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6 Attorneys for Defendants TRADEMARK  
CONSTRUCTION CO., INC., and TRADEMARK  
7 CONSTRUCTION CO., INC., WHICH WILL DO  
BUSINESS IN CALIFORNIA AS J.M.W. TRUSS AND  
8 COMPONENTS

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF SAN DIEGO**

12 JOSE GARCIA, an individual, on behalf  
of himself and others similarly situated,

13 Plaintiff,

14 vs.

15 TRADEMARK CONSTRUCTION CO.,  
16 INC., an Arizona corporation;  
TRADEMARK CONSTRUCTION CO.,  
17 INC., WHICH WILL DO BUSINESS IN  
CALIFORNIA AS J.M.W. TRUSS AND  
18 COMPONENTS, an Arizona corporation;  
and DOES 1 through 50, inclusive

19 Defendant.  
20

Case No. '18CV1214 JLS WVG

**NOTICE OF REMOVAL OF CIVIL  
ACTION TO FEDERAL COURT BY  
DEFENDANTS**

[28 U.S.C. § 1332 (d) (Class Action  
Fairness Act)]

[Filed concurrently with Civil Cover  
Sheet; Notice of Parties with Financial  
Interest; and Declarations of Richard D.  
Wilson and Nikolas T. Djordjevski]

1 Defendants Trademark Construction Co., Inc. (“Trademark”) and Trademark  
2 Construction Co., Inc. which will do business in California as J.M.W. Truss and  
3 Components (“JMW”) (collectively, “Defendants”) remove this action from the San  
4 Diego County Superior Court to the United States District Court for the Southern  
5 District of California pursuant to 28 U.S.C. § 1332(d) (the Class Action Fairness Act  
6 [“CAFA”]) and 1446 because (1) Plaintiff and other members of the putative class  
7 are citizens of a State different from any defendant; (2) the number of members of all  
8 proposed plaintiff classes in the aggregate is over 100; and (3) the matter in  
9 controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and  
10 costs.

11 The above facts were true when Plaintiff filed his Complaint and remain true  
12 as of the date of filing this Notice. As set forth in more detail below, all CAFA  
13 requirements are satisfied.

14 **I. THE STATE COURT ACTION**

15 1. Plaintiff filed his Complaint on April 2, 2018 in the San Diego County  
16 Superior Court (“Action”). The Action was assigned Case No. 37-2018-00016180-  
17 CU-OE-CTL. (Declaration of Nikolas T. Djordjevski [“Djordjevski Decl.”], ¶¶ 2 and  
18 5; Ex. 1, Complaint.)

19 2. On April 19, 2018 Plaintiff sent a Notice and Acknowledgement of  
20 Receipt to counsel for Defendants. Defendants then filed their Answer to Plaintiff’s  
21 Complaint in San Diego County Superior Court on June 8, 2018. (Djordjevski Decl.,  
22 ¶¶ 3-4.)

23 **II. REMOVAL IS TIMELY**

24 3. Under 28 U.S.C. § 1446(b) and Federal Rule of Civil Procedure 6(a),  
25 Defendants’ deadline to remove is June 8, 2018. *Murphy Bros., Inc. v. Michetti Pipe*  
26 *Stringing, Inc.*, 526 US 344, 354 (1999). This Notice of Removal is timely.

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1 **III. REMOVAL IS PROPER UNDER CAFA**

2 4. Removal under CAFA is proper given Plaintiff’s allegations and claims.  
3 The Complaint asserts: (1) failure to pay minimum wages; (2) failure to pay wages  
4 and overtime under Cal. Labor Code § 510; (3) meal period liability under Cal.  
5 Labor Code § 226.7; (4) rest period liability under Cal. Labor Code § 226.7; (5)  
6 failure to reimburse necessary business expenditures under Cal. Labor Code § 2802;  
7 (6) violation of Cal. Labor Code § 226(a); (7) violation of Cal. Labor Code § 221;  
8 (8) violation of Cal. Labor Code § 203; and (9) violation of Cal. Business &  
9 Professions Code § 17200 *et seq.* (Ex. 1, Complaint.)

10 5. CAFA grants district courts original jurisdiction over civil class action  
11 lawsuits filed under federal or state law in which any member of a class of plaintiffs  
12 is a citizen of a state different from any defendant; the number of members of all  
13 proposed plaintiff classes in the aggregate is over 100; and where the matter in  
14 controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.  
15 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions under 28 U.S.C. §  
16 1446.

17 6. This Court has original jurisdiction over the Action under CAFA  
18 because it is a civil case filed as a class action wherein at least one member of the  
19 putative class of plaintiffs is a citizen of a state different from Defendants, the  
20 number of members in Plaintiff’s proposed classes in the aggregate is over 100, and  
21 the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

22 **A. CAFA’s Diversity of Citizenship Requirement is Satisfied**

23 7. CAFA’s diversity requirement is satisfied when at least one plaintiff is a  
24 citizen of a state in which none of the defendants are citizens. 28 U.S.C. §§  
25 1332(d)(2), 1332(d)(5)(B), 1453(a), (b); *Rodgers v. Central Locating Service, Ltd.*,  
26 2006 U.S. Dist. LEXIS 6255, \*7-\*8.

27 8. At all relevant times, Plaintiff has been a resident of California. (Ex. 1,  
28 Complaint, ¶ 2.)

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1           9. Plaintiff seeks to represent a class of “[a]ll individuals employed by  
2 Defendants...who have been employed as non-exempt, hourly construction  
3 employees at Defendants’ work sites within the State of California.” (Ex. 1,  
4 Complaint, ¶ 30.) Some such employees are residents and citizens of Mexico who  
5 work in the United States in California pursuant to work visas. (Declaration of  
6 Richard D. Wilson [“Wilson Decl.”], ¶ 3.)

7           10. Under 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a  
8 citizen of any state by which it has been incorporated and the state where it has its  
9 principal place of business.” The Supreme Court has established the proper test for  
10 determining a corporation’s principal place of business for purposes of diversity  
11 jurisdiction. *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). The Court held that the  
12 “‘principal place of business’ is best read as referring to the place where a  
13 corporation’s officers direct, control, and coordinate the corporation’s activities.” *Id.*  
14 at p. 1184. The Court further clarified that the principal place of business was the  
15 place where the corporation “maintains its headquarters – provided that the  
16 headquarters is the actual center of direction, control and coordination.” *Id.*

17           11. Defendants are corporate entities organized under the laws of the State  
18 of Arizona with their principal places of business in Yuma, Arizona. Their executive  
19 management has directed, controlled, and coordinated its activities from there.  
20 Defendants have not been organized under the laws of California nor had their  
21 principal place of business there. (Wilson Decl., ¶ 2.) Although JMW operates a  
22 business that includes construction and framing services in California, its primary  
23 business is the engineering, design, manufacture, and sale of wood truss components  
24 for building and construction. All such business is performed in Yuma, Arizona.  
25 (Wilson Decl., ¶ 4.)

26           12. Minimal diversity is established because, at all relevant times, Plaintiff  
27 has been a citizen of California and Defendants have not. In addition, there are  
28 putative class members who are residents and citizens of Mexico while Defendants

1 are not. Removal is proper under 28 U.S.C. § 1332(d); *Serrano v. 180 Connect Inc.*,  
2 478 F.3d 1018, 1019 (9th Cir. 2007).

3 **B. CAFA’s Class Size Requirement is Satisfied**

4 13. Plaintiff brings this Action on behalf of himself and “[a]ll individuals  
5 employed by Defendants at any time during the period of four (4) years prior to the  
6 filing of [the Action] and ending on a date as determined by the Court..., and who  
7 have been employed as non-exempt, hourly construction employees at Defendants’  
8 worksites within the State of California.” (Ex.1, Complaint, ¶ 30.) Plaintiff also seeks  
9 to represent several additional subclasses. (*Id.*, ¶ 30(a) – (i).)

10 14. Plaintiff alleges that here are “hundreds of Employees who satisfy the  
11 Class definition within the State of California.” (Ex. 1, Complaint, ¶ 34.) He further  
12 alleges that “employee turnover during the relevant time period increases this  
13 number substantially” and that “Defendants’ employment records will provide  
14 information as to the number...of Class members.” (*Id.* at ¶ 35.)

15 15. From April 2, 2014 to the present, JMW has employed, in the aggregate,  
16 more than 100 putative class members. (Wilson Decl., ¶ 5.)<sup>1</sup>

17 **C. CAFA’s Amount in Controversy Requirement is Satisfied**

18 16. CAFA authorizes the removal of class action cases in which the amount  
19 in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

20 17. The “District Court [must] determine whether it has jurisdiction by  
21 adding up the value of the claim of each person who falls within the definition of [a  
22 plaintiff’s] proposed class and determine whether the resulting sum exceeds  
23 [\$5,000,000].” *Standard Fire Insurance Co. v. Knowles*, 133 S.Ct. 1345,  
24 1348 (2013). For purposes of removal, “[t]he court accepts the allegations in the  
25 complaint as true and assumes the jury will return a verdict in the plaintiff’s favor on  
26 every claim.” *Henry v. Cent. Freight Lines, Inc.*, 692 F. App’x 806, 807 (9th Cir.

27 \_\_\_\_\_  
28 <sup>1</sup> In alleging the class size for CAFA removal, Defendants do not concede that Plaintiff’s allegations in the Complaint are accurate.

1 2017) (citing *Campbell v. Vitran Express, Inc.*, 471 F. App'x. 646, 648 (9th Cir.  
2 2012)).

3 18. Among other things, Plaintiff seeks the recovery of unpaid minimum  
4 wage and overtime, meal and rest period penalties, wage statement penalties, waiting  
5 time penalties, and attorneys' fees on behalf of himself and the putative class. (Ex. 1,  
6 p. 35, Relief Requested.) Taking Plaintiff's allegations at face value (discussed in  
7 detail below) the Complaint satisfies the \$5,000,000 threshold for CAFA removal.  
8 *See* 28 U.S.C. § 1332(d).<sup>2</sup>

9 **1. Relevant Data**

10 19. From April 2, 2017 to the present, JMW issued at least 4,829 wage  
11 statements to at least 540 putative class members. (Wilson Decl., ¶ 6.)

12 20. From April 2, 2015 to the present, at least 228 putative class members  
13 separated from their employment with JMW. These putative class members earned  
14 an average hourly rate of \$26.35. (Wilson Decl., ¶ 7.)

15 21. From April 2, 2014 to the present, JMW employed at least 746  
16 employees who worked at least 13,678 workweeks, or 68,390 workdays. These  
17 employees earned an average hourly rate of \$28.52, with an average overtime  
18 premium rate of \$42.78. (Wilson Decl., ¶ 8.)

19 **2. Wage Statement Penalties**

20 22. Plaintiff seeks statutory penalties for inaccurate wage statements under  
21 California Labor Code § 226 on behalf of putative class members. Such alleged  
22 inaccuracies include facial violations. (Ex. 1, Complaint, ¶¶ 24, 26, 84-90.)

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26 <sup>2</sup> In alleging the amount in controversy for CAFA removal, Defendants do not  
27 concede in any way that Plaintiff's allegations in the Complaint are accurate, or that  
28 Plaintiff is entitled to any of the monetary relief requested in the Complaint.  
Defendants do not concede that any or all putative class members are entitled to any  
recovery, or are appropriately included in the Action.

1 23. A one-year statutory period applies to Plaintiff’s claim for wage  
2 statement penalties. Cal. Code Civ. Proc. § 340(a); *Falk v. Children’s Hospital Los*  
3 *Angeles*, 237 Cal.App.4th 1454, 1469 (2015).

4 24. Labor Code § 226(e) provides for the greater of all actual damages or  
5 \$50 for the initial pay period in which a violation occurred and \$100 for each  
6 subsequent pay period.

7 25. As noted above, from April 2, 2017 to the present, JMW issued at least  
8 4,829 wage statements to at least 540 putative class members. (Wilson Decl. ¶ 7.)  
9 Therefore, based on Plaintiff’s allegations, the amount in controversy for wage  
10 statement penalties is **\$455,900** (540 wage statements x \$50 = \$27,000; 4,289 wage  
11 statements x \$100 = \$428,900 [\$27,000 + \$428,900 = \$455,900]). JMW issues wage  
12 statements to employees every week, along with their paychecks. (Wilson Decl., ¶  
13 6.)

