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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF KERN
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14 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
15 **rel. EDMUND G. BROWN JR., Attorney General of**
the State of California,

16 Plaintiff,

17 v.

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19 **CHARLES EVLETH CONSTRUCTION, INC., a**
20 **California Corporation, CHARLES W. EVLETH,**
21 **aka "Charles Evleth", "Charles Evleth III" and**
"Charles Eveleth" an individual, KATHLEEN
JANETTE EVLETH, an individual, and DOES I
through 100, inclusive,

22 Defendants.
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Case No.

COMPLAINT FOR
INJUNCTIVE RELIEF,
RESTITUTION AND CIVIL
PENALTIES
(Business & Professions Code
sections 17200 et seq.)

26 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., as
27 Attorney General of the State of California, is informed and believes, and on such information
28 and belief alleges:

1. **INTRODUCTION**

2. 1. This action is brought by Plaintiff, the People of the State of California, ex rel.
3 Edmund G. Brown Jr., Attorney General of the State of California, against Defendant Charles
4 Evleth Construction, Inc. (hereafter Evleth), a California general contractor primarily performing
5 drywall installation, to stop Evleth from engaging in unfair competition. Evleth has engaged in a
6 pattern and practice of violating state law including: paying employees cash without withholding
7 and paying state income tax, without withholding Social Security and Medicare contributions,
8 without withholding and paying state unemployment insurance contributions, and without
9 withholding and paying contributions to the state disability fund; failing to pay overtime pay;
10 failing to provide all employees with an itemized written statement reflecting their gross wages,
11 number of hours worked, piece-rate earnings, the applicable piece rate, all deductions taken, net
12 wage earned, the inclusive dates of the pay period, the name of the employee and his or her social
13 security number, the hourly rate in effect during the pay period, and the number of hours the
14 employee worked; failing to provide employees with tools necessary to perform the work they
15 were hired to perform; failing to pay employees the full amount owed; failing to provide
16 employees with rest periods, and failing to provide all employees with workers compensation
17 benefits for injuries occurring on the job. Through this conduct, Evleth has illegally lowered its
18 cost of doing business, failed to pay state income and employment-related taxes and failed to
19 provide workers' compensation insurance. Evleth's unlawful, unfair and fraudulent conduct not
20 only harms law-abiding construction companies, but also injures its employees and the taxpayers
21 of California. This action seeks to enjoin Evleth from engaging in unfair competition and to pay
22 restitution and applicable penalties. The Attorney General seeks a prejudgment writ of
23 attachment to prevent Defendant Charles Evleth Construction, Inc. from continuing to withhold
24 the full amount of wages due by law, which Charles Evleth Construction, Inc. implicitly agreed
25 to pay as part of its obligations as an employer.

26 **PARTIES**

27 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California
28 and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is

1 complaint as if set fully herein.

2 10. Defendants have violated and continue to violate Business & Professions Code,
3 section 17200, et seq. by engaging in acts of unfair competition including, but not limited to, the
4 following:

5 a. failing to pay employees overtime pay in violation of Labor Code section 510
6 and applicable Industrial Welfare Commission Orders, including but not limited to Industrial
7 Welfare Commission Wage Order No. 16, subdivision 3;

8 b. failing to provide employees with a 10 minute break during each four hours.
9 Each day an employer fails to provide a required break it is liable for an additional hour pay.
10 (Labor Code, section 226.7; Wage Order 16, subd. (10).)

11 c. failing to pay employees all wages earned and owing (Labor Code sections
12 201, 202, and 203.) Evleth, through a supervisor, collected and received part of wages already
13 owed to employees, in contravention of Labor Code, sections 221 and 223. The Legislature
14 enacted sections 221 and 223 "to prohibit secret deductions of 'kickbacks.'"

15 d. failing to provide tools necessary to perform a job unless the worker earns
16 twice the minimum wage. (Industrial Welfare Comm'n order 16, subd. (8)(b).)

17 e. failing to provide all employees with workers compensation coverage.
18 (Labor Code, section 3700 et seq.)

19 f. failing to provide employees with an itemized written statement reflecting
20 their gross wages, the number of hours the employee worked, piece rate earnings, the applicable
21 piece rate, all deductions taken, net wage earned, the inclusive dates of the pay period, the name
22 of the employee and his or her social security number, and the hourly rate in effect during the pay
23 period, in violation of Labor Code section 226;

24 g. paying employees cash without withholding and paying state income tax
25 contributions, state unemployment insurance contributions, and contributions to the state
26 disability fund in violation of Unemployment Insurance Code sections 976, 986, 987, 1110, and
27 13020;

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1 11. Through Evleth's unfair, fraudulent and unlawful practices set forth in paragraph
2 10(a) through 10(g), Evleth engaged in unfair competition, and an injunction is proper.

3 12. Through Evleth's unfair, fraudulent and unlawful practices set forth in paragraph
4 10(a) through 10(e), Evleth's employees during the past four years suffered substantial monetary
5 losses and are entitled to restitution for the losses in an amount not less than \$3,136,000.00. The
6 losses include but are not limited to:

- 7 (a) the wages not paid to workers for work performed;
- 8 (b) time-and-one-half pay for overtime worked;
- 9 (c) premium or "penalty" pay as expressed in Wage Order 16 for each occasion
10 an employee was not given a rest period;
- 11 (d) payment to employees for tools necessary to perform the work they were
12 hired to perform;
- 13 (e) reimbursement for expenses and lost wages after an employee sustained
14 injury on the job.

15 13. Through Evleth's unfair, fraudulent and unlawful practices set forth in paragraph
16 10 (a) through 10 (g), Evleth engaged in unfair competition on at least 1,200 occasions.

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, The People pray for the following relief:

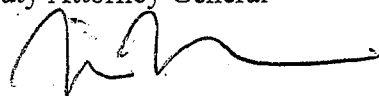
- 20 1. The Charles Evleth Construction, Inc. its successors, agents, representatives,
21 employees and all persons acting in concert with defendant be enjoined and restrained from
22 engaging in unfair competition as defined in Business and Professions Code section 17200,
23 including but not limited to the types of acts or practices alleged in the foregoing complaint;
- 24 2. Defendants pay restitution to employees of Evleth during the past four years for
25 wages lost through Evleth's violations of the law and other amounts lost as expressed in this
26 complaint in an amount not less than \$3,136,000.00;
- 27 3. Defendants pay civil penalties as for each violation of Business and Professions
28 Code section 17200 as set forth in the complaint for the amount not less than \$1,000,000.00;

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- 4. The Court retains jurisdiction in this matter;
- 5. Defendants be required to disclose any and all information and records needed to enforce this judgment and/or injunction;
- 6. The People recover the costs of investigation and costs of the action; and
- 7. Such other and further relief as the Court deems appropriate and just.

DATED: 01/16/09

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