23. Venue is proper because Defendant Sierra National has its principal place of business in
5 Sacramento County and Defendants Skidmore and Jones-Skidmore reside in Sacramento County.

6 **PARTIES**

7 **Plaintiff**

8 7. **Plaintiff NCIC** is a joint labor-management committee established under 29 U.S.C.
9 § 175a in the construction industry. Among other functions, NCIC monitors public works contractors’
10 compliance with wage-and-hour laws. NCIC brings the present suit in order, *inter alia*, to recover the
11 wages to which Employees are entitled, plus interest, liquidated damages, attorney’s fees, and the
12 expenses incurred in identifying and pursuing Defendants for their violations of law.

13 **Defendants**

14 8. **Defendant Sierra National Construction, Inc.:** Plaintiff is informed and believes and
15 thereupon alleges that Defendant Sierra National Construction, Inc. is a construction company that
16 performs work throughout Northern California, with its headquarters in Carmichael, California.
17 Defendant Sierra National Construction, Inc. conducts business as Defendant Sierra National
18 Construction, Inc., Sierra National Construction, Sierra National Asphalt, and Sierra National Asphalt
19 Equipment Rentals. Defendant Sierra National Construction, Inc. has performed public works projects
20 in Northern California during the statutory limitations period for this action.

21 9. **Defendant Sierra National Asphalt:** Plaintiff is informed and believes and thereupon
22 alleges that Defendant Sierra National Asphalt is a fictitious business name for Defendant Sierra
23 National Construction, Inc., and a construction company that performs work throughout Northern
24 California, with its headquarters in Carmichael, California. Defendant Sierra National Asphalt merged
25 with Defendant Sierra National Construction, Inc. Defendant Sierra National Asphalt holds its own
26 contractor’s license with the California Contractors State License Board. Defendant Sierra National
27 Asphalt has performed public works projects in Northern California during the statutory limitations
28 period for this action.

1 10. **Defendant Kip Skidmore:** Plaintiff is informed and believes and thereupon
2 alleges that Kip Skidmore is, and at all times with which this action is concerned has been, the
3 co-owner and President of Defendant Sierra National Construction, Inc. For all or some of the
4 relevant time, Defendant Skidmore has resided in Carmichael, California. Defendant Skidmore
5 is the qualifier for Defendant Sierra National Construction, Inc.'s contractor's license.
6 Defendant Skidmore signed the Form 5500 annually for the H&W plan as the employer or plan
7 sponsor. Plaintiff is informed and believes and thereupon alleges that Defendant Skidmore has
8 directly supervised and controlled the operations of Defendant Sierra National Construction,
9 Inc. with respect to the public works contracts specified in this Complaint, including the acts
10 herein alleged, and that he personally participated in the acts of making false claims for
11 payment to the public entities despite Defendant Sierra National Construction, Inc.'s
12 noncompliance with state labor law. Defendant Skidmore is a contractor, subcontractor,
13 licensee, officer, agent, or representative of Defendant Sierra National Construction, Inc. under
14 Labor Code § 1722.1.

15 11. **Defendant Illa Jones-Skidmore:** Plaintiff is informed and believes and
16 thereupon alleges that Illa Jones-Skidmore is, and at all times with which this action is
17 concerned has been, a co-owner of, officer of, representative for, and an agent of Sierra National
18 Construction Inc. Plaintiff is informed and believes and thereupon alleges that Defendant Jones-
19 Skidmore has directly supervised and controlled the operations of Defendant Sierra National
20 Construction, Inc. with respect to the public works contracts specified in this Complaint,
21 including the acts herein alleged, and that she personally participated in the acts of making false
22 claims for payment to the public entities despite Defendant Sierra National Construction, Inc.'s
23 noncompliance with state labor law. For all or some of the relevant time, Defendant Jones-
24 Skidmore has resided in Carmichael, California. Defendant Jones-Skidmore is a contractor,
25 subcontractor, licensee, officer, agent, or representative of Defendant Sierra National
26 Construction, Inc. under Labor Code § 1722.1.

