

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Newport Construction, Inc.**

**Case No. 16-0333-PWH**

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor Newport Construction, Inc. (Newport) submitted a request for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on August 10, 2016, with respect to a work of improvement known as the Lab/College Services Building (Project) performed for the Glendale Community College District (District) in the County of Los Angeles. The Assessment determined that the following amounts were due: \$17,434.24 in unpaid prevailing wages, \$359.51 in unpaid training funds, \$8,640.00 in Labor Code section 1775 statutory penalties,<sup>1</sup> \$950.00 in section 1813 statutory penalties, and \$20,400.00 in section 1777.7 statutory penalties. Newport timely filed its Request for Review of the Assessment on August 24, 2016.<sup>2</sup>

A Hearing on the Merits was held in Los Angeles, California, before Hearing Officer Howard Wien, on May 25, 2017, September 7, 2017, and November 30, 2017. Nick Campbell appeared as counsel for Newport, and Abdel Nassar appeared as counsel for DLSE. Testimony was presented by Industrial Relations Representative Kenneth Mayorga and Newport workers Deudiel Cardoso and Aaron Ramon, Sr. in support of the Assessment. Newport's President and Responsible Managing Officer Michael M.

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<sup>1</sup> All further section references are to the California Labor Code, unless otherwise specified.

<sup>2</sup> The prime contractor on the Project, Mallcraft, Inc. (Mallcraft), did not file a request for review from the Assessment.

Mojaver testified on behalf of Newport. Pursuant to Order of the Hearing Officer, the parties submitted post-hearing briefs on January 23, 2018; the case stood submitted on that day.

The issues for decision are:

- Whether the Assessment correctly found that Newport failed to report and pay the required prevailing wages for all hours worked on the Project by the affected workers.
- Whether Newport is liable for nonpayment of training fund contributions, and if so, in what amount.
- Whether the Labor Commissioner abused her discretion in assessing statutory penalties under section 1775 at the rate of \$120.00 per violation for 72 violations, totaling \$8,640.00.
- Whether Newport is liable for liquidated damages under section 1742.1, subdivision (a), and if so, in what amount.
- Whether the Assessment correctly found that Newport failed to pay the overtime prevailing wage rate for all overtime hours worked, thereby making Newport liable for a section 1813 statutory penalty of \$25.00 per violation for 38 violations, totaling \$950.00.
- Whether Newport knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230, subdivision (a), by not issuing public works contract award information in a Division of Apprenticeship Standard (DAS) 140 form or its equivalent to the applicable apprenticeship committee in the geographic area of the Project for the craft of Tile Layer.
- Whether Newport knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a), by not issuing valid requests for dispatch of apprentices in a DAS 142 form or its equivalent to the applicable apprenticeship committee in the geographic area of the Project for the craft of Tile Layer.

- Whether Newport knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a), by not employing apprentices on the Project in the ratio of one hour of apprentice work for every five hours of journeyman work in the craft of Tile Layer.
- Whether Newport is liable for section 1777.7 statutory penalties, and if so, in what amount.

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Assessment, and that Newport failed to carry its burden of proving the basis for the Assessment was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subs. (a), (b).) Accordingly, the Director issues this Decision affirming but modifying in part the Assessment.

### **FACTS**

#### **The Project.**

The District advertised the Project for bid on May 29, 2013, and awarded the contract to Mallcraft on or about September 14, 2013. Under the prime contract between the District and Mallcraft, Mallcraft was to construct a new three-story Lab/College Services building for the District. On October 30, 2013, Mallcraft and Newport entered into a subcontract (Subcontract) under which Newport was to furnish and install all tile flooring for the new building. Under paragraph 15.1(e) of the Subcontract, Newport agreed to comply with the Labor Code provisions on prevailing wage and apprentice requirements for public works projects, as follows:

If the payment of prevailing wages is required by law or the contract documents, then (a) Subcontractor shall submit certified payroll records to Contractor no later than 3 working days after the workers have been paid, and (b) California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated herein as though fully set forth, and Subcontractor shall comply with these statutes, and all interpretations thereof by the Director of the Department of Industrial Relations, to the extent that they may be applicable to Subcontractor on this project.

(DLSE Exhibit No. 5, p. 4.)

Assessment of Unpaid Prevailing Wages, Training Fund Contributions and Statutory Penalties Under Sections 1775 and 1813.

The Assessment's determination of unpaid wages, unpaid training fund contributions, and statutory penalties under sections 1775 and 1813 was based on the work of three of Newport's journeymen Tile Finishers on the Project: Deudiel Cardoso, Aaron Ramon Sr. and Aaron Ramon Jr. As determined by the bid advertisement date of March 13, 2014, the applicable prevailing wage determination for Tile Finishers working in Los Angeles County was No. LOS-2013-1, issued August 22, 2012 (Tile Finisher PWD).<sup>3</sup> As of the year 2015 when these workers performed their work on the Project, two predetermined increases in the Tile Finisher PWD provide that the straight time prevailing wage to be paid to the workers was \$33.63/hour, and the time-and-a-half rate for overtime and Saturday work was \$45.26/hour.<sup>4</sup> Also, a training fund contribution of \$0.89 was to be made to the Tile & Terrazzo Industry Joint Apprenticeship Committee (Tile JAC).

