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GOLDEN GATE BRIDGE, HIGHWAY AND
8 TRANSPORTATION DISTRICT

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 GOLDEN GATE BRIDGE, HIGHWAY AND
13 TRANSPORTATION DISTRICT,

14 Plaintiff,

15 v.

16 UNITED STATES DEPARTMENT OF
LABOR; JULIE A. SU in her official capacity
17 as Acting Secretary of Labor;
OCCUPATIONAL SAFETY AND HEALTH
18 ADMINISTRATION; and DOUGLAS L.
PARKER in his official capacity as Assistant
19 Secretary of Labor for Occupational Safety
and Health,

20 Defendants.
21

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

22
23 Plaintiff GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT
24 (“Plaintiff” or the “District”) alleges causes of action against Defendants UNITED STATES
25 DEPARTMENT OF LABOR; JULIE A. SU in her official capacity as Acting Secretary of Labor;
26 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION; and DOUGLAS L. PARKER
27 in his official capacity as Assistant Secretary of Labor for Occupational Safety and Health
28 (collectively “Defendants”) as follows:

Case No.

INTRODUCTION

1
2 1. The District brings this action under the Administrative Procedure Act (“APA”) 5
3 U.S.C. § 500, *et seq.*, challenging the United States Occupational Safety and Health
4 Administration’s (“OSHA”) (a component of the Department of Labor under the authority of the
5 Secretary of Labor Julie A. Su) illegal and unjustified attempt to reduce the factor of safety for
6 temporary scaffolding designs—a requirement that improves workplace safety and protects
7 employees from risk at work.

8 2. In 1996, OSHA issued regulations stating that each scaffold and scaffold component
9 shall be capable of supporting, without failure, its own weight and at least four times the maximum
10 intended load applied or transmitted to it. Maximum intended load is defined as “the total load of
11 all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to
12 be applied to a scaffold or scaffold component at any one time.” *See* 29 C.F.R. § 1926.451(a)(1) and
13 29 C.F.R. § 1926.450.

14 3. In interpreting this regulation, OSHA issued a December 6, 2013, Standard
15 Interpretation Letter (“2013 Interpretation Letter”) which made clear that “[u]nder section
16 1926.451(a)(1), each component of a scaffold system must be able to support at least 4 times the
17 maximum intended load on that component, in addition to the weight of the component.” The 2013
18 Interpretation Letter further explained that, for example, “on a multi-level scaffold, each bottom leg
19 must be able to support its own weight and four times the load reasonably anticipated to be imposed
20 on that leg. Part of the load imposed on a bottom leg will arise from the weight of the part of the
21 scaffold that the bottom leg supports. Part will arise from the weight of persons, equipment, tools,
22 and materials on the scaffold, and part will arise from other sources, such as wind.” This
23 interpretation emphasized the need to apply a factor of safety of four to all loads transmitted to the
24 component being designed, including loads from the weight of the other scaffold members the
25 component is supporting.

26 4. Seven years later, OSHA reversed course. On April 24 2020, OSHA issued a revised
27 version of the 2013 Interpretation Letter changing this long-standing guidance which directly
28 conflicts with 29 C.F.R. § 1926.451(a)(1) and 29 C.F.R. § 1926.450 (“2020 Revised Interpretation

1 Letter”). Suddenly, OSHA claimed that transmitted loads arising from the portion of scaffold weight
2 carried by the component are not subject to the prescribed safety factor of four. In fact, the 2020
3 Revised Interpretation Letter states that the weight transmitted from scaffold members supported by
4 the component is not increased by any factor of safety at all – deviating significantly from the
5 regulations and its prior established construction of 29 C.F.R. § 1926.451(a)(1) and 29 C.F.R. §
6 1926.450.

7 5. The 2020 Revised Interpretation Letter newly defines the weight of the scaffold
8 component to include “the weight of the component itself, in addition to the portion of the scaffold’s
9 weight that is transmitted to that component.”

10 6. The 2020 Revised Interpretation Letter dangerously decreases the requirement to
11 apply a safety factor of four to all transmitted loads – in violation of the plain text and longstanding
12 meaning of 29 C.F.R. § 1926.451(a)(1) and 29 C.F.R. § 1926.450 – without first engaging in the
13 APA’s requisite procedure. As such, the new rule is arbitrary, capricious, and otherwise contrary to
14 law, as well as violative of the APA’s notice and comment procedures.