14 **3. Waiting Time Penalties**

15 26. Plaintiff seeks waiting time penalties under California Labor Code §  
16 203 on behalf of all putative class members. (Ex. 1, Complaint, ¶¶ 30(h), 95-100.)

17 27. California Labor Code § 203 provides that “[i]f an employer willfully  
18 fails to pay ... any wages of an employee who is discharged or who quits, the wages  
19 of the employee shall continue as a penalty from the due date thereof at the same rate  
20 until paid or until an action therefor is commenced; but the wages shall not continue  
21 for more than 30 days.”

22 28. A three-year statutory period applies to Plaintiff’s claim for waiting  
23 time penalties. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1398 (2010)  
24 (waiting-time penalty claims are governed by three-year statute of limitations for  
25 statutory violations under Cal. Code Civ. Proc. § 338(a).)

26 29. From April 2, 2015 to the present, at least 228 putative class members  
27 separated from their employment with JMW. These putative class members earned  
28 an average hourly rate of \$26.35, with an average daily rate of pay of \$210.80.

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(Wilson Decl., ¶ 7.) Therefore, based on Plaintiff's allegations, the amount in controversy for waiting time penalties is **\$1,441,872** ( $\$26.35 \times 8 \text{ hours} \times 30 \text{ days} \times 228 \text{ putative class members} = \$1,441,872$ ).

#### 4. Unpaid Overtime and Minimum Wages

30. Plaintiff also seeks unpaid overtime under California Labor Code § 510 on behalf of putative class members. (Ex. 1, Complaint, ¶¶ 58-65.) He alleges that he and putative class members were required to work at least 20 minutes off-the-clock per day, in excess of eight hours. (Ex. 1, Complaint, ¶¶ 11-12.) He also seeks liquidated damages in an amount equal to the unpaid minimum wages resulting from off-the-clock work under Section 1194.2 (*Id.*, ¶¶ 28, 49, 52.)

31. California Labor Code § 510 provides, *inter alia*, that any work in excess of eight hours in a workday or 40 hours in a workweek shall be compensated at one and one-half times an employee's regular rate of pay.

32. A four year statutory period applies to Plaintiff's claims for overtime and minimum wages/liquidated damages because such damages are recoverable as restitution under the Business & Professions Code. *Cortez v. Purolator Air Filtration Prods.*, 23 Cal.4th 163 (2000); Bus & Prof. Code § 17208.

33. As noted above, from April 2, 2014 to the present, putative class members earned an average hourly rate of \$28.52, with an average overtime premium rate of \$42.78. (Wilson Decl., ¶ 8.) Based on Plaintiff's allegations, the amount in controversy for unpaid overtime wages is **\$965,488.99** ( $[\$28.52 \times 1.5 = \$42.78] \times 0.33 \text{ hours [20 minutes]} \times 68,390 \text{ work days} = \$965,488.99$ ). In addition, the amount in controversy for liquidated damages is **\$214,402.65** ( $\$9.50 \text{ [average minimum wage during the statutory period]} \times 0.33 \text{ [20 minutes]} \times 68,390 \text{ days} = \$214,402.65$ ).

34. An assumption of 20 minutes per day of unpaid overtime is reasonable given Plaintiff's allegations, which state that putative class members worked "at least" 20 minutes of off-the-clock per day. Moreover, Plaintiff alleges Defendants



1 had a “consistent” policy of not paying for all hours worked. (Ex. 1, Complaint, ¶¶  
2 59-60.)

### 3 5. Meal and Rest Period Premium Pay

4 35. Under California’s Unfair Competition Law (“UCL”), California  
5 Business and Professions Code §§ 17200 et seq., on behalf of himself and all  
6 putative class members in California from April 2, 2014 to the present, Plaintiff  
7 seeks restitution in the form of one additional hour of premium pay for each workday  
8 in which Defendants failed to provide a timely, duty-free meal period, or failed to  
9 provide a timely, duty-free second meal period. (Ex. 1, Complaint, ¶¶ 67-71, 109.)  
10 Plaintiff contends that the failure to provide lawful meal periods in violation of  
11 California Labor Code §§ 226.7 and 512 constitutes an unlawful business practice  
12 under the UCL. (*Id.*, ¶ 108.)

13 36. The statute of limitations for a claim under the UCL is four years. Cal.  
14 Bus. & Prof. Code § 17208. Under the UCL, an individual may recover unlawfully  
15 withheld wages as a form of restitution. *Cortez*, 23 Cal.4th at 173. A plaintiff may  
16 seek to recover meal or rest period premium pay as a form of restitution under the  
17 UCL, under the theory that premium pay constitutes wages under the UCL. *Murphy*  
18 *v. Kenneth Cole Prods., Inc.*, 40 Cal.4th 1094, 1114 (2007).

19 37. Plaintiff alleges that he and other putative class members were “required  
20 to perform work for more than five (5) hours during a shift, but were often required  
21 to do so without receiving all required timely and uninterrupted meal periods,” and  
22 that such meal periods were scheduled late “as a matter of uniform company policy.”  
23 (Ex. 1, Complaint, ¶ 17.) Plaintiff also alleges that he and the putative class were also  
24 “never provided” with a second meal period despite often working in shifts of over  
25 ten hours. (*Id.*) He alleges that Defendants had a policy and practice of sending  
26 Plaintiff and other putative class members to meal and rest periods at the same time,  
27 thus often making the meal and rest periods both untimely. (*Id.*) Plaintiff further  
28 alleges that Defendants failed to pay him and the class members “premium pay” of

1 one hour of wages at each employee’s hourly rate of pay for each non-compliant  
2 meal or rest period. (*Id.* at ¶ 18.)

3 38. From April 2, 2014, JMW employed at least 746 employees who  
4 worked at least 13,678 workweeks and earned an average hourly rate of pay of  
5 \$28.52. (Wilson Decl. ¶ 8.)

6 39. A removing defendant may employ reasonable assumptions based on  
7 the complaint to determine the amount in controversy. With a conservative estimate  
8 of 2.5 meal and rest break violations per workweek, the total amount in controversy  
9 for meal and rest period premium pay is equal to **\$1,950,482.80** ([13,678 workweeks  
10 x 2.5 (meal break violations per week) x \$28.52 = \$975,241.40] + [13,678  
11 workweeks x 2.5 (rest period violations per week) x \$28.52 = \$975,241.40]).

12 40. An assumed violation rate of 50% is reasonable in estimating the  
13 amount in controversy for alleged meal and rest period violations. *See, e.g., Oda v.*  
14 *Gucci Am., Inc.*, No. 2:14-CV-07469-SVW, 2015 WL 93335, at \*4-5 (C.D. Cal. Jan.  
15 7, 2015) (upholding assumed 50% violation rate [or 2.5 violations per week] on both  
16 meal *and* rest period claims where plaintiffs alleged that “Plaintiffs and the class  
17 members *sometimes* did not receive all of their meal periods in a lawful fashion”)  
18 (emphasis supplied); *Mejia v. DHL Express (USA), Inc.*, 2015 WL 2452755, at \*4  
19 (C.D. Cal. May 21, 2015) (assuming 100% rest period violation rate where plaintiff  
20 alleged defendant “adopted and maintained uniform policies, practices and  
21 procedures’ that caused the purported violations of California’s rest period law.”);  
22 *Duberry v. J. Crew Grp., Inc.*, No. 214CV08810SVWMRW, 2015 WL 4575018, at  
23 \*1, 6 (C.D. Cal. July 28, 2015) (applying a 70% violation rate but finding allegations  
24 were “sufficient to ground an assumed 100% violation rate” where Plaintiff alleged  
25 defendant engaged in a “uniform policy and systematic scheme of wage abuse  
26 against their hourly-paid or non-exempt employees,” which included a failure to pay  
27 for “missed meal periods and rest breaks in violation of California law”).

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1                   **6. Attorneys' Fees**

2           41. Based on the above claims, Defendants have demonstrated that  
3 \$5,028,146.44 is in controversy based on the allegations in the Complaint.<sup>3</sup>

4           42. Plaintiff additionally seeks attorney fees. (Ex. 1, Complaint, Relief  
5 Requested, ¶ 16.) In the Ninth Circuit, 25% of the total recovery is the “benchmark  
6 level” for reasonable attorney fees in class action cases. *Garibay v. Archstone*  
7 *Communities LLC*, 539 F. App’x 763, 764 (9th Cir. 2013). Using this 25%  
8 benchmark, courts have included attorney fees for 25% of the total recovery in  
9 determining the amount in controversy under CAFA. *Id.* (contemplating inclusion of  
10 25% of total recovery in attorney fees under CAFA); *Rwomwijhu v. SMX, LLC*, No.  
11 CV1608105ABPJWX, 2017 WL 1243131, at \*6 (C.D. Cal. Mar. 3, 2017) (including  
12 fees in calculation, noting that “courts in the Ninth Circuit, including this one, have  
13 allowed an estimated fee award of 25% of a plaintiff’s damages in calculating the  
14 amount in controversy under CAFA”); *Sanchez v. Russell Sigler, Inc.*, No.  
15 CV1501350ABPLAX, 2015 WL 12765359, at \*7 (C.D. Cal. Apr. 28, 2015) (same).

16           43. Assuming an award of attorneys’ fees in the benchmark amount of 25%  
17 of the total recovery, the amount in controversy for such fees is **\$1,257,036.61**  
18 (\$5,028,146.44 x 0.25).

19                   **7. Summary**

20           44. Even excluding Plaintiff’s claims for unreimbursed expenses under  
21 Labor Code Section 2802, unlawful deductions of wages under Section 221, and  
22 attorneys’ fees, the Complaint satisfies the \$5 million threshold for purposes of  
23 removal under CAFA. With benchmark attorneys’ fees added, the amount in  
24 controversy exceeds \$6 million (\$5,028,146.44 in alleged damages and penalties +  
25 \$1,257,036.61 = \$6,285,183.05.) Even the most conservative of estimated recoveries  
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27 \_\_\_\_\_  
28 <sup>3</sup> \$455,900 in wage statement penalties + \$1,441,872 in waiting time penalties +  
\$965,488.99 in unpaid overtime + \$214,402.65 in unpaid minimum wages/liquidated  
damages + \$1,950,482.80 in meal and rest period penalties = \$5,028,146.44.

1 for Plaintiff’s additional claims pushes the amount in controversy well over the \$5  
2 million threshold.

3 **IV. VENUE IS PROPER IN THIS COURT**

4 45. Under 28 U.S.C. § 1441(a), this Notice of Removal is filed in the  
5 district court of the United States in which the Action is pending. The Superior Court  
6 for the County of San Diego is within the Southern District of California. (28 U.S.C.  
7 § 84(d).) Therefore, venue is proper in this Court because it is the district and  
8 division embracing the place where the Action is pending. (28 U.S.C. § 1441(a).)

9 46. In accordance with 28 U.S.C. §1446(a), this Notice of Removal is  
10 accompanied by the Declarations of Richard D. Wilson and Nikolas T. Djordjevski,  
11 and Exhibits 1 to 5, which constitute a copy of all processes, pleadings, and orders  
12 provided to Defendants.

13 47. As required by 28 U.S.C. §1446(b) and Federal Rule of Civil Procedure  
14 6(a), this Notice of Removal was filed timely as Plaintiff provided Notices and  
15 Acknowledgements of Receipt on April 19, 2018. (Djordjevski Dec. ¶ 3.)

16 48. As required by 28 U.S.C. §1446(d), Defendants provided Notice of  
17 Removal to Plaintiff through his attorneys of record.

18 49. As required by 28 U.S.C. §1446(d), a copy of the original Notice of  
19 Removal will be filed with the Superior Court of the State of California, for the  
20 County of San Diego.

21 50. If this Court has a question regarding the propriety of this Notice of  
22 Removal, Defendants request it issue an Order to Show Cause so it may have an  
23 opportunity to more fully brief the grounds for this removal.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Defendants remove the above-entitled action to the  
3 United States District Court for the Southern District of California.

