

**UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**I (a) PLAINTIFFS** (Check box if you are representing yourself )  
Helix Electric, Inc.

**DEFENDANTS**  
Division of Labor Standards Enforcement, an agency of the State of California; Department of Industrial Relations, an agency of the State of California; Donna Dell, an individual in her capacity as Labor Commissioner of the State of California; John Rea, an individual in his capacity as Acting Director of the Department of Industrial Relations of the State of California; County of Sacramento, Public Works Compliance Program  
County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

**(b)** County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

**(c)** Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  
Richard M. Freeman / Matthew S. McConnell  
Sheppard Mullin Richter & Hampton  
12544 High Bluff Drive, Suite 300  
San Diego, CA 92130 (858) 720-8900

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

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

**III. CITIZENSHIP OF PRINCIPAL PARTIES** - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. 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 (specify):  6 Multi District Litigation  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check 'Yes' only if demanded in complaint.)

Declaratory/

**CLASS ACTION** under F.R.C.P. 23:  Yes  No

**MONEY DEMANDED IN COMPLAINT: \$** Injunctive Relief

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violation of Equal Protection Clause. Preemption under 29 USC Section 1441, et seq. Plaintiffs seek declaratory and injunctive relief from purported joint labor-management committee's request for employee addresses pursuant to California Labor Code Section 1776(e).

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE / PENALTY</b>	<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities /Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 SC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 892 Economic Stabilization Act	<b>REAL PROPERTY</b>	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> 865 RS(405(g))
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 240 Torts to Land				<b>FEDERAL TAX SUITS</b>
<input checked="" type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_.

# UNITED STATES DISTRICT COURT

Eastern District District of California

Helix Electric, Inc.

## SUMMONS IN A CIVIL CASE

V.

Division of Labor Standards Enforcement, et al.,

CASE NUMBER:

TO: (Name and address of Defendant)

Division of Labor Standards Enforcement, an agency of the State of California; Department of Industrial Relations, an agency of the State of California; Donna Dell, an individual in her capacity as Labor Commissioner of the State of California; John Rea, an individual in his capacity as Acting Director of the Department of Industrial Relations of the State of California; County of Sacramento, Public Works Compliance Program

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard M. Freeman  
Matthew S. McConnell  
Sheppard Mullin Richter & Hampton  
12544 High Bluff Drive, Suite 300  
San Diego, CA 92130

an answer to the complaint which is served on you with this summons, within 20 days days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
NAME OF SERVER ( <i>PRINT</i> )	TITLE

*Check one box below to indicate appropriate method of service*

- Served personally upon the defendant. Place where \_\_\_\_\_  
\_\_\_\_\_
  
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were \_\_\_\_\_
  
- Returned \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL
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**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date
Signature of Server

\_\_\_\_\_  
*Address of Server*

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
RICHARD M. FREEMAN, Cal. Bar No. 61178  
3 MATTHEW S. MCCONNELL, Cal. Bar No. 209672  
12544 High Bluff Drive, Suite 300  
4 San Diego, California 92130-3051  
Telephone: 858-720-8900  
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6 Attorneys for Plaintiff  
HELIX ELECTRIC, INC.  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 HELIX ELECTRIC, INC.  
11 Plaintiff,

12 v.

13 DIVISION OF LABOR STANDARDS  
14 ENFORCEMENT, an agency of the State  
of California; DEPARTMENT OF  
15 INDUSTRIAL RELATIONS, an agency of  
the State of California; DONNA DELL, an  
16 individual in her capacity as Labor  
Commissioner of the State of California;  
17 JOHN REA, an individual in his capacity  
as Acting Director of the Department of  
18 Industrial Relations of the State of  
California; COUNTY OF  
19 SACRAMENTO, PUBLIC WORKS  
COMPLIANCE PROGRAM,  
20 Defendants.  
21

CASE NO. \_\_\_\_\_

**COMPLAINT FOR:**

- (1) DECLARATORY RELIEF; AND**
  - (2) INJUNCTIVE RELIEF**
- DEMAND FOR JURY TRIAL**
- TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION REQUESTED**

1 Plaintiff Helix Electric, Inc. ("Helix") alleges as follows:  
2

3 **JURISDICTION AND VENUE**

4 1. Jurisdiction of this action is conferred on this United States District  
5 Court by the provisions of 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3)  
6 and (a)(4), 29 U.S.C. § 141, et seq., and 28 U.S.C. § 2201-2202, as this action arises under  
7 the Constitution and other laws of the United States of America, is to seek redress against  
8 persons acting under color of state law, to secure a declaration of rights concerning the  
9 unconstitutional application of California Labor Code § 1776(e), to secure a declaration of  
10 rights concerning the preemption of California Labor Code § 1776(e), and to restrain and  
11 enjoin defendants from an unconstitutional and preempted application of California Labor  
12 Code § 1776(e).  
13

14 2. Venue lies in this judicial district under 28 U.S.C. § 1391(b) because,  
15 among other things, this is the judicial district in which a substantial part of the events or  
16 omissions giving rise to Helix's claim occurred and defendants are residents of or maintain  
17 official offices and places of business within this judicial district.  
18

19 **THE PARTIES**

20 3. Plaintiff Helix Electric, Inc. is and at all relevant times herein was a  
21 corporation organized and existing under the laws of the State of California and authorized  
22 to do business in the State of California, with its principal place of business in the County  
23 of San Diego, State of California. Helix is the holder of Contractor State License Board  
24 License No. 483309.  
25

26 4. Helix is informed and believes and thereon alleges that defendant  
27 Donna Dell is the Labor Commissioner of the State of California and as such is a public  
28 officer of the State of California responsible for enforcement of the state's wage and hour

1 laws including prevailing wage laws, California Labor Code §§ 1720-1815. Defendant  
2 Donna Dell is sued herein in her official capacity and is a "person" amenable to suit within  
3 the meaning of 42 U.S.C. § 1983.  
4

5           5. Helix is informed and believes and thereon alleges that defendant  
6 John Rea is the Acting Director of the Department of Industrial Relations State of  
7 California and as such is the public officer of the State of California responsible for the  
8 overall interpretation and enforcement of the State of California's wage and hour laws  
9 including the prevailing wage laws. Defendant John Rea is sued herein in his official  
10 capacity and is a "person" amenable to suit within the meaning of 42 U.S.C. § 1983.  
11

12           6. Helix is informed and believes and thereon alleges that defendant  
13 Department of Industrial Relations ("Department") is, and at all times herein mentioned  
14 was, an agency of the State of California.  
15

16           7. Helix is informed and believes and thereon alleges that defendant  
17 Division of Labor Standards Enforcement ("DLSE") is, and at all times mentioned herein  
18 was, a subdivision of the Department and an agency of the State of California.  
19

20           8. Helix is informed and believes and thereon alleges that defendant  
21 County of Sacramento ("County") is, and at all times mentioned herein was, a political  
22 subdivision of the State of California.  
23

24           9. Helix is informed and believes and thereon alleges that defendant  
25 Public Works Compliance Program ("PWCP") is, and at all times mentioned herein was,  
26 an entity of unknown origin located and operating within the State of California, County of  
27 Sacramento.  
28





1           16. Labor Code section 1776(e) contains an exception to the  
2 "obliteration" obligation with respect to joint labor-management committees established  
3 pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. § 175a).  
4 Where a joint labor-management committee requests certified payroll records, the  
5 awarding body is only required to "obliterate" the names and social security numbers of  
6 the employees.

7  
8           17. Pursuant to 29 U.S.C. § 175a, joint labor-management committees  
9 are:

11           "established for the purpose of improving labor management  
12 relationships, job security, organizational effectiveness,  
13 enhancing economic development or involving workers in  
14 decisions affecting their jobs including improving  
15 communication with respect to subjects of mutual interest and  
16 concern."

17           18. Helix is informed and believes that PWCP is not a labor management  
18 committee within the meaning of the federal Labor Management Cooperation Act of 1978  
19 (29 U.S.C. § 175a). Helix is informed and believes that PWCP is not registered with the  
20 DOL and has no record of receiving any approval from the DOL or any other federal  
21 agency as a joint labor management committee. Instead, Helix is informed and believes  
22 that PWCP is a union sponsored entity whose purpose is to investigate and harass non-  
23 union contractors in an effort to aid union organizing and reduce competition by non-union  
24 contractors. Helix is further informed and believes that PWCP's request for Helix's  
25 certified payroll records is part of an organized attack by the IBEW against Helix based on  
26 the fact that Helix is a non-union contractor who performs substantial amounts of public  
27 works.

28           19. In or about October, 2005, Helix discovered that PWCP was seeking  
the addresses of its employees. Through its counsel, Helix sent a letter to the County

1 contesting the validity of PWCP's status as a joint-labor management committee and  
2 requesting that the County refuse to provide the employee addresses.

3  
4 20. On or about October 19, 2005, counsel for the County sent a letter to  
5 Helix in which it indicated "unless presented with good cause to do otherwise, within  
6 fourteen days, I intend to recommend to County staff that they comply with PWCP's  
7 requests."

8  
9 21. During subsequent discussions with the County, Helix was informed  
10 by the County that the only way to prevent the release of the employee addresses was an  
11 order from a court.

12  
13 22. On or about October 31, 2005, Helix informed the County that it  
14 would be filing a motion for a temporary restraining order to prevent disclosure of the  
15 employee addresses.

16  
17 23. Helix is informed and believes that absent an immediate court order,  
18 the County will divulge the addresses of Helix's employees to the PWCP.

19  
20 **FIRST CLAIM FOR RELIEF**

21 (Declaratory Relief)

22 24. Helix realleges and incorporates by reference herein each and every  
23 allegation contained in paragraphs 1 through 24 as though fully set forth herein.

24  
25 25. An actual controversy now exists between Helix and defendants in  
26 that Helix contends that: (1) PWCP is not a legitimate joint-labor management committee  
27 within the meaning of 29 U.S.C. § 175a; (2) even assuming *arguendo* that PWCP was a  
28 legitimate joint-labor management committee, its conduct and purpose in seeking Helix's

1 employees' addresses is well outside the scope of the permissible activities of a joint labor-  
2 management committee pursuant to 29 U.S.C. § 175a; (3) Labor Code section 1776(e) is  
3 preempted by the National Labor Relations Act pursuant to Lockyer v. Chamber of  
4 Commerce, 411 F.3d 973 (9<sup>th</sup> Cir. 2005); and (4) Labor Code section 1776(e) violates the  
5 Equal Protection Clause of the United States Constitution.

6  
7 26. Helix seeks a declaration that:

8  
9 a. PWCP is not a legitimate joint-labor management committee  
10 within the meaning of 29 U.S.C. § 175a and is therefore not entitled to employee addresses  
11 pursuant to Labor Code section 1776(e).

12  
13 b. PWCP's request for Helix's employees' addresses is not within  
14 the scope of permissible activities performed by joint labor-management committees  
15 pursuant to 29 U.S.C. § 175a (set forth above in paragraph 18) and PWCP therefore is not  
16 entitled to employee addresses pursuant to Labor Code section 1776(e) even assuming  
17 *arguendo* that PWCP is in fact a legitimate joint labor-management committee.

18  
19 c. By expressly authorizing joint labor-management committees  
20 to receive employee addresses, Labor Code section 1776(e) is preempted by the National  
21 Labor Relations Act (under both the Garmon and Machinists doctrines) because it: (1)  
22 impermissibly seeks to interfere "with the National Labor Relations Board's interpretation  
23 and active enforcement of the integrated scheme of regulation established by the NLRA,"  
24 and (2) by giving union groups greater access to employer confidential information than  
25 what is permitted under the National Labor Relations Act, Labor Code section 1776(e)  
26 "runs roughshod over the delicate balance between labor unions and employers as  
27 mandated by Congress through the National Labor Relations Act." See Lockyer v.  
28 Chamber of Commerce, 411 F.3d 973, 985-989 (9<sup>th</sup> Cir. 2005); Technology Service

1 Solutions, 332 NLRB No. 100, slip op. at 2-3 (2000) (an employer has no statutory  
2 obligation to provide the addresses of its employees to a union wishing to organize them  
3 absent a pending election petition, an obligation to remedy its unfair labor practices, or a  
4 determination that the union has no reasonable alternative means of access).

5  
6 d. Labor Code section 1776(e)'s express authorization for joint  
7 labor-management committees to receive employee addresses is a violation of the Equal  
8 Protection Clause because it discriminates on the basis of union versus non-union by  
9 giving a special preference to union affiliated groups and is therefore unconstitutional.

10  
11 27. Helix is informed and believes, and thereon alleges, that defendants  
12 deny or dispute said allegations, and instead contend that Labor Code section 1776(e) does  
13 not violate the Equal Protection Clause, is not preempted by the National Labor Relations  
14 Act, and that PWCP is a legitimate joint-labor management committee operating within  
15 the meaning of 29 U.S.C. § 175a.

16  
17 28. Helix is entitled to a judicial determination and declaration of the  
18 respective rights, duties, and obligations of the parties with respect to Labor Code section  
19 1776(e) and the PWCP's request for the addresses of Helix's employees, and for such other  
20 related relief as the Court deems just and necessary.

21  
22 29. Helix has been required to employ attorneys in pursuing this complaint  
23 and in seeking this relief for defendants unconstitutional application of the California  
24 Labor Code and is entitled to an award of attorneys' fees pursuant to the provisions of 42  
25 U.S.C. § 1983 and 1988.





1 d. Labor Code section 1776(e)'s express authorization for joint  
2 labor-management committees to receive employee addresses is a violation of the Equal  
3 Protection Clause and is therefore unconstitutional.

4  
5 2. for cost of suit;

6  
7 3. for attorneys' fees pursuant to 42 U.S.C. § 1983 and 1988;

8  
9 4. for such other relief as the Court deems just and proper.

10  
11 Second Claim For Relief

12 1. For issuance of a temporary restraining order, preliminary injunction  
13 and permanent injunction against defendants and each of its agents, employees, attorneys,  
14 representatives and those persons acting in active concert or participation with them, from  
15 enforcing or complying with Labor Code § 1776(e) as to Helix with respect to the PWCP's  
16 request for employee addresses until such time that the Court can decide whether PWCP is  
17 a legitimate joint labor-management committee, whether PWCP is acting with the scope of  
18 joint labor-management committees, whether Labor Code § 1776(e) is preempted, or  
19 whether Labor Code § 1776(e) is unconstitutional.

20  
21 2. for cost of suit;

22  
23 3. for attorneys' fees pursuant to 42 U.S.C. § 1983 and 1988;

24  
25 4. for such other relief as the Court deems just and proper.

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**DEMAND FOR TRIAL BY JURY:**

Plaintiff hereby demands trial by jury.

Dated: November 14, 2005

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

RICHARD M. FREEMAN  
MATTHEW S. MCCONNELL  
Attorneys for Plaintiff  
HELIX ELECTRIC, INC.