27 12. **Defendant Does 1 through 50:** The true names and capacities, whether
28 individual, corporate, associate, or otherwise, of the Defendants named herein as Does 1

1 through 50 are unknown to the Plaintiff at this time, and Plaintiff therefore sues said Defendants by
2 fictitious names. Plaintiff is informed and believes and thereupon alleges that each fictitiously named
3 Defendant is in some manner responsible and liable for the unlawful acts alleged herein. On leave of
4 Court, Plaintiff will amend this Complaint to show the true names and capacities of Does 1 through 50
5 and the bases of their liability when those bases are ascertained. Defendants Sierra National
6 Construction, Inc., Defendant Sierra National Asphalt, Kip Skidmore, Illa Jones-Skidmore, and Does 1
7 through 50 are herein referred to collectively as “Sierra National” or “Defendants.”

8 **LEGAL BACKGROUND**

9 13. California enacted the prevailing wage law, Labor Code sections 1720-1861, to set
10 minimum wage and hour standards on publicly funded construction projects. The law’s purpose is to
11 protect employees on public works projects, and to protect honest contractors from dishonest
12 competitors who seek to gain an advantage at their employees’ expense.

13 14. Labor Code sections 1770 and 1773 provide that the Director of Industrial Relations
14 will determine and publish general prevailing rates for all construction workers crafts or classifications
15 in each California locality. Under Labor Code Section 1773.1, the general prevailing rate of per diem
16 wages includes both a basic straight-time hourly rate of pay and “employer payments” for (1) H&W,
17 (2) pension, (3) vacation, (4) travel, (5) subsistence, (6) training programs, (7) joint labor-management
18 committees, and (8) other fees specified in a collective bargaining agreement.

19 15. Labor Code Section 1773.1 provides that “employer payments” for fringe benefits are
20 counted as credits against the obligation to pay employees the general prevailing rate of per diem
21 wages. Lab. Code § 1773.1(c).

22 16. Sections 1771 and 1774 require contractors on public works to pay their employees no
23 less than the general prevailing rate of per diem wages for the type of work (“craft”) performed in the
24 locality where the work is performed.

25 17. Section 1778 makes it a felony to take or receive the wages of a worker on a public
26 works project.

27 18. Labor Code section 1771.2 enables joint-labor management committees established
28 pursuant to 29 U.S.C. Section 175a to sue an employer that failed to pay the prevailing wage for

1 restitution of unpaid wages, as well as interest, liquidated damages, civil penalties, injunctive relief, and
2 the joint labor-management committee’s attorney’s fees and costs incurred in maintaining the action.

3 19. When unscrupulous contractors pay their workers below the prevailing wage, they are
4 able to underbid law-abiding contractors and thus unfairly compete for public works construction
5 projects. There is no adequate mechanism for law-abiding contractors to recover their pecuniary
6 damages when they lose a construction bid to a contractor who later violates prevailing wage laws.

7
8 **FIRST CAUSE OF ACTION FOR RESTITUTION OF PREVAILING WAGE**
9 **UNDERPAYMENTS DUE TO INFLATED H&W AND VACATION FRINGE CREDITS;**
10 **ATTORNEY’S FEES AND COSTS**

11 (Labor Code § 1771.2)

12 20. Plaintiff incorporates herein the foregoing paragraphs.

13 21. Below is a table showing Prevailing Wage projects within the statutory period,
14 including the Department of Industrial Relations (“DIR”) project ID, awarding body, project
15 name, county, and the name of the prime contractor. Where the prime contractor is an entity
16 other than Sierra National, Defendant Sierra National served as a subcontractor on the project.