15 PARTIES

16 7. The District is now, and was at all times hereinafter mentioned, a public agency
17 existing under the laws of California. The District owns, operates, and maintains the Golden Gate
18 Bridge. The District has a long history of protecting construction workers, dating back to its original
19 construction. The Golden Gate Bridge was built in the midst of the Great Depression at a cost of
20 \$35 million. Of that amount, \$1 million was spent on a temporary safety net to provide workers with
21 fall protection. It was the first bridge built where all of the construction workers wore hard hats.
22 Furthermore, the District receives federal funding, that requires, as a condition, compliance with
23 Federal laws, including the relevant OSHA regulations.

24 8. The United States Department of Labor (“DOL”) was created in 1913 (*see* Act of
25 Mar. 4, 1913, 37 Stat. 736) and serves to foster, promote, and develop the welfare of the wage
26 earners, job seekers, and retirees of the United States; improve working conditions; advance
27 opportunities for profitable employment; and assure work-related benefits and rights. The DOL is
28 the federal agency responsible for supervising the formulation, issuance, and enforcement of rules,

1 regulations, and policy by OSHA. It is an executive agency of the United State of America. Its
2 principal address is 200 Constitution Avenue, NW, Washington, DC 20210.

3 9. Julie A. Su is the Acting United States Secretary of Labor. In this capacity, she is
4 authorized to issue, amend, and rescind the rules, regulations and policies of OSHA. She is sued in
5 her official capacity. Her principal address is 200 Constitution Avenue, NW, Washington, DC
6 20210.

7 10. OSHA was created in 1971 and seeks to ensure safe and healthful working conditions
8 for workers by setting and enforcing standards and by providing training, outreach, education, and
9 assistance. OSHA is a component of the Department of Labor. Its principal address is 200
10 Constitution Avenue, NW, Washington, DC 20210.

11 11. Douglas L. Parker is the Assistant Secretary of Labor for OSHA. In his capacity, he
12 is responsible for assuring safe and healthful working conditions for working individuals by setting
13 and enforcing standards and by providing training, outreach, education and assistance. He is sued
14 in his official capacity. His principal address is 200 Constitution Avenue, NW, Washington, DC
15 20210.

16 **JURISDICTION AND VENUE**

17 12. The district courts shall have original jurisdiction of all civil actions arising under
18 the Constitution, laws, or treaties of the United States, pursuant to 28 U.S.C. § 1331. This action
19 arises under the APA, 5 U.S.C. § 500, *et seq.*, and the OSH Act, 29 U.S.C. § 651, *et seq.*
20 Furthermore, jurisdiction lies under 5 U.S.C. § 702 (judicial review of agency action), and 5 U.S.C.
21 § 703 (authorizing suits for declaratory and injunctive relief against agency action).

22 13. This Court also has the authority to issue the declaratory relief sought pursuant to 28
23 U.S.C. § 2201 and 5 U.S.C. § 706.

24 14. Venue is proper in this Court because Plaintiff resides in this district. *See* 28 U.S.C.
25 § 1391(e)(1)(C).

26 **FACTUAL BACKGROUND**

27 15. OSHA is charged with assuring “safe and healthful working conditions” for all
28 working men and women in the United States through various means, including setting “appropriate

1 reporting procedures with respect to occupational safety and health.” 29 U.S.C. § 651.

2 **Background of 29 C.F.R. 1926.451(a)(1) and 29 C.F.R. 1926.450(b)**

3 16. In 1969, the Contract Work Hours Standards Act was amended, leading to the
4 Construction Safety Act (“CSA”), which provided safer work environments for construction
5 employees. Safety and Health Regulations for Construction were issued in 1971 under 29 C.F.R.
6 part 1518.

7 17. The Occupational Safety and Health Act (“OSH Act”) of 1970 allowed the Secretary
8 of Labor to adopt these standards as OSHA standards, redesignating them as 29 C.F.R. part 1926
9 by the end of 1971.

10 18. In 1977, OSHA began a comprehensive review of scaffold standards due to concerns
11 about their effectiveness. This review included consultations with the Advisory Committee on
12 Construction Safety and Health (“ACCSH”). 61 Fed. Reg. 46026.

13 19. On November 25, 1986, OSHA issued a notice of proposed rulemaking on scaffolds
14 used in construction. The proposal set a period, ending February 23, 1987, during which interested
15 parties could submit written comments or request a hearing. OSHA twice granted requests for more
16 time to submit comments and hearing requests. OSHA first extended the comment and hearing
17 request period to June 1, 1987 and then extended that period to August 14, 1987. OSHA received
18 602 comments on the proposal, along with several hearing requests. 61 Fed. Reg. 46026.

