

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California

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10 **CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**
11 **DIVISION OF LABOR STANDARDS ENFORCEMENT**
12 **STATE LABOR COMMISSIONER**

13 In re the DEBARMENT
14 proceeding against:

15 R M V CONSTRUCTION, INC., a
16 California Corporation;

17 and

18 ROBERT MICHAEL VASIL II a.k.a.
19 ROBERT MICHAEL VASIL a.k.a. MIKE
20 VASIL, an Individual and
21 CEO/RMO/President of R M V
22 Construction, Inc.,

23 Respondents.

Case No. LB 5266

Assigned for All Purposes to the
Honorable Zoe Yuzna, Hearing Officer

**Decision and ORDER OF DEBARMENT
of Respondents from Public Works
Projects**

[Labor Code section 1777.1]

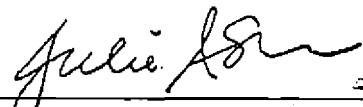
24 The attached *Proposed Statement of Decision* of Hearing Officer Zoe Yuzna,
25 DEBARRING Respondents R M V. CONSTRUCTION, INC., a California Corporation and
26 ROBERT MICHAEL VASIL II a.k.a. ROBERT MICHAEL VASIL a.k.a. MIKE VASIL,
27 an Individual and CEO/RMO/President of R M V Construction, Inc. from bidding, being
28 awarded or performing any work on public works projects in the State of California for

1 THREE YEARS, is hereby adopted in full by the Division of Labor Standards Enforcement
2 as the FINAL *Decision* in the above-captioned matter.

3
4 This *Decision* shall become effective 45 days from the execution of the *Order* below,
5 with the debarment expiring on August 18, 2018.

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7 **IT IS SO ORDERED.**

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10 Dated: February 16, 2016 DIVISION OF LABOR STANDARDS ENFORCEMENT
11 Department of Industrial Relations
12 State of California

13 By: 
14 _____
15 JULIE A. SU
16 State Labor Commissioner
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1 STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
2 DIVISION OF LABOR STANDARDS ENFORCEMENT
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6 Special Hearing Officer for the State Labor Commissioner

7
8 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

9 **DEPARTMENT OF INDUSTRIAL RELATIONS**

10 **FOR THE STATE OF CALIFORNIA**

11
12 In the Matter of the) Case No. LB 5266
Debarment Proceeding Against:)
13)
14 R M V CONSTRUCTION, INC., a California) **PROPOSED STATEMENT OF DECISION**
Corporation;) **RE DEBARMENT OF RESPONDENTS**
15) **FROM PUBLIC WORKS PROJECTS**
and,)
16) (Labor Code § 1777.1)
17 ROBERT MICHAEL VASIL II a.k.a. ROBERT)
MICHAEL VASIL a.k.a. MIKE VASIL, an)
18 individual and CEO/RMO/President of R M V)
Construction, Inc.,)
19)
20 Respondents:)
21)

22
23 Debarment proceedings pursuant to Labor Code § 1777.1 were initiated by the DIVISION OF
24 LABOR STANDARDS ENFORCEMENT, STATE LABOR COMMISSIONER by the filing of a
25 Statement of Alleged Violations against the following named respondents: R M V CONSTRUCTION,
26 INC., a California Corporation, and ROBERT MICHAEL VASIL II a.k.a. ROBERT MICHAEL
27 VASIL a.k.a. MIKE VASIL, an individual and CEO/RMO/President of R M V CONSTRUCTION,
28 INC. (collectively referenced hereinafter as "Respondents").

1 Respondents were duly served with the Notice of Hearing and Statement of Alleged Violations
2 on June 26, 2014.

3 The hearing on the alleged violations was held in Los Angeles, California on two days:
4 August 12, 2014 and September 9, 2014. Zoe Yuzna served as the Hearing Officer. Max Norris
5 appeared on behalf of Complainant, the LABOR COMMISSIONER, CHIEF OF THE DIVISION OF
6 LABOR STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL RELATIONS,
7 STATE OF CALIFORNIA (sometimes referenced herein as "Complainant" or the "Division").
8 ROBERT MICHAEL VASIL, II ("VASIL") appeared in his individual capacity and as
9 CEO/RMO/President of R M V CONSTRUCTION, INC. on behalf of the corporation at the first day
10 of hearing on August 12, 2014, but VASIL did not appear at the second day of hearing on
11 September 9, 2014. Present as witnesses for Complainant were Deputy Labor Commissioners Lance
12 Grucela, Jeffrey Pich, and Tony Eguavoen.