17 22. Sierra National has performed public works construction projects governed by
18 the California prevailing wage laws, Labor Code sections 1720 *et seq.* as set forth below:

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DIR Project	Awarding Body	Project Name	County	Prime
21 409627	Alto, LLC; Omni Financial; Diamante Development; La Canada 143-25	Salmon Falls Booster Pump Station	El Dorado	Sierra National
22 338096	California Natural Resources Agency, Department of Water Resources	Lower Elkhorn Basin Levee Setback, Sacramento and Yolo Bypasses	Yolo	Forgen, LLC
23 505183	Carmichael Water District	LaSierra Well Topside Improvements	Sacramento	Sierra National

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DIR Project	Awarding Body	Project Name	County	Prime
368568	Carmichael Water District	La Vista Tank and Booster Station Project	Sacramento	Koch & Koch, Inc
411570	Center Joint Unified School District	Center High CTE Project	Sacramento	Brco Constructors, Inc.
421247	City of Benicia	Fitzgerald Field Bleacher Replacement Project	Solano	J-WALT CONSTRUCTION, INC.
469376	City of Galt	Vintage Oak SSLS Upgrades Project	Sacramento	Koch & Koch, Inc
389081	City of Lincoln	Lincoln Blvd Phase 3	Placer	Sierra National
499648	City of Lincoln	Industrial Grind & Pave	Placer	Sierra National
407940	City of Lincoln	445 M Street	Placer	Sierra National
455073	City of Lincoln	Hoitt Area Water Distribution Rehabilitation	Placer	FLOWLINE CONTRACTORS, INC.
409638	City of Lincoln	Santorini Paving	Placer	Sierra National
518584	City of Lincoln	McCourtney Culvert Repair	Placer	Sierra National
421408	City of Lincoln	Aitken Ranch Park Phase3	Placer	PBM Construction, Inc.
128572	City of Sacramento	Shasta Park Water Facility	Sacramento	Sierra National
453752	City of Woodland	2023 El Dorado & Cleveland Paving Repairs	Placer	Sierra National
425855	City of Woodland	2022 Spring Lake Parks Project	Yolo	OLYMPIC LAND CONSTRUCTION
458962	Davis Media Access	Davis Media Access T.I.	Yolo	Sierra National
476137	Dry Creek Joint Elementary School District	QG Seal and Striping	Placer	Sierra National
473666	Dry Creek Joint Elementary School District	QG Seal and Striping 2023	Placer	Sierra National
377584	Dry Creek Joint Elementary School District	SMS Sealing & Striping	Placer	Sierra National

DIR Project	Awarding Body	Project Name	County	Prime
398941	Fair Oaks Water District	Skyway Well Phase 2 Construction, Skyway Well Equipping	Sacramento	Sierra National
412328	Gridley Senior Associates, a CA LP	Sunrise Village Apartments	Butte	Pacific West Builders, Inc.
435308	Griffin Technology Academies	Griffin Academy Interim Housing Phase II	Solano	Schreder & Brandt MFG, Inc.
487477	Jefferson Elementary School District	Fernando Rivera School Thomas Edison Safety Site Work	San Mateo	Schreder & Brandt MFG, Inc.
471940	Marysville Joint Unified School District	Foothill IS Modular Site Prep Project	Yuba	Imagecon, Inc.
378929	Rescue Union School District	Marina Village Driveway Repairs	El Dorado	Sierra National
417071	RJUHSD	Concession and Restroom Buildings at Stadium- Multiple Sites	Placer	Brco Constructors, Inc.
473275	Roseville City School District	Spranger Asphalt Seal and Stripe	Placer	Sierra National
214132	Sacramento Municipal Utility District	General Building Construction and Design Services	Sacramento	Sierra National
426699	Sacramento Municipal Utility District	General Construction & Support Services	Sacramento	Sierra National
446109	Sacramento Municipal Utility District	Civil Annual Construction Contract	Sacramento	Sierra National
496746	Sacramento Municipal Utility District	2023 General Building Construction & Support Services	Sacramento	Sierra National
428983	Sacramento Municipal Utility District	Solano 4 Wind Project	Solano	Vestas-American Wind Technology, Inc.