19 20. On January 26, 1988, OSHA announced that it would convene an informal public
20 hearing on March 22, 1988 to elicit additional information on specific issues related to scaffolds,
21 fall protection and stairways and ladders. 61 Fed. Reg. 46026-46027.

22 21. The informal public hearing was held on March 22 and 23, 1988. At the close of the
23 hearing, Judge Williams set a period, ending May 9, 1988, for the submission of additional
24 comments and information. OSHA received 31 submissions, including testimony and documentary
25 evidence, in response to the hearing notice. 61 Fed. Reg. 46027.

26 22. On March 29, 1993, OSHA reopened the rulemaking record multiple times on
27 subpart L “Scaffolds” to obtain additional comments and information regarding fall protection and
28 safe means of access for employees erecting and dismantling scaffolds. On February 1, 1994, OSHA

1 again reopened the rulemaking record to obtain comments and information regarding scaffolds. 61
2 Fed. Reg. 46027.

3 23. A wide range of employers, businesses, labor unions, trade associations, state
4 governments, and other interested parties contributed to the development of this record. 61 Fed.
5 Reg. 46027.

6 24. In the legislative history, OSHA noted that “[s]caffold-related incidents resulting in
7 injuries and fatalities continue to occur despite the fact that OSHA has had a scaffold standard
8 (existing subpart L) in place since 1971.” It further noted “compliance with the standard being
9 published today will be better than it has been in the past because this standard has been simplified,
10 brought up to date, and strengthened to provide additional protection.” Furthermore, OSHA’s final
11 rule estimated that, of the 510,500 injuries and illnesses that occur in the construction industry
12 annually, 9,750 are related to scaffolds. In addition, of the estimated 924 occupational fatalities
13 occurring annually, at least 79 are associated with work on scaffolds. Furthermore, seventy-two
14 percent of the workers injured in scaffold accidents covered by the BLS study attributed the accident
15 either to the planking or support giving way, or to the employee slipping, or being struck by a falling
16 object. 61 Fed. Reg. 46027.

17 25. OSHA cited the following example for the OSHA Integrated Management
18 Information System “of the types of accidents that continue to injure and kill employees working
19 on scaffolds”:

20 In July, 1991, two employees were working on a pump jack scaffold
21 doing roofing work. The scaffold became overloaded and broke. The
22 employees fell 12 feet to the ground, resulting in one fatality and one
23 serious injury.

23 61 Fed. Reg. 46027.

24 26. As a result, OSHA determined that “employees using scaffolds are exposed to a
25 significant risk of harm. Specifically, scaffold related fatalities still account for 9% of all fatalities
26 in the construction workplace.” Consequently, OSHA found “that the revision of its scaffold
27 standards for construction is necessary to improve employee protection. OSHA has determined that,
28 as revised, the standard clearly states employers’ duties and the appropriate compliance measures.”

1 61 Fed. Reg. 46027-46028.

2 27. On August 30, 1996, OSHA issued its Final Rule for Safety Standards for Scaffolds
3 Used In the Construction Industry. In that Final Rule, OSHA replaced the terms “maximum rated
4 load” and “workload” with the term “Maximum Intended Load.”

5 28. 29 C.F.R § 1926.450(b) defines “Maximum Intended Load” as “the total load of all
6 persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be
7 applied to a scaffold or scaffold component at any one time.” This regulation has not been altered
8 since 1996.

9 29. 29 C.F.R 1926.451(a)(1) states “[e]xcept as provided in paragraphs (a)(2), (a)(3),
10 (a)(4), (a)(5) and (g) of this section, each scaffold and scaffold component shall be capable of
11 supporting, without failure, its own weight and at least 4 times the maximum intended load applied
12 or transmitted to it.” This regulation has not been altered since 1996.

13 **December 6, 2013 Standard Interpretation Letter**

14 30. On December 6, 2013, James G. Maddux, then Director, Directorate of Construction
15 of OSHA, issued a Standard Interpretation Letter in response to an inquiry from Mr. Steve Karasik
16 of PERI Formwork Systems, Inc.

17 31. This 2013 Interpretation Letter provided guidance on the interpretation of 29 C.F.R.
18 1926.450(b) and 1926.451(a)(1) regarding the factor of safety to be applied to loads in temporary
19 scaffold design.