13 At the first day of hearing on August 12, 2014, Respondents requested a continuance on the
14 grounds that (1) VASIL originally went to the incorrect address for the hearing, going to the office of
15 Complainant's counsel rather than the address listed on the Notice of Hearing, (2) Respondents
16 needed more time to obtain legal counsel, and (3) breaks were taken at the outset of the hearing. The
17 requests were denied due to a finding that no extraordinary circumstances were presented constituting
18 good cause to continue of the hearing. Respondents' mistake in first going to the wrong address for
19 the hearing did not prejudice Respondents, as the start of the hearing was suspended until VASIL's
20 arrival at the correct location.

21 Complainant submitted a hearing brief at the outset of the first day of hearing, which included
22 a sixth project that was not included in Complainant's Statement of Alleged Violations: the
23 Amphitheater Interpretive Pathway #C0954006 Project (the "Amphitheater Project"). Because
24 Respondents were not given notice of Complainant's intention to include the Amphitheater Project as
25 part of its case prior to the hearing date, evidence of the Amphitheater Project is not considered and
26 shall be excluded from these findings.

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1 The hearing was tape recorded and electronically recorded. The witnesses testified under oath
2 and all exhibits presented were admitted into evidence. At the conclusion of the hearing, the matter
3 was taken under submission.

4 **FINDINGS OF FACT**

5 1. It is undisputed that Respondent RMV CONSTRUCTION, INC., a California Corporation,
6 (hereinafter, referred to as "RMV") has been, at all times relevant herein, a contractor licenced by the
7 Contractors State License Board under license number 892389.

8 2. It is undisputed that Respondent ROBERT MICHAEL VASIL II a.k.a. ROBERT MICHAEL
9 VASIL a.k.a. MIKE VASIL (hereinafter "VASIL") was at all relevant times mentioned listed as
10 CEO/RMO/President of RMV with the Contractors State License Board.

11 **Guardrail Project, San Diego County**

12 3. RMV served as the Prime Contractor on the Replacement of Guardrail End
13 Sections and Installation of New Guardrails Project in San Diego County (the "Guardrail Project").
14 The Awarding Body on the project was the County of San Diego under Contract Number 1015868.

15 4. Deputy Labor Commissioner Lance Grucela testified that he began his investigation of RMV on
16 the Guardrail Project because it was a Division of Labor Standards Enforcement Public Works
17 Compliance Monitoring Unit project. Deputy Grucela's monitoring revealed falsified certified payroll
18 records, failure to pay prevailing wages, and shaving of hours on certified payroll records.

19 **Falsified Certified Payroll Records**

20 5. Deputy Grucela's investigation revealed discrepancies in RMV's certified payroll records – not
21 only between the certified payroll records submitted to the County of San Diego (the "County") as
22 compared to inspector logs maintained by Steve Fordham, Resident Engineer for the County of San
23 Diego, but also as compared with two subsequent sets of certified payroll records submitted by RMV
24 to Deputy Grucela.

25 6. In total, Deputy Grucela received three separate and unique versions of certified payroll records
26 submitted by RMV: certified payroll records that RMV submitted to the County (Exhibit 42), certified
27 payroll records submitted to Deputy Grucela by facsimile on April 25, 2013 (Exhibit 43), and certified
28 payroll records left at the Division counter on August 7, 2013 (Exhibit 46b).

1 7. The certified payroll records submitted to the County (Exhibit 42) reflect the same amount of
2 workers and hours as the inspector logs maintained by the County (Exhibit 47), but the certified
3 payroll records submitted to Deputy Grucela on April 25, 2013 (Exhibit 43) report fewer workers and
4 fewer hours worked. For example, for the week ending November 3, 2012, the certified payroll
5 records submitted to the County (Exhibit 42) show 5 laborers working a total of 104 hours, while the
6 certified payroll records submitted to Deputy Grucela for the same time period (Exhibit 43) show just
7 one laborer working only 24 hours.

8 8. The third set of certified payroll records submitted by RMV are significantly different than the
9 previous versions, with omitted tax deduction information, different rates of pay, and different
10 workers listed on specific dates. (*Compare Exhibits 42, 43, and 46b.*) Some names previously listed
11 as workers in the first two sets are listed as owners in the third version. (*Id.*) Ownership documents
12 show only VASIL as the owner of RMV, with no indication of previous ownership by the workers
13 listed or anyone else.

14 9. The certified payroll records submitted to the County (Exhibit 42) are signed under penalty of
15 perjury.

16 10. RMV submitted timesheets with the certified payroll records submitted to Deputy Grucela on
17 August 7, 2013 (Exhibit 46). Deputy Grucela testified that he later discovered, through worker
18 interviews, that the workers had never seen the timesheets, which appeared to be fabricated.

19 **Failure to Pay Prevailing Wages**

20 11. Evidence was presented that numerous workers were paid less than prevailing wages, with
21 evidence that Gary Bryant was paid \$15 per hour (Exhibit 6), while Tim Sullivan, George Franco,
22 Krystal Bryant, and David Carel were paid a flat daily rate of \$100 per hour (Exhibits 7 to 10,
23 respectively) – wages below any prevailing wage.