DIR Project	Awarding Body	Project Name	County	Prime
483282	San Juan Water District	SJWD Annual Paving Services FY23/24	Placer	Sierra National
436002	Twin Rivers Unified School District	BRCO Constructors, Inc. - Frontier ES Outdoor Learning Shade Structure	Sacramento	BrcO Constructors, Inc.
490891	UC Davis Health System- Facilities Design & Construction	FSSB Fleet Service Remove Underground Fuel Tank	Sacramento	Ramcon Engineering & Environmental Contracting, Inc.
389140	University Enterprises, Inc.	Shell and Demolition and Child Development Center	Sacramento	S W Allen Construction, Inc.
324038	University of California, Davis, Design and Construction Management	Hot Water Quad Loop and Hutchinson Conversion Campus Heat Exchanger & Distribution Piping	Yolo	MARK III Construction, Inc.
472607	Western Placer Unified School District	SES Asphalt Shade Structure	Placer	Sierra National
479726	Western Placer Unified School District-Maintenance	LHS Parking Lot Slurry	Placer	Sierra National
472605	Western Placer Unified School District	FSS Asphalt Shade Structure	Placer	Sierra National
484337	Yolo County Community Services Department-Division of Integrated Waste Management	Ramcon Engineering & Environmental Contracting	Yolo	Ramcon Engineering & Environmental Contracting, Inc.

23. Plaintiff sues under Labor Code section 1771.2 to recover wages that Sierra National owes to the Employees, plus interest.

31. When the H&W benefit credit is reduced to the amount Sierra National actually paid for H&W benefits, Sierra National's payments on its certified payroll records are insufficient to meet the total hourly prevailing wage. As such, Sierra National failed to pay Employees the required prevailing wages for work the Employees performed on Northern California public works projects.

Inflated Vacation Credits

32. Based on information and belief and a review of certified payroll records and fringe benefit statements, Sierra National claimed a bigger credit for vacation benefit contributions than Sierra National reasonably anticipated paying for vacation benefits.

33. Sierra National's Fringe Benefit Statements show that Sierra National claimed different vacation benefits for its various Employee crafts. Even when a single individual worked in two different classifications, Sierra National claimed different credits for the vacation benefit.

34. The hourly cost of vacation, or any paid leave, generally varies based on a worker's wage rate. But Sierra National claimed vacation credits that are not related to wage rates. For example:

Craft	Hourly Base Wage	Hourly Vacation Credit	Vacation/Wage %
Operating Engineer	\$46.42 to \$50.39	\$5.34	10.6% to 11.5%
Cement Mason	\$41.00	\$6.15	15%
Laborer	\$32.80 to \$33.75	\$3.05	9.0% to 9.3%

35. In sum, in an offset of the per diem wages paid to Employees, Sierra National claimed a bigger credit for H&W benefits than Sierra National reasonably anticipated paying for the benefits. By claiming an inflated vacation credit, Sierra National reduced the hourly cash wage paid to its Employees.

36. When the vacation benefit credit is reduced to the amount Sierra National actually paid for vacation benefits, Sierra National's payments on its certified payroll records are insufficient to meet the total hourly prevailing wage. As such, Sierra National failed to pay Employees the required prevailing wages for work the Employees performed on Northern California public works projects.

1 **SECOND CAUSE OF ACTION FOR LIQUIDATED DAMAGES ON LABOR CODE**
2 **VIOLATIONS RELATED TO HEALTH AND WELFARE BENEFITS**

3 (Labor Code § 1771.2)

4 37. Plaintiff incorporates herein the foregoing paragraphs.

5 38. Pursuant to Labor Code section 1771.2, Plaintiff is entitled to recover liquidated
6 damages in an amount equal to the unpaid wages Defendants owe the Employees.

7 39. Plaintiff obtained numerous Sierra National Statement of Employer Payments, Form
8 PW-26, which shows fringe benefit payments. Form PW-26 is filed for each prevailing wage project.
9 These forms show that Sierra National claimed different H&W benefits for its various Employee crafts.
10 For example, on the Spring Lakes Park project, Sierra National claimed H&W payments of \$9.00 an
11 hour for cement masons, \$9.60 an hour for laborers, and \$13.38 an hour for operating engineers.

