

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Recom, Inc.

Case No. 16-0292-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

**DECISION OF THE
DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor Recom, Inc. (Recom) timely submitted a request for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on June 27, 2016, with respect to work performed by Recom on the Los Angeles Community College District (LACCD) Los Angeles City College Clausen Hall modernization project (Project).¹ The Assessment determined that \$150,384.88 was due in unpaid prevailing wages, unpaid training fund contributions, and statutory penalties. DLSE moved to amend the Assessment pursuant to California Code of Regulations, title 8, section 17226, subdivision (a)(3) to increase the Assessment. A Hearing on the Merits took place in Los Angeles, California on January 11, 2017, and May 10, 2017, before Hearing Officer Howard Wien. Richard Minasian (President and owner of Recom) appeared for Recom, and David D. Cross appeared for DLSE. Five witnesses testified at the hearing: Paul Tsan, Deputy Labor Commissioner for DLSE, Minasian, and three workers who were employed on the Project. On May 10, 2017, the Hearing Officer granted DLSE's motion to amend the Assessment, increasing the total assessment to \$153,930.58. The case was submitted at the conclusion of testimony and closing oral argument on May 10, 2017.

¹ When necessary to avoid confusion with other projects referred to herein, this Decision will refer to the Project as the LACCD Project.

The issues for decision are as follows:

- Whether the Assessment was timely.
- Whether the Assessment correctly found that Recom had failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether Recom is liable for liquidated damages under Labor Code section 1742.1, subdivision (a),² and if so, in what amount.
- Whether the Assessment correctly found that Recom failed to make required training fund contributions to an approved apprenticeship program or the California Apprenticeship Council.
- Whether the Labor Commissioner abused her discretion in assessing penalties under section 1775 at the maximum rate of \$50.00 per violation for 447 violations.
- Whether the Assessment correctly found that Recom failed to pay the overtime prevailing wage rate for all overtime hours worked, thereby making Recom liable for a statutory penalty of \$25.00 per violation under section 1813.

In this Decision as set forth below, the Director affirms the Assessment on all issues except: (1) the number of hours Recom's employee Hamo Parseghian worked on the Project as a fire sprinkler fitter and the corresponding assessment of unpaid prevailing wages and section 1775 statutory penalty resulting from his employment; (2) the number of hours Recom's employees Oshin Sokzi and Robert Hartoonian worked on the Project as fire sprinkler fitters and the corresponding assessment of unpaid prevailing wages;³ and (3) the assessment of unpaid training fund contributions. Accordingly, the Director issues this Decision affirming and modifying the Assessment.

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² All subsequent section references are to the Labor Code unless otherwise specified.

³ As discussed in footnote 13, *post*, the modification of Oshin Sokzi's hours and Hartoonian's hours does not affect the assessment of the section 1775 statutory penalty.

FACTS

LACCD advertised the Project for bid on April 29, 2011. Prime contractor Jeffrey C. Stone, Inc. dba Summit Builders (Stone) entered into a contract with LACCD on August 10, 2011, and Recom entered into its subcontract with Stone on October 3, 2011. Recom's scope of work was to supply and install a complete fire sprinkler system for the modernization of the existing Clausen Hall music building, including but not limited to pipes, raisers, hangers, elbows, heads, valves, gauges, fittings and switches.

On March 5, 2014, while Recom was in the midst of its work on the Project, Stone defaulted on its contract with LACCD. In late March 2014, surety Liberty Mutual Insurance Company (Liberty Mutual) entered into a Takeover Agreement with LACCD to complete the Project. Liberty Mutual hired S&W Investments Inc., dba Sage Contractor Services (Sage) as the prime contractor to complete the work. On April 10, 2014, Recom and Liberty Mutual entered into a "Ratification Agreement" under which Recom continued to perform its work on the Project in accordance with all of the terms and conditions stated in Recom's original subcontract with Stone.⁴

Recom had eight journeymen employees working on the Project on various dates from July 6, 2012, to December 11, 2014, in the City of Los Angeles, Los Angeles County: Oshin Sokzi, Robert Hartoonian, Osep Allagholi, Hamo Parseghian, George Shirvanian, Razmik Bogozian, Matavos Sokzi, and Orbel Sokzi.⁵ Recom correctly classified these eight workers as fire sprinkler fitters for which the applicable Prevailing Wage Determination was Plumber, Fire Sprinkler Fitter (Protection and Control Systems, Overhead and Underground) for Los Angeles County (LOS-2011-1) (Fire Sprinkler PWD).⁶ The Fire Sprinkler PWD specified that contractors were to pay a total of \$64.68

⁴ The Assessment named both Stone and Sage as prime contractors. Neither requested review of the Assessment.

⁵ Matavos Sokzi and Orbel Sokzi were, respectively, Oshin Sokzi's father and brother. This Decision will use the single name "Sokzi" to refer to Oshin Sokzi. Recom also had several apprentice workers on the Project, but they were not the subject of the Assessment.

⁶ Recom's certified payroll records (CPRs) additionally designated Sokzi as quality control manager and Shirvanian and Hartoonian as foremen. The evidence showed that Recom used the terms "quality control manager" and "foreman" interchangeably.

per hour for work performed within the City of Los Angeles (throughout the time period relevant to this case), comprised of the following:

- Basic wage rate of \$40.98 per hour to be paid directly to the fire sprinkler fitters;
- Fringe benefits of \$22.35 per hour to be paid to the union fund,⁷ comprised of the following:
 - a) Health and Welfare: \$8.35 per hour;
 - b) Pension: \$13.45 per hour; and
 - c) Misc. Other (industry pension fund and P.I.P.E. fund): \$0.55 per hour.
- Training Fund: \$1.35 per hour to be paid to an approved apprenticeship program or the California Apprenticeship Council.
- Daily overtime and Saturday work required time and one-half for the basic wage rate, and Sunday and holiday work required double time for the basic wage rate.

Assessment.

The Assessment was prepared by Deputy Labor Commissioner Paul Tsan. Tsan wrote the Penalty Review upon which the Assessment was based. DLSE served the Assessment by mail on June 27, 2016. As of that date, the Project had not yet been completed, no Notice of Completion was recorded, and LACCD had not yet accepted the Project.

As addressed above, on May 10, 2017, the Hearing Officer granted DLSE's motion to amend the Assessment upward. This amendment was solely the result of

⁷ LACCD's bid advertisement and the LACCD-Stone prime contract stated that the Project was subject to LACCD's Project Labor Agreement (PLA). Under the PLA, the \$22.35 per hour fringe benefits were to be paid directly to the union fund for fire sprinkler fitters, the National Automatic Sprinkler Industry Fringe Benefit Funds (NASI Funds).

assessing 12 additional days of work for Parseghian,⁸ resulting in the following increased assessments: (1) the unpaid prevailing wages of \$124,045.53 in the original Assessment increased by \$2,817.35 to \$126,862.88; (2) the section 1775 statutory penalty of \$21,750.00 in the original Assessment (at rate of \$50.00 per violation) increased by \$600.00 to \$22,350.00; and (3) the unpaid training fund contributions of \$4,564.35 in the original Assessment increased by \$128.25 to \$4,692.60.

Underpayment of Prevailing Basic Wage Rate.

Although Recom's CPRs stated that Recom paid its eight journeymen fire sprinkler fitters the prevailing basic wage rate of \$40.98 per hour, DLSE found that Recom failed to pay the prevailing basic wage to seven of the eight journeyman (the sole exception being Shirvanian). DLSE also found that Recom failed to pay the required fringe benefits on behalf of all eight journeyman: Recom underpaid fringe benefits as to Bogozian and Hartoonian, and did not make any fringe benefit payments as to the other six journeymen.

Three of the seven workers – Sokzi, Allagholi and Hartoonian – provided Tsan the paystubs from Recom's paychecks showing the following hourly wage rates Recom actually paid, which they corroborated by their testimony in the Hearing:

- Allagholi: Recom's paystubs stated a pay rate of \$10.00 per hour for some checks and \$18.50 per hour for other checks;
- Sokzi: Recom's paystubs stated an initial pay rate of \$11.50 per hour, and subsequent paystubs showed the following increases: (1) \$15.00 per hour commencing June 1, 2013; (2) \$17.50 per hour commencing July 20, 2013; and (3) \$20.00 per hour commencing July 5, 2014.
- Hartoonian: Recom's paystubs stated a pay rate of \$25.00 per hour.

The four other workers for whom DLSE assessed Recom for nonpayment of the prevailing basic wage rate were Parseghian, Bogozian, Matavos Sokzi, and Orbel Sokzi.

⁸ Recom's CPRs showed one day of work for Parseghian. The original Assessment assessed underpayment of prevailing wages for that one day.

As to these workers:

- Parseghian: Tsan testified that in his interview, Parseghian stated that Recom paid him \$35.00 per hour, and Parseghian confirmed this by his signed written statement.
- Bogozian: Tsan testified Bogozian told him by phone that Recom paid him \$20.00 per hour for his work on the Project.
- Matavos Sokzi and Orbel Sokzi: Sokzi testified that his father and brother told him they were paid \$25.00 per hour, and Sokzi saw his father's and brother's paystubs stating that rate.

In his testimony, Richard Minasian (Recom's President and owner) did not dispute that Recom's paychecks stated the wages shown on the paystubs, which were far below the prevailing basic wage rate. His explanation, however, was as follows.

First, as to Sokzi, Minasian testified that Recom did not pay the prevailing wage for fire sprinkler fitter because Sokzi never performed the work of fire sprinkler fitter. According to Minasian, Sokzi never had the skills or training necessary to perform such work, and instead Sokzi's sole work on the Project was as foreman, which did not require payment of the prevailing wage.⁹ Minasian did not explain the apparent contradiction between this testimony and Recom's CPRs, which were signed by Minasian under penalty of perjury. For all hours of Sokzi's work reported on the CPRs: (1) the CPRs designated Sokzi as fire sprinkler fitter (in addition to quality control manager), and (2) the CPRs stated that Recom paid Sokzi the prevailing basic wage rate for fire sprinkler fitter.

Second, as to Allagholi, Minasian testified that Allagholi asked to be paid \$10.00 by check and the rest in cash, that "a couple" of other workers asked to be paid in cash, and that Recom complied. Minasian did not identify the "couple" of other workers, or

⁹ As addressed, *post*, Recom made this assertion also to explain why Recom's CPRs did not report all of the days and hours Sokzi worked on the Project, i.e., Minasian testified that the unreported days and hours were those in which Sokzi solely performed foreman work. DLSE and Recom did not submit evidence of the scope of work of fire sprinkler fitter. Throughout the Hearing, both DLSE and Recom maintained that the work of a foreman or quality control manager that did not entail physical labor (e.g., writing daily logs and reports, and attending meetings of the foremen of various trades) was not covered by the applicable prevailing wage determination for fire sprinkler fitter.

explain what they specifically requested. Nor did Minasian testify as to the amounts of his alleged cash payments to Allagholi and the “couple” of others. He did testify that he had kept a book stating these cash payments. However, Recom never provided any such book to DLSE for DLSE’s investigation of this matter, and Recom never submitted any such book as evidence at the Hearing. On cross-examination by Minasian, Allagholi directly and unequivocally denied that Recom ever made a cash payment to him for his work on the Project.

Third, as to Hartoonian, the Assessment was based on a comparison of the days and hours that Recom reported on its CPRs and the pay stubs which showed that the actual payments were less. Minasian testified that most of Hartoonian’s work was as foreman, not fire sprinkler fitter. Minasian, however, did not explain why Recom’s CPRs reported all of Hartoonian’s hours by designating Hartoonian as fire sprinkler fitter (and foreman) and by stating that Recom paid Hartoonian the prevailing wage rate for fire sprinkler fitter for all of Hartoonian’s hours.

Hartoonian testified that his work did include foreman duties, such as writing daily pre-task planning logs and subcontractor daily reports. He testified that such report-writing did not interfere with his labor as fire sprinkler fitter. Also, he worked with and supervised apprentices and journeymen. In these assignments he joined in the physical labor performed by the journeymen and apprentices while supervising them. However, Hartoonian also testified that on each day at the jobsite, he attended one-hour foremen meetings with foremen from other trades, and he performed approximately one hour of tasks that did not constitute fire sprinkler fitter labor, such as supervising the delivery of materials to the jobsite that Recom would use the following day.

As to Parseghian, Bogozian, Matavos Sokzi, and Orbel Sokzi, Minasian did not testify as to the payments Recom made to them. Further, Minasian did not rebut the Assessment’s findings and DLSE’s evidence that they were paid a lesser hourly rate than what Recom recorded on its sworn CPRs.

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Underpayment of Fringe Benefits.

Tsan testified that on May 20, 2016, and on June 10, 2016, DLSE requested Recom to provide proof of payment of the fringe benefits to the NASI Funds at the rate of \$22.35 per hour, consisting of fringe benefit reports and cancelled checks made payable to NASI Funds. Recom failed to produce any such reports or cancelled checks. DLSE then requested NASI Funds to provide all of its reports of payments from Recom during the period of Recom's work on the Project. NASI Funds produced those reports (except NASI Funds did not possess such reports for the month of December 2014). The reports showed Recom underpaid the fringe benefits as to Bogozian and Hartoonian, and Recom did not make any fringe benefit payments as to the other six journeymen. The Assessment found nonpayment of fringe benefits for the portion that Recom failed to pay on behalf of Bogozian and Hartoonian, and for the unpaid amounts due for the other six journeymen. The NASI Funds reports showed that Recom fully paid the fringe benefits for Recom's apprentices on the Project.¹⁰

Minasian testified that Recom's contract with the general contractor stated that Recom would comply with the PLA (addressed in footnote seven, *ante*) and Minasian knew the PLA stated that fringe benefits had to be paid directly to the union. Recom did not offer any testimony or other evidence countering DLSE's assessment of Recom's underpayment of the fringe benefits to the union's designee, NASI Funds. Rather, Minasian's testimony implied, but did not overtly state, that Recom paid the fringes in cash directly to the workers. Minasian testified that Recom did not include the fringe benefits on the workers' paychecks because the workers would then be taxed on the fringes. Minasian did not offer any testimony as to the amount, timing of payment, and identity of payee of any cash payment of fringe benefits to workers. Recom did not present to DLSE in its investigation, and did not offer as evidence, any writing showing or indicating any cash payment of fringe benefits to workers. Each worker who testified at the Hearing – Sokzi, Hartoonian and Allagholi – denied receiving any fringe benefit cash payment from Recom.

¹⁰ The Assessment and amended Assessment did not include any of the apprentices.

Failure to Report All Hours Sokzi Worked on the Project.

Recom's CPRs reported that Sokzi worked on the Project as a fire sprinkler fitter for 104 days in the period from February 5, 2013 through May 12, 2014, plus a single day on October 24, 2014 – eight hours each day (except for July 1 and 2, 2013, in which the CPRs reported four hours and seven hours, respectively). The CPRs stated that Recom paid Sokzi the prevailing basic wage rate for fire sprinkler fitter (as stated on the Fire Sprinkler PWD) for each of those hours.

DLSE's evidence showed that Sokzi worked on the Project as a fire sprinkler fitter an additional 110 days: eight hours per day on the days of August 21, 2013 and April 18, 2014, and the 108 days during the period from May 28, 2014 through December 11, 2014. For each of those 110 days, Recom's CPRs reported either fewer hours than shown by DLSE's evidence or no hours at all. DLSE's evidence of Sokzi's hours during these days consisted of the testimony of Sokzi and Tsan, the written materials that Sokzi provided Tsan during the investigation, and written reports described below that Sokzi and others created contemporaneously with the workdays. Those reports supported Sokzi's testimony as to the days he worked on the Project as a fire sprinkler fitter.

As to those 110 days, Sokzi testified that he performed the same physical work on fire sprinkler installation that Recom's other fire sprinkler fitters were performing, and he used the same tools, such as pipe threading machine, a scissor lift, and hand tools including a pipe wrench and drill. Sokzi and Tsan determined the 110 days mentioned above by reviewing reports written contemporaneously with the work performed, chiefly:

- Subcontractor Daily Report Forms that each subcontractor on the Project wrote and submitted to the general contractor: Sokzi wrote these reports on behalf of Recom as foreman (as did Recom's other foremen, Hartoonian and Shirvanian). Each such daily report stated the total workers for that day and designated how many were foreman, journeyman or apprentice, the equipment on site, deliveries to the work site, the work performed, and the name of each such worker. Many subcontractor daily reports that Sokzi wrote showed that he was performing the work of fire sprinkler fitter on days that Recom did not report any hours for him.

- Pre-Task Planning logs for each day that subcontractors were working on the Project: Each subcontractor, including Recom, wrote on the log the work expected to be performed that day, and the headcount of workers for that day. Each log was then submitted to the general contractor. Sokzi wrote these reports, as did Hartoonian and Shirvanian.

In preparing the Assessment, DLSE also reviewed inspection reports written by LACCD's inspector Tim Hoyt and LACCD's daily construction reports, both of which included daily work Recom performed on the Project during this period in which Recom's CPRs often showed no work performed at all.

DLSE's evidence showed that most of Sokzi's work as foreman or quality control manager was brief and did not interfere with his performance of physical work as fire sprinkler fitter. Sokzi's foreman and quality control manager work included writing the pre-task planning logs at the beginning of the workday and the subcontractor daily reports at the end of the workday, and interfacing with LACCD's inspector.

Sokzi also testified, however, that his work as foreman included participating in meetings with the foremen of the other trades on the Project each Tuesday, lasting an hour or less. During these meetings Sokzi did not perform the physical work of a fire sprinkler fitter. The evidence showed that Sokzi worked on the Project on 41 Tuesdays.

Minasian testified that the days and hours not reported on Recom's CPRs for Sokzi were the days and hours when Sokzi solely performed work as quality control manager rather than the work of fire sprinkler fitter. Minasian also testified that Sokzi's duties as quality control manager would never allow him time to perform the physical duties of fire sprinkler fitter – even though Minasian signed the CPRs designating Sokzi as fire sprinkler fitter and stating that Recom paid Sokzi the prevailing wage for fire sprinkler fitter. Those foreman duties included supervising and observing the physical work done by Recom's other journeymen and apprentices who were actually installing the fire sprinkler system, coordinating Recom's work with the other subcontractors on the job site by meeting with their foremen each day, walking the jobsite with LACCD's inspector Tim Hoyt, and inspecting the pipes and other materials delivered to the site by Recom's fabricator.

Minasian admitted that, as to the days after late July 2014 when Sokzi was virtually the only Recom worker on the Project, Sokzi did such work as adjusting the height of the fire sprinkler heads and adjusting the escutcheons, but Minasian characterized such work as quality control, rather than fire sprinkler fitter work.

Under cross-examination, Minasian admitted that on each of the days that he was on the jobsite, he was there chiefly at the beginning of the workday and the end of the workday and so he did not witness the actual work performed by Sokzi throughout the day.

Alleged Failure to Report All Hours Parseghian Worked on the Project.

Recom's CPRs showed one day of work by Parseghian. The original Assessment imposed underpayment of prevailing wages for that single day. Tsan interviewed Parseghian in about July 2016, after the original Assessment was issued. Parseghian told Tsan he worked a total of 13 days on the Project during the months of March through July 2012, totaling 103 hours, and those days and hours were then marked on a blank calendar that Tsan provided Parseghian. There was no evidence that Parseghian reviewed any document to refresh his recollection as to the 13 days he wrote on that calendar in this interview with Tsan – four years after the alleged work occurred.

Shortly after Tsan's interview of Parseghian, Parseghian's daughter emailed to Tsan a copy of pages from a calendar. Her transmittal email stated, in part, "My name is Cynthia Parseghian. I am sending you the pages requested from my father, Hamo Parseghian." Those calendar pages contain handwritten notes on nine days stating "LACCD," with 72 total hours worked – plus other days stating "UCLA." Tsan did not have any further conversation with Parseghian after the one interview described above. Therefore, he did not discuss with Parseghian the discrepancy between the 13 days (totaling 103 hours) stated on the interview calendar and the nine days (totaling 72 hours) stated on the calendar provided by Parseghian's daughter. Neither Parseghian nor his daughter testified in the Hearing.

As addressed *ante* at page four, DLSE successfully moved to increase the Assessment based upon 12 of Parseghian's alleged days of work that were not reported on Recom's CPRs.

Minasian offered testimony and exhibits that challenged DLSE's amended Assessment as to Parseghian. First, Minasian testified that on at least some of the 12 days, Parseghian had actually worked on Recom's other projects, including a project at UCLA. To corroborate his testimony, Minasian presented an exhibit consisting of a DLSE form calendar on which dates were marked for Parseghian's work on the UCLA project. Parseghian's calendar pages, emailed by his daughter, similarly showed that Parseghian had indicated he was working on the UCLA project, or may have been working on the UCLA project, on six of the 13 days he told Tsan he worked on the LACCD Project.

Assessment of Training Fund Contributions.

The amended Assessment found Recom failed to pay \$4,692.60 in training fund contributions for the work performed by the eight workers. Yet, DLSE presented no evidence supporting any basis for assessing training fund contributions. Tsan did not testify on this matter. The Penalty Review merely stated that Recom had not complied with Tsan's two requests for proof of payment of training fund contributions. The Penalty Review listed approved apprenticeship programs that could supply fire sprinkler fitter apprentices to the Project. DLSE presented no evidence, however, showing that it ever contacted any of the applicable apprenticeship programs or the California Apprenticeship Council to determine whether Recom made the training fund contributions required by the Fire Sprinkler PWD.

Minasian did not testify on the issue of whether Recom made any training fund contributions, and Recom did not offer any other evidence on the issue.

Failure to Pay Overtime.

The Assessment imposed a \$25.00 statutory penalty under section 1813 on the basis that Allagholi worked 12 hours on the Project on June 4, 2013, which was four hours of overtime work not paid at the required overtime rates. Minasian did not testify on this issue and Recom offered no other evidence contradicting DLSE's prima facie evidence supporting the assessment of this penalty.

DISCUSSION

The Assessment Was Timely.

Section 1741, subdivision (a) in effect when the Assessment was issued on June 27, 2016, provides in relevant part:

The assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

The limitations period under section 1741, subdivision (a) previously was 180 days, but the Legislature increased it to 18 months in 2013. (Stats. 2013, ch. 792, § 1, effective Jan. 1, 2014.) The former section 1741, like the current one, commences the limitations period upon the filing of a valid notice of completion or acceptance of the public work, whichever occurs last. (See former § 1741, subd. (a), stats. 2000, ch. 954, § 9 and stats. 2003, ch. 849, § 2.) Recom's work continued to December 11, 2014, well after the effective date of the amendment to section 1741 extending the limitations period to 18 months. Further, regardless of whether a limitations period of 180 days or 18 months applied to this case, the period had not commenced running as of the issuance of the Assessment on June 27, 2016, because no notice of completion had been filed and LACCD had not accepted the public work. Accordingly, the Assessment was timely.

Recom Underpaid Prevailing Wages.

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. The purpose of these provisions has been summarized as follows:

The overall purpose of the prevailing wage law . . . is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(Lusardi Construction Co. v. Aubry (1992) 1 Cal.4th 976, 987, citations omitted *(Lusardi)*.) DLSE enforces prevailing wage requirements not only for the benefit of workers, but also “to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a), and see *Lusardi*, at p. 985.)

Section 1775, subdivision (a) requires, among other provisions, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing rate; section 1775, subdivision (a) also prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following service of a civil wage and penalty assessment under section 1741.

When DLSE determines that a violation of the prevailing wage laws has occurred, a written civil wage and penalty assessment is issued pursuant to section 1741. An affected contractor or subcontractor may appeal the assessment by filing a request for review under section 1742. DLSE has the burden of providing evidence that “provides prima facie support for the Assessment ...” (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that initial burden is met, “the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment ... is incorrect.” (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).)

Here, there was no dispute between DLSE and Recom as to the prevailing wage rate -- consisting of the basic wage rate plus fringe benefits -- required by the Fire Sprinkler PWD. As to the prevailing basic wage rate of \$40.98 per hour, DLSE presented prima facie evidence that Recom paid seven workers (i.e., all the journeymen fire sprinkler fitters other than Shirvanian) substantially less than that rate for all hours worked on the Project. As to the fringe benefit of \$22.35 per hour, DLSE presented prima facie evidence that Recom underpaid the fringe benefits for two of the journeymen (Bogozian and Hartoonian), and Recom failed to pay any fringe benefit payments for the other six journeymen. This Decision will first address the assessment of prevailing basic wages, and then the assessment as to fringe benefits.

Underpayment of Prevailing Basic Wage to Sokzi.

Recom failed its burden of proving that the basis for the Assessment was incorrect as to Sokzi (although, as discussed below, Sokzi's testimony established that the Assessment was incorrect as to 41 hours of work). Recom's CPRs reported Sokzi's work as fire sprinkler fitter on the Project for many days; on many other days, the CPRs either incorrectly failed to report any work by Sokzi, or under-reported his time. Recom never paid Sokzi the prevailing basic wage rate for fire sprinkler fitter.

DLSE's evidence that Sokzi performed the labor of fire sprinkler fitter included Sokzi's testimony, corroborated by contemporaneous written reports (e.g., subcontractor daily reports and pre-task planning logs) showing Sokzi's work. Sokzi testified as to the actual work duties he performed and the tools he used in performing the manual labor of fire sprinkler fitter each day he worked on the Project. Sokzi also testified that his other brief foreman duties of interfacing with the inspector and writing daily logs and reports did not interfere with the manual labor he performed as fire sprinkler fitter.

Minasian's explanation as to why Recom's CPRs did not report all the days and hours Sokzi worked on the Project, and why Recom paid Sokzi less than the prevailing wage rate, was that Sokzi never performed the work of fire sprinkler fitter. Instead, he only performed the work of foreman or quality control manager. Minasian never explained the fundamental contradiction between this testimony and Recom's many sworn CPRs that did report Sokzi's work on the Project as fire sprinkler fitter, and that did state that Recom was paying him the fire sprinkler fitter prevailing wage.

Minasian made several additional assertions in his testimony regarding Sokzi's work as a quality control manager to attempt to prove the basis for the Assessment was incorrect. He testified that fire sprinkler installation required two workers to perform the physical labor, and one of the most time-consuming tasks of Sokzi's work quality control manager was to supervise Recom's other two workers who performed that physical labor. However, many of Sokzi's subcontractor's daily reports during this period showed that Recom had only two workers on the jobsite to perform the physical work: Sokzi plus either a journeyman or an apprentice. Also, many subcontractor daily reports during this period showed that Sokzi worked alone. Minasian admitted that on such days Sokzi

performed such work as adjusting the sprinkler heads and the escutcheons. Although Minasian's testimony characterized such work as quality control work, it was clearly physical work within the Fire Sprinkler PWD that Sokzi performed alone. Moreover, Minasian admitted that on the days he was at the jobsite, he was there usually at the beginning of the workday and at the end of the workday, and so he did not see the work performed by Sokzi throughout the day.

Accordingly, Recom failed to meet its burden of proving these bases for the Assessment were incorrect. An admission by Sokzi in his testimony, however, does prove that one basis for the Assessment was incorrect. Sokzi testified that every Tuesday he participated in foremen meetings with the foremen from other trades, and these meetings lasted "for an hour or less." During such meetings Sokzi did not perform the labor of a fire sprinkler fitter. The evidence establishes there were 41 such Tuesdays. Accordingly, the Assessment must be reduced by 41 hours, at the prevailing wage rate of \$63.33 per hour (i.e., the prevailing basic wage of \$40.98 per hour plus the fringe benefits of \$22.35 per hour); this totals a reduction of \$2,596.53.

Alleged Underpayment of Prevailing Basic Wage to Parseghian.

The original Assessment found that Recom underpaid Parseghian for the single day reported on the CPRs. The amended Assessment found that Parseghian worked 12 additional days, with a resulting increase of \$2,817.35 assessed in prevailing wages. However, there was no prima facie support for this increase.

First, as addressed above, after DLSE issued the original Assessment on June 27, 2016, Parseghian was interviewed by Tsan and at that time handwrote on a blank calendar provided by Tsan 13 total days of work that he claimed to have worked on the Project, totaling 103 hours. Those hours were purportedly worked on five days in March 2012, two days in April 2012, one day in May 2012, one day in June 2012, and four days in July 2012 – all four years before Parseghian wrote them on the calendar. There was no evidence as to how Parseghian recalled such specific workdays approximately four years after they occurred. For example, there was no evidence that Parseghian reviewed any document during his interview with Tsan showing or indicating the days he worked on the Project.

Second, shortly after Parseghian’s interview with Tsan, Parseghian’s daughter emailed Tsan pages from a calendar, “requested from my father.” Those pages failed to corroborate the 13 days Parseghian wrote from memory on DLSE’s blank calendar, as addressed above. Those pages stated only nine of those days of work on the LACCD Project (totaling 72 hours) – plus other days of work on the UCLA project. Tsan never had any follow-up communication with Parseghian to attempt to resolve these discrepancies and uncertainties in the calendars.

Third, Minasian’s exhibit of a separate DLSE form calendar showing Parseghian’s work on the UCLA project showed that Parseghian had asserted he worked on the UCLA project – or may have worked on the UCLA project – on six of the 13 days he told Tsan he worked on the LACCD Project.

Accordingly, there are contradictions in the three calendars in evidence depicting dates on which Parseghian may have worked on the Project: the DLSE calendar for the Project, the DLSE calendar for the UCLA project, and the calendar Parseghian’s daughter emailed to Tsan pertaining to both the Project and the UCLA project. Due to the substantial discrepancies in the dates stated in these three calendars, the lack of any follow-up interview of Parseghian to explain those discrepancies, and the absence of any evidence on how Parseghian recalled the dates he worked on the Project four years after the work occurred, this Decision finds there is no sufficient evidence to show that Parseghian worked on the LACCD Project on the 12 days added by the amended Assessment.

Accordingly, this Decision modifies the amended Assessment by reducing the amended Assessment in the sum of \$2,817.35 in prevailing wages for Parseghian.

Underpayment of Prevailing Basic Wage to Allagholi, Bogozian, Matavos Sokzi, Orbel Sokzi, and Hartoonian.

Recom failed to carry its burden of proving that the basis for the Assessment as to Allagholi, Bogozian, Matavos Sokzi, Orbel Sokzi and Hartoonian was incorrect. The pay stubs for Allagholi and Hartoonian showed Recom’s actual payments were less than shown on the CPRs. Minasian testified that Allagholi asked to be paid \$10.00 per hour by check and the rest by cash, that a “couple” of other workers also asked to be paid in

cash, and that Recom complied with the requests. Upon cross-examination by Minasian, Allagholi directly and unequivocally denied that Recom made any cash payments to him. Minasian did not give any specific testimony on the alleged cash payments, e.g., no testimony on how much Recom allegedly paid Allagholi in cash, when Recom made such payments, or who at Recom handed the cash to Allagholi. Minasian alluded to a book that he kept stating cash payments to workers on the Project, but he did not present any such book to DLSE during the investigation and he did not present it as evidence at the Hearing. This Decision finds that that Recom has failed to disprove the basis for the Assessment as to underpayment of wages to Allagholi, Bogozian, Matavos Sokzi, Orbel Sokzi and Hartoonian.

Hartoonian's own testimony, however, disproved a portion of the Assessment. The Assessment as to Hartoonian was based on the days and hours that Recom reported on its CPRs: 51 days of work, eight hours per day. Hartoonian testified that a portion of each day was devoted exclusively to foreman duties in which he did not perform the labor of fire sprinkler fitter: one hour per day in foremen meetings, and approximately one hour per day in other foreman tasks such as conferring with the foremen of other trades, and supervising the delivery of materials to the jobsite for Recom to use the following day. Accordingly, the Assessment must be reduced by 102 hours, comprising 2 hours per day for the 51 days Hartoonian worked at the Project, at the prevailing wage rate of \$63.33 per hour (i.e., the prevailing basic wage of \$40.98 per hour and the fringe benefit of \$22.35 per hour). This totals a reduction of \$6,459.66 for Hartoonian.

Underpayment of Fringe Benefits.

As to the fringe benefits of \$22.35 per hour that Recom was required to pay to the NASI Funds, DLSE presented prima facie evidence that Recom underpaid the amounts due on behalf of Bogozian and Hartoonian, and failed to make any payments for the six other journeymen. Recom did not assert that it paid any fringe benefits to the union's designee, NASI Funds, even though Minasian testified he knew the PLA required payment of the fringe benefits to the union. Minasian admitted that Recom's check payments to the journeymen did not include payment of fringe benefits. His testimony indirectly alluded to Recom paying fringe benefits to the journeymen in cash (by stating

that payments by check would be taxed to the workers), but he did not testify as to any specifics of any such cash payments, i.e., no testimony as to how much was paid, when it was paid, who handed the cash to the workers, or which workers received the cash. Moreover, each of the three journeymen who testified at the Hearing (Sokzi, Allagholi and Hartoonian) denied receiving any payment of fringe benefits from Recom. Accordingly, Recom failed to prove that this basis of the Assessment was incorrect.

In conclusion, this Decision modifies the amended Assessment by finding that Recom underpaid prevailing wages (consisting of the prevailing basic wage plus the fringe benefits) in the total sum of \$114,989.34.

Recom Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a) provides for the imposition of liquidated damages upon the contractor, essentially a doubling of the unpaid wages. It provides in part:

After 60 days following the service of a Civil Wage and Penalty Assessment under Section 1741 . . . , the affected contractor, subcontractor, and surety . . . shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the Assessment . . . subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

As of April 29, 2011, the date for bid advertisement on the Project, (and also as of June 27, 2016 when DLSE served the Assessment on Recom), the statutory scheme regarding liquidated damages provided contractors three alternative ways to avert liability for liquidated damages, in addition to prevailing on the case, or settling the case with DLSE and DLSE agreeing to waive liquidated damages. These required the contractor to make key decisions within 60 days of the service of the civil wage and penalty assessment upon the contractor. First, under section 1742.1, subdivision (a), the contractor could decide whether to pay to the workers all or a portion of the wages assessed in the civil wage and penalty assessment, and thereby avoid liability for liquidated damages on the amount of wages so paid. Here, Recom stipulated in the Prehearing Conference on October 14, 2016, that it did not make such payment.

Second, under section 1742.1, subdivision (b) a contractor could avert liability for liquidated damages if, within 60 days from issuance of the civil wage and penalty assessment, the contractor deposited into escrow with the Department of Industrial Relations the full amount of the assessment of unpaid wages, plus the statutory penalties under sections 1775 and 1813. Here, Recom stipulated in the Prehearing Conference on October 14, 2016, that it did not make such deposit.

Third, the contractor could choose to rely upon the Director's discretion to waive liquidated damages under (former) section 1742.1, subdivision (a), which stated:

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment ... with respect to a portion of the unpaid wages covered by the assessment ..., the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.¹¹

(§ 1742.1, subd. (a).)

This Decision affirms the underpayment of prevailing wages stated in the amended Assessment (i.e., the prevailing basic wage plus the fringe benefits), but reduces the amount from \$126,862.88 to \$114,989.34. This \$11,873.54 modification is based on the testimony of two of Recom's journeymen quantifying the amount of time they spent on foreman and quality control manager duties instead of fire sprinkler fitter tasks. The statutory test of whether the contractor had substantial grounds to appeal the Assessment is not judged by those matters for which wages are not due and for which no liquidated damages can be imposed (i.e., the \$11,873.54 modification). Rather, the proper test is

¹¹ On June 27, 2017 (after the conclusion of the Hearing on the Merits and the submission of this case for decision), the Director's discretionary waiver power was deleted from section 1742.1 by Senate Bill 96 (stats. 2017, ch 28, § 16 (SB 96)). Legislative enactments, however, are to be construed prospectively rather than retroactively, unless the legislature expresses its intent otherwise. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 936.) Further, "[a] statute is retroactive if it substantially changes the legal effect of past events." (*Kizer v. Hannah* (1989) 48 Cal.3d 1, 7.) Here, the law in effect at the time the civil wage and penalty assessment was issued (in 2016) allowed a waiver of liquidated damages in the Director's discretion, as specified, which could have influenced the contractor's decision as to how to respond to the assessment. Applying the current terms of section 1742.1 as amended by SB 96 in this case would have retroactive effect because it would change the legal effect of past events (i.e., what the contractor elected to do in response to the assessment). Accordingly, this Decision finds that the Director's discretion to waive liquidated damages in this case under section 1742.1, subdivision (a) is unaffected by SB 96.

whether Recom had substantial grounds to appeal the Assessment as to the portion the Director is upholding – i.e., unpaid prevailing wages totaling \$114,989.34.

The Director finds that as to the \$114,989.34 in prevailing wages affirmed by this Decision, Recom failed to demonstrate it had substantial grounds to appeal.

The evidence established that Recom knew its obligations under the prevailing wage law and deliberately failed to comply. As to the seven journeymen for whom this Decision finds that Recom failed to pay the prevailing basic wage, Recom correctly designated them as fire sprinkler fitters in its CPRs, and those CPRs stated the correct prevailing wage to be paid to them. Recom's witness Minasian signed those CPRs under penalty of perjury. Yet, on appeal, Minasian's testimony directly contradicted those CPRs. Minasian testified that Sokzi never worked on the Project as fire sprinkler fitter because he did not have the skills to perform fire sprinkler work, and because all of his time was taken up by performing the duties of foreman or quality control manager. Similarly, as to Hartoonian, Minasian testified that most of Hartoonian's work was as foreman, not fire sprinkler fitter. However, Minasian never explained why Recom's CPRs reported that Recom paid Hartoonian the prevailing wage rate for fire sprinkler fitter for all of Hartoonian's hours. Recom failed to present any documentary evidence or other evidence to corroborate Minasian's striking contradiction of Recom's own CPRs. In contrast, Sokzi's and Hartoonian's testimony was corroborated by documentary evidence, including reports and logs written concurrently with the events.

Minasian's testimony further established that Recom had no substantial grounds to appeal by virtue of his bald assertions, without any documentary corroboration or corroboration of any other witness, that Recom paid part of the prevailing wage to the workers in cash. **The fact that** Minasian testified as to his "book" recording cash payments that could have provided corroboration, but never presented it to DLSE or to the Hearing Officer, only emphasizes the insubstantiality of his argument.

As to fringe benefits, Recom's knowledge of its obligation is shown by Minasian's admission that he knew the PLA required Recom to pay the fringe benefits to the union, and is shown by Recom's payment of all fringes for its apprentices to the union's designee NASI Funds. Yet, inexplicably Recom did not make any fringe benefit

payments as to six journeymen and underpaid as to two others. Recom's failure to present even a colorable argument that fringe benefits were not due reveals it had no bona fide basis to contest the Assessment on that issue.

The record as a whole demonstrates a deliberate failure by Recom to comply with the prevailing wage requirements, consisting of its failure to pay the workers the prevailing wages stated in its own CPRs, its failure to present any corroboration of alleged cash payments, and its inexplicable failure to make full payment of fringe benefits for its journeymen despite making full payment for its apprentices. Recom presents no substantial grounds for appealing the Assessment.

Accordingly, the Director does not waive payment of the liquidated damages. Recom is liable for liquidated damages in the sum of \$114,989.34

DLSE Failed to Present Prima Facie Evidence that Recom Failed to Pay Training Fund Contributions.

In general, and unless an exemption applies, section 1777.5, subdivision (m)(l) requires contractors on public works projects who employ journeyman or apprentices in any apprenticeable craft to pay training fund contributions to the California Apprenticeship Council or to an apprenticeship committee approved by the Department of Apprenticeship Standards, as follows:

A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

Here, DLSE failed to provide evidence sufficient to provide prima facie support for the assessment of unpaid training fund contributions. The only mention in the record on this issue is the finding in the Assessment. Tsan did not testify on this issue. The Penalty Review's unsupported statements that Recom had not complied with Tsan's two requests for proof of payment of training contributions, and its bald conclusion that Recom had failed to pay training contributions, do not constitute prima facie evidence that Recom failed to make the required contributions. Since DLSE failed to meet its burden to present prima facie evidence, Recom did not have the burden of proving that the Assessment was incorrect as to this element of the Assessment. (Cal. Code Regs., tit. 8, § 17250, subds. (a) and (b).) Accordingly, the assessment of allegedly unpaid training fund contributions is dismissed.

Recom Is Liable for a Modified Penalty Under Section 1775.

Section 1775, subdivision (a), as it read in 2011 at the time of the bid advertisement that led to Recom's work on the Project, states in relevant part:

(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than ten dollars (\$10) . . . unless the failure of the . . . subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the . . . subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) . . . if the . . . subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.^[12]

Section 1775, subdivision (a)(2)(D) states, “The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.” Further, “the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.” (Cal. Code Regs. tit. 8, §17250, subd. (c).) Abuse of discretion is established if the “agency’s nonadjudicatory action . . . is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy.” (*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute his own judgment “because in [his] own evaluation of the circumstances the punishment appears to be too harsh.” (*Pegues v. Civil Service Commission* (1998), 67 Cal.App.4th 95, 107.)

Here, the Labor Commissioner selected \$50.00 as the rate for the section 1775 penalty based on the evidence that Recom’s violations were willful (§ 1775, subd. (a)(2)(A)(iii) and § 1777.1, subd. (c)), the violations were not a good faith mistake (§ 1775, subd. (a)(2)(A)(i)), and Recom had a prior record of failing to meet its prevailing wage obligations. (§ 1775, subd. (a)(2)(A)(2)). As to willfulness and lack of good faith

¹² Section 1777.1, subdivision (c) defines a willful violation as one in which “the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.”

mistake, the evidence showed that Recom knew of its obligations under the prevailing wage law and deliberately failed to comply. The evidence also showed that Recom failed to rebut DLSE's evidence that it has a prior record of failing to meet its prevailing wage obligations.

For the foregoing reasons, Recom failed to satisfy its burden of proving abuse of discretion in the setting of the penalty rate at \$50.00. As to the number of violations, the original Assessment correctly stated 435 violations. The amended Assessment added 12 violations for 12 additional days of work by Parseghian, but as found above, DLSE failed to present prima facie evidence supporting those 12 days. Accordingly, the section 1775 statutory penalties stated in the amended Assessment is modified: Recom is liable for the section 1775 penalties at the rate of \$50.00 per violation for 435 violations, totaling \$21,750.00.¹³

Recom Is Liable for a \$25.00 Overtime Penalty.

Section 1815 states in full as follows:

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

Section 1813 states as follows:

The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the ... contractor ... for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. ...

¹³ This Decision's reduction of the Assessment as to prevailing wages for Sokzi (assessed at one hour for each of 41 days) and Hartoonian (assessed at two hours for each of 51 days), *ante*, does not affect the assessment of the section 1775 statutory penalty, because the penalty is imposed for "each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates . . ." (§ 1775, subd. (a)(1), *emphasis added*.) The evidence established that Sokzi and Hartoonian were underpaid prevailing wages for additional hours worked on each of those days.

Here, the Fire Sprinkler PWD required Recom to pay Allagholi time and one-half of the basic wage rate for the four hours of overtime Allagholi worked on June 4, 2013. Recom did not present any evidence to contradict DLSE's evidence that Recom only paid Allagholi straight time for those four hours. Accordingly, the section 1813 statutory penalty of \$25.00 is affirmed.

Based on the foregoing, the Director makes the following findings:

FINDINGS

1. DLSE timely served the Assessment upon affected subcontractor Recom, Inc. in accordance with section 1741.
2. Recom, Inc.'s workers Allagholi, Sokzi, Hartoonian, Parseghian, Shirvanian, Bogozian, Matavos Sokzi and Orbel Sokzi performed work in Los Angeles County within the City limits of Los Angeles during the pendency of the Project and were entitled to be paid the journeyman prevailing wage rate for fire sprinkler fitter for that work. The prevailing wage rate included both a basic wage rate and fringe benefits. The original Assessment found that Recom, Inc. underpaid prevailing wages for these eight workers in the aggregate sum of \$124,045.53.
3. The evidence established that the basis of the Assessment of unpaid prevailing wages was incorrect as to 41 hours for Sokzi, resulting in a \$2,596.53 reduction of the Assessment.
4. The evidence established that the basis of the Assessment of unpaid prevailing wages was incorrect as to 102 hours for Hartoonian, resulting in a \$6,459.66 reduction in the Assessment.
5. The amended Assessment increased the original Assessment by adding \$2,817.35 in prevailing wages for an additional 12 days of work performed by Parseghian. However, the evidence established that the basis of the amended Assessment of unpaid prevailing wages was incorrect as to those 12 days, resulting in a \$2,817.35 reduction in the amended Assessment.
6. In light of findings 2, 3, 4 and 5 above, Recom, Inc. underpaid its workers on the Project in the aggregate sum of \$114,989.34.

7. No wages were paid or deposited with the Department of Industrial Relations as a result of the Assessment, and there are insufficient grounds to waive payment of these damages. Accordingly, Recom, Inc. is liable for \$114,989.34 in liquidated damages under section 1742.1.
8. DLSE failed to provide prima facie evidence that Recom, Inc. failed to make training fund contributions in the sum of \$4,692.60, or any other sum. Accordingly, the assessment of unpaid training fund contributions is dismissed.
9. The Labor Commissioner did not abuse her discretion in setting section 1775 penalties at the rate of \$50.00 per violation. The determination in the original Assessment that Recom, Inc. had committed 435 violations is correct. The amended Assessment incorrectly added 12 violations for Parseghian. Accordingly, the amended Assessment is modified to find Recom, Inc. liable for section 1775 penalties in the aggregate sum of \$21,750.00 for 435 violations.
10. Recom, Inc. is liable for a statutory penalty under section 1813 in the sum of \$25.00 for a single violation.
11. The amounts found due in the Assessment as modified and affirmed by this Decision are as follows:

Wages due:	\$114,989.34
Liquidated damages:	\$114,989.34
Penalties under section 1775(a):	\$21,750.00
Penalties under section 1813:	\$25.00
TOTAL	\$251,753.68

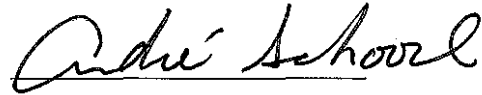
In addition, interest is due and shall continue to accrue on all unpaid wages as provided in section 1741, subdivision (b).

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ORDER

The Civil Wage and Penalty Assessment is affirmed in part and modified in part as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 9/12/2018



André Schoorl
Acting Director of Industrial Relations