4  
5 DATED: June 8, 2018

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

6  
7  
8 By: s/Spencer C. Skeen  
9 Spencer C. Skeen  
Nikolas T. Djordjevski

10 Attorneys for Defendants TRADEMARK  
11 CONSTRUCTION CO., INC., and  
12 TRADEMARK CONSTRUCTION CO.,  
13 INC., WHICH WILL DO BUSINESS IN  
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COMPONENTS

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jose Garcia, on behalf of himself and others similarly situated

(b) County of Residence of First Listed Plaintiff Los Angeles (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David Yeremian/Alvin B. Lindsay
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DEFENDANTS

Trademark Construction Co., Inc., an Arizona Corporation,
Trademark Construction Co., Inc., which will do business in
California as J.M.W. Truss and Components, an Arizona
Corporation

County of Residence of First Listed Defendant Yuma, Arizona
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Spencer C. Skeen/Nikolas T. Djordjevski
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4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
T: (858) 652-3100 F: (858) 652-3101

'18CV1214 JLS WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 625 Drug Related Seizure, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332(d) - Class Action Fairness Act

Brief description of cause:

Wage and Hour Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

IF ANY

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE June 8, 2018

SIGNATURE OF ATTORNEY OF RECORD s/Spencer C. Skeen

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

# Exhibit 1



1 DAVID YEREMIAN & ASSOCIATES, INC.  
David Yeremian (SBN 226337)  
2 david@yeremianlaw.com  
Alvin B. Lindsay (SBN 220236)  
3 alvin@yeremianlaw.com  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**04/02/2018** at 08:00:00 AM  
Clerk of the Superior Court  
By Valeria Contreras, Deputy Clerk

6 Attorneys for Plaintiff JOSE GARCIA,  
on behalf of himself and others similarly situated  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

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JOSE GARCIA, an individual, on behalf of  
himself and others similarly situated,

Plaintiff,

vs.

TRADEMARK CONSTRUCTION CO.,  
INC., an Arizona corporation;  
TRADEMARK CONSTRUCTION CO.,  
INC., WHICH WILL DO BUSINESS IN  
CALIFORNIA AS J.M.W. TRUSS AND  
COMPONENTS, an Arizona corporation;  
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2018-00018180-CU-OE-CTL

**CLASS ACTION**

Assigned for All Purposes To:  
Hon.  
Dept.:

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802
6. Violation of Labor Code §§ 226(a)
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 203;
9. Violation of Business & Professions Code § 17200 *et seq.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff JOSE GARCIA, (hereinafter "Plaintiff") on behalf of himself and all others  
2 similarly situated (collectively, "Employees"; individually, "Employee") complains of  
3 Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of himself and all current and former  
6 Employees within the State of California who, at any time four (4) years prior to the filing of this  
7 lawsuit, are or were employed as non-exempt, hourly construction workers by Defendants  
8 TRADEMARK CONSTRUCTION CO., INC., TRADEMARK CONSTRUCTION CO., INC.,  
9 WHICH WILL DO BUSINESS IN CALIFORNIA AS J.M.W. TRUSS AND COMPONENTS,  
10 and DOES 1 through 50 (all defendants being collectively referred to herein as "Defendants").  
11 Plaintiff alleges that Defendants, and each of them, violated various provisions of the California  
12 Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and California Business  
13 & Professions Code, and seeks redress for these violations.

14 2. Plaintiff and the Class members worked as hourly, non-exempt construction  
15 employees for Defendants, and Plaintiff's job positions included carpenter and safety coordinator.  
16 Plaintiff has resided in Los Angeles County, California and was generally employed by  
17 Defendants throughout his employment at a work site in Hollywood, California, and consistently  
18 worked at Defendants' behest without being paid all wages due. More specifically, Plaintiff and  
19 the other similarly situated Class members were employed by Defendants and worked at  
20 Defendants' job sites performing construction related job duties. Upon information and belief,  
21 Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities (2)  
22 was subjected to the same policies and practices (3) and endured similar violations at the hands of  
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock  
25 and failed to record accurate time worked by these Employees, including by rounding hours  
26 worked to their substantial detriment, failed to pay them at the appropriate rates for all hours  
27 worked, failed to reimburse business expenses, and provided Plaintiff and the Class members with  
28 inaccurate wage statements that prevented Plaintiff and the Class from learning of these unlawful

1 pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest  
2 periods, as employees were not provided with the opportunity to take all required timely,  
3 uninterrupted and duty-free meal periods and rest breaks as required by the Labor Code.

4 4. TRADEMARK CONSTRUCTION CO., INC., upon information and belief, was  
5 an Arizona company registered to do business in California in March of 1987, but its status with  
6 the California Secretary of State is listed as surrendered as of October of 1993. The only evidently  
7 related entity listed as active with the California Secretary of State is named Defendant  
8 TRADEMARK CONSTRUCTION CO., INC., WHICH WILL DO BUSINESS IN CALIFORNIA  
9 AS J.M.W. TRUSS AND COMPONENTS (hereinafter "Trademark Construction") (collectively  
10 with Trademark Construction Co., Inc. and the DOES, "Defendants"). Trademark Construction is  
11 an Arizona corporation which lists its principal executive offices in San Diego, California, where it  
12 is upon information and belief headquartered, and the company also lists its agent for service of  
13 process in San Diego, California. Upon information and belief, and according to the Notice to  
14 Employee under Labor Code §2810.5 issued to Plaintiff by Defendants, Trademark Construction  
15 also does business as J.M.W. Truss and Components and/or Ace Trucking. Upon information and  
16 belief, Defendants employ and employed other Class members at other construction work site  
17 locations throughout California, including in Los Angeles and San Diego counties.

18 5. This Court has jurisdiction over this Action pursuant to California Code of Civil  
19 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
20 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
21 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
22 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
23 obligations and liabilities giving rise to this lawsuit occurred at least in part in the County of San  
24 Diego and Defendants list their principal executive offices and are headquartered in San Diego,  
25 California, and Defendants employ Plaintiff and other Class members in San Diego County and  
26 throughout California.

27 6. The true names and capacities, whether individual, corporate, associate, or  
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently



1 employment, Plaintiff was listed in Defendant's records with a base rate of either \$11/hr or  
2 \$12/hr and an overtime rate, if at all, of \$16.50/hr or \$18/hr. Plaintiff was never paid double time  
3 for hours worked over twelve (12) in a day. These wage rates are lower than they should have  
4 been for union jobs, and upon information and belief, Defendants employed Plaintiff and the  
5 Class members as a subcontractor to a general contractor who paid Defendants, who in turn paid  
6 their employees. Plaintiff and the Class members were required to undergo training presented by  
7 these general contractors to permit them to work on a given job site. Plaintiff was required by  
8 Defendants to join a Union and received a Union Card and was provided with a Memorandum of  
9 Agreement and a Residential Master Labor Agreement from the Union. Among other things,  
10 these documents establish Plaintiff is to be paid at certain set hourly rates depending on his level  
11 and provides for overtime as required under IWC Wage Order 16, and further incorporates the  
12 meal and rest period requirements under the IWC Wage Orders and California Labor Code.

13 10. During the course of Plaintiff and the Class members' employment with  
14 Defendants, they were not paid all wages they were owed, including for all work performed  
15 (resulting in "off the clock" work) and for all overtime hours worked and were forced to work  
16 off-the-clock to keep labor budgets low due to understaffing and in an effort to satisfy the  
17 difficult production requirements and demands Defendants' managers required of them.

18 11. More specifically, despite having the ability to record actual hours worked by  
19 Plaintiff and the Class members, Defendants did not maintain real time records of when  
20 Employees were working at the job site or taking alleged meal periods. Instead, Defendants  
21 maintained a master time sheet which listed all the Employees at that work site. The list was  
22 tightly controlled by the foreman, who only permitted Plaintiff and the other Class members to  
23 write in the time when they were supposed to be scheduled to work for that day and the time they  
24 left had to reflect the scheduled end time for the shift. Additionally, Defendants required Plaintiff  
25 and the Class to "sign in" at least ten minutes before their scheduled time (while writing down  
26 only the scheduled start time) so that they would be prepared to work, and Plaintiff and the Class  
27 members actually began working despite remaining off the clock until their scheduled start time.  
28 Defendants followed a similar and uniform company-wide policy and practice at the end of shifts,

1 by requiring Plaintiff and the Class members to write down on the employee sign in sheet the  
2 times when their shifts were supposed to end and then return to complete their assigned work for  
3 the shift and preparation for the next day while working off the clock. On the occasions when  
4 Plaintiff would arrive at work early for his scheduled shift, as required by Defendants, and he  
5 wrote in the actual time of his arrival, it was crossed out by Defendants' foreman and made to  
6 reflect the scheduled start time. Plaintiff and the Class members were also not given a chance to  
7 review their timekeeping entries to ensure their correctness or to confirm the hours they would be  
8 paid for and the rates they would be paid at for those hours. These unlawful company-wide  
9 policies and practices resulted in approximately at least twenty (20) minutes of off the clock work  
10 per day, which was further compounded by Defendants' unlawful rounding.

11         12. Following their common policy and practice, Defendants would then take these  
12 listed rounded and under-recorded hours reflecting only scheduled hours in a "Time Card  
13 Listing" which Defendants used to compile and record the timekeeping data for creating  
14 Plaintiff's wage statements. These time card listings reflected a perfect eight (8) hours worked for  
15 every shift, with occasional overtime, and timekeeping entries were thus rounded down by  
16 Defendants to full hour increments for payroll purposes. Thus, rather than paying Plaintiff and the  
17 Class members for all hours and minutes they actually worked, Defendants followed a uniform  
18 policy and practice of rounding all time entries to the nearest hour (i.e. to the nearest 60 minute  
19 time increment), and generally did so to the detriment of the Employees, and Plaintiff contends  
20 this policy is not neutral and results, over time, to the detriment of the Class members by  
21 systematically undercompensating them. These unlawfully rounded time entries were inputted  
22 into Defendants' payroll system from which wage statements and payroll checks were created.  
23 By implementing policies, programs, practices, procedures and protocols which rounded the  
24 hours worked by Class members down to their detriment, Defendants' willful actions resulted in  
25 the systematic underpayment of wages to Class members, including underpayment of overtime  
26 pay to Class members over the relevant time period.

27         13. In addition to the rounding that Plaintiff and the Class members endured to their  
28 detriment, Defendants required them to endure further off the clock work. The Employees'

1 personal cell phones were the primary means of communication from Defendants, even on the job  
2 sites, as Defendants would contact employees throughout the work day regarding job  
3 requirements and duties. Foreman and managers would also contact Plaintiff and the Class  
4 members while they were off duty and away from the job site to address scheduling and work  
5 sites and other work-related matters. Plaintiff was also contacted when working as a safety  
6 coordinator to make appointments for injured employees and was required to accompany them to  
7 their examinations and treatments by driving them in his personal vehicle, but Plaintiff was  
8 neither paid for these additional off the clock work hours nor was he reimbursed for any attendant  
9 mileage he drove in his personal vehicle for work purposes.

10 14. Additionally, for his first five months working for Defendants, Plaintiff was paid  
11 no overtime, and following this initial period he was under-paid his overtime hours, according to  
12 Defendants' uniformly applied policy and practice of not paying for all hours worked and not  
13 paying for all such hours at the appropriate rates. When Plaintiff and the Class members worked  
14 over eight (8) hours in a shift, Defendants often failed to pay those hours at the required time and  
15 a half rate for overtime, and overtime should have began accruing sooner than it did even when  
16 paid due to the pervasive off the clock work Defendants required. Additionally, Plaintiff and the  
17 Class would often work Saturdays such that hours worked on those Saturdays were over forty  
18 (40) for the week, entitling them to receive overtime wages, yet Defendants paid for hours  
19 worked on these days at the regular rate without correctly calculating when overtime was  
20 accruing in a given work week. Defendant has also either failed to maintain timekeeping records  
21 for Plaintiff that would permit him to discover the nature and extent of Defendants' unlawful  
22 rounding or has refused to produce them to Plaintiff in response to his timely request to be  
23 provided with them.