DLSE's investigation found that Newport's certified payroll records (CPRs) correctly classified Cardoso, Ramon Sr., and Ramon Jr. as Tile Finishers and slightly overstate the prevailing wage rate for this classification.<sup>5</sup> DLSE determined that Newport had paid these workers prevailing wage rates for the hours stated in the CPRs. DLSE determined, however, that the CPRs substantially underreported the hours that these workers had worked on the Project, resulting in a substantial underpayment of required prevailing wages. Some of the underpayment was for overtime and Saturday hours. According to DLSE's audit:

- Cardoso worked 232 straight time hours and 48 overtime and Saturday hours, for

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<sup>3</sup> The document LOS-2013-1 containing this prevailing wage determination included prevailing wage determinations of 17 different crafts, each with its own prevailing wage rate. One of those crafts was Tile Layer, which is addressed *post*, in the discussion of the section 1777.7 statutory penalty imposed by the Assessment.

<sup>4</sup> These sums include fringe benefits.

<sup>5</sup> For Newport's work on the Project from April 13, 2015, through September 4, 2015, the CPRs slightly overstate the hourly prevailing wage rate to be paid to the workers as \$34.19. For dates after September 4, 2015, the CPRs overstate the hourly rate as \$35.04. In computing the amount of unpaid prevailing wages in the Assessment, DLSE credited Newport for all sums stated in the CPRs.

which he earned a total prevailing wage of \$9,974.64. The CPRs reported that Newport paid him \$3,521.57 for his work on the Project, resulting in an underpayment of \$6,453.07.

- Ramon Sr. worked 72 straight time hours and 14 overtime and Saturday hours, for which he earned a total prevailing wage of \$3,055.00. The CPRs reported that Newport paid him \$1,138.80 for his work on the Project, resulting in an underpayment of \$1,916.20.
- Ramon Jr. worked 173 straight time hours and 87 overtime and Saturday hours, for which he earned total prevailing wages of \$9,755.61. Newport's CPRs reported that Newport paid him \$690.64, resulting in an underpayment of \$9,064.97.<sup>6</sup>

As to the \$0.89/hour training fund contribution required by the Tile Finisher PWD, the Tile JAC provided DLSE its records showing that Newport's training fund contributions for Cardoso, Ramon Sr. and Ramon Jr. totaled \$197.63. DLSE's investigation determined those three employees worked a total of 626 hours on the Project, thereby requiring a total training fund contribution of \$557.14. The Assessment thus determined that Newport was liable for unpaid training fund contributions in the sum of \$359.51.

As to the section 1775 penalty, DLSE determined there were a total of 72 worker-days in which Newport underreported hours on the CPRs and consequently failed to pay the prevailing wage to the three workers (and failed to pay the training fund contributions to the Tile JAC). The Labor Commissioner set the penalty rate at \$120.00 per violation. The Assessment thereby imposed an aggregate section 1775 penalty of \$8,640.00.

As to the section 1813 statutory penalty, DLSE found that the three workers had worked a total of 38 days for which the CPRs fail to report overtime and Saturday hours, and for which Newport consequently failed to pay the workers the overtime or Saturday rate. The Assessment therefore imposed an aggregate section 1813 penalty at the

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<sup>6</sup> As addressed *post*, DLSE's audit actually understates the straight time hours and overtime and Saturday hours shown on DLSE's prima facie evidence. As a result, Newport's underpayment was greater than \$9,064.97.

statutory rate of \$25.00, totaling \$950.00.

Assessment of Apprenticeship Violations.

The Assessment did not impose any section 1777.7 penalty related to the craft of Tile Finishers. DLSE's investigation found that Newport complied with all apprenticeship requirements as to Tile Finishers. Rather, the section 1777.7 penalty was imposed for a different craft, that of Tile Layer.

The CPRs reported 1,343 hours of Tile Layer work on the Project.<sup>7</sup> As determined by the bid advertisement date of March 13, 2014, the applicable prevailing wage determination for Tile Layers working in Los Angeles County is No. LOS-2013-1 (Tile Layer PWD).<sup>8</sup> The Tile Layer PWD provides that Tile Layer is an apprenticeable craft.

In the geographic area of the Project site, there was one apprenticeship committee for the craft of Tile Layer (as well as the craft of Tile Finisher): the Tile JAC. DLSE's investigation found that, unlike Newport's full compliance with apprenticeship requirements for Tile Finishers, Newport failed to comply with the apprenticeship requirements as to Tile Layers.<sup>9</sup> For Tile Layers, Newport did not issue to the Tile JAC any public works contract award information (in a DAS 140 form or equivalent) or any request for dispatch of apprentices (in a DAS 142 form or equivalent). Newport had Tile Layer apprentices work on the Project for 24 total hours.