20 32. The inquiry posed by Mr. Steve Karasik was: “For scaffolds used in construction
21 work, how is the weight of the scaffold taken into consideration in determining whether the 4 to 1
22 factor required by 29 C.F.R. 1926.451(a)(1) is satisfied? How do the scaffolding requirements for
23 general industry work differ from construction?”

24 33. The response provided by OSHA in the 2013 Interpretation Letter was: “Under
25 section 1926.451(a)(1), each component of a scaffold system must be able to support at least 4 times
26 the maximum intended load on that component, in addition to the weight of the component.”

27 34. The letter further elaborated that: “As this language makes clear, in applying section
28 1926.451(a)(1), each component of a scaffold must be able to support its own weight, plus 4 times

1 the total load on that component. For example, on a multi-level scaffold, each bottom leg must be
2 able to support its own weight and four times the load reasonably anticipated to be imposed on that
3 leg. Part of the load imposed on a bottom leg will arise from the weight of the part of the scaffold
4 that the bottom leg supports. Part will arise from the weight of persons, equipment, tools, and
5 materials on the scaffold, and part will arise from other sources, such as wind.”

6 35. The interpretation of section 1926.451(a)(1) provided in the 2013 Interpretation
7 Letter was consistent with the plain language of the regulation and the definition of “maximum
8 intended load” under section 1926.450(b), which requires a factor of safety of four to all loads
9 transmitted to the component being designed, including loads from the weight of other scaffold
10 members the component is supporting.

11 36. The 2013 Interpretation Letter emphasized the proper application of the factor of
12 safety to all transmitted loads.

13 **April 24, 2020 Revised Standard Interpretation Letter**

14 37. On April 24, 2020, OSHA released a revision of the December 6, 2013, Standard
15 Interpretation letter. This revision was not a new letter but a heavily redlined version of the 2013
16 Interpretation Letter, and it was unsigned by the new author.

17 38. This revision altered the guidance provided by Director Maddux, despite the fact that
18 the regulations under 29 C.F.R. 1926.450(b) and 1926.451(a) had not changed since their
19 implementation in 1996.

20 39. The April 24, 2020 revisions state that transmitted loads arising from the portion of
21 scaffold weight carried by the component being analyzed are not subject to the prescribed safety
22 factor of four.

23 40. The revised interpretation suggests that the weight transmitted from scaffold
24 members supported by the component is not increased by any factor of safety at all, which
25 contradicts the plain language of 29 C.F.R. 1926.451(a) and 1926.450(b).

26 41. The 2020 Revised Interpretation Letter states: “Under section 1926.451(a)(1), each
27 component of a scaffold system must be able to support its own weight (the weight of the component
28 itself, in addition to the portion of the scaffold’s weight that is transmitted to that component), and

1 at least 4 times the maximum intended load transmitted to that component.”

2 42. The 2020 Revised Interpretation Letter also newly defines the weight of the scaffold
3 component to include “the weight of the component itself, in addition to the portion of the scaffold’s
4 weight that is transmitted to that component.”

5 43. This differs significantly from the regulations, which included the transmitted load
6 in the calculation of the maximum intended load.

7 44. The 2020 Revised Interpretation Letter results in components being designed against
8 the point of failure without a safety factor on the portion of the scaffold’s weight supported by the
9 component, exposing construction workers to less safe conditions.

10 45. The revisions ignore common engineering practices that account for underestimation
11 of loads, unexpected additional loads, unanticipated uneven distribution of loads, potential lower
12 than expected ultimate strength/capacity of the component, component fatigue, and other factors
13 that necessitate the application of a factor of safety.

14 46. In revising the definition of Maximum Intended Load via the 2020 Revised
15 Interpretation Letter, OSHA failed to consider the impact this change would have on other sections,
16 including 29 C.F.R. 1926.451(a)(3) and 29 C.F.R. 1926.451(a)(4).

17 47. On June 23, 2020, the District sent a letter to Scott Ketcham, Director, Directorate
18 of Construction for the DOL and OSHA, with copies to the Secretary of Labor, the Deputy Assistant
19 Secretary for Congressional and Intergovernmental Affairs, and the Principal Deputy Assistant
20 Secretary of Labor for OSHA (who was serving as Acting Assistant Secretary of Labor at the time).
21 The letter requested the withdrawal of the 2020 Revised Interpretation Letter, arguing that it was
22 inconsistent with the plain meaning of the regulations. OSHA declined to withdraw the letter.

23 **FIRST CLAIM FOR RELIEF**

24 **(Declaratory Judgment – Violation of 5 U.S.C. § 706(2)(D))**

25 48. The allegations in paragraphs 1 through 46 are incorporated herein.

26 49. The APA requires this Court to hold unlawful and set aside any agency action taken
27 “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

28 50. The Supreme Court has held that all legislative rules—which are those having the

1 force and effect of law and are accorded weight in agency adjudicatory processes—must go through
2 the notice-and-comment requirements. *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199, 1204
3 (2015)

4 51. As an authority of the government of the United States, OSHA is an agency subject
5 to the Administrative Procedure Act. *See* 5 U.S.C. § 551(1). None of the Act’s “agency” exceptions
6 applies to OSHA. *See id.* § 551(1)(A)-(H).

7 52. In 1996, OSHA issued regulations stating that scaffolds and scaffold components
8 shall be capable of supporting, without failure, its own weight and at least four times the maximum
9 intended load applied or transmitted to it. *See* 29 C.F.R. § 1926.451(a)(1) and 29 C.F.R. § 1926.450.

10 53. In interpreting this regulation, OSHA issued the 2013 Interpretation Letter which
11 made clear that “[u]nder section 1926.451(a)(1), each component of a scaffold system must be able
12 to support at least 4 times the maximum intended load on that component, in addition to the weight
13 of the component.” The 2013 Interpretation Letter further explained that, for example, “on a multi-
14 level scaffold, each bottom leg must be able to support its own weight and four times the load
15 reasonably anticipated to be imposed on that leg. Part of the load imposed on a bottom leg will arise
16 from the weight of the part of the scaffold that the bottom leg supports. Part will arise from the
17 weight of persons, equipment, tools, and materials on the scaffold, and part will arise from other
18 sources, such as wind.” This interpretation emphasized the need to apply a factor of safety of four
19 to all loads transmitted to the component being designed, including loads from the weight of other
20 scaffold members the component is supporting and was consistent with the plain language of 29
21 C.F.R. § 1926.451(a)(1) and 29 C.F.R. § 1926.450.

22 54. Seven years later, OSHA reversed course. On April 24, 2020, OSHA issued a revised
23 version of the 2013 Interpretation Letter changing this long-standing guidance which directly
24 conflicts with 29 C.F.R. § 1926.451(a)(1) and 29 C.F.R. § 1926.450 (“2020 Revised Interpretation
25 Letter”). Suddenly, OSHA claimed that transmitted loads arising from the portion of scaffold weight
26 carried by the component are not subject to the prescribed safety factor of four. In fact, the 2020
27 Revised Interpretation Letter states that the weight transmitted from scaffold members supported by
28 the component is not increased by any factor of safety at all – deviating significantly from 29 C.F.R.

1 § 1926.451(a)(1) and 29 C.F.R. § 1926.450.

2 55. The 2020 Revised Interpretation Letter also newly defines the weight of the scaffold
3 component to include “the weight of the component itself, in addition to the portion of the scaffold’s
4 weight that is transmitted to that component.”

5 56. Defendants have promulgated an amendment to 29 C.F.R. § 1926.451(a)(1) and 29
6 C.F.R. § 1926.450, unilaterally reducing the factor of safety for temporary scaffolding designs via
7 the 2020 Revised Interpretation Letter.

8 57. With exceptions that are not applicable here, the APA requires that any “rules which
9 do not merely interpret existing law or announce tentative policy positions but which establish new
10 policy positions that the agency treats as binding must comply with the APA’s notice-and-comment
11 requirements, regardless of how they initially are labeled.” 72 Fed. Reg. 3433. None of the few
12 limited exceptions to the general notice-and-comment obligation applies to the 2020 Revised
13 Interpretation Letter, because the 2020 Revised Interpretation Letter is an amendment to OSHA’s
14 existing legislative rule governing scaffolding requirements.

15 58. At minimum, notice-and-comment rulemaking requires that OSHA (1) issue a public
16 notice of the proposed rule, most often by publishing notice in the Federal Register, (2) give all
17 interested parties a fair opportunity to submit comments on the proposed rule as well as evaluate
18 and respond to significant comments received, and (3) include in the final rule’s promulgation a
19 concise statement of the rule’s basis and purpose.

20 59. The 2020 Revised Interpretation Letter is substantially different from that offered by
21 OSHA’s existing scaffold-regulations, 29 C.F.R. 1926.451(a)(1). The 2020 Revised Interpretation
22 Letter also newly defines the weight of the scaffold component to include “the weight of the
23 component itself, in addition to the portion of the scaffold’s weight that is transmitted to that
24 component.”