24 15. As a result of the above described unlawful rounding and requirements to work off  
25 the clock, the failure to calculate and pay wages at the correct rates, the daily work demands and  
26 pressures to work through breaks, and the other wage violations they endured at Defendants'  
27 hands, Plaintiff and the Class members were not properly paid for all wages earned and for all  
28 wages owed to them by Defendants, including when working more than eight (8) hours in any

1 given day and/or more than forty (40) hours in any given week. As a result of Defendants'  
2 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for  
3 which they were not adequately and completely compensated, in addition to the hours they were  
4 required to work off the clock. To the extent applicable, Defendants also failed to pay Plaintiff  
5 and the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of  
6 the seventh consecutive work day in a week and overtime payments at the rate of 2 times the  
7 regular rate for hours worked over eight (8) on the seventh consecutive work day, as required  
8 under the Labor Code and applicable IWC Wage Orders.

9 16. Therefore, from at least four (4) years prior to the filing of this lawsuit and  
10 continuing to the present, Defendants thus had a consistent policy or practice of failing to pay  
11 Employees for all hours worked, and failing to pay minimum wage for all time worked as required  
12 by California Law. Also, from at least four (4) years prior to the filing of this lawsuit and  
13 continuing to the present, Defendants also had a consistent policy or practice of failing to pay  
14 Employees overtime compensation at premium overtime rates for all hours worked in excess of  
15 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in  
16 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding  
17 sections of IWC Wage Orders.

18 17. Additionally, Defendants failed to provide all the legally required unpaid, off-duty  
19 meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other  
20 Class members, as required by the applicable Wage Order and Labor Code. Defendants did not  
21 have a policy or practice which provided or recorded all the legally required unpaid, off-duty meal  
22 periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other Class  
23 members. Plaintiff and other Class members were required to perform work as ordered by  
24 Defendants for more than five (5) hours during a shift, but were often required to do so without  
25 receiving all required timely and uninterrupted meal periods. More specifically, Defendants had a  
26 policy and practice of sending Plaintiff and the other Class members to meal periods and rest  
27 breaks at the same time based on a set schedule. Despite requiring off the clock work and  
28 compelling Plaintiff and the Class to often work over ten (10) hours in a work shift, Defendants



1 generally scheduled only one meal period and two (2) ten (10) minute rest breaks per eight (8)  
2 hour work shift, and all work would allegedly stop during these breaks. Defendants did not  
3 maintain any timekeeping records of when Plaintiff and the Class members actually began and  
4 ended their meal periods, but scheduled them late as a matter of uniform company policy. For  
5 example, Plaintiff and the Class members were generally required to fill in the time sheet to show  
6 they started work at 7:00 a.m., but a meal period was not generally provided until 1:00 p.m. or  
7 thereafter, which was well over five (5) hours into a work shift. Plaintiff and the Class members  
8 were also never provided with a second meal period despite often working shifts of over ten (10)  
9 total hours. Additionally, both meal and rest periods were also shortened or interrupted by work  
10 demands and management and foreman inquiries, and some second rest periods were provided  
11 after an employee worked eight (8) hours in a shift (when off the clock work was included).  
12 Furthermore, when Plaintiff and the Class members worked over ten (10) hours in a work shift,  
13 they were not provided with a third ten (10) minute rest period as a matter of uniform company  
14 policy and practice.

15 18. Additionally, as addressed above, Defendants followed a practice of under-  
16 reporting or rounding down hours worked in a manner that would impact when Employees were to  
17 receive meal periods, and meal periods were therefore either provided late or were interrupted by  
18 work demands. On occasions when Employees in the Class worked over 10 hours in a shift,  
19 Defendants also failed to provide them with a second meal period. As a result, Defendants' failure  
20 to provide the Plaintiff and the Class members with all the legally required off-duty, unpaid meal  
21 periods and all the legally required off-duty, paid rest periods is and will be evidenced by  
22 Defendants' business records, or lack thereof. Defendants have either failed to maintain required  
23 records of when meal periods were provided or failed to produce them in response to Plaintiff's  
24 timely and lawful request. Defendants also failed to pay Employees "premium pay," i.e. one hour  
25 of wages at each Employee's effective hourly rate of pay, for each meal period or rest break that  
26 Defendants failed to provide or deficiently provided. Defendants instead, upon information and  
27 belief, automatically deducted 30 minutes per work shift for unlawfully provided meal periods,  
28 and the fact that the opportunity to take meal periods timely or for their full duration was not

1 provided to Plaintiff and the Class members requires Defendants to pay premium wages of one  
2 full hour of regular wages for each unprovided or untimely or impermissibly shortened meal  
3 period.

4 19. Therefore, for at least four years prior to the filing of this action and through to the  
5 present, Plaintiff and the Class members were forced to place attaining production requirements  
6 and responding to manager demands above taking their authorized breaks, and they could not be  
7 relieved to take breaks, or were required to remain on-duty at all times and were unable to take  
8 off-duty breaks or were otherwise not provided with the opportunity to take required timely breaks  
9 due to Defendants' policies and practices. On the occasions when Plaintiff and the Class members  
10 were provided with a meal period, it was often untimely or interrupted, as they were required to  
11 respond to work demands, and they were not provided with one (1) hour's wages in lieu thereof.  
12 Meal period violations thus occurred in one or more of the following manners:

- 13 (a) Class members were not provided full thirty-minute duty free meal periods  
14 for work days in excess of five (5) hours and were not compensated one (1)  
15 hour's wages in lieu thereof, all in violation of, among others, Labor Code  
16 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage  
17 Order(s);
- 18 (b) Class members were not provided second full thirty-minute duty free meal  
19 periods for work days in excess of ten (10) hours;
- 20 (c) Class members were required to work through at least part of their daily  
21 meal period(s);
- 22 (d) Meal periods were provided after five hours of continuous work during a  
23 shift; and
- 24 (e) Class members were restricted in their ability to take a full thirty-minute  
25 meal period.

26 20. Plaintiff and the Defendants' Employees in the Class were also not authorized and  
27 permitted to take lawful rest periods, were required by Defendants to work through or during  
28 breaks, and were not provided with one (1) hour's wages in lieu thereof. On the shifts when

1 Plaintiff worked shifts over ten (10) hours, he was not authorized and permitted to take a third  
2 rest period. Rest period violations therefore arose in one or more of the following manners:

3 (a) Class members were required to work without being provided a minimum  
4 ten (10) minute rest period for every four (4) hours or major fraction  
5 thereof worked and were not compensated one (1) hour of pay at their  
6 regular rate of compensation for each workday that a rest period was not  
7 provided;

8 (b) Class members were not authorized and permitted to take timely rest  
9 periods for every four hours worked, or major fraction thereof; and

10 (c) Class members were required to remain on-duty during rest periods or  
11 otherwise had their rest periods interrupted by work demands.

12 21. Additionally, from at least four (4) years prior to the filing of this lawsuit and  
13 continuing to the present, Defendants have regularly required Plaintiff and the Class members to  
14 incur business expenses in the course of performing their required job duties for Defendants,  
15 including cellular phone and mileage expenses. For example, Plaintiff and the Class members  
16 were frequently and systematically contacted on their personal cellular phones by Defendants both  
17 during work hours and while off duty regarding job duties and scheduling requirements and the  
18 like, all without reimbursement from Defendants. Plaintiff estimates that at least half (50%) of his  
19 monthly calls and message traffic were related to job duties and work requirements. Additionally,  
20 on the occasions when Plaintiff was required to drive for work-related duties during a work shift,  
21 he was not reimbursed for his mileage in addition to being required to work off the clock. When  
22 he attempted to request this reimbursement from Defendants' management, he was informed it  
23 was not reimbursable. Plaintiff was also required to purchase a specific and special hard hat by  
24 Defendants, and was not reimbursed for this necessary business expense. These expenses incurred  
25 by Plaintiff and the Class were necessary and required of them in performing their assigned job  
26 duties, but Defendants failed to reimburse Plaintiff and the Class for all such necessary  
27 expenditures, thus entitling them to reimbursement according to proof as required under Labor  
28 Code § 2802 and the applicable provisions of the IWC Wage Orders.

1           22. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
2 present, Defendants have consistently and unlawfully collected or received wages from Employees  
3 by making automatic deduction from Employees' wages, including for any unpaid meal periods  
4 Employees were denied and by under-reporting and recording hours worked and rounding hours  
5 down to the detriment of the Employee Class members.

6           23. As a result of these illegal policies and practices, Defendants engaged in and  
7 enforced the following additional unlawful practices and policies against Plaintiff and the Class  
8 members he seeks to represent:

- 9           a. failing to pay all wages owed to Class members who either were discharged, laid  
10 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,  
11 203;
- 12           b. failing to pay all wages owed to the Class members twice monthly in accordance  
13 with the requirements of Labor Code § 204;
- 14           c. failing to pay Class members all wages owed, including all meal and rest period  
15 premium wages;
- 16           d. failing to maintain accurate records of Class members' earned wages and meal  
17 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the  
18 applicable IWC Wage Orders; and
- 19           e. failing to produce timekeeping records in response to Plaintiff's timely and lawful  
20 request to receive them under these authorities.

21           24. Wage statements were issued weekly to Plaintiff and the Class members, and their  
22 wage statements would accordingly also reflect rounded hours for week, for example 40.0 or 32.0  
23 hours at a corresponding rate of, for example, \$12/hr. However, when these listed hours are  
24 multiplied by the listed rate, it did not equate to the listed amount of total earnings corresponding  
25 to those regular hours and the listed regular rate. The math in this instances often worked out to  
26 reflect earnings for at a higher rate than that which was listed on the wage statements, for example  
27 \$18 to \$19 per hour, which perhaps could have been the wage rate to which Plaintiff was entitled  
28 under any applicable union agreements, but there was no way for Plaintiff and the Class members

1 to understand what hours they worked at what corresponding rates from reference to the wage  
2 statements. The Notice to Employee under Labor Code §2810.5 issued to Plaintiff by Defendants  
3 does not list an hourly pay rate for Plaintiff. Additionally, the wage statements issued to Plaintiff  
4 list “Trademark Construction Co., Inc.” and “Trademark Construction Co.” as the employer, with  
5 an address of “San Diego, CA 92127.” However, the entity Trademark Construction Co., Inc. has  
6 surrendered its registration in California and no longer does business, and the only Trademark  
7 Construction Co., Inc. registered to conduct business in California is listed as the d/b/a of J.M.W.  
8 Truss and Components, however this entity dba is not listed on the wage statements issued to  
9 Plaintiff, and upon information and belief, the other Class members. This is a facial violation of  
10 Labor Code § 226(a)(8).

11 25. Therefore, from at least four (4) years prior to the filing of this lawsuit, and  
12 continuing to the present, Defendants have also consistently failed to provide Employees with  
13 timely, accurate, and itemized wage statements, in writing, as required by California wage-and-  
14 hour laws, including by the above-described requirement of off the clock work, unlawful rounding  
15 to the detriment of Employees, and incorrect calculation of the regular rate used to calculate and  
16 pay overtime. Defendants have also made it difficult to account with precision for the unlawfully  
17 withheld meal and rest period compensation owed to Plaintiff and the Class, during the liability  
18 period, because they did not implement and preserve a record-keeping method as required for non-  
19 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable  
20 California Wage Orders. Upon information and belief, time clock punches were not maintained, or  
21 were not accurately maintained, for work shifts and meal periods, which were automatically  
22 presumed by Defendants to have been lawfully provided when they were not. Defendants also  
23 failed to accurately record and pay for all regular and overtime hours worked and submitted by  
24 Plaintiff and the Class members, as Defendants’ policy of unlawfully rounding time entries to the  
25 detriment of Employees resulted in changed timekeeping records and corresponding payroll  
26 records reflecting that Employees worked less hours than they actually worked.

27 26. Defendants have thus also failed to comply with Labor Code § 226(a) by  
28 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class

1 members, along with the appropriate applicable rates, among others requirements. Plaintiff and  
2 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee  
3 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the  
4 applicable California IWC Wage Orders by failing to maintain time records showing when the  
5 employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code  
6 § 226.7, and total daily hours worked by itemizing in wage statements all deductions from  
7 payment of wages and accurately reporting total hours worked by the Class members.

8 27. From at least four (4) years prior to filing this lawsuit and continuing to the present,  
9 Defendants have thus also had a consistent policy of failing to pay all wages owed to Employees  
10 at the time of their termination of within seventy-two (72) hours of their resignation, as required  
11 by California wage-and-hour laws.