As to the Assessment's calculation of the section 1777.7 statutory penalty, the Labor Commissioner set the rate at \$60.00 per day of violation. Based upon Newport's failure to issue a notice of public works contract award information to the Tile JAC for the craft of Tile Layer, the Labor Commissioner set the penalty period to commence on

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<sup>7</sup> The Tile Layer work was performed by workers other than Tile Finishers Cardoso, Ramon Sr. and Ramon Jr.

<sup>8</sup> As stated *ante*, the document No. LOS-2013-1 contains the prevailing wage determinations of 17 different crafts, including Tile Finisher craft of Cardoso, Ramon Sr. and Ramon Jr.

<sup>9</sup> For the craft of Tile Finisher, Newport issued to the Tile JAC a valid DAS 140 form and a valid DAS 142 form. Newport's journeymen Tile Finishers worked 1,397 hours on the Project, and Newport's apprentice Tile Finishers worked 525 hours on the Project.

the first day Newport worked on the Project (April 13, 2015) through the last day Newport worked on the Project (March 18, 2016). This totals 340 days, resulting in the penalty of \$20,400.00.

Newport's Evidence at the Hearing on the Merits.

Mojaver testified that Newport was incorporated in 2008, and since then, 99% of Newport's work has been on public works construction projects. Mojaver is the person who has been responsible for, among other things, hiring workers, issuing Newport's payments to the workers, preparing Newport's CPRs, and issuing Newport's notices (i.e., the DAS 140 and DAS 142 forms) in order to comply with apprenticeship requirements on public works projects. Mojaver gave no testimony as to the apprentice issues in this case.

In the Hearing, Mojaver did not recall any days and hours that Cardoso, Ramon Sr. and Ramon Jr. worked on the Project. He testified that the days and hours stated on the CPRs are correct, because he had prepared them from daily timesheets initialed by each worker. Each timesheet covered a week of work. For each worker who worked on a particular day, there was a space in which to handwrite the time of arrival at the job site and a space in which to handwrite the time of departure; there was also a space for the worker to initial that information. Mojaver used that information to calculate the number of hours each worker worked each day, and he transferred that information to the CPR for that week.

For all of Newport's public works projects, including the Project, Mojaver kept the timesheets for "a couple of months." He then discarded the timesheets unless a worker, general contractor, or awarding body made an inquiry or complaint as to hours and wages on the project. He never received any such inquiry or complaint regarding the Project.

Newport did submit as an exhibit eight pages of documents which Mojaver testified were timesheets for eight weeks of work on the Project. Newport did not produce any alleged timesheets for the other 21 weeks of work on the Project that are reported on the CPRs. Mojaver testified that he had thrown away all the other timesheets for the Project several months after Newport had completed its work because Newport

did not need them any more. Mojaver never testified as to why had not discarded the eight timesheets submitted as evidence at the Hearing.

Cardoso is included on the first seven timesheets in the exhibit, and Ramon Jr. is included in the eighth timesheet. Mojaver testified that the initials on those timesheets were written by Cardoso and Ramon Jr., respectively.

Mojaver testified that his workers always worked eight hours per day on the Project, arriving at 7:00 a.m. and leaving at 3:30 p.m. (which, during daylight savings time, was shifted to one-half hour later, i.e., arrival at 7:30 a.m. and departure at 4:00 p.m.). Mojaver did not offer any testimony on why a majority of the days shown in the eight timesheets state earlier departure times, resulting in substantially fewer than eight hours of work per day. Similarly, Mojaver did not offer any testimony explaining the contradiction between his testimony asserting the amount of work was always eight hours per day versus the CPRs stating that Cardoso, Ramon Sr., Ramon Jr. and many other workers worked substantially less than eight hours per day on numerous days.

Mojaver further testified that none his workers performed any work on the Project on any weekend, and none performed overtime work. None of his workers on any of his projects was permitted to work overtime or on weekends without his express approval, and he never approved overtime or weekend work on the Project. Further, any weekend work on the Project would have required the approval of the District and a request that the District open the gate to the premises. According to Mojaver's testimony, he never obtained any such approval from the District and never made any such request to the District to open the gate. This testimony was contradicted by the CPR showing that a Newport Tile Finisher (not Cardoso, Ramon Sr. or Ramon Jr.) and a Newport Tile Layer each worked on the Project eight hours on Saturday, February 20, 2016, and two hours on Sunday, February 21, 2016.

DLSE's Evidence at the Hearing on the Merits.

Cardoso testified that he never saw the alleged timesheets addressed above and never initialed any timesheets for his work on the Project. Cardoso was interviewed by DLSE on May 16, 2016. DLSE provided him a form calendar for the year 2015, and during this interview he handwrote on the calendar the hours he worked each day on the



Project. This totaled 280 hours, performed on 35 days at eight hours each day. Six of those days were Saturdays.

Cardoso testified that he based this calendar on three factors: (1) his memory of the dates and hours he worked, including his memory that he never worked on the Project less than eight hours in a day; (2) his paystubs for some of the weeks he worked on the Project;<sup>10</sup> and (3) a phone conversation he had with his former supervisor, Raul Pablo, while he was completing this calendar at DLSE's office. In that conversation, Pablo confirmed that the dates Cardoso wrote on this calendar were approximately the dates Cardoso had worked on the Project.

