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6 **United States District Court**  
7 **Central District of California**  
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9 JOHN BUSKER, on behalf of himself and  
10 all others similarly situated,

11 Plaintiff,

12 v.

13 WABTEC CORPORATION; MARK  
14 MARTIN; and DOES 1 through 100,  
15 Defendants.  
16

Case No. 2:15-cv-08194-ODW-AFM

17 **ORDER GRANTING MOTION FOR**  
18 **SUMMARY JUDGMENT [65]**

19 **I. INTRODUCTION**

20 On September 11, 2015, Plaintiff John Busker filed this putative class action in  
21 the Los Angeles Superior Court against Wabtec Corporation (“Wabtec”) and Mark  
22 Martin (“Martin”) (collectively, “Defendants”). (Not. of Removal, Ex. A (“Compl.”),  
23 ECF No. 1-1.) Then, on October 15, 2015, Plaintiff filed an amended complaint in  
24 state court alleging causes of action for: (1) failure to pay minimum and overtime  
25 wages, (2) failure to pay prevailing wages on a public works project, (3) failure to  
26 provide accurate wage statements, (4) waiting time penalties under California Labor  
27 Code section 203, (5) unfair business competition, (6) declaratory relief, and (7)  
28 penalties pursuant to California Labor Code section 2699. On October 19, 2015,  
Defendants removed the action to federal court. (Not. of Removal ¶ 4, ECF No. 1.)

1 Defendants now move for summary judgment, arguing that Busker’s claims fail  
2 as a matter of law because prevailing wage requirements are not applicable to his  
3 work for Defendants. (ECF No. 65.) For the reasons discussed below, the Court  
4 **GRANTS** Defendants’ Motion for Summary Judgment.<sup>1</sup>

## 5 **II. FACTUAL BACKGROUND**

6 This is a putative class action lawsuit arising out of Busker’s and other putative  
7 class members’ work on a public works project under the employment of Wabtec. On  
8 October 13, 2010, the Southern California Regional Rail Authority (also known as  
9 “Metrolink”) entered into a public works contract with Parsons Transportation Group,  
10 Inc. (“Parsons”) to design, furnish, and install a Positive Train Control (“PTC”)  
11 system on the Metrolink railway system. (Statement of Uncontroverted Facts  
12 (“SUF”) ¶ 2.) This contract involved two types of work: “On-Board Work,” involving  
13 procuring and installing PTC systems on Metrolink’s trains; and “Field Installation  
14 Work,” such as installing PTC in the field and along the wayside of the train tracks.  
15 (*Id.* ¶ 3.) The Metrolink-Parsons contract contained a prevailing wage requirement,  
16 but it explicitly pertained only to Field Installation Work and not to On-Board Work.  
17 (*Id.* ¶ 7.)

18 In November 2010, Parsons entered into a subcontract with Wabtec, under  
19 which Wabtec took responsibility for designing, furnishing, installing, testing, and  
20 certifying the on-board PTC components, equipment, and system on the trains. (*Id.*  
21 ¶ 4.) Under the subcontract, Wabtec did not take responsibility for and did not  
22 perform any Field Installation Work, such as working on buildings, realty, railroad  
23 tracks, or the wayside of the tracks. (*Id.* ¶ 6.)

24 Busker worked for Wabtec as a vendor employee through Visron Technical  
25 LLC. (*Id.* ¶ 11.) He worked as a PTC technician for Wabtec from April 22, 2013,  
26 through March 18, 2015. (*Id.*) During this time, Busker worked exclusively on

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27 <sup>1</sup> After carefully considering the papers filed in support of and in opposition to the Motion, this  
28 Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-  
15.

1 Metrolink trains installing and testing PTC systems. (*Id.* ¶ 12.) He did not do any  
2 Field Installation Work. (*Id.* ¶ 13.)