12 28. In light of the foregoing, Employees bring this action pursuant to, *inter alia*, Labor  
13 Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510, 511, 512, 558, 1174, 1185,  
14 1194, 1194.2, and 1197 and California Code of Regulations, Title 8, section 11000 *et seq.*,

15 29. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,  
16 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have  
17 enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices  
18 alleged in this Complaint.

19 **CLASS ALLEGATIONS**

20 30. Plaintiff brings this class action on behalf of himself and all others similarly situated  
21 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or  
22 “Class members”) defined as follows: “All individuals employed by Defendants at any time  
23 during the period of four (4) years prior to the filing of this lawsuit and ending on a date as  
24 determined by the Court (“the Class Period”), and who have been employed as non-exempt,  
25 hourly construction employees at Defendants’ work sites within the State of California.”

26 Further, Plaintiff seeks to represent the following Subclasses composed of and defined as  
27 follows:

28 ///

- 1           a.     Subclass 1. Minimum Wages Subclass. All Class members who were not  
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3           b.     Subclass 2. Wages and Overtime Subclass. All Class members who were not  
4 compensated for all hours worked for Defendants at the required rates of pay, including for all  
5 hours worked in excess of eight in a day and/or forty in a week.
- 6           c.     Subclass 3. Meal Period Subclass. All Class members who were subject to  
7 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-  
8 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 9           d.     Subclass 4. Rest Break Subclass. All Class members who were subject to  
10 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
11 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
12 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 13          e.     Subclass 5. Expense Reimbursement Subclass. All Class members who incurred  
14 necessary and reasonable expenses in connection with performing their job duties for Defendants  
15 and who were subject to a policy and/or practice under which such expenses were not reimbursed.
- 16          f.     Subclass 6. Wage Statement Subclass. All Class members who, within the  
17 applicable limitations period, were not provided with accurate itemized wage statements.
- 18          g.     Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members  
19 who were subject to Defendants' policy and/or practice of automatically deducting 30-minutes  
20 worth of wages from Employees for alleged meal periods they were denied and/or by understating  
21 the hours worked by Employees and/or by deducting uniform expenses from their wages.
- 22          h.     Subclass 8. Termination Pay Subclass. All Class members who, within the  
23 applicable limitations period, either voluntarily or involuntarily separated from their employment  
24 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
25 termination.
- 26          i.     Subclass 9. UCL Subclass. All Class members who are owed restitution as a result  
27 of Defendants' business acts and practices, to the extent such acts and practices are found to be  
28 unlawful, deceptive, and/or unfair.

1           31. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
2 modify the class description with greater particularity or further division into subclasses or  
3 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class  
4 against Defendants, the Class Period should be adjusted accordingly.

5           32. Defendants, as a matter of company policy, practice and procedure, and in violation  
6 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,  
7 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged  
8 in a practice whereby Defendants failed to correctly calculate compensation for the time worked  
9 by the Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of  
10 this work, required employees to perform this work and permitted or suffered to permit this work.  
11 Defendants have uniformly denied these Class members wages to which these employees are  
12 entitled, and failed to provide meal periods or authorize and permit rest periods, in order to  
13 unfairly cheat the competition and unlawfully profit.

14           33. This action has been brought and may properly be maintained as a class action  
15 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
16 of interest in litigation and proposed class is easily ascertainable.

17           **A. Numerosity**

18           34. The potential members of the class as defined are so numerous that joinder of all  
19 the member of the class is impracticable. While the precise number of class member has not been  
20 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
21 time period relevant to this lawsuit, hundreds of Employees who satisfy the Class definition within  
22 the State of California.

23           35. Accounting for employee turnover during the relevant time period increases this  
24 number substantially. Plaintiff alleges that Defendants’ employment records will provide  
25 information as to the number and location of all Class members.

26           **B. Commonality**

27           36. There are questions of law and fact common to the Class that predominate over any  
28 questions affecting only individual Class members. These common questions of law and fact



1 include:

- 2 a. Whether Defendants failed to pay Employees minimum wages;
- 3 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 4 c. Whether Defendants failed to pay Employees overtime as required under Labor  
5 Code § 510;
- 6 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
7 IWC Wage Orders, by failing to provide Employees with requisite meal periods or  
8 premium pay in lieu thereof;
- 9 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
10 Orders, by failing to authorize and permit Employees to take requisite rest breaks  
11 or provide premium pay in lieu thereof;
- 12 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with  
13 inaccurate wage statements;
- 14 g. Whether Defendants violated Labor Code § 221;
- 15 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay  
16 wages and compensation due and owing at the time of termination of employment;
- 17 i. Whether Defendants' conduct was willful;
- 18 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage  
19 Orders by failing to maintain accurate records of Class members' earned wages and  
20 work periods;
- 21 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all  
22 Employees during the relevant time period for all hours worked, whether regular or  
23 overtime;
- 24 l. Whether Defendants violated Business and Professions Code § 17200 et seq.;
- 25 m. Whether Employees are entitled to equitable relief pursuant to Business and  
26 Professions Code § 17200 et seq.

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1           **C.     Typicality**

2           37.     The claims of the named plaintiff are typical of those of the other Employees. The  
3 Employee Class members all sustained injuries and damages arising out of and caused by  
4 Defendants' common course of conduct in violation of statutes, as well as regulations that have  
5 the force and effect of law, as alleged herein.

6           **D.     Adequacy of Representation**

7           38.     Plaintiff will fairly and adequately represent and protect the interest of the  
8 Employees. Counsel who represents the Employees are experienced and competent in litigating  
9 employment class actions.

10          **E.     Superiority of Class Action**

11          39.     A class action is superior to other available means for the fair and efficient  
12 adjudication of this controversy. Individual joinder of all Employees is not practicable, and  
13 questions of law and fact common to all Employees predominate over any questions affecting only  
14 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of  
15 Defendants' illegal policies or practices of failing to compensate Employees properly.

16          40.     As to the issues raised in this case, a class action is superior to all other methods for  
17 the fair and efficient adjudication of this controversy, as joinder of all Class members is  
18 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class  
19 members. Further, as the economic or other loss suffered by vast numbers of Class members may  
20 be relatively small, the expense and burden of individual actions makes it difficult for the Class  
21 members to individually redress the wrongs they have suffered. Moreover, in the event  
22 disgorgement is ordered, a class action is the only mechanism that will permit the employment of  
23 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in  
24 managing this case as a class action, and proceeding on a class-wide basis will permit Employees  
25 to vindicate their rights for violations they endured which they would otherwise be foreclosed  
26 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

27          41.     Class action treatment will allow those persons similarly situated to litigate their  
28 claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.  
2 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would  
3 set forth the subject and nature of the instant action. The Defendants' own business records can be  
4 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent  
5 that any further notice is required additional media and/or mailings can be used.

6 42. Defendants, as prospective and actual employers of the Employees, had a special  
7 fiduciary duty to disclose to prospective Class members the true facts surrounding Defendants'  
8 pay practices, policies and working conditions imposed upon the similarly situated Employees as  
9 well as the effect of any alleged arbitration agreements that may have been forced upon them. In  
10 addition, Defendants knew they possessed special knowledge about pay practices and policies,  
11 most notably intentionally refusing to pay for all hours actually worked which should have been  
12 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements  
13 and policies and practices on the Employees and Class as a whole.

14 43. Plaintiff and the Employees in the Class did not discover the fact that they were  
15 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there  
16 ever any discussion about Plaintiff's and the Class' wavier of their Constitutional rights of trial by  
17 jury, right to collectively organize and oppose unlawful pay practices under California and federal  
18 law as well as obtain injunctive relief preventing such practices from continuing. As a result, the  
19 applicable statutes of limitation were tolled until such time as Plaintiff and the Class members  
20 discovered their claims.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(Against All Defendants)**

24 44. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
25 full herein.

26 45. Defendants failed to pay Employees minimum wages for all hours worked.  
27 Defendants had a consistent policy of misstating Employees time records and failing to pay  
28 Employees for all hours worked. Employees would work hours and not receive wages, including

1 as alleged above in connection with off the clock work and regarding rounding of timekeeping  
2 entries and requiring Class members to remain on duty and working off the clock due to the  
3 production and other demands placed upon them by Defendants' management. Defendants, and  
4 each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified  
5 Employee hours, and imposed difficult to attain job and shift scheduling requirements on  
6 Plaintiff and the Class members, which resulted in off the clock work and underpayment of all  
7 wages owed to employees over a period of time, while benefiting Defendants. During the  
8 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the  
9 Class members, including by unlawful rounding to their detriment. Additionally, Defendants also  
10 maintained a practice of managers contacting Plaintiff and the Class members by calling  
11 Employees on their personal cellular phones and texting messages both while they were off-duty,  
12 including after or before on the clock work hours or during on duty hours regarding job and other  
13 work-site related requirements. Defendants also failed to compensate Plaintiff for all hours  
14 worked when he was driving employees to appointments and examinations. Defendants' uniform  
15 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the  
16 Class as a whole, as a result of implementing a uniform policy and practice that denied accurate  
17 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

18 46. In California, employees must be paid at least the then applicable state minimum  
19 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California  
20 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must  
21 timely pay its employees for all hours worked. Defendants failed to do so.

22 47. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"  
23 states: "The minimum wage for employees fixed by the commission is the minimum wage to be  
24 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

25 48. The applicable minimum wages fixed by the commission for work during the  
26 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are  
27 therefore entitled to double the minimum wage during the relevant period.

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1           49.     The minimum wage provisions of California Labor Code are enforceable by private  
2 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to  
3 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal  
4 overtime compensation applicable to the employee is entitled to recover in a civil action the  
5 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
6 interest thereon, reasonable attorney’s fees and costs of suit.”

7           50.     As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
8 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
9 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
10 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
11 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may  
12 be used as a credit against a minimum wage obligation.

13           51.     In committing these violations of the California Labor Code, Defendants  
14 inaccurately recorded or calculated the correct time worked and consequently underpaid the actual  
15 time worked by Plaintiff and other members of the Class. Defendants acted in an illegal attempt  
16 to avoid the payment of all earned wages, and other benefits in violation of the California Labor  
17 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.  
18 As a result of these violations, Defendant also failed to timely pay all wages earned in accordance  
19 with California Labor Code § 1194.

20           52.     California Labor Code § 1194.2 also provides for the following remedies: “In any  
21 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
22 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

24           53.     In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
25 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial  
26 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
27 pay each employee minimum wages.

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1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
2 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action  
3 may be maintained directly against the employer in an employee's name without first filing a  
4 claim with the Department of Labor Standards and Enforcement.

5 59. By their conduct, as set forth herein, Defendants violated California Labor Code §  
6 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:  
7 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a  
8 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked  
9 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
10 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight  
11 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not  
12 paying Employees wages for all hours worked, including by requiring off the clock work as  
13 addressed above and by unlawfully rounding down and under-reporting actual hours worked.

14 60. Defendants had a consistent policy of not paying Employees wages for all hours  
15 worked. Defendants, and each of them, have intentionally and improperly rounded, changed,  
16 adjusted and/or modified certain employees' hours, including Plaintiff's, or otherwise caused them  
17 to work off the clock to avoid paying Plaintiff and the Class members all earned and owed straight  
18 time and overtime wages and other benefits, in violation of the California Labor Code, the  
19 California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division  
20 of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring  
21 Plaintiff and other similarly situated non-exempt employees to work through meal periods when  
22 they were required to be clocked out or to otherwise work off the clock to complete their daily job  
23 duties or to attend and participate in company required activities or to prepare for work shifts and  
24 wrap up daily work. Therefore, Employees were not properly compensated, nor were they paid  
25 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a  
26 given week. Based on information and belief, Defendants did not make available to Employees a  
27 reasonable protocol for correcting time records when Employees worked overtime hours or to fix  
28 incorrect time entries or those that Defendants unlawfully rounded to the Employee's detriment.

1 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated  
2 Employees in the Class to work off the clock to complete their daily job duties, or by simply not  
3 paying all hours worked over eight (8) in a work shift and over forty (40) in a work week at the  
4 applicable overtime rates.