25 60. The substantial differences between 29 C.F.R. 1926.451(a)(1) and the 2020 Revised
26 Interpretation Letter demonstrate that the latter’s “interpretation” of 29 C.F.R. 1926.451(a)(1) is in
27 fact an amendment, modification and/or revision to the regulation.

28 61. This action is timely because it has been commenced within six years of April 24,

1 2020, the date of the 2020 Revised Interpretation Letter’s promulgation. 28 U.S.C. § 2401(a) (six-
2 year statute of limitations for actions seeking nonmonetary relief against the federal government).

3 62. Because the 2020 Revised Interpretation Letter is an amendment to a legislative rule,
4 it is itself a legislative rule. In promulgating the 2020 Revised Interpretation Letter, OSHA did not
5 give the public prior notice or an opportunity through comment to participate in the rule’s
6 formulation.

7 63. In creating different obligations, Defendants failed to properly engage in notice-and-
8 comment rulemaking. As a result, the April 24, 2020 Revised Interpretation Letter should be
9 declared unlawful and set aside.

10 **SECOND CLAIM FOR RELIEF**

11 **(Declaratory Judgment – 5 U.S.C. § 706(2)(A))**

12 64. The allegations in paragraphs 1 through 62 are reincorporated herein.

13 65. The APA requires this Court to hold unlawful and set aside any agency action that is
14 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §
15 706(2)(A).

16 66. Congress requires that whenever an agency takes action, it do so after engaging in a
17 process by which it “examine[s] the relevant data and articulate[s] a satisfactory explanation for its
18 action including a rational connection between the facts found and the choice made.” *Motor Veh.*
19 *Mfrs. Ass’n. v. State Farm Ins.*, 463 U.S. 29, 43 (1983) (quotation omitted).

20 67. An agency action is arbitrary and capricious if the agency has relied on factors which
21 Congress has not intended it to consider, entirely failed to consider an important aspect of the
22 problem, offered an explanation for its decision that runs counter to the evidence before the agency,
23 or is so implausible that it could not be ascribed to a difference in view or product of agency
24 expertise.

25 68. Defendants gave no explanation for their departure from explicit statutory text,
26 including 29 C.F.R. 1926.451(a)(1) and 29 C.F.R. 1926.450(b) whereby Defendants unilaterally
27 decreed that the weight of scaffold components transmitted to the analyzed component is not subject
28 to the prescribed safety factor of four.

1 69. Nor did Defendants give any explanation of the relevant factors that were the basis
2 of their actions.

3 70. Defendants failed to consider important aspects of safety issues caused by the 2020
4 Revised Interpretation Letter, and ignore the legislative histories of 29 C.F.R. 1926.451(a)(1) and
5 29 C.F.R. 1926.450(b), which explicitly state that the revised standards are required to clearly state
6 employers' duties and the appropriate compliance measures because employees using scaffolds are
7 exposed to a significant risk of harm.

8 71. Defendants fail to consider the practical harms created by Defendants' unlawful
9 application of 29 C.F.R. 1926.451(a)(1) and 29 C.F.R. 1926.450(b). Specifically, if the new
10 interpretation of 29 C.F.R. 1926.451(a)(1) is applied, it results in a component to be designed against
11 the point of failure with no factor of safety on the portion of the scaffold's weight supported by the
12 component.

13 72. Furthermore, Defendants fail to consider that a margin of safety is necessary to
14 account for: underestimation of loads, unexpected additional loads, unanticipated uneven
15 distribution of loads, possible lower than expected ultimate strength/capacity of the component,
16 component ultimate capacity deterioration due to repeated use, component fatigue due to imposed
17 vibrations causing lowering of the component's ultimate capacity. These factors must be
18 compensated by the application of a factor of safety on the total load transmitted to that component,
19 as required by the plain language of 29 C.F.R. 1926.451(a)(1).

20 73. Defendants' failure to consider essential safety margins in their revised interpretation
21 exposes construction workers to significant risks and undermines the protective intent of the
22 regulations.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays that this Court issue a decree and order for the following
25 relief:

26 1. Declaratory judgment that Defendants have acted not in accordance with law and
27 without observance of procedure as required by law, issuing the 2020 Revised Interpretation Letter,
28 because the public was not afforded notice or an opportunity to comment before it was promulgated

