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Attorney General of California
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7 
8 *Attorneys for Plaintiff*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF KERN METROPOLITAN DIVISION

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13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA, ex rel. EDMUND G.**
BROWN JR., Attorney General of the State
of California,

15 Plaintiff,

16 v.

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18 **CHARLES EVLETH CONSTRUCTION,**
INC., A California Corporation, CHARLES
19 **W. EVLETH, aka "Charles Evleth",**
"Charles Evleth III" and "Charles Eveleth"
20 **an individual, and DOES 1 through 100,**
inclusive,,

21 Defendant.

Case No. S-1500-CV-266199, WDP

STIPULATION FOR SETTLEMENT
AND [proposed] ORDER THEREON

Judge: The Honorable William D.
Palmer

Trial Date: Not Yet Set

Action Filed: January 22, 2009

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23 IT IS HEREBY STIPULATED by and among Plaintiff, the People of the State of
24 California ("People" or "Plaintiff"), through its attorney, Attorney General Edmund G. Brown Jr.,
25 by Deputy Attorney General Timothy J. Kolesnikow, Defendant Charles Evleth Construction,
26 Inc. ("Defendant") and its officers and agents Charles Evleth and Kathleen Evleth, through their
27 attorneys, that:
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1 1. The Final Judgment and Permanent Injunction (hereafter "Judgment"), a
2 copy of which is attached hereto as Exhibit 1, shall be entered by the Clerk upon payment by
3 Defendants of the amounts set forth below in paragraphs 5 through 8;

4 2. The Judgment may be signed by a judge, commissioner or judge pro tem
5 of the Kern County Superior Court;

6 3. The Judgment resolves only the matters specifically described in the civil
7 complaint filed in Kern County Superior Court Case number S-1500-CV-266199 WDP;

8 4. Defendant agrees to make all payments set forth below (totalling
9 \$350,000) within 30 days of the entry of the Order on this Stipulation, and agree that Plaintiff or
10 his agents may negotiate all checks prior to entry of any Judgment in this matter;

11 5. Pursuant to California Business and Professions Code §17203, Defendant
12 shall pay TWO HUNDRED THOUSAND DOLLARS (\$200,000) as restitution to those
13 employees/former employees who claim to be owed unpaid wages and thereby suffered pecuniary
14 losses because of Defendants' violation of Business and Professions Code §17200 et. seq. as
15 described in the Complaint. Defendant shall, by means of certified check payable to a restitution
16 administrator designated by Plaintiff, make payment within 30 days of the entry of the Order on
17 this Stipulation.

18 a. Plaintiff, in its discretion, may determine the eligibility of any
19 individual for restitution, pay restitution directly to eligible individuals in accordance with any
20 reasonable plan or method, including restitution to all eligible individuals, or to groups of eligible
21 individuals reasonably selected by Plaintiff in its discretion, on a full, pro rata, or differential
22 basis, and distribute any remaining restitution as additional civil penalties after payment of
23 restitution as set forth in this paragraph.

24 b. So that Plaintiff may determine which employees/former employees
25 are entitled to restitution, and in what amount, Defendant shall make a good faith effort to
26 cooperate with Plaintiff in determining which employees/former employees claim to be entitled to
27 restitution and how best to locate those employees to effect payment to the employees.
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1 c. Defendant shall, in addition to the amount of \$200,000 in
2 restitution, pay to the restitution administrator the amount of \$25,000 for estimated employer-
3 share payroll taxes (including FICA, FUTA, Medicare, California State Unemployment and
4 Employment Training Taxes). Upon conclusion of administration, the restitution administrator
5 shall not refund to Defendant any amount of the \$25,000 which is not used towards employer-
6 side payroll taxes, but shall pay any remaining amount to the People of the State of California,
7 through the Attorney General's office, which amounts shall be allowed as further civil penalties.
8 If the estimated taxes are more than \$25,000 the amount above \$25,000 shall be deducted from
9 the amount of civil penalties set forth in paragraph 6, below.

10 6. Pursuant to California Business and Professions Code §17206,
11 Defendants shall pay SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00) as and for civil
12 penalties. Defendants shall, by means of certified check payable to the People of the State of
13 California, make payment within 30 days of the entry of the Order on this Stipulation.

14 7. Defendant shall pay TWENTY FIVE THOUSAND DOLLARS
15 (\$25,000.00) as and for the fees and costs of a restitution administrator designated by the
16 Attorney General's Office. Defendant shall, by means of certified check payable to the restitution
17 administrator designated by the Plaintiff, make payment within 30 days of the entry of the Order
18 on this Stipulation. If the total costs of such administration is less than \$25,000, the remaining
19 balance shall be paid by the restitution administrator to the People of the State of California as
20 civil penalties, in addition to the \$75,000 in civil penalties as set forth in ¶6.

21 8. Defendant shall pay FIFTY THOUSAND DOLLARS (\$50,000.00) as
22 and for attorney fees and costs related to the investigation and the prosecution of this matter.
23 Defendant shall, by means of certified check payable to the California Attorney General, make
24 payment within 30 days of the entry of the Order on this Stipulation.

25 9. The checks described in paragraphs 5 through 8, above, shall be delivered
26 to Plaintiff at the following address: California Attorney General's Office, 300 South Spring
27 Street, Suite 1702, Los Angeles California 90013, Attn: Deputy Attorney General Timothy J.
28 Kolesnikow.

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10. After the checks described in paragraphs 5 through 8 have been paid to Plaintiff, but before entry of judgment, Plaintiff shall file a request for dismissal of Does and individual Defendants Charles Evleth and Kathleen Evleth. Upon dismissal, Plaintiff and individual Defendants Charles Evleth and Kathleen Evleth are to bear their own costs and attorney fees as to claims alleged against Charles Evleth and Kathleen Evleth individually.

11. Defendant admits it at times failed to pay overtime to employees who were paid "by piece," in violation of Labor Code section 510 and Industrial Welfare Commission Order No. 16. Defendant admits that it at times failed to keep records of hours worked by employees who were paid "by piece," and to provide them with an accurate itemized pay statement, in violation of Labor Code section 226 and Industrial Welfare Commission Order No. 16.

12. This Stipulation for Entry of Final Judgment and Permanent Injunction may be executed in counterparts with the same force and effect as if executed in one complete document by all parties.

EDMUND G. BROWN JR.
Attorney General of California
MARK J. BRECKLER
Senior Assistant Attorney General
JON M. ICHINAGA
Supervising Deputy Attorney General

DATE: _____

By: TIMOTHY J. KOLESNIKOW
Deputy Attorney General
Attorneys for Plaintiff

KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIEB & KIMBALL, LLP

DATE: _____

BARRY L. GOLDNER, Attorney for Defendants

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CHARLES EVLETH CONSTRUCTION, INC.,
a California Corporation

DATE: _____

By: Charles Evleth, officer

ORDER

Pursuant to the foregoing stipulation, and good cause appearing thereto, IT IS
HEREBY ORDERED that the case is stayed, and that no later than 35 days after entry of the
instant Order, Plaintiff shall file a declaration notifying the Court regarding the status of payments
made pursuant to the instant stipulation and Order.

IT IS FURTHER ORDERED THAT, upon Plaintiff's filing a declaration stating that
all payments have been made as set forth in the above stipulation, Judgment in the form attached
hereto as Exhibit "1" shall be entered, as set forth in the above stipulation of the parties.

DATE: _____

Hon. Judge William D. Palmer,
Judge of the Superior Court

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Exhibit "1"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN, METROPOLITAN DIVISION

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. EDMUND G. BROWN JR., Attorney General of the State of California,

Plaintiff,

v.

CHARLES EVLETH CONSTRUCTION, INC., A California Corporation,

Defendant.

Case No. S-1500-CV-266199 WDP

[proposed] FINAL JUDGMENT AND PERMANENT INJUNCTION

Judge: The Honorable William D. Palmer

Plaintiff, the People of the State of California ("People" or "Plaintiff"), through its Attorney General Edmund G. Brown Jr., by Deputy Attorneys General Timothy J. Kolesnikow, and Defendant Charles Evleth Construction Inc., ("Defendant") through its counsel, having stipulated that this Final Judgment and Permanent Injunction (hereafter "Judgment") may be entered, with each party waiving the right to an adjudicative trial, without the taking of evidence on any issue of fact or law, or any factual finding by the Court or any admission or denial of wrongdoing or guilt except as expressly set forth below;

Now, therefore, in order to resolve this case, S-1500-CV-266199 WDP, and only this case,

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Exh. 1
p-1

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the allegations and subject matter of the People’s Complaint filed in this action, and the parties thereto; venue is proper in this County; and this Court has jurisdiction to enter this Judgment.

2. Pursuant to Business and Professions Code §17203, Defendant and its agents, employees, former employees, officers, former officers, directors, former directors, representatives, successors, partners, assigns, and those acting in concert or in participation with them, are enjoined from committing, recommending, or counseling any person or legal entity to perform any of the following acts:

a Failing to pay employees overtime pay required by contract or by law (Labor Code section 510 and applicable Industrial Welfare Commission Orders including but not limited to Industrial Welfare Commission Wage Order No. 16). Defendant admits it at times failed to pay overtime to employees who were paid “by piece.”

b. Failing to provide employees with an accurate itemized written statement reflecting their gross wages, the number of hours the employee worked, rate of pay, piece-rates, all deductions taken, net wage earned, the inclusive dates of the pay period, the name of the employee and his or her social security number, and the hourly rate in effect during the pay period, in violation of Labor Code section 226. Defendant admits it at times failed to keep records of hours worked by employees who were paid “by piece.”

c. Failing to pay the California state minimum wage. (Labor Code §1197; Industrial Welfare Commission Wage Order 16, subd. 4).

d. Requiring employees to bring and use their own hand tools without being paid at least twice the minimum wage. (Industrial Welfare Commission Wage Order 16, subd. (8)(b)).

e. Suffering or permitting supervisors to take kickbacks from employees in exchange for the employees being allowed to work. (Labor Code §§ 221, 223; Industrial Welfare Commission Wage Order 16, subd. 7).

Exh. 1
p. 2

1 f. Suffering or permitting employees to pay other, "off the books"
2 workers' wages, which "off the books" workers are otherwise paid nothing, or less than the
3 minimum wage, by Defendant (i.e., permitting splitting of paychecks in cash with other workers).
4 (Labor Code §§ 221, 223; Industrial Welfare Commission Wage Order 16, subd. 7).

5 3. The payments required pursuant to paragraphs 5-8 of the Stipulation For
6 Entry of Judgment And Order Thereon are not dischargeable nor subject to any reduction in
7 bankruptcy.

8 4. Payment having been made as set forth in the Stipulation For Entry of
9 Judgment and Order Thereon, Defendants' employees, officers, and directors, as well as
10 Defendants, are deemed to have satisfied all requirements for monetary payments for any matters
11 actually alleged in the Complaint.

12 5. The Court retains jurisdiction as the ends of justice may require for the
13 purpose of enabling any party to this Judgment to apply to the Court at any time for such further
14 orders and directions as may be necessary or appropriate (a) for the construction or carrying out
15 of this Final Judgment and Permanent Injunction and/or the Stipulation For Entry of Judgment
16 And Order Thereon; (b) for Plaintiff to apply at any time for enforcement of any provision of this
17 Final Judgment and Permanent Injunction and/or the Stipulation For Entry of Judgment And
18 Order Thereon; (c) for modification of the injunctive provisions of this Judgment and Permanent
19 Injunction; and (d) for punishment of any violations of this Judgment and Permanent Injunction
20 and/or the Stipulation For Entry of Judgment And Order Thereon.

21 6. Defendants shall provide, within twenty (20) days of receipt of a request,
22 information requested by Plaintiff for the purpose of enabling Plaintiff to determine compliance
23 with the provisions of this Judgment and/or the Stipulation For Entry of Judgment and Order
24 Thereon.

25 7. Individual Defendants Charles W. Evleth and Kathleen Janette Evleth are
26 dismissed with prejudice from the action, with all parties to bear their own fees and costs.

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Exh. 7
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8. The clerk shall enter this Final Judgment and Permanent Injunction forthwith, but only after Plaintiff informs the Court that Defendants have made all payments specified in the Stipulation For Entry of Judgment and Order Thereon.

DATE: _____

Hon. Judge William D. Palmer,
Judge of the Kern County Superior Court

Dated: February ___, 2010

Prepared by:

EDMUND G. BROWN JR.
Attorney General of California
JON M. ICHINAGA
Supervising Deputy Attorney General

TIMOTHY J. KOLESNIKOW
Deputy Attorney General
Attorneys for Plaintiff

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Exh 1
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