5 61. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of  
6 regular wages owed and overtime compensation, as required by California law, violates the  
7 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

8 62. Additionally, Labor Code § 558(a) provides "any employer or other person acting  
9 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
10 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil  
11 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each  
12 pay period for which the employee was underpaid in addition to an amount sufficient to recover  
13 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each  
14 underpaid employee for each pay period for which the employee was underpaid in addition to an  
15 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall  
16 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in  
17 this section are in addition to any other civil or criminal penalty provided by law." Defendants  
18 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC  
19 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor  
20 Code § 558.

21 63. Defendants' failure to pay compensation in a timely fashion also constituted a  
22 violation of California Labor Code § 204, which requires that all wages shall be paid  
23 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
24 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
25 and overtime compensation earned by Employees. Each such failure to make a timely payment of  
26 compensation to Employees constitutes a separate violation of California Labor Code § 204.

27 64. Employees have been damaged by these violations of California Labor Code §§  
28 204 and 510 (and the relevant orders of the Industrial Welfare Commission).









1 reimbursement from Defendants. Plaintiff estimates that at least half (50%) of his monthly calls  
2 and message traffic were related to job duties and work requirements. Additionally, on the  
3 occasions when Plaintiff was required to drive for work related duties during a work shift, he was  
4 not reimbursed for his mileage in addition to being required to work off the clock. When he  
5 attempted to request this reimbursement from Defendants' management, he was informed it was  
6 not reimbursable. Plaintiff was also required to purchase a specific and special hard hat by  
7 Defendants, and was not reimbursed for this necessary business expense.

8         81. Plaintiff and the Class members were not reimbursed for those lawful and  
9 necessary work related expenses or losses incurred in direct discharge of their job duties during  
10 employment with Defendants and at the direction of the Defendants pursuant to Labor Code §  
11 2802(a) and the applicable IWC Wage Orders, paragraph 9.

12         82. Defendants' knowing and willful failure to reimburse lawful necessary work related  
13 expenses and losses to Plaintiff and the Class members resulted in damages because, among other  
14 things, Defendants did not inform employees of their right to be reimbursed for those work related  
15 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard  
16 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and  
17 necessary expenses was an expected and essential function of their employment with Defendants  
18 and that failure to incur those expenses would have adverse consequences on their employment.

19         83. Therefore, Plaintiff and the Class members are entitled to reimbursement for any  
20 and all necessary work related expenses, as provided for in Labor Code § 2802(b), incurred during  
21 the direct discharge of their duties while employed by Defendants, as well as accrued interest on  
22 those expenses that were not reimbursed from the date Plaintiff and the Class members incurred  
23 those expenses. Further, Plaintiff and the Class members are entitled to costs and attorney's fees  
24 pursuant to Labor Code § 2802(c).

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**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 226(a)**  
**(Against All Defendants)**

84. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

85. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

86. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks, and rounded timekeeping entries to the detriment of the Class members, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. More specifically, wage statements were issued weekly to Plaintiff and the Class members, and their wage statements would accordingly also reflect rounded hours for week, for example 40.0 or 32.0 hours at a corresponding rate of, for example, \$12/hr. However, when these listed hours are multiplied by the listed rate, it did not equate to the listed amount of total earnings corresponding to those regular hours and the listed regular rate. The math in this instances often worked out to reflect earnings for at a higher rate than that which was listed on the wage statements, for example \$18 to \$19 per hour, which perhaps could have been the wage rate to which Plaintiff was entitled under any applicable union agreements, but there was no way for Plaintiff and the Class members to understand what hours they worked at what corresponding rates from reference to the wage statements. The Notice to Employee under Labor Code §2810.5 issued to Plaintiff by Defendants does not list an hourly pay rate for Plaintiff. Additionally, the

1 wage statements issued to Plaintiff list “Trademark Construction Co., Inc.” and “Trademark  
2 Construction Co.” as the employer, with an address of “San Diego, CA 92127.” However, the  
3 entity Trademark Construction Co., Inc. has surrendered its registration in California and no  
4 longer does business, and the only Trademark Construction Co., Inc. registered to conduct  
5 business in California is listed as the d/b/a of J.M.W. Truss and Components, however this entity  
6 dba is not listed on the wage statements issued to Plaintiff, and upon information and belief, the  
7 other Class members. This is a facial violation of Labor Code § 226(a)(8).

8         87. Therefore, throughout the liability period, Defendants intentionally failed to furnish  
9 to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately  
10 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-  
11 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net  
12 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
13 the employee and only the last four digits of his or her social security number or an employee  
14 identification number other than a social security number, (8) the name and address of the legal  
15 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and  
16 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor  
17 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed  
18 to provide Plaintiff and the Class members with such timely and accurate wage and hour  
19 statements.

20         88. Plaintiff and the Class members suffered injury as a result of Defendants’ knowing  
21 and intentional failure to provide them with the wage and hour statements as required by law and  
22 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the  
23 Defendants have failed to provide a wage statement, failed to provide accurate and complete  
24 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive,  
25 and the Plaintiff and Class members cannot promptly and easily determine from the wage  
26 statement alone one or more of the following: (i) The amount of the gross wages or net wages  
27 paid to the employee during the pay period or any of the other information required to be  
28 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of

1 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net  
2 wages paid to the employee during the pay period, (iii) The name and address of the employer  
3 and, (iv) The name of the employee and only the last four digits of his or her social security  
4 number or an employee identification number other than a social security number. For purposes  
5 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an  
6 objective standard] would be able to readily ascertain the information without reference to other  
7 documents or information.

8 89. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code  
9 § 226(a), Employees suffered injuries, including among other things confusion over whether they  
10 received all wages owed them, the difficulty and expense involved in reconstructing pay records,  
11 and forcing them to make mathematical computations to analyze whether the wages paid in fact  
12 compensated them correctly for all hours worked.

13 90. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover  
14 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
15 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not  
16 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an  
17 award of costs and reasonable attorneys’ fees.

18 **SEVENTH CAUSE OF ACTION**  
19 **VIOLATION OF LABOR CODE § 221**  
20 **(Against All Defendants)**

21 91. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
22 full herein.

23 92. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or  
24 receive from an employee any part of wages theretofore paid by said employer to said employee.”  
25 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and  
26 public policy, an employer must timely pay its employees for all hours worked. Defendants failed  
27 to do so.

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1 NINTH CAUSE OF ACTION

2 VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

3 (Against All Defendants)

4 101. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
5 full herein.

6 102. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,  
7 brings this claim pursuant to Business & Professions Code § 17200 et seq. The conduct of  
8 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and  
9 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting  
10 the public interest within the meaning of Code of Civil Procedure § 1021.5.

11 103. Plaintiff is a “person” within the meaning of Business & Professions Code  
12 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive  
13 relief, restitution, and other appropriate equitable relief.

14 104. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair  
15 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and  
16 fraudulent in that Defendants’ policy and practice failed to provide the required amount of  
17 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and  
18 Class members for all hours worked, due to systematic business practices as alleged herein that  
19 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare  
20 Commission requirements in violation of California Business and Professions Code §§ 17200, et  
21 seq., and for which this Court should issue injunctive and equitable relief, pursuant to California  
22 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

23 105. Wage-and-hour laws express fundamental public policies. Paying employees their  
24 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental  
25 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State  
26 vigorously to enforce minimum labor standards, to ensure that employees are not required or  
27 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
28 employers and their employees from competitors who lower costs to themselves by failing to

1 comply with minimum labor standards.

2 106. Defendants have violated statutes and public policies. Through the conduct alleged  
3 in this Complaint Defendants have acted contrary to these public policies, have violated specific  
4 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
5 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,  
6 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
7 guaranteed to all employees under the law.

8 107. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in  
9 violation of the Business & Professions Code § 17200 *et seq.*

10 108. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
11 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of  
12 reasonable care should have known that their conduct was unlawful; therefore their conduct  
13 violates the Business & Professions Code § 17200 *et seq.*

14 109. By the conduct alleged herein, Defendants have engaged and continue to engage in  
15 a business practice which violates California and federal law, including but not limited to, the  
16 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor  
17 Code including Sections 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court should  
18 issue declaratory and other equitable relief pursuant to California Business & Professions Code §  
19 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
20 competition, including restitution of wages wrongfully withheld.

21 110. As a proximate result of the above-mentioned acts of Defendants, Employees have  
22 been damaged, in a sum to be proven at trial.

23 111. Unless restrained by this Court Defendants will continue to engage in such  
24 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court  
25 should make such orders or judgments, including the appointment of a receiver, as may be  
26 necessary to prevent the use by Defendants or their agents or employees of any unlawful or  
27 deceptive practice prohibited by the Business & Professions Code, including but not limited to the  
28 disgorgement of such profits as may be necessary to restore Employees to the money Defendants

1 have unlawfully failed to pay.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

4 1. For an order certifying this action as a class action;

5 2. For compensatory damages in the amount of the unpaid minimum wages for work  
6 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
7 the filing of this action, as may be proven;

8 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
9 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

10 4. For compensatory damages in the amount of all unpaid wages, including overtime  
11 and double-time pay, as may be proven;

12 5. For compensatory damages in the amount of the hourly wage made by Employees  
13 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
14 years prior to the filing of this action, as may be proven;

15 6. For compensatory damages in the amount of the hourly wage made by Employees  
16 for each day requisite rest breaks were not provided or were deficiently provided where no  
17 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
18 be proven;

19 7. For damages and restitution for failure to reimburse all reasonable and necessary  
20 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

21 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

22 9. For restitution and/or damages for all amounts unlawfully withheld from the wages  
23 for all class members in violation of Labor Code § 221, as may be proven;

24 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
25 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

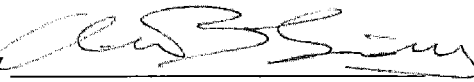
26 11. For restitution for unfair competition pursuant to Business & Professions Code  
27 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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- 1           12. For an order enjoining Defendants and their agents, servants, and employees, and
- 2 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
- 3 duties adumbrated in this Complaint;
- 4           13. For all general, special, and incidental damages as may be proven;
- 5           14. For an award of pre-judgment and post-judgment interest;
- 6           15. For an award providing for the payment of the costs of this suit;
- 7           16. For an award of attorneys' fees; and
- 8           17. For such other and further relief as this Court may deem proper and just.

9  
10 DATED: March 30, 2018

DAVID YEREMIAN & ASSOCIATES, INC.

11  
12 By 

13 David Yeremian  
14 Alvin B. Lindsay  
15 Attorneys for Plaintiff JOSE GARCIA  
16 and all others similarly situated  
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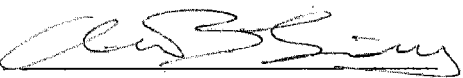
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**DEMAND FOR JURY TRIAL**

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

DATED: March 30, 2018

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian  
Alvin B. Lindsay  
Attorneys for Plaintiff JOSE GARCIA  
and all others similarly situated

# Exhibit 2

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

TRADEMARK CONSTRUCTION CO., INC., an Arizona corporation;  
"Additional Parties Attachment," attached.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JOSE GARCIA, an individual, on behalf of himself and others similarly  
situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/02/2018 at 08:00:00 AM**

Clerk of the Superior Court  
By Valeria Contreras, Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): San Diego Superior Court  
330 West Broadway, San Diego, CA 92101

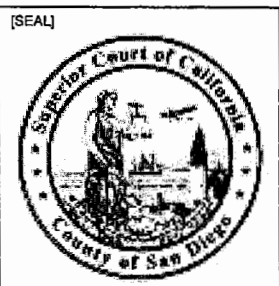
CASE NUMBER: 37-2018-00016180-CU-DE-CTL  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
David Yeremian, 535 N. Brand Blvd. Suite 705, Glendale, CA 91203 (818) 230-8380

DATE: 04/03/2018  
(Fecha)

Clerk, by V. Contreras, Deputy  
(Secretario) V. Contreras (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Garcia v. Trademark Construction Co., Inc., et al.	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
  Defendant
  Cross-Complainant
  Cross-Defendant

TRADEMARK CONSTRUCTION CO., INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS J.M.W. TRUSS AND COMPONENTS, an Arizona corporation; and DOES 1 through 50, inclusive



<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
Short Title: Garcia vs Trademark Construction Co Inc [E-FILE]	
<b>NOTICE OF CONFIRMATION OF ELECTRONIC FILING</b>	CASE NUMBER: 37-2018-00016180-CU-OE-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

**Electronic Filing Summary Data**

Electronically Submitted By: David Yeremian  
 On Behalf of: Jose Garcia  
 Transaction Number: 2464901  
 Court Received Date: 03/30/2018  
 Filed Date: 04/02/2018  
 Filed Time: 08:00 AM  
 Fee Amount Assessed: \$1,435.00  
 Case Number: 37-2018-00016180-CU-OE-CTL  
 Case Title: Garcia vs Trademark Construction Co Inc [E-FILE]  
 Location: Central  
 Case Type: Other employment  
 Case Category: Civil - Unlimited  
 Jurisdictional Amount: > 25000

**Status**

**Documents Electronically Filed/Received**

Accepted Complaint  
 Accepted Civil Case Cover Sheet  
 Accepted Original Summons

**Comments**

**Clerk's Comments:**  
**Events Scheduled**

Hearing(s)	Date	Time	Location	Department
Civil Case Management Conference	09/07/2018	10:00 AM	Central	C-74

**Electronic Filing Service Provider Information**

Service Provider: OneLegal  
 Email: support@onelegal.com

Contact Person: Customer Support  
Phone: (800) 938-8815

# Exhibit 3

POS-015

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):                  Alvin Lindsay (220236)                  David Yermian &amp; Associates, Inc.                  535 N. Brand Blvd. Suite 705                  Glendale, California 91203</p> <p>TELEPHONE NO.: 818-230-8380 FAX NO. (Optional): 818-230-0308                  E-MAIL ADDRESS (Optional): alvin@yermianlaw.com                  ATTORNEY FOR (Name): Plaintiff, Jose Garcia</p>	<p>FOR COURT USE ONLY</p> <p>CASE NUMBER: 37-2018-00016180-cu-oe-ctl</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego                  STREET ADDRESS: 330 W Broadway                  MAILING ADDRESS:                  CITY AND ZIP CODE: San Diego, 92101                  BRANCH NAME: Hall of Justice Courthouse</p>	
<p>PLAINTIFF/PETITIONER: Jose Garcia                  DEFENDANT/RESPONDENT: Trademark Construction Co., Inc., et al.</p>	
<p><b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b></p>	

TO (insert name of party being served): Trademark Construction Co., Inc. an Arizona corporation


**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: April 19, 2018

Natalia Bermudes  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt of *(to be completed by sender before mailing)*:

1.  A copy of the summons and of the complaint.
2.  Other *(specify)*:  
 Civil Case Cover Sheet  
 Notice of Case Assignment and Case Management Conference on Mandatory efile Case  
 ADR Information Packet

*(To be completed by recipient):*

Date this form is signed:

Spencer C. Skeen, Trademark Construction Co., Inc.  
(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

  
(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

# Exhibit 4



# Exhibit 5

1 Spencer C. Skeen, CA Bar No. 182216  
 spencer.skeen@ogletree.com  
 2 Nikolas T. Djordjevski, CA Bar No. 294728  
 nikolas.djordjevski@ogletree.com  
 3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
 4370 La Jolla Village Drive, Suite 990  
 4 San Diego, CA 92122  
 Telephone: 858.652.3100  
 5 Facsimile: 858.652.3101

6 Attorneys for Defendants TRADEMARK CONSTRUCTION CO.,  
 INC., and TRADEMARK CONSTRUCTION CO., INC., WHICH  
 7 WILL DO BUSINESS IN CALIFORNIA AS J.M.W. TRUSS AND  
 COMPONENTS -

8  
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 10 **FOR THE COUNTY OF SAN DIEGO**

11 JOSE GARCIA, an individual, on behalf of  
 12 himself and others similarly situated,

13 Plaintiff,

14 vs.

15 TRADEMARK CONSTRUCTION CO., INC.,  
 an Arizona corporation; TRADEMARK  
 16 CONSTRUCTION CO., INC., WHICH WILL  
 DO BUSINESS IN CALIFORNIA AS J.M.W.  
 17 TRUSS AND COMPONENTS, an Arizona  
 corporation; and DOES 1 through 50, inclusive

18 Defendants.  
 19

Case No. 37-2018-00016180-CU-OE-CTL

[Assigned for all purposes to The Honorable  
 Ronald L. Styn, Dept. C-74]

**DEFENDANTS' ANSWER TO  
 PLAINTIFF'S CLASS ACTION  
 COMPLAINT**

Action Filed: April 2, 2018  
 Trial Date: None set

21 Defendants TRADEMARK CONSTRUCTION CO., INC. and TRADEMARK  
 22 CONSTRUCTION CO., INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS J.M.W.  
 23 TRUSS AND COMPONENTS ("Defendants") respond to the Complaint filed by Plaintiff JOSE  
 24 GARCIA ("Plaintiff") as follows:

25 **DEMAND FOR ARBITRATION**

26 **DEFENDANTS DEMANDS THAT THIS MATTER BE SUBMITTED TO BINDING ARBITRATION**  
 27 **PURSUANT TO A VALID ARBITRATION AGREEMENT ENTERED INTO BETWEEN THE PARTIES.**  
 28 **DEFENDANTS WILL FILE A STIPULATION SIGNED BY THE PARTIES' REPRESENTATIVES, OR**



1 ALTERNATIVELY A PETITION TO COMPEL ARBITRATION. DEFENDANTS DO NOT, BY THE FILING OF  
2 THIS PLEADING, WAIVE THEIR RIGHTS TO COMPEL BINDING ARBITRATION.

3 **GENERAL DENIAL**

4 Under Code of Civil Procedure § 431.30, Defendants deny, generally and specifically,  
5 each and every allegation contained in the Complaint. Defendants deny Plaintiff or the  
6 employees he seeks to represent were injured and/or damaged in any sum or sums, and denies  
7 they committed the alleged acts intentionally, negligently, carelessly, recklessly, or otherwise  
8 acted unlawfully or committed any other wrongful act whatsoever.

9 Defendants further deny that by reason of any act or omission on its part, its agents,  
10 servants or employees, or any of them, Plaintiff or the employees he seeks to represent were  
11 injured or damaged in the amount alleged, or in any other manner or amount whatsoever, and  
12 denies that Defendants, their agents, servants or employees, or any of them, acted unlawfully.

13 **AFFIRMATIVE DEFENSES**

14 Defendants allege these affirmative defenses in response to the Complaint. In asserting  
15 these defenses, Defendants do not expressly or impliedly assume the burden of disproving any  
16 element of any claim for which Plaintiff bears the burden of proof as a matter of law. Defendants  
17 are informed and believe and thereon allege the following:

18 **FIRST AFFIRMATIVE DEFENSE**

19 The Complaint, and each of its allegations, fails to state facts sufficient to constitute a cause  
20 of action against Defendants.

21 **SECOND AFFIRMATIVE DEFENSE**

22 Plaintiff unreasonably delayed in filing the action and in notifying Defendants of the basis  
23 for the causes of action alleged against them, all of which unduly prejudiced Defendants in their  
24 defense of the action, thereby barring or diminishing Plaintiffs' recovery pursuant to the doctrines  
25 of waiver, estoppel, and laches.

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**THIRD AFFIRMATIVE DEFENSE**

This putative class action may not be litigated in a judicial forum because Plaintiff and the employees he seeks to represent are subject to mandatory, final, and binding arbitration agreements.

**FOURTH AFFIRMATIVE DEFENSE**

The Complaint and each of its causes of action are barred by the applicable statutes of limitations including, without limitation, those provided for in California Code of Civil Procedure §§ 338(a) and/or 340(a), California Labor Code §§ 203(b), and California Business and Professions Code § 17208.

**FIFTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the principles of accord and satisfaction.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff failed to properly exhaust the required administrative remedies.

**SEVENTH AFFIRMATIVE DEFENSE**

The claims are barred by the doctrine of res judicata and collateral estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

The claims in the Complaint are subject to set off and recoupment.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent are barred because they consented and agreed to the conduct about which they now complain.

**TENTH AFFIRMATIVE DEFENSE**

Defendants acted in good faith and had reasonable grounds for believing their actions did not violate the law.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants did not willfully, knowingly, or intentionally violate any section of the California Labor Code.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent failed to mitigate their damages.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent were provided with and compensated for productive time, non-productive time, and rest periods as required by California law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendants performed and discharged every obligation owed, except such obligations as they were legally excused from performing.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent violated their employee obligations and pertinent duties under California Labor Code §§ 2856 and 2857.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendants' method for compensating Plaintiff and the employees he seeks to represent complied with all applicable laws.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The allegations involve matters for which individual questions predominate and therefore are not appropriate claims for class or representative treatment.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The claims are neither common to, nor typical of, employees alleged to be similarly situated or similarly aggrieved to Plaintiff.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not an adequate representative of the alleged putative class members identified, as they are not similarly situated or similarly aggrieved.

**TWENTIETH AFFIRMATIVE DEFENSE**

The existence of any alleged damages involve individual questions, making class or representative action treatment improper.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to satisfy the prerequisites for class certification.

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**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Certification of a class would constitute a denial of Defendants’ due process rights in violation of the Fourteenth Amendment and the California Constitution.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent are barred, in whole or in part, to the extent they have released any or all of their individual purported causes of action against Defendants.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent are barred, in whole or in part, to the extent they have received and accepted payment of any of the amounts the now claim.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The Complaint fails, in whole or in part, because such claims and the statutory provisions upon which they are based do not give rise to private rights of action.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

This action may not be litigated on a class-wide basis because Plaintiff and the employees he seeks to represent entered into valid and enforceable class action waivers.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent are barred because they are preempted by Section 301 of the Labor Management Relations Act.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent are barred because they failed to exhaust the internal grievance procedures set forth in applicable collective bargaining agreements.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent are barred to the extent they are based on an alleged violations of an applicable Wage Order because the applicable Wage Order does not support a private right of action, and the exclusive remedy is an action before the California Labor Commissioner.

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**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent were provided with and compensated for productive time, non-productive time, and rest periods as required by California law.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent were paid all wages due on a timely basis, including all minimum and overtime wages.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay wages, including minimum and overtime wages, and failure to timely pay wages, are barred to the extent that the wages they seek to recover are *de minimis*.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay wages, including minimum and overtime wages, and failure to timely pay wages, are barred to the extent they seek to recover wages for work that was not performed for the primary benefit of Defendants.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay wages, including minimum and overtime wages, and failure to timely pay wages, are barred to the extent they seek to recover wages for work that Defendants did not suffer or permit them to perform, or that was not performed while under the direction and control of Defendants.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay wages, including minimum and overtime wages, and failure to timely pay wages, are barred to the extent they performed work without Defendants' actual or constructive knowledge.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay wages, including minimum and overtime wages, and failure to timely pay wages, are

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1 barred because Plaintiff and the employees he seeks to represent are exempt under certain sections  
2 of the Labor Code, including but not limited to, Sections 512(e) and 514.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 The claims by Plaintiff and the employees he seeks to represent that are premised on a  
5 failure to provide meal or rest periods are barred because Defendants provided meal and rest  
6 periods in accordance with the law; employees were not required to work during any meal or rest  
7 period and any failure by Plaintiff, or the employees he seeks to represent, to take a meal or rest  
8 period was due to their own election and not any acts or omissions by Defendants.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 The claims by Plaintiff and the employees he seeks to represent that are premised on a  
11 failure to provide meal or rest periods are barred to the extent they had valid written meal period  
12 waivers.

13 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

14 To the extent Plaintiff and the employees he seeks to represent seek penalties for alleged  
15 meal or rest period violations for the same working day, or for more than one meal or rest period  
16 violation in a single working day, such claims are barred because such wages and/or penalties are  
17 duplicative and improper.

18 **FORTIETH AFFIRMATIVE DEFENSE**

19 The claims by Plaintiff and the employees he seeks to represent that are premised on a  
20 failure to provide meal and rest periods will not support an award of unpaid wages, or any other  
21 recovery based on an award of unpaid wages, because an action under California Labor Code  
22 section 226.7 is not an action to recover unpaid wages. (*Kirby v. Immoos Fire Protection, Inc.*  
23 (2012) 53 Cal. 4th 1244; *Jones v. Spherion Staffing LLC* (C.D. Cal. 2012) 2012 U.S. Dist. LEXIS  
24 112396, at \*21-26.)

25 **FORTY-FIRST AFFIRMATIVE DEFENSE**

26 The meal and rest period claims fail because Plaintiff and the employees he seeks to  
27 represent were authorized and permitted to take meal and rest periods as required by the applicable  
28 Wage Order of the Industrial Welfare Commission and any other applicable laws.

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**FORTY-SECOND AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to provide meal and rest periods are barred because Plaintiff and the employees he seeks to represent are exempt under, *inter alia*, Industrial Wage Order No. 16.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to provide expense reimbursements as required by Labor Code section 2802 fail because the expenses were not reasonably necessary to incur nor required by Defendants.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to provide expense reimbursements as required by Labor Code section 2802 fail because Defendants did not know or have reason to know that such expenses were being incurred.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to provide expense reimbursements as required by Labor Code section 2802 are barred to the extent they seek to recover expenses that were not incurred for the primary benefit of Defendants.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to provide expense reimbursements as required by Labor Code section 2802 are barred to the extent that the expenses they seek to recover are *de minimis*.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to provide expense reimbursements as required by Labor Code section 2802 are barred to the extent they claim they were required to maintain tools and equipment customarily required by their particular trade or craft as set forth in Industrial Wage Order No. 16.

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**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

Any claim for penalties, interest, and attorney fees under California Labor Code § 226(e) is barred because the wage statements issued accurately reflected the information required by Labor Code § 226(a).

**FORTY-NINTH AFFIRMATIVE DEFENSE**

The claim for improper wage statements is barred because Plaintiff and the employees he seeks to represent have suffered no injury due to any allegedly improper wage statements.

**FIFTIETH AFFIRMATIVE DEFENSE**

The claim for improper wage statements is barred because Defendants did not knowingly or intentionally fail to comply with Labor Code § 226.

**FIFTY-FIRST AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on unlawful deductions under Labor Code § 221 fail because any such deductions were specifically authorized by law.

**FIFTY-SECOND AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on unlawful deductions under Labor Code § 221 fail because any such deductions were specifically authorized by the employees, including Plaintiff.

**FIFTY-THIRD AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay timely all wages due at termination are barred because there was no willful failure to pay such final wages.

**FIFTY-FOURTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay timely all wages due at termination are barred because at the time of termination Defendants had a good-faith belief, based in fact and law, that all salary and any other wages earned employees, including Plaintiff, were being paid timely and that no other wages were due or owing.

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**FIFTY-FIFTH AFFIRMATIVE DEFENSE**

The claims by Plaintiff and the employees he seeks to represent that are premised on a failure to pay timely all wages due at termination are barred because they secreted or absented themselves to avoid payment, or refused payment when fully tendered.

**FIFTY-SIXTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff and the employees he seeks to represents claims for failure to timely pay all wages due at termination are based on the alleged failure to provide meal or rest periods or pay the meal or rest-period premium, they are barred because an action under California Labor Code section 226.7 is not an action to recover unpaid wages. (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal. 4th 1244; *Ling v. PF Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242, 1261.)

**FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

Prosecution of a class or representative action under California Business and Professions Code §§ 17200 *et seq.* constitutes a denial of Defendants’ due process rights in violation of the Fourteenth Amendment to the United States Constitution and the California Constitution. In addition, the standards of liability under California’s Unfair Competition Law are unduly vague and subjective.

**FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to bring claims under California Business and Professions Code §§ 17200 *et seq.* and lacks standing to be a member of a class.

**FIFTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff and the employees he seeks to represent have suffered no injury-in-fact and have not lost money or property due to any alleged violation of California’s Unfair Competition Law.

**SIXTIETH AFFIRMATIVE DEFENSE**

The claims brought under California Business and Professions Code §§ 17200 *set seq.* are barred because there is an adequate remedy at law.

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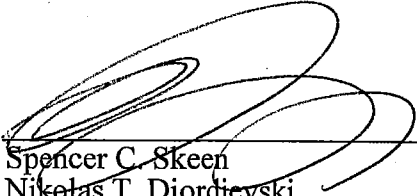
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**JURY DEMAND**

Defendants hereby demand trial by jury on all issues, if any, triable to a jury.

DATED: June 8, 2018

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By:   
Spencer C. Skeen  
Nikolas T. Djordjevski

Attorneys for Defendants TRADEMARK  
CONSTRUCTION CO., INC., and  
TRADEMARK CONSTRUCTION CO., INC.,  
WHICH WILL DO BUSINESS IN  
CALIFORNIA AS J.M.W. TRUSS AND  
COMPONENTS

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**PROOF OF SERVICE**

Jose Garcia v. Trademark Construction Co., Inc., et al.  
Case No. 37-2018-00016180-CU-OE-CTL

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Los Angeles in the office of a member of the bar of this court at whose direction the service was made. My business address is 4370 La Jolla Village Drive, Suite 990, San Diego, California 92122.

On June 8, 2018, I served the following document(s):

DEFENDANTS' ANSWER TO PLAINTIFF'S CLASS ACTION COMPLAINT

by placing  (the original)  (a true copy thereof) in a sealed envelope addressed as stated on the attached mailing list.

- BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- BY MAIL:** I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid at 4370 La Jolla Village Drive, Suite 990, San Diego, California 92122.
- BY OVERNIGHT DELIVERY:** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., Los Angeles, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.
- BY FACSIMILE** by transmitting a facsimile transmission a copy of said document(s) to the following addressee(s) at the following number(s), in accordance with:
  - the written confirmation of counsel in this action:
  - [State Court motion, opposition or reply only] in accordance with Code of Civil Procedure section 1005(b):
  - [Federal Court] in accordance with the written confirmation of counsel in this action and order of the court:
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person[s] at the e-mail addresses listed on the attached

service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- BY PERSONAL SERVICE:** I caused to be delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

Addressee(s)

David Yeremian  
 Alvin B. Lindsay  
 David Yeremian & Associates, Inc.  
 535 N. Brand Blvd., Suite 705  
 Glendale, CA 91203  
 (818) 230-8380 / Fax: (818) 230-0308  
[david@yeremianlaw.com](mailto:david@yeremianlaw.com)  
[alvin@yeremianlaw.com](mailto:alvin@yeremianlaw.com)  
 Attorneys for Plaintiff Jose Garcia

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on June 8, 2018, at San Diego, California.

Erika Schmidt

\_\_\_\_\_  
Type or Print Name

  
 \_\_\_\_\_  
 Signature

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1 Spencer C. Skeen, CA Bar No. 182216  
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2 Nikolas T. Djordjevski, CA Bar No. 294728  
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4 San Diego, CA 92122  
Telephone: 858.652.3100  
5 Facsimile: 858.652.3101

6 Attorneys for Defendants TRADEMARK  
CONSTRUCTION CO., INC., and TRADEMARK  
7 CONSTRUCTION CO., INC., WHICH WILL DO  
BUSINESS IN CALIFORNIA AS J.M.W. TRUSS AND  
8 COMPONENTS

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF SAN DIEGO

12 JOSE GARCIA, an individual, on behalf  
of himself and others similarly situated,

13 Plaintiff,

14 vs.

15 TRADEMARK CONSTRUCTION CO.,  
16 INC., an Arizona corporation;  
TRADEMARK CONSTRUCTION CO.,  
17 INC., WHICH WILL DO BUSINESS IN  
CALIFORNIA AS J.M.W. TRUSS AND  
18 COMPONENTS, an Arizona corporation;  
and DOES 1 through 50, inclusive

19 Defendant.  
20

Case No. '18CV1214 JLS WVG

**DECLARATION OF RICHARD D.  
WILSON IN SUPPORT OF  
DEFENDANTS' NOTICE OF  
REMOVAL**

[28 U.S.C. § 1332 (d) (Class Action  
Fairness Act)]

[Filed concurrently with Notice of  
Removal; Civil Cover Sheet; Notice of  
Parties with Financial Interest; and  
Declaration of Nikolas T. Djordjevski]

RDW Declaration  
iso Removal

Case No.

DECLARATION OF RICHARD D. WILSON

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**DECLARATION OF RICHARD D. WILSON**

I, Richard D. Wilson, declare as follows:

1. I am the President and an owner of Trademark Construction Co., Inc. (“Trademark”) and Trademark Construction Co., Inc., which will do business in California as J.M.W. Truss and Components (“JMW”). I am familiar with the corporate records of both Trademark and JMW. I have knowledge, possession, and/or control of, among other things, various personnel data of JMW’s employees as described in this declaration. In preparing this declaration, I directed the review of personnel data for the company’s hourly construction employees in California. The facts stated herein are known to me based on my personal knowledge and on JMW’s business records. Entries are made on those records in a timely manner by people with knowledge of the information being entered, and it is the regular practice of JMW to maintain such records. If called as a witness, I could and would competently testify to the following.

2. Both Trademark Construction Co., Inc. and JMW are corporations organized under the laws of Arizona with their principal places of business in Yuma, Arizona. Their headquarters have always been in Arizona and their executive management have directed, controlled, and coordinated their activities from there. Neither JMW nor Trademark Construction Co., Inc. have been organized under the laws of California nor had their principal places of business there.

3. Between April 2, 2014 and the present, JMW has employed individuals in California as non-exempt construction employees who are also residents and citizens of Mexico who work in California pursuant to work visas.

4. Although JMW operates a business that includes construction and framing services in California, its primary business is the engineering, design, manufacture, and sale of wood truss components for building and construction. All such business is performed from Yuma, Arizona.

///

RDW Declaration  
iso Removal





1 Spencer C. Skeen, CA Bar No. 182216  
 spencer.skeen@ogletree.com  
 2 Nikolas T. Djordjevski, CA Bar No. 294728  
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 3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
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 5 Facsimile: 858.652.3101

6 Attorneys for Defendants TRADEMARK  
 CONSTRUCTION CO., INC., and TRADEMARK  
 7 CONSTRUCTION CO., INC., WHICH WILL DO  
 BUSINESS IN CALIFORNIA AS J.M.W. TRUSS AND  
 8 COMPONENTS

9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF SAN DIEGO**

11  
 12 JOSE GARCIA, an individual, on behalf  
 of himself and others similarly situated,

13 Plaintiff,

14 vs.

15 TRADEMARK CONSTRUCTION CO.,  
 16 INC., an Arizona corporation;  
 TRADEMARK CONSTRUCTION CO.,  
 17 INC., WHICH WILL DO BUSINESS IN  
 CALIFORNIA AS J.M.W. TRUSS AND  
 18 COMPONENTS, an Arizona corporation;  
 and DOES 1 through 50, inclusive

19 Defendant.  
 20

Case No. '18CV1214 JLS WVG

**DECLARATION OF NIKOLAS T.  
 DJORDJEVSKI IN SUPPORT OF  
 DEFENDANTS' NOTICE OF  
 REMOVAL**

[28 U.S.C. § 1332 (d) (Class Action  
 Fairness Act)]

[Filed concurrently with Notice of  
 Removal; Civil Cover Sheet; Notice of  
 Parties with Financial Interest; and  
 Declaration of Richard D. Wilson]

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**DECLARATION OF NIKOLAS T. DJORDJEVSKI**

I, Nikolas T. Djordjevski, declare as follows:

1. I am an attorney at law duly licensed and admitted to the United States District Court for the Southern District of California. I am an associate with the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., counsel for Defendants. I am familiar with the facts and circumstances reflected below and surrounding this litigation. If called as witness, I could and would competently testify to the following:

2. On or about April 2, 2018, Plaintiff filed his Complaint in the San Diego County Superior Court, Case No. 37-2018-00016180-CU-OE-CTL.

3. On or about April 19, 2018, Plaintiff, by way of his counsel, provided my office with a Notice and Acknowledgement of Receipt for both Defendant Trademark Construction Co., Inc. and Trademark Construction Co., Inc., DBA J.M.W. Truss and Components.

4. Defendants filed their Answer to Plaintiff's Complaint on June 8, 2018 with the San Diego County Superior Court.

5. Attached as Exhibits 1 – 5 are true and accurate copies of all process, pleadings, and orders provided to Defendants.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on June 8, 2018 in San Diego, California.

/s/ Nikolas T. Djordjevski  
Nikolas T. Djordjevski

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Trademark Construction Facing Former Employee's Wage and Hour Lawsuit](#)

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