24 12. Evidence was presented that Gary Bryant should have been paid \$43.21 per hour for Laborer
25 work and \$59.96 per hour for Operating Engineer work – substantially more than the \$15 per hour
26 that he was paid. (Exhibit 6.)

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1 **Shaving of Hours and Failure to Pay Overtime**

2 13. The hours listed in the inspector logs maintained by the County (Exhibit 47) are substantially
3 greater than the hours reported in the certified payroll records provided by RMV to Deputy Grucela
4 (Exhibits 43 and 46b).

5 **West Alvarado Project, San Diego County**

6 14. RMV served as the Prime Contractor on the West Alvarado St. Sidewalk Improvement #5734
7 Project (the "West Alvarado Project") in San Diego County. The Awarding Body on the project was
8 the County of San Diego (the "County") under Contract Number 543552.

9 15. Deputy Grucela testified that the investigation of the West Alvarado Project was originally
10 handled by then Deputy Labor Commissioner Veronica Perez and later assigned to Deputy Grucela
11 upon Ms. Perez's resignation from the Division. Deputy Grucela authenticated Ms. Perez's Penalty
12 Review (Exhibit 12) and testified that he worked closely with Ms. Perez on the investigation, which
13 revealed failure to pay prevailing wages, shaving of hours on certified payroll records, and
14 misclassification of workers.

15 **Failure to Pay Prevailing Wages**

16 16. The Division provided evidence of significant discrepancies between inspector's logs provided
17 by the County and certified payroll records provided the by the contractor to the County. (Exhibit 12.)

18 17. Deputy Grucela testified that he interviewed worker Jesus Barajas with respect to the West
19 Alvarado Project, during which time Mr. Barajas stated that he was paid a flat rate of \$20 per hour for
20 the work he performed.

21 18. Mr. Barajas was listed on the inspector's logs as (1) a Teamster, for which he should have
22 received \$45.66 per hour, and (2) a Laborer, for which he should have received \$42.18 per hour.
23 (Exhibit 12.)

24 **Shaving of Hours and Failure to Pay Overtime**

25 19. RMV did not report Mr. Barajas on its certified payroll records, while the inspector's logs
26 listed Mr. Barajas as working 4 hours on March 4, 2013 and 4.5 hours on March 5, 2013. Other
27 workers' hours were listed as fewer hours worked on certified payroll records when compared to the
28 inspector's logs.

1 **Misclassification**

2 20. Jesus Barajas was classified as a Laborer for work performed as a Teamster (driving a truck).

3 21. Evidence was provided that worker Gary Bryant was listed as a Laborer on certified payroll
4 records for work performed as an Operating Engineer, operating heavy machinery. Mr. Bryant was
5 paid only \$15 for such work, well below the prevailing wage rate.

6 **Sidewalk Project, City of El Cajon**

7 22. RMV served as the Prime Contractor on the Sidewalk Repair # 02612 project (the "Sidewalk
8 Project") in San Diego County. The Awarding Body on the project was the City of El Cajon under
9 Bid Number 026-12.

10 23. Deputy Grucela testified that the investigation of the Sidewalk Project was originally handled
11 by then Deputy Labor Commissioner Veronica Perez and later assigned to Deputy Grucela upon Ms.
12 Perez's resignation from the Division. The investigation was opened due to a complaint by the Center
13 for Contract Compliance. Deputy Grucela authenticated Ms. Perez's Penalty Review (Exhibit 14) and
14 testified that he worked with Ms. Perez on the investigation, which revealed failure to pay prevailing
15 wages, shaving of hours on certified payroll records, and misclassification of workers.

16 **Failure to Pay Prevailing Wages**

17 24. Respondents stipulated to their failure to pay the prevailing wage, disputing only the
18 willfulness of the violation. VASIL explained that he did not prepare the books or sign the certified
19 payroll records; there was another person who prepared the books.

20 25. Deputy Grucela testified that a review of the certified payroll records revealed RMV's
21 representation that it paid the correct prevailing wage rate (in the absence of misclassification), but
22 Deputy Perez's investigation of RMV's supporting documents revealed that RMV's representations
23 on the certified payroll records are inconsistent with the amounts received by workers. For example,
24 for the week ending May 20, 2012, worker Jesus Barajas should have received \$1,025.49 pursuant to
25 RMV's certified payroll records, but when RMV was asked to furnish cancelled checks, RMV
26 provided only a check issued on May 27, 2012 in the amount of \$480.00. The following week, ending
27 May 26, 2012, Mr. Barajas should have received \$1,828.62 pursuant to RMV's certified payroll

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1 records, but RMV furnished a check for just \$700.00 for that week. Mr. Barajas told Deputy Grucela
2 that he was only paid \$20.00 per hour for his work with RMV (Exhibit 11).