3 After learning that a co-worker wanted to pursue prevailing wage claims against  
4 Wabtec, Busker filed a prevailing wage complaint with the California Department of  
5 Industrial Relations (“DIR”). (*Id.* ¶ 16.) DIR opened an investigation in June 2015  
6 and solicited responses from Wabtec, Metrolink, and Wabtec workers. (*Id.* ¶ 17.) On  
7 December 22, 2015, the DIR investigator issued a Civil Wage and Penalty  
8 Assessment (“CWAPA”) for prevailing wages in the amount of \$5,786,349, and  
9 related penalties of \$682,215. (*Id.* ¶ 18.) Thereafter, Wabtec and Parsons filed  
10 requests for review of the CWAPA and submitted supporting documents. (*Id.* ¶ 19.)  
11 The Assistant Chief of DIR then ordered the release of the assessment, meaning that  
12 Wabtec no longer owed the amount described in the CWAPA. (*See id.* ¶¶ 19, 20.)

13 While the DIR investigation was ongoing and before the issuance of the  
14 CWAPA, Busker initiated this civil suit. (*See Compl.*) Busker asserts that he and a  
15 class of workers were not paid the minimum hourly wage rate required by California’s  
16 Prevailing Wage Law.

### 17 **III. LEGAL STANDARD**

18 Summary judgment shall be entered in favor of the moving party when “the  
19 pleadings, depositions, answers to interrogatories, and admissions on file, together  
20 with the affidavits, if any, show that there is no genuine issue as to any material fact  
21 and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P.  
22 56(c). The moving party initially bears the burden of showing the non-existence of a  
23 material factual dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). The  
24 burden then shifts to the non-moving party to “designate ‘specific facts showing that  
25 there is a genuine issue for trial.’” *Id.* (quoting Rule 56(e)). To carry this burden, the  
26 non-moving party “must do more than simply show that there is some metaphysical  
27 doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*, 475  
28 U.S. 574, 586 (1986). A dispute about a material fact is genuine if a reasonable jury

1 could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477  
2 U.S. 242, 248 (1986).

3 For the purposes of summary judgment, the evidence is viewed in the light most  
4 favorable to the non-moving party, and all justifiable inferences are to be drawn in his  
5 favor. *Anderson*, 477 U.S. at 255; *see also Sisco–Nownejad v. Merced Cmty. Coll.*  
6 *Dist.*, 934 F.2d 1104 (9th Cir. 1991). Moreover, “[c]redibility determinations, the  
7 weighing of the evidence, and the drawing of legitimate inferences from the facts, are  
8 jury functions, not those of a judge [when] he is ruling on a motion for summary  
9 judgment.” *Anderson*, 477 U.S. at 255.

#### 10 IV. DISCUSSION

11 All of Busker’s claims asserted in this action are dependent on his prevailing  
12 wage claims. (*See* SUF ¶ 15; Compl. ¶¶ 34–86.) Moreover, Busker has admitted that  
13 he has no additional complaint or claims if he is not entitled to prevailing wages.  
14 (SUF ¶ 15; Busker Dep. at 14:24–15:23, Ex. B, ECF No. 65-3; Compl. ¶¶ 34–86.)  
15 The Court finds that as a matter of law Busker’s work for Wabtec does not entitle him  
16 to prevailing wages, and as such, there is no need for discussion of his additional  
17 claims.

##### 18 A. Meaning of “Public Works”

19 California Labor Code section 1771 provides that the general prevailing wage  
20 shall be paid to “all workers employed on public works.” Public works are further  
21 defined as work paid for in whole or part with public funds consisting of  
22 “construction, alteration, demolition, installation, or repair work,” “irrigation, utility,  
23 reclamation, and improvement,” “street, sewer, or other improvement work,” “the  
24 laying of carpet,” and “public transportation demonstration projects.” Cal. Lab. Code  
25 § 1720.

26 Beyond the text of the statute itself, public works can be understood as  
27 involving only fixed works and/or realty. Prior to 2000, the definition of public works  
28 was more limited, including only work done as part of physically constructing a

1 building. *See City of Long Beach v. Dep't of Indus. Relations*, 34 Cal. 4th 942, 948  
2 (2004). In 2000, the definition was expanded to include “such activities as the design  
3 and preconstruction phases of construction,” but the focus of the statute remained on  
4 physical improvements to land. *See id.* at 946 (internal quotations omitted). An  
5 opinion letter from the California Attorney General supports this interpretation:

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7 Thus, public works contracts generally feature construction projects of  
8 substantial dimension-including such undertakings as the erection,  
9 alteration, improvements, repair, and demolition of structures. The  
10 operation of a system, on the other hand, embraces more routine  
11 activities; it connotes the day-to-day business of running the system.  
12 Accordingly, we conclude that public works contracts are  
13 distinguishable from contracts associated with the procurement of  
14 goods and services that are used for the regular operational needs of  
15 the Authority or its enterprises.