12 40. Plaintiff obtained Sierra National’s certified payrolls for over 60 prevailing wage
13 projects. According to the certified payrolls, Sierra National claimed different H&W benefit for its
14 various Employee crafts. For example, on the Fernando Rivera School/Thomas Edison Safety Site
15 Work project, DIR job # 487477, for the week ending April 13, 2024, Sierra National paid both a
16 laborer and an operating engineer for 17 hours of work. At the same time, Sierra National claimed
17 H&W credits of \$171.70 for the laborer and \$227.46 for the operating engineer. When divided by the
18 17 hours of work, this equals a \$10.10 claimed H&W credit for the laborer and a \$13.38 claimed H&W
19 credit for the operating engineer.

20 41. On at least 12 different prevailing wage projects, Sierra National claimed a different
21 H&W credit when a single individual worked in different classifications. In other words, the same
22 Employee received a different H&W “contribution” when working as an operating engineer or a
23 laborer. For example, on the Civil Annual Construction Contract project, during the week ending
24 February 3, 2024, Sierra National allegedly paid the same Employee \$9.12 an hour in H&W for the
25 Employee’s work as a cement mason and \$13.38 per hour in H&W for the Employee’s work as an
26 operating engineer. The hourly cost of H&W generally varies based on the type of coverage (single
27 versus family coverage), not based on whether one person worked as a laborer or an operator.

28 42. When Sierra National claims a larger H&W credit, it reduces the cash payments paid to

1 its Employees. By claiming a \$13.38 per hour credit, Sierra National reduced the cash wage payments
2 to operating engineers by the same amount.

3 43. Plaintiff reviewed the annual Form 5500 filings for Sierra National's H&W plan, the
4 Sierra National Construction, Inc. Insurance Program, a single-employer plan that is sponsored and
5 administered by Sierra National.

6 a. In 2020, Sierra National's H&W plan spent \$603,681 to provide benefits to
7 approximately 75.5 employees (78 employees at the beginning of the plan year and 73 at
8 the end of the plan year), for an average per person cost of \$7,996. If divided by full-
9 time employment, or 2080 work hours, the H&W credit is only \$3.84 an hour, far below
10 the H&W credits Sierra National claimed.

11 b. In 2021, Sierra National's H&W plan spent \$675,824 to provide benefits to
12 approximately 79 employees (73 employees at the beginning of the plan year and 85 at
13 the end of the plan year), for an average per person cost of \$8,555. If divided by full-
14 time employment, or 2080 work hours, the H&W credit is only \$4.11 an hour, far below
15 the H&W credits Sierra National claimed.

16 c. In 2022, Sierra National's H&W plan spent \$629,785 to provide benefits to
17 approximately 74.5 employees (85 employees at the beginning of the plan year and 64 at
18 the end of the plan year), for an average per person cost of \$8,453. If divided by full-
19 time employment, or 2080 work hours, the H&W credit is only \$4.06 an hour, far below
20 the H&W credits Sierra National claimed.

21 d. Reversing the math produces similar mismatches. If Employees worked full-time
22 (2080 hours per year), and Sierra National contributed \$11 per hour (the average benefit
23 for 50% operators and 50% laborers/cement masons), then we would expect Sierra
24 National to make \$1.8 million in payments to the H&W plan for 2022. However, plan
25 contributions for that year were only \$629,785, about a third of the total expected costs
26 based on the fringe benefit credits claimed in the certified payrolls.

27 44. By claiming an inflated H&W credit, Sierra National reduced the hourly cash wage paid
28 to its Employees.

1 45. Plaintiff estimates the following in unpaid wages due to inflated H&W credits:

2 a. To find the number of Employees who received some H&W benefits but were
3 underpaid their prevailing wages, Plaintiff reviewed the number of participants from
4 Sierra National's H&W Form 5500, which states the number of active participants at the
5 beginning and the end of the year. Plaintiff took an average based on those numbers.
6 Additionally, the Department of Labor's Bureau of Labor Statistics provides
7 occupational employment data for highway, street, and bridge construction companies
8 (code 237300). Based on the statistics, similar contractors employ an average 74.3% of
9 their staff working on construction, extraction, transportation, and material moving
10 occupations. Using this data, Plaintiff estimates that Sierra National employed 77
11 (construction) Employees in 2020, 84 Employees in 2021, and 75 Employees in 2022
12 who received some H&W benefits.

13 Plan Year	H&W Active Participants Beginning of Year	H&W Active Participants End of Year	H&W Average Active Participants	Construction Employee Total-74.3%
14 2020	78	73	75.5	56.10
15 2021	73	85	79	58.7
16 2022	85	64	74.5	55.4
17 2023	Based on discovery	Based on discovery	Based on discovery	Based on discovery
18 2024	Based on discovery	Based on discovery	Based on discovery	Based on discovery

19 b. Sierra National, based on a review of the certified payroll, employed about 50%
20 of their construction workers as operating engineers and 50% as cement masons or
21 laborers on public works projects. The average weighted H&W benefit for 50%
22 operators and 50% laborers/cement masons computes to \$11 per hour, based on the
23 reported hourly benefits in Sierra National's fringe statements. Plaintiff compared that
24 anticipated cost to the actual H&W costs to Sierra National reported in the Form 5500.
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The comparison delta represents the estimated amount owed to Employees per hour. Finally, Plaintiff calculated the estimated prevailing wages owed by multiplying the affected Employees by the average amount owed to Employees per hour, and multiplying that by 1700 hours (common public work hours for the industry in the region).

Plan Year	Affected Employees	Anticipated Costs Based on Payroll	Defendants' Actual Cost	Avg. Hourly \$ Owed to Employees	TOTAL Owed to FT (1700 hr) Employees
2020	56	\$11 per hour	\$3.84 per hour	\$7.16	\$681,632
2021	59	\$11 per hour	\$4.11 per hour	\$6.89	\$691,067
2022	55	\$11 per hour	\$4.06 per hour	\$6.94	\$648,890
2023	Based on discovery	“	Based on discovery	Based on discovery	Based on discovery
2024	Based on discovery	“	Based on discovery	Based on discovery	Based on discovery

c. Plaintiff intends to amend its Complaint to conform to the evidence produced in discovery.

46. Additionally, upon information and belief based on review of Forms 5500 for Sierra National’s H&W plan and pension plan, Plaintiff believes and therefore alleges that Sierra National claimed H&W credits for Employees who did not receive H&W benefits.

a. Many workers in the construction industry are ineligible to participate in H&W plans due to seasonal employment, minimum monthly hourly requirements, or other eligibility rules.

b. 2020 records show that some Sierra National employees did not receive H&W benefits. In 2020, Sierra National’s H&W plan reported 78 active participants at the

1 beginning of the plan year and 73 at the end. By contrast, the Sierra National’s pension
2 plan for the same year reported 104 active participants at the beginning of the plan year
3 and 104 at the end. This means that 26 to 31 employees covered by the pension plan
4 were not covered by the H&W plan. However, Sierra National claimed a H&W credit
5 for every construction Employee on the 2020 certified payrolls that Plaintiff reviewed.

6 c. 2021 records show that some Sierra National employees did not receive H&W
7 benefits. In 2021, Sierra National’s H&W plan reported 73 active participants at the
8 beginning of the plan year and 85 at the end. By contrast, the Sierra National’s pension
9 plan for the same year reported 111 active participants at the beginning of the plan year
10 and 118 at the end. This means that 33 to 45 employees covered by the pension plan
11 were not covered by the H&W plan. However, Sierra National claimed a H&W credit
12 for every construction Employee on the 2021 certified payrolls that Plaintiff reviewed.

13 d. 2022 records show that some Sierra National employees did not receive H&W
14 benefits. In 2022, Sierra National’s H&W plan reported 85 active participants at the
15 beginning of the plan year and 64 at the end. By contrast, the Sierra National’s pension
16 plan for the same year reported 105 active participants at the beginning of the plan year
17 and 98 at the end. This means that 20 to 34 employees covered by the pension plan were
18 not covered by the H&W plan. However, Sierra National claimed a H&W credit for
19 every construction Employee on the 2022 certified payrolls that Plaintiff reviewed.

20 47. Plaintiff estimates the following in unpaid wages due to Sierra National claiming
21 H&W credits for employees who did not receive H&W benefits:

22 a. Below is a table calculating Employees who did not receive H&W benefits, even though
23 Sierra National claimed a H&W credit for the Employees:

24

Year	H&W Plan Active		Pension Plan Active		Employees without
	Beginning/	End	Beginning/	End	H&W
25 2020	78	73	114	126	36 to 53
26 2021	73	85	117	146	44 to 61
27 2022	85	64	105	98	20 to 34

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1 b. Any Employee who was not provided H&W benefits when Sierra National claimed a
2 H&W credit, must be paid the H&W benefit amount deducted from their per diem
3 prevailing wage.

4 c. Based on H&W credit reductions of \$9.00 an hour (cement masons) to \$13.38
5 (operating engineers) for Employees working 1700 hours on public works (common
6 public work hours for the industry in the region), Sierra National owes an estimated
7 \$1,530,000 to \$3,136,408 in prevailing wages for 2020-2022 alone.

8 Year	Employees without H&W	Public Works Project	Total at Cement Mason Rate	Total at Op. Engineer Rate
9 2020	36 to 53	1700 hours	\$550,800 - \$810,900	\$818,856 - \$1,205,538
10 2021	44 to 61	1700 hours	\$673,200 - \$933,300	\$1,000,824 - \$1,387,506
11 2022	20 to 34	1700 hours	\$306,000 - \$520,200	\$454,920 - \$773,364
12 2023	Based on Discovery	1700 hours	Based on Discovery	Based on Discovery
13 2024	Based on Discovery	1700 hours	Based on Discovery	Based on Discovery

14 d. Plaintiff intends to amend its Complaint to conform to the
15 evidence produced in discovery.

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19 **THIRD CAUSE OF ACTION FOR LABOR CODE VIOLATION CIVIL PENALTIES**

(Labor Code §§ 1771.2, 1775)

20 48. Plaintiff incorporates herein the foregoing paragraphs.

21 49. Sierra National's prevailing wage underpayments were knowing, willful, and deliberate.

22 50. Sierra National's president, Defendant Skidmore, signed the Form 5500 for the H&W
23 plan under penalty of perjury that the information in the form is true, correct, and complete.

24 51. Plaintiff alerted Sierra National of the underpayment based on the inflated H&W credit
25 by filing a complaint with California's Division of Labor Standards Enforcement, filed on August 11,
26 2022.

27 52. To this day, Sierra National has not corrected its underpayments.
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1 4. An injunction barring Defendant, along with its officers, representatives, agents, and
2 employees, from violating California’s prevailing wage statutes and regulations;

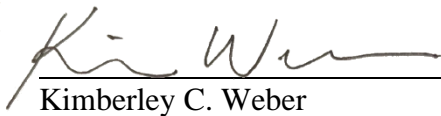
3 5. Plaintiff’s attorneys’ fees and costs of suit pursuant to Labor Code § 1771.2,
4 Government Code §§ 6259(d) and 800, Code of Civil Proc. § 1021.5, and/or any other applicable
5 statute.

6 6. Other and further relief as the Court deems just and proper.

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8 Dated: September 27, 2024

Respectfully submitted,

9 McCracken, Stemerman & Holsberry, LLP

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11 _____
12 Kimberley C. Weber

13 *Attorneys for Plaintiff NCIC*
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