3 26. In response to Deputy Grucela's testimony about the discrepancies between the certified
4 payroll records and the cancelled checks furnished by RMV, VASIL testified that any shortfalls in
5 amounts paid to workers by check were paid in cash in the form of loans made prior to work being
6 performed. VASIL testified that he gave workers cash upfront and then later subtracted the amounts
7 from the workers' respective paychecks. VASIL testified that he gave workers Gary Bryant and Jesus
8 Barajas a few thousand dollars upfront. VASIL did not bring copies of any of the receipts to the
9 hearing and could not recall when the receipts were created or who made the receipts (although
10 VASIL remembered making some of the receipts himself).

11 27. Deputy Grucela testified that he reviewed the receipts when they were submitted to the
12 Division and noticed that a number of the receipts were dated 2013, even though the work that they
13 allegedly compensated was performed in 2012. The receipts made no mention of loans and were
14 presented as payments made to workers on an ongoing basis for wages.

15 **Shaving of Hours and Failure to Pay Overtime**

16 28. Evidence was submitted showing that workers Jesus Barajas, Gary Bryant, and John Soria
17 were listed in the inspector's logs as working on certain days, while certified payroll records for the
18 same workers and the same days list fewer or no hours. For example, Mr. Barajas was listed in the
19 inspector's logs as working two hours as an Operating Engineer and two hours as a Teamster on May
20 25, 2013, but none of the May 25, 2013 hours are listed in the certified payroll records.

21 **Misclassification**

22 29. Evidence was submitted showing that Joel Torres was reported on the inspector's logs as a
23 Laborer, while the certified payroll records reflect that Mr. Torres worked as Cement Finisher, a
24 classification with a lower pay rate.

25 **R&R Project, County of San Diego**

26 30. RMV served as the Prime Contractor on the R&R Concrete Curb, Gutter, Sidewalk, Driveway,
27 Cross Gutter and Curb Ramp Project (the "R&R Project") in San Diego County. The Awarding Body
28 on the project was the County of San Diego under Contract Number 1012898.

1 31. Deputy Labor Commissioner Jeffrey Pich testified that he began his investigation due to
2 complaints received from workers alleging that they were not paid for all hours worked on the R&R
3 Project. The investigation revealed failure to pay prevailing wages, in addition to shaving of hours on
4 certified payroll records.

5 **Failure to Pay Prevailing Wages**

6 32. Deputy Pich testified that worker Jesus Barajas stated in his complaint that he was paid only
7 \$15 for each hour worked. Co-workers Jeffrey Wirtz and Edward Pryor stated in their respective
8 complaints that Mr. Barajas worked as a truck driver (Teamster). (Exhibits 18 and 20, respectively.)
9 According to evidence submitted, the proper prevailing wage for a Teamster would be \$42.46 per
10 hour. (Exhibit 16.)

11 33. In their respective complaints, workers Jeffrey Wirtz and Edward Pryor stated that
12 Respondents only paid them for half the hours they worked. (Exhibits 18 and 20, respectively.)

13 **Shaving of Hours and Failure to Pay Overtime**

14 34. Respondents acknowledged that workers reported working more hours than were recorded in
15 the foreman's dailies and the certified payroll records. Initially, VASIL did not provide an
16 explanation for the discrepancy, but later explained that workers Jeffrey Wirtz and Edward Pryor were
17 given work only because they were between jobs and they were not actually needed, nor were they
18 supposed to be working on the R&R Project fulltime. VASIL acknowledged that Mr. Barajas was a
19 part of the regular operations of the R&R Project, but explained that he was only included on certified
20 payroll records for hours performed on the job site. When Mr. Barajas was performing duties for the
21 R&R Project, but off the job site, he was paid a different rate and not included on the certified payroll
22 records.

23 35. Deputy Pich testified that Mr. Barajas submitted a calendar showing hours worked that
24 exceeded the hours reported by RMV on its certified payroll records.

25 36. The complaint of Edward Pryor was submitted, which alleges that Respondents "would not
26 issue pay check stubs for the first six weeks, did not pay overtime and cut hours in half every week.
27 Example[:] work 49.5 hours[,] get paid for 27 hours, work 49 hours[,] get paid for 24 hours." (*Id.*)

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1 37. The complaint of Jeffrey Wirtz was submitted, which alleges that Respondents failed to pay
2 overtime and paid workers "for half or sometimes less. We work 40 [hours] he pays us around 20
3 [hours] . . . was not paying us for full time on job." (Exhibit 18.)

4 38. A letter from Mr. Wirtz to Deputy Pich was submitted as evidence. (Exhibit 19.) The letter
5 states that VASIL gave Mr. Wirtz a check with a notation that the check constituted payment for a
6 specified set of weeks. (*Id.*) In his letter, Mr. Wirtz clarifies that the payment is not accurate and does
7 not constitute full payment of what was owed to Mr. Wirtz.