Ramon Sr. was interviewed by DLSE on January 14, 2016. In this interview, he handwrote on DLSE's form calendar for 2015 the number of hours he worked on the Project each day. All of these work days occurred in the preceding month, December 2015. Ramon Sr. testified that apart from writing these days and hours from memory, he also had a paystub for his work on the Project on December 7 through 11, 2015. He recalled complaining to Mojaver that this paystub showed only 20.3 hours of work for that week (and a corresponding shortfall in the wages due him), even though he had worked 40 hours that week. That testimony, however, conflicts with the DLSE calendar on which he wrote nine hours of work per day for that week, totaling 45 hours. He did not testify as to this five-hour discrepancy.

Ramon Jr. was interviewed by DLSE on January 14, 2016. According to Mayorga's testimony, during this interview Ramon Jr. handwrote on DLSE's form calendar for 2015 the number of hours he worked on the Project each day. The total he wrote on the 2015 calendar shows 301 hours of work performed on 31 days in the months of July, August and December. These hours consist of 213 straight time hours and 88 overtime and Saturday hours. A majority of those days and hours are designated as being worked the preceding month, December 2015, wherein the calendar shows he worked 172 hours on 18 days. Ramon Jr. did not testify at the Hearing.

### **Discussion**

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<sup>10</sup> However, no party presented any of Cardoso's paystubs as an exhibit in the Hearing.

The California Prevailing Wage Law (CPWL), set forth at Labor Code sections 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects. The purpose of the CPWL was summarized by the California Supreme Court in one case 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, and 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 unpaid prevailing 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. The request for review is transmitted to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) At the hearing, 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).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

Newport Failed to Pay the Required Prevailing Wages.

In this case, the evidence presented, as addressed *ante*, satisfied DLSE’s burden of producing evidence providing prima facie support for the Assessment of unpaid prevailing wages, and showed that Newport failed in its burden to prove that the basis of the Assessment was incorrect.

Newport’s sole witness was Mojaver, who had no recollection of the number of days and hours that Cardoso, Ramon Sr. and Ramon Jr. worked on the Project. Under Industrial Welfare Commission Order No. 16-2001 regulating wages, hours and working conditions in the construction industry and other industries (Work Order No. 16-2001), section 6, subdivisions (A)(1) and (C), Newport was required to maintain for three years “[t]ime records showing when the employee begins and ends each work period.”<sup>11</sup> If Newport had complied with Work Order No. 16-2001, then those time records may have been available as evidence that the basis of the Assessment was incorrect. Newport, however, did not comply. Instead, Mojaver testified that he had discarded the timesheets for the Project two months after completion in accordance with his standard practice because no one had complained about wages or hours on the Project by the end of that two-month period. In contradiction of that testimony, Newport produced alleged timesheets for eight weeks out of the total 21 weeks of work stated in the CPRs, and Mojaver never offered any explanation why he still possessed those particular timesheets.

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<sup>11</sup> At the conclusion of the final day of the Hearing on November 30, 2017, Nassar requested that the Hearing Officer take official notice of Work Order No. 16-2001, but Nassar did not have a copy available to be viewed by the Hearing Officer and Campbell. The Hearing Officer set December 11, 2017, as the date for DLSE to file and serve its request for official notice (enclosing a copy of Work Order No. 16-2001), and December 18, 2017, as the date for Newport to file and serve any objection. On December 8, 2017, DLSE filed and served its request for official notice. No opposition was received from Newport. Accordingly, the Hearing Officer took official notice of Work Order No. 16-2001 under California Code of Regulations, title 8, section 17245.

For three reasons, this Decision finds that the eight timesheets produced by Newport fail to satisfy Newport's burden of proving the basis for the Assessment or any part thereof is incorrect: (1) Newport failed to maintain the time records required by Work Order No. 16-2001, as shown by Mojaver's testimony that he had discarded all timesheets for the Project in accordance with his standard practice; (2) Newport inexplicably produced eight out of 21 timesheets for the Project in contradiction of Mojaver's testimony that he had discarded all of them; and (3) Cardoso credibly testified that he had never seen the timesheets that Newport produced at the Hearing and had never initialed them.<sup>12</sup>

That Newport failed to meet its burden of proving the basis for the Assessment incorrect finds further support in other contradictions in Mojaver's testimony on material points. Many of the hours on which the Assessment was based were overtime and Saturday hours. Mojaver repeatedly and vociferously denied that any of his workers on the Project had worked overtime or Saturday hours. Yet he never offered testimony to explain why the CPRs state that two workers worked on the Project eight hours each on Saturday and two hours each on a Sunday, February 20 and 21, 2016. As another example, Mojaver testified that his workers always worked eight hours per day on the Project. Yet he never offered testimony to explain why the CPRs show that Cardoso, Ramon Sr., Ramon Jr. and many other workers worked substantially fewer than eight hours on many days.

Although Newport failed to prove the basis for the Assessment was incorrect. Ramon Sr.'s testimony established that in the week ending December 11, 2015, he worked 40 hours, rather than the 45 hours he had written on his DLSE calendar. This reduces the prevailing wages due Cardoso by \$168.15. Accordingly, this Decision modifies the Assessment by finding that Newport underpaid prevailing wages in the total sum of \$17,266.09.

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<sup>12</sup> Moreover, the Director notes that Newport's timesheets lacked evidentiary weight because they contained a statement falsely informing workers that Newport could require them to work without pay. Newport's form timesheet states: "Any work on Punch List will be fixed by the person who caused it with NO PAY" (all capitals in original). The CPWL requires contractors to pay the prevailing wage rate to all workers for all of their work on a public works project; it is impermissible to require workers to work without pay.

This Decision also notes that the Assessment understated the prevailing wages due for Ramon Jr.. DLSE's prima facie evidence, consisting of the calendar on which Ramon Jr. wrote the days and hours he worked on the Project, shows he worked 213 straight time hours and 88 Saturday and overtime hours. The prevailing wage rate required Newport to pay Ramon Jr. a total of \$11,146.07 for these hours. The CPRs establish that Newport paid him \$690.64, resulting in an underpayment of \$10,455.43. In light of this evidence, DLSE's audit understated both the straight time and Saturday/overtime hours, and reported that Newport underpaid Ramon Jr. \$9,064.97 (rather than \$10,455.43). As this Decision will not impose a liability on Newport greater than the amount stated in the Assessment and for which Newport was given notice, however, the Decision affirms the Assessment's finding of unpaid prevailing wages for Ramon Jr. in the amount of \$9,064.97.

Newport Is Liable for Section 1775 Statutory Penalties.

Section 1775, subdivision (a) – as it read in May 2013 when the Project was advertised for bid – 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 two hundred dollars (\$200) 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 forty dollars (\$40) . . . unless the failure of the contractor . . . 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 . . . .

(ii) The penalty may not be less than eighty dollars (\$80) . . . if the contractor . . . 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 one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

((Former) § 1775, subd. (a).) The reference immediately above to “willful” as being defined in “subdivision (c) of Section 1777.1” is a typographical error in the statute. The correct subdivision is subdivision (e), which states: “A willful violation occurs when 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.”

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.” 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, the Director is not free to substitute her or his own judgment when “in [her/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.) The contractor “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).)

Here, the Labor Commissioner imposed the \$120.00 penalty rate under section 1775, subdivision (a)(2)(A)(iii), based on evidence that Newport’s violation was willful. Newport failed to carry its burden of proving this basis for the Assessment was incorrect. Ninety-nine percent of Newport’s work since incorporating in 2008 was work on public works projects. From that experience, Newport knew it must pay its workers the prevailing wage for each hour they work on those projects, and it was critically important to report accurately each hour worked. Moreover, Newport intentionally discarded its

timesheets for work performed on the Project, and its other projects, two months after completion of the work (unless it had received a complaint about wages or hours in that two-month period). This practice violated Work Order No. 16-2001 which required three-year retention. This practice deprived future fact-finders of crucial evidence as to the days and hours worked by each worker.

Accordingly, Newport failed to establish that the Labor Commissioner abused her discretion in setting the penalty rate at \$120.00.

As to the number of violations, the section 1775 penalty is imposed “for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates....” (§ 1775, subdivision (a)(1).) DLSE’s prima facie evidence showed that Newport committed 72 such violations. Newport failed to carry its burden of proving this basis for the Assessment was incorrect. Accordingly, the setting of the section 1775 statutory penalty at \$8,640.00, calculated at the rate of \$120.00 per violation for 72 violations, is affirmed.<sup>13</sup>

Newport Is Liable for Failure to Pay Training Fund Contributions in the Sum of \$355.06.

Section 1777.5, subdivision (m)(1), 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 approved apprenticeship program approved by the Division of Apprenticeship Standards.

Here, the Tile PWD stated that the training fund contributions were to be paid at the rate of \$0.89 per hour, and the applicable program was the Tile JAC. DLSE determined from records provided by the Tile JAC that Newport had timely paid \$197.63 in training fund contributions for the work Cardoso, Ramon Sr. and Ramon Jr. performed on the Project. DLSE’s investigation determined they worked a total of 626 hours on the Project, thereby requiring a total training fund contributions of \$557.14. Newport failed

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<sup>13</sup> This Decision’s deduction from the Assessment of five hours of work of Ramon Sr. (resulting in a reduction of \$168.15 in prevailing wages due) does not affect the assessment of the section 1775 statutory penalty. The five hours consisted of one hour for each day of December 7 through 11, 2015. The evidence established that on each of those days, Ramon Sr. worked eight hours that were not reported in the CPRs. Each of those days constituted a violation that was properly included in the total 72 violations in the Assessment.

to prove this basis for the resulting \$359.51 assessment was incorrect. However, Ramon Sr.'s testimony established that he had worked five hours fewer than DLSE had found. Accordingly, this Decision modifies the Assessment by finding that Newport underpaid training funds in the sum of \$355.06.

Newport Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages on a contractor, essentially a doubling of the unpaid wages, in specified circumstances. 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 DLSE's issuance of the Assessment on August 10, 2016, 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).

First, under section 1742.1, subdivision (a), within 60 days of service of the assessment, the contractor could pay the workers all or a portion of the wages stated in the assessment, and thereby avoid liability for liquidated damages on the amount of wages so paid. Second, under section 1742.1, subdivision (b), a contractor could avert liability for liquidated damages if, within 60 days from issuance of the assessment, the "full amount of the assessment or notice, including penalties has been deposited with the Department of Industrial Relations . . . ." Or third, the contractor could choose to rely on 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.<sup>14</sup>

((Former) § 1742.1, subd. (a).)

Here, Newport stipulated prior to the Hearing on the Merits that it had not paid any back wages to any of its workers, and had not deposited the amount of the Assessment, or any part thereof, with the Department within 60 days following service of the Assessment.

Further, there was no substantial ground for Newport to appeal the \$17,266.09 in prevailing wages this Decision finds due. As a contractor with a long history of public works projects, Newport knew its obligation to report on the CPRs all hours worked, and to pay its workers for all hours worked. Newport also knew, or reasonably should have known, that it would not have a witness who could testify from his own recollection as to the days and hours worked by the workers. Newport intentionally discarded its timesheets two months after completion of the Project (other than the eight alleged timesheets it produced as an exhibit in this case). Those timesheets could potentially have documented the hours and days worked; further, in discarding them, Newport violated Work Order No. 16-2001 requiring a three-year retention of time records.

Accordingly, this Decision finds that Newport did not have substantial grounds for appealing the Assessment of \$17,266.09 and the Director does not waive payment of the liquidated damages. Newport is liable for liquidated damages in the sum of \$17,266.09.

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<sup>14</sup> On June 27, 2017, the Director's authority to waive liquidated damages in his or her discretion was deleted from section 1742.1 by legislative amendment. (Stats. 2017, ch. 28, § 16 [Sen. Bill 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.) Here, there was no expression of legislative intent that SB 96 apply retroactively to pending cases. (Accord, *Kizer v. Hannah* (1989) 48 Cal.3d 1, 7, "A statute is retroactive if it substantially changes the legal effect of past events.") Therefore, the prior version of section 1742.1 in effect on the date the Assessment was issued in this matter will be applied to the Assessment.

Newport is Liable for a Section 1813 Statutory Penalty in the Sum of \$825.00.

Section 1815 states in full:

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 the penalty for violation of section 1815 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.

The Assessment imposed a \$950.00 statutory penalty under section 1813 based on Newport's alleged failure to pay Cardoso, Ramon Sr. and Ramon Jr. the overtime and Saturday wage rates for 38 days in which they worked overtime hours. As addressed *ante*, however, Ramon Sr.'s testimony established he had five fewer days of overtime work. Accordingly, the section 1813 statutory penalty is modified. Newport is liable for a section 1813 statutory penalty at the rate of \$25 per day for 33 worker-days, resulting in an aggregate penalty of \$825.00.

Newport Violated Apprenticeship Requirements.

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. These requirements are further addressed in regulations promulgated by the California Apprenticeship Council (CAC). (Cal. Code Regs., tit. 8, §§ 227 to 232.70.) In review of an assessment asserting violation of apprentice requirements, "... the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5." (§ 1777.7, subd. (c)(2)(B); accord, Cal. Code Regs., tit. 8, § 232.50, subd. (b).)

Section 1777.5, subdivision (d), establishes that every contractor awarded a public

works contract by the state or any political subdivision who employs workers in any apprenticeable craft or trade “shall employ apprentices in at least the ratio set forth in this section . . . .” Section 1777.5, subdivision (g), specifies the ratio as not less than one hour of apprentice work for every five hours of journeyman work in each particular craft or trade:

The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(§ 1777.5, subd. (g).) The governing regulation as to this 1:5 ratio of apprentice hours to journeyman hours is California Code of Regulations, title 8, section 230.1, subdivision (a), which states in part:

Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter.<sup>15</sup> Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract.

The regulatory scheme establishes a two-step process by which the contractor obtains apprentices to satisfy the 1:5 ratio: (1) the contractor is required to notify the applicable apprenticeship committees of upcoming apprentice work opportunities in the particular craft or trade; and (2) the contractor is required to request the applicable apprenticeship committees to dispatch apprentices in the craft or trade to work on the project. (§ 1777.5, subd. (e); Cal. Code Regs., tit. 8, §§ 230, subd. (a) and 230.1, subd. (a).)

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<sup>15</sup> Here, the record established no exemption for Newport.

As to notification to apprenticeship committees of upcoming work opportunities in each craft or trade, California Code of Regulations, title 8, section 230, subdivision (a), states in relevant part:

Contractors shall provide contract award information to the apprenticeship committee for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices. Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. This contract award information shall be in writing and may be a DAS Form 140, Public Works Contract Award Information. The information shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. Failure to provide contract award information, which is known by the awarded contractor, shall be deemed to be a continuing violation for the duration of the contract, ending when a Notice of Completion is filed by the awarding body for the purpose of determining the accrual of penalties under Labor Code Section 1777.7.

As to the request to the applicable apprenticeship committees to dispatch apprentices to the project job site in each craft or trade, California Code of Regulations, title 8, section 230.1, subdivision (a), states in relevant part:

Contractors who are not already employing sufficient registered apprentices (as defined by Labor Code Section 3077) to comply with the one-to-five ratio must request the dispatch of required apprentices from the apprenticeship committees providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee written notice of at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. . . . All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email.

(Cal. Code Regs, tit. 8, § 230.1, subd. (a).) DAS provides a form (DAS 142) that contractors may use to request dispatch of apprentices from apprenticeship committees.

Further, California Code of Regulations, title 8, section 230.1, subdivision (a), provides in relevant part:

. . . [I]f in response to a written request no apprenticeship committee dispatches or agrees to dispatch during the period of the public works project any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the apprenticeship committee's standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio.

(Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

Here, the Tile Layer PWD and the Tile Finisher PWD are both contained in a single prevailing wage determination – No. LOS-2013-1. This document clearly lists Tile Layer and Tile Finisher as two separate crafts, with each having its own hashtag (#) designating that each was an apprenticeable craft with its own prevailing wage rates. Newport's knowledge that Tile Finisher and Tile Layer are separate crafts is shown by the CPRs. The CPRs designate each worker as either a Tile Finisher or Tile Layer, and state a wage rate of \$34.19 per hour for Tile Finishers and \$50.20 per hour for Tile Layers. The fact that the Tile JAC was the sole applicable apprenticeship committee for both crafts does not alter the requirement of section 1777.5 and the implementing regulations quoted above that Newport must employ apprentices in each craft in the 1:5 ratio, and that Newport must issue DAS 140 and DAS 142 forms (or their equivalents) for each craft.

Newport satisfied these requirements as to Tile Finisher, but not Tile Layer, despite the fact that both crafts were used in the Project. For the 1,343 hours of Tile Layer journeyman work on the Project stated in the CPRs, the 1:5 ratio required 268 hours of Tile Layer apprentice work. Instead, Newport had only 24 hours of Tile Layer apprentice work. Accordingly, this Decision finds that Newport violated section 1777.5 and California Code of Regulations, title 8, section 230, subdivision (a), and section 230.1, subdivision (a).

A Section 1777.7 Penalty in the Sum of \$20,400.00 Is Justified Under De Novo Review of the Facts.

Section 1777.7 states in relevant part:

(a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation.

The phrase quoted above — “knowingly violated Section 1777.5” — is defined by California Code of Regulations, title 8, section 231, subdivision (h), as follows:

For purposes of Labor Code Section 1777.7, a contractor knowingly violates Labor Code Section 1777.5 if the contractor knew or should have known of the requirements of that Section and fails to comply, unless the failure to comply was due to circumstances beyond the contractor’s control. There is an irrebuttable presumption that a contractor knew or should have known of the requirements of Section 1777.5 if the contractor had previously been found to have violated that section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects, . . . .

Under the former version of section 1777.7 applicable in this case (i.e., the version in effect on the bid advertisement date in 2013), the Director decides the appropriate penalty de novo. (Former § 1777.7, subd. (f)(2).) In setting the penalty de novo, the Director is to consider all of the following circumstances:

- (A) Whether the violation was intentional.
- (B) Whether the party has committed other violations of Section 1777.5.
- (C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.
- (D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.
- (E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

((Former) § 1777.7, subd. (f)(1) and (2).)

A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment, namely, the affected contractor has the

burden of proving that the basis for the assessment is incorrect. (Cal. Code Regs., tit. 8, § 17250, subd. (b).)

Here, the evidentiary record establishes that Newport “knowingly” violated section 1777.5 under the irrebuttable presumption of California Code of Regulations, title 8, section 231, subdivision (h). The Subcontract notifies Newport of its obligation to comply with the Labor Code provisions on apprenticeship requirements for public works projects. In addition, since Newport’s incorporation in 2008, 99 percent of Newport’s work was on public works projects. Mojaver was the sole person at Newport responsible for compliance with the apprenticeship requirements, including issuance of DAS 140 and DAS 142 forms. On the CPRs (all of which Mojaver prepared and certified), Mojaver designated each worker as either Tile Finisher or Tile Layer, each with the materially different prevailing wage requirements stated in the Tile Finisher PWD and Tile Layer PWD. Mojaver issued valid DAS 140 and DAS 142 forms for the craft of Tile Finisher, and Newport satisfied the 1:5 ratio requirement for that craft. This evidence establishes that Newport knew the apprenticeship requirements. Moreover, although Mojaver gave lengthy testimony in the Hearing to support Newport’s position that it complied with prevailing wage requirements, Mojaver offered no testimony on whether Newport complied with apprenticeship requirements. The evidence of record establishes that Newport knew the apprenticeship requirements and how to comply with them, but failed to comply.

This Decision notes that a violation is not deemed to be “knowingly” made if “the failure to comply was due to circumstances beyond the contractor’s control.” (Cal. Code Regs., tit. 8, § 231, subd. (h).) Here, the evidentiary record establishes that Newport’s violations were not due to any matter beyond its control.

Given that Newport committed a “knowing” violation, the analysis turns to the five de novo review factors “A” through “E” listed above.

Factor “A” – whether the violation was intentional – favors a higher penalty. The facts stated above on Newport’s violations being “knowingly” made also support a finding that Newport’s violations were intentional. Newport failed to demonstrate that its violations were not intentional.

Factor “B” – whether Newport had committed other violations of section 1777.5 – favors a low penalty: there was no evidence presented at the Hearing of other violations.

Factor “C” – whether, upon notice of the violation, Newport voluntarily took steps to remedy the violation – is not applicable here. DLSE did not commence its investigation and initiate communication with Newport until after Newport’s work on the Project had ceased.

Factors “D” and “E” – whether, and to what extent, the violation resulted in lost training opportunities for apprentices and otherwise harmed apprentices or apprenticeship programs – favors a higher penalty. Newport’s journeyman Tile Layers worked 1,343 hours on the Project. The 1:5 ratio required 268 hours of Tile Layer apprentice hours, but Newport had only 24 hours. Newport’s violation deprived Tile Layer apprentices of 244 hours, or approximately six weeks, of on-the-job training, and harmed the Tile JAC by depriving it of the opportunity to have its Tile Layer apprentices receive that on-the-job training.

Accordingly, the Director finds that weighing of the five de novo review factors supports a \$60.00 penalty rate per violation.

As to the number of penalty days, under California Code of Regulations, title 8, section 230. subdivision (a), quoted *ante*, the Labor Commissioner could have calculated the penalty commencing with the first day Newport had journeymen working on the Project (April 13, 2015), to the date the District filed a Notice of Completion. However, as of the issuance of the Assessment on August 10, 2016, the Project was not yet complete and the District had not filed a Notice of Completion. Under this circumstance, the Labor Commissioner could have imposed the penalty for the entire period ending with the issuance of the Assessment on August 10, 2016. Instead, the Labor Commissioner ended the penalty period five months earlier, on March 18, 2016, the final day Newport had journeymen working on the Project. This Decision concurs with that determination.

Accordingly, on de novo review this Decision finds that Newport is liable for the section 1777.7 statutory penalty in the sum of \$20,400.00, computed at the rate of \$60.00 per day for 340 days.



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

### **FINDINGS AND ORDER**

1. Affected contractor Newport Construction, Inc. timely filed a Request for Review of the Civil Wage and Penalty Assessment timely issued by the Division of Labor Standards Enforcement (DLSE).

2. Newport Construction, Inc. underpaid the prevailing wages owed to three Tile Finishers on the Project, Deudiel Cardozo, Aaron Ramon Sr. and Aaron Ramon Jr., in the aggregate sum of \$17,266.09. Accordingly, Newport Construction, Inc. is liable for payment of prevailing wages in the sum of \$17,266.09.

3. Newport Construction, Inc. did not make required training fund contributions in the aggregate amount of \$355.06 for work performed on the Project. Accordingly, Newport Construction, Inc. is liable for payment of training funds in the sum of \$355.06.

4. The Labor Commissioner did not abuse her discretion in assessing penalties against Newport Construction, Inc. under section 1775, subdivision (a), at the rate of \$120.00 per violation for 72 violations. Accordingly, the assessment of section 1775 statutory penalties in the sum of \$8,640.00 is affirmed.

5. Newport Construction, Inc. did not prove a basis for waiver of liquidated damages. Accordingly, under section 1742.1, subdivision (a), Newport Construction, Inc. is liable for liquidated damages in the sum of \$17,266.09.

6. Newport Construction, Inc. is liable for a statutory penalty under section 1813 in the sum of \$825.00.

7. Newport Construction, Inc. knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230, subdivision (a), by not issuing public works contact award information in a DAS 140 form or its equivalent to the applicable apprenticeship committee for the craft of Tile Layer in the geographic area of the Project.

8. Newport Construction, Inc. knowingly violated section 1777.5 and California Code of Regulations, title 8, section 230.1, subdivision (a), by: (a) not issuing a valid request for dispatch of Tile Layer apprentices in a DAS 142 form or its equivalent

to the applicable apprenticeship committee in the geographic area of the Project; and (b) not employing Tile Layer apprentices on the Project in the ratio of one hour of apprentice work for every five hours of journeyman work.

9. Newport Construction, Inc. is liable for an aggregate statutory penalty under section 1777.7 in the sum of \$20,400.00, computed at \$60.00 per day for 340 days.

10. The amounts found due in the Assessment, as affirmed and modified by this Decision, are as follows:

Wages:	\$ 17,266.09
Training Fund Contributions	\$ 355.06
Penalties under section 1775, subdivision (a):	\$ 8,640.00
Liquidated damages under section 1742.1:	\$ 17,266.09
Penalties under section 1813:	\$ 825.00
Penalties under section 1777.7:	\$ 20,400.00
<b>TOTAL:</b>	<b>\$ 64,752.24</b>

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

The Civil Wage and Penalty Assessment is modified and affirmed 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: September 9, 2019

  
Victoria Hassid  
Chief Deputy Director  
Department of Industrial Relations<sup>16</sup>

<sup>16</sup> See Government Code sections 7, 11200.4.