14 Attorney General Opinion 11-304, 95 Ops. Cal. Atty. Gen. 102 (Dec. 24, 2012)  
15 (internal quotations omitted).

16 Thus, sections § 1771 and § 1720 have been interpreted to mean that in order  
17 for workers to be entitled to prevailing wages, they must have been employed on  
18 project involving fixed works or realty on land.

19 **B. Defendants Have Met Their Burden in Showing Non-Existence of a**  
20 **Material Factual Dispute**

21 Because the prevailing wage requirement applies only to public works  
22 involving fixed works or realty, all that is needed in order for Defendants to prevail on  
23 summary judgment is to show that Busker was not involved in a public works project  
24 of that kind. Here, Busker’s work for Wabtec was part of a contract Wabtec entered  
25 into with Parsons to design, furnish, install, and test PTC equipment on Metrolink  
26 trains. (SUF ¶¶ 4, 5, 11.) In that job, Busker worked exclusively as a technician  
27 installing and testing PTC systems on board the trains. (*Id.* ¶ 12.) While the larger  
28 Parsons contract did involve some work on the fixed areas of the Metrolink system

1 such as the wayside of the train tracks, the subcontract with Wabtec under which  
2 Busker was employed did not include any of that work. (*Id.* ¶¶ 3, 6.) The contract  
3 between Parsons and Wabtec for the on-board work did not include a prevailing wage  
4 requirement, and neither are those wages required by law. (*See id.* ¶¶ 7–8); Cal. Lab.  
5 Code §§ 1771, 1720.

6 **C. Busker Has Failed to Designate Specific Facts Showing that There is a**  
7 **Genuine Issue for Trial**

8 Busker opposes Defendants’ motion and unsuccessfully attempts to assert the  
9 existence of genuine issues of material fact. For example, Busker asserts that section  
10 1720 applies to his work for Wabtec because the statute does not create an exception  
11 disclaiming coverage for work on locomotives and “rolling stock.” (Opp’n 3–4, ECF  
12 No. 68.) The question, however, is not whether an exception exists relevant to work  
13 done on trains, but whether the statute would otherwise cover trains in the first place.  
14 Based on the text of the statute and its subsequent interpretation, it does not. No  
15 exception is necessary where the statute does not pertain to work done on trains to  
16 begin with.

17 Additionally, Busker asserts that Wabtec disputes whether it ever employed  
18 Busker. (*Id.* at 10.) This is unsupported, as Defendants have acknowledged that  
19 Busker worked as a PTC installer technician for Wabtec (SUF ¶ 11) and provided  
20 further confirmation that this fact is undisputed in their Reply. (Reply 1, ECF No.  
21 79.)

22 Finally, Busker attempts to argue that California Labor Code section 1772  
23 entitles him to a prevailing wage. Section 1772 states, “Workers employed by  
24 contractors or subcontractors in the execution of any contract for public work are  
25 deemed to be employed upon public work.” The plain text of this section does not  
26 broaden the meaning of public work; rather, it ensures that workers who are involved  
27 in a project on a contract for public work are covered by the prevailing wage  
28 requirement. The requirement that the underlying contract be one for public work

1 remains, and as discussed, the Parsons-Wabtec contract for the on-board installation  
2 of PTC does not meet that requirement.

3 Because Defendants have shown an absence of a genuine dispute of material  
4 fact, and Busker has failed to rebut that showing, summary judgment is appropriate.  
5 Without entitlement to prevailing wages, none of Busker's claims can survive, and  
6 thus summary judgment is granted as to all of Busker's claims in this action.

7 **V. CONCLUSION**

8 For the reasons discussed above, the Court **GRANTS** Defendants' Motion for  
9 Summary Judgment. The Clerk of Court shall close the case.

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12 **IT IS SO ORDERED.**

13 January 10, 2017

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16 **OTIS D. WRIGHT, II**  
17 **UNITED STATES DISTRICT JUDGE**  
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