8 39. The letter also references false timecards prepared by VASIL. (*Id.*) When asked about the
9 timecards, which are included in Exhibit 18, VASIL confirmed that he prepared the timecards and
10 confirmed that he wrote the note to Mr. Wirtz, which says, "Jeff please sign these so we can get paid."
11 (Exhibit 19.)

12 40. Deputy Pich testified that he spoke with Keith Murdock, the Resident Engineer for the
13 Awarding Body on the R&R Project. Mr. Murdock told Deputy Pich that Respondents were
14 submitting bogus time cards and making the workers sign them.

15 **Trash Cage Enclosure Project, Department of Parks and Recreation**

16 41. RMV served as the Prime Contractor on the Trash Cage Enclosure #C0954004
17 Project (the "Trash Cage Enclosure Project") in San Diego County. The Awarding Body on the
18 project was the Department of Parks and Recreation under Contract Number C0954006.

19 42. Deputy Labor Commissioner Tony Eguavoen testified that he began his investigation due to a
20 complaint from the Center for Contract Compliance. Deputy Eguavoen's investigation revealed
21 failure to pay prevailing wages, shaving of hours on certified payroll records, and misclassification of
22 workers.

23 43. Deputy Eguavoen testified that he sent out employee questionnaires to workers reported on
24 RMV's certified payroll records, and received an employee questionnaire from worker Garren Fain.
25 (Exhibit 24.)

26 **Failure to Pay Prevailing Wages**

27 44. In his employee questionnaire, Mr. Fain listed his titles as a Laborer, Welder, Operator, and
28 Finisher. (*Id.*) He stated that he was paid \$15 per hour for all hours, including overtime and

1 weekends. (*Id.*) Evidence was submitted showing that the prevailing wage for a Laborer, for example,
2 was \$39.63 – much more than \$15 per hour.

3 **Shaving of Hours and Failure to Pay Overtime**

4 45. Respondents acknowledged that workers reported working more hours than were recorded in
5 the foreman's dailies and the certified payroll records. VASIL did not provide an explanation for the
6 discrepancy.

7 46. Although the Division alleges that Mr. Fain worked more hours than were reported by RMV,
8 Mr. Fain indicated on his questionnaire that he was paid for all hours worked. (Exhibit 24.) Deputy
9 Eguavoen testified that Mr. Fain had difficulty recalling the hours he worked and Mr. Fain's letter,
10 submitted as Exhibit 26, indicates that Mr. Fain does not have reliable records of his hours.

11 **Misclassification**

12 47. Evidence was submitted that the Trash Cage Enclosure Project entailed cement work, but no
13 workers were listed as Cement Masons – Respondents listed Laborer as the only classification on
14 payroll records.

15 CONCLUSIONS OF LAW

16 The Division seeks to debar Respondents for a period of three (3) years based on its position
17 that Respondents "willfully" violated public works laws with "intent to defraud."

18 Labor Code § 1777.1 provides:

19 (a) Whenever a contractor or subcontractor performing a public
20 works project pursuant to this chapter is found by the Labor
21 Commissioner to be in violation of this chapter with intent to
22 defraud, except Section 1777.5, the contractor or subcontractor or a
23 firm, corporation, partnership, or association in which the
contractor or subcontractor has any interest is ineligible for a
period of not less than one year or more than three years to do
either of the following:

24 (1) Bid on or be awarded a contract for a public works
project.

25 (2) Perform work as a subcontractor on a public works
26 project.

27 (b) Whenever a contractor or subcontractor performing a public
28 works project pursuant to this chapter is found by the Labor
Commissioner to be in willful violations of this chapter, except
Section 1777.5, within a three-year period, the contractor or

1 subcontractor or a firm corporation, partnership, or association in
2 which the contractor or subcontractor has any interest is ineligible
3 for a period up to three years for each second and subsequent
4 violation occurring within three years of a separate and previous
5 willful violation of this chapter to do either of the following:

6 (1) Bid on or be awarded a contract for a public works
7 project.

8 (2) Perform work as a subcontractor on a public works
9 project.

10 (c) Whenever a contractor or subcontractor performing a public
11 works project has failed to provide a timely response to a request
12 by the Division of Labor Standards Enforcement, the Division of
13 apprenticeship Standards, or the awarding body to produce
14 certified payroll records pursuant to Section 1776, the Labor
15 Commissioner shall notify the contractor or subcontractor that, in
16 addition to any other penalties provided by law, the contractor or
17 subcontractor will be subject to debarment under this section if the
18 certified payroll records are not produced within 30 days after
19 receipt of the written notice. If the commissioner finds that the
20 contractor or subcontractor has failed to comply with Section 1776
21 by that deadline, unless the commissioner finds that the failure to
22 comply was due to circumstances outside the contractor's or
23 subcontractor's control, the contractor or subcontractor or a firm,
24 corporation, partnership, or association in which the contractor or
25 subcontractor has any interest is ineligible for a period of not less
26 than one year and not more than three years to do either of the
27 following:

28 (1) Bid on or be awarded a contract for public works
project.

(2) Perform work as a subcontractor on a public works
project.

Under Labor Code §1771.1(c), "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." Moreover, a person's knowledge
of the law is imputed to him and an unlawful intent may be inferred from the doing of an unlawful act.
People v. McLaughlin (1952) 111 Cal.App.2d 781, 245 P.2d 1076.

California Code of Regulations, Title 8, Section 16800 defines "Intent to Defraud" as "the
intent to deceive another person or entity, as defined in this article, and to induce such other person or
entity, in reliance upon such deception, to assume, create, transfer, alter or terminate a right,
obligation or power with reference to property of any kind." Intent to deceive or defraud can be

1 inferred from the facts. *People v. Kiperman* (1977) 69 Cal.App.Supp.25. An unlawful intent can be
2 inferred from the doing of an unlawful act. *People v. McLaughlin, supra*.

3 The evidence establishes that Respondents "willfully" violated public works laws by failing to
4 pay proper prevailing wages, shaving hours on certified payroll records, and failing to pay overtime.
5 The evidence further establishes that Respondents acted with an "intent to defraud" the workers, the
6 awarding bodies, and the State of California when Respondents misclassified workers and submitted
7 certified payroll records that they knew were not accurate.

8 **Failure to Pay Prevailing Wages**

9 Credible testimony and documentary evidence establishes that Respondents failed to pay
10 prevailing wages to workers on all the projects discussed herein, including credible evidence that:

11 1. On the Guardrail Project, Gary Bryant was paid \$15 per hour (Exhibit 6), while Tim
12 Sullivan, George Franco, Krystal Bryant, and David Carel were paid a flat daily rate of \$100 per hour
13 (Exhibits 7 to 10, respectively) – wages below any prevailing wage – with evidence that, for example,
14 Gary Bryant should have been paid \$43.21 per hour for Laborer work and \$59.96 per hour for
15 Operating Engineer work – substantially more than the \$15 per hour that he was paid (Exhibit 6);

16 2. On the West Alvarado Project, Jesus Barajas was paid only \$20 per hour for work
17 performed as (a) a Teamster, for which he should have received \$45.66 per hour, and (b) a Laborer,
18 for which he should have received \$42.18 per hour (Exhibit 12), while Gary Bryant was paid only \$15
19 per hour for work performed as an Operating Engineer, operating heavy machinery;

20 3. On the Sidewalk Project, Respondents stipulated to their failure to pay the prevailing wage;

21 4. On the R&R Project, Jesus Barajas was paid only \$15 for each hour worked as a truck
22 driver (Teamster) (Exhibits 18 and 20), for which Mr. Barajas should have been paid \$42.46 per hour
23 (Exhibit 16). Mr. Barajas' co-workers Jeffrey Wirtz and Edward Pryor were only paid for half the
24 hours they worked (Exhibits 18 and 20).

25 5. On the Trash Cage Enclosure Project, Garren Fain was paid \$15 per hour for work
26 performed as a Laborer, Welder, Operator, and Finisher (Exhibit 24), where the prevailing wages for
27 such work is much higher. For example, credible evidence was submitted showing that the prevailing
28 wage for a Laborer was \$39.63 – much more than \$15 per hour.

1 Respondents should have known that workers on public works projects must be paid the
2 equivalent of at least the prevailing wage. Failure to pay prevailing wages constitutes a "willful"
3 violation of the public works laws.

4 **Shaving of Hours and Failure to Pay Overtime**

5 Credible testimony and documentary evidence further establishes that Respondents shaved
6 hours and failed to pay overtime on all the projects discussed herein, including credible evidence that:

7 1. On the Guardrail Project, the hours listed in the inspector's logs maintained by the County
8 (Exhibit 47) are substantially greater than the hours reported in the certified payroll records provided
9 to the Division (Exhibits 43 and 46);

10 2. On the West Alvarado Project, Respondents did not report Jesus Barajas on certified payroll
11 records, while inspector logs listed Mr. Barajas as working on certain dates. Other workers' hours
12 were listed as fewer hours worked on certified payroll records when compared to the inspector's logs;

13 3. On the Sidewalk Project, Jesus Barajas, Gary Bryant, and John Soria were listed in the
14 inspector's logs as working on certain days, while certified payroll records for the same days list
15 fewer or no hours. For example, Mr. Barajas was listed in the inspector's logs as working two hours
16 as an Operating Engineer and two hours as a Teamster on May 25, 2013, but none of the May 25,
17 2013 hours are listed in the certified payroll records;

18 4. On the R&R Project, workers reported working more hours than were recorded in the
19 foreman's dailies and the certified payroll records. VASIL's explanation that certain workers were
20 not actually needed was not credible and does not justify a failure to pay for work performed.
21 Respondents failed to pay overtime and paid workers for half the hours they worked or less (Exhibit
22 18); and

23 5. On the Trash Enclosure Project, Respondents acknowledged that workers reported working
24 more hours than were recorded in the foreman's dailies and the certified payroll records. VASIL did
25 not provide an explanation for the discrepancy.

26 Respondents deliberately failed to comply with State overtime laws and submitted false
27 certified payroll records showing less hours than the hours actually worked. The responsibility of
28 ensuring that workers are paid for all hours worked and that the certified payroll records accurately

1 reflect the correct hours worked falls on Respondents, who knew or should have known they were
2 violating the public works laws by deliberately not paying workers for all hours worked and not
3 accurately reporting the actual hours worked.

4 **Misclassification**

5 Credible testimony and documentary evidence further establishes that, on the West Alvarado
6 Project, Respondents misclassified (a) Jesus Barajas as a Laborer for work performed as a Teamster
7 (driving a truck), and (b) Gary Bryant as a Laborer for work performed as an Operating Engineer,
8 operating heavy machinery.

9 On the Trash Enclosure Project, which entailed cement work, no workers were listed as
10 Cement Masons. Instead, on certified payroll records, Respondents listed Laborer as the only
11 classification on the project.

12 It is inferred from the facts that Respondents intended to deceive the workers, the awarding
13 body, and the State in its misclassifications, with the intent to pay workers less than prevailing wages
14 for the hours they worked performing certain functions.

15 **Falsified Certified Payroll Records**

16 Credible testimony and documentary evidence further establishes that, on the Guardrail
17 Project, Respondents submitted falsified certified payroll records, with three separate and unique
18 versions of records for the same dates submitted into evidence: Exhibits 42, 43, and 46b. The records
19 submitted to the County, which were signed under penalty of perjury (Exhibit 42), report more
20 workers and hours worked than the versions subsequently submitted to the Division (Exhibit 43 and
21 46b). For example, for the week ending November 3, 2012, the certified payroll records submitted to
22 the County (Exhibit 42) show 5 laborers working a total of 104 hours, while the certified payroll
23 records submitted to Deputy Grucela for the same time period (Exhibit 43) show just one laborer
24 working only 24 hours.

25 The third set of certified payroll records submitted by RMV are significantly different than the
26 previous versions, with omitted tax deduction information, different rates of pay, and different
27 workers listed on specific dates. (*Compare* Exhibits 42, 43, and 46b.) Some names previously listed
28 as workers in the first two sets are listed as owners in the third version (*Id.*), while ownership

1 documents show only VASIL as the owner of RMV, with no indication of previous ownership by the
2 workers listed or anyone else.

3 Furthermore, RMV submitted timesheets with the certified payroll records submitted to Deputy
4 Grucela on August 7, 2013 (Exhibit 46). Deputy Grucela testified that he later discovered, through
5 worker interviews, that the workers had never seen the timesheets, which appeared to be fabricated.

6 It is clear from the facts that Respondents intended to deceive the workers, the awarding body,
7 and the State by submitting false and contradictory certified payroll records (with falsified
8 timesheets), with the intent to pay workers less than they were owed under the law.

9 The evidence supports a finding Respondents committed other violations discussed in this
10 decision with an "intent to defraud" the workers, the awarding bodies and the State of California. On
11 the Sidewalk Project, Respondents' representations on the certified payroll records are inconsistent
12 with the amounts received by workers. For example, on the week ending May 20, 2012, worker Jesus
13 Barajas should have received \$1,025.49 pursuant to RMV's certified payroll records, but when RMV
14 was asked to furnish cancelled checks, RMV provided only a check issued on May 27, 2012 in the
15 amount of \$480.00. The following week, ending May 26, 2012, Mr. Barajas should have received
16 \$1,828.62 pursuant to RMV's certified payroll records, but RMV furnished a check for just \$700.00
17 for that week. Mr. Barajas told Deputy Grucela that he was only paid \$20.00 per hour for his work
18 with RMV (Exhibit 11).

19 VASIL testified that any shortfalls in amounts paid to workers by check were paid in cash in the
20 form of loans made prior to work being performed, but VASIL's testimony is not credible, given that
21 VASIL did not bring copies of any receipts to the hearing and could not recall when the receipts were
22 created or who made the receipts (although VASIL remembered making some of the receipts himself).

23 Deputy Grucela testified that he reviewed the receipts when they were submitted to the Division
24 and noticed that a number of the receipts were dated 2013, even though the work which they allegedly
25 compensated was performed in 2012. The receipts made no mention of loans and were presented as
26 payments made to workers on an ongoing basis for wages. It can be inferred from the dates on the
27 receipts and VASIL's questionable testimony that Respondents intended to defraud the workers, the
28 awarding body, and the State of California by paying workers less than the amounts that should have

1 been paid pursuant to the certified payroll records and by fabricating receipts and a story to explain
2 the unlawful shortfalls.

3 On the R&R Project, VASIL admitted that he prepared timecards and wrote a note to worker
4 Jeffrey Wirtz, saying, "Jeff please sign these so we can get paid." (Exhibit 19.) The falsified
5 timecards and attempt to coerce Mr. Wirtz into signing the falsified timecards constitutes yet another
6 act by Respondents with an intent to defraud.

7 CONCLUSION

8 Based on the evidence presented at the hearing, we find that Respondents R M V
9 CONSTRUCTION, INC., a California Corporation, and ROBERT MICHAEL VASIL II a.k.a.
10 ROBERT MICHAEL VASIL a.k.a. MIKE VASIL, an individual and CEO/RMO/President of R M V
11 CONSTRUCTION, INC. "willfully" violated the public works laws by failing to pay proper
12 prevailing wages, and shaving hours on certified payroll records and failing to pay overtime on all the
13 projects discussed herein.

14 We also find that Respondents T R M V CONSTRUCTION, INC., a California Corporation,
15 and ROBERT MICHAEL VASIL II a.k.a. ROBERT MICHAEL VASIL a.k.a. MIKE VASIL, an
16 individual and CEO/RMO/President of R M V CONSTRUCTION, INC. violated the public works
17 laws with an "intent to defraud" the workers, the awarding bodies, and the State of California when
18 Respondents misclassified workers on the West Alvarado Project and the Trash Enclosure Project,
19 and submitted certified payroll records that they knew were not accurate on the Guardrail Project.
20 As such, we find that all respondents are in violation of Labor Code § 1777.1.

21 "Although debarment can have a severe economic impact on contractors, it 'is not intended as
22 punishment. It is instead, a necessary means to enable the contracting governmental agency to deal
23 with irresponsible bidders and contractors, and to administer its duties with efficiency.'" *Southern*
24 *California Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 542.
25 Accordingly, we debar all three respondents for a period of three years, as requested by the Division.

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1 **ORDER OF DEBARMENT**

2 In accordance with the foregoing, it is hereby ordered that Respondents R M V
3 CONSTRUCTION, INC., a California Corporation, and ROBERT MICHAEL VASIL II a.k.a.
4 ROBERT MICHAEL VASIL a.k.a. MIKE VASIL, an individual and CEO/RMO/President of R M V
5 CONSTRUCTION, INC. shall be ineligible to, and shall not, bid on or be awarded a contract for a
6 public works project, and shall not perform work as a subcontractor on a public work as defined by
7 Labor Code §§ 1720, 1720.2 and 1720.3, for a period of three (3) years, effective 45 days after this
8 decision is issued by the Labor Commissioner. A three year period is appropriate under these
9 circumstances where Respondents R M V CONSTRUCTION, INC., a California Corporation, and
10 ROBERT MICHAEL VASIL II a.k.a. ROBERT MICHAEL VASIL a.k.a. MIKE VASIL, an
11 individual and CEO/RMO/President of R M V CONSTRUCTION, INC. "willfully" violated the
12 public works laws. Three years is also appropriate where Respondents R M V CONSTRUCTION,
13 INC., a California Corporation, and ROBERT MICHAEL VASIL II a.k.a. ROBERT MICHAEL
14 VASIL a.k.a. MIKE VASIL, an individual and CEO/RMO/President of R M V CONSTRUCTION,
15 INC. misclassified workers and submitted false certified payroll records with "intent to defraud."

16 This debarment shall also apply to any other contractor or subcontractor in which Respondents
17 R M V CONSTRUCTION, INC., a California Corporation, and ROBERT MICHAEL VASIL II a.k.a.
18 ROBERT MICHAEL VASIL a.k.a. MIKE VASIL, an individual and CEO/RMO/President of R M V
19 CONSTRUCTION, INC. have any interest or for which respondents act as a responsible managing
20 employee, responsible managing officer, general partner, manager, supervisor, owner, partner, officer,
21 employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all
22 instances where respondents receive payments, whether in cash or in another form of compensation,
23 from the entity bidding or performing works on the public works project, or enters into any contract or
24 agreement with the entity bidding or performing work on the public works project for services

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1 performed or to be assigned or sublet, or for vehicles, tools, equipment or supplies that have been or
2 will be sold, rented or leased during the period of debarment.

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4 Dated: June 29, 2015

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

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ZOE YUZNA
9 Special Hearing Officer for the Labor Commissioner

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CERTIFICATION OF SERVICE
(C.C.P. 1013)

In the matter of the RMV Construction
Case No: LB 5266

I, Ramina German, hereby certify that I am employed in the County of Sacramento, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: DIVISION OF LABOR STANDARDS ENFORCEMENT, Legal Unit, 2031 Howe Avenue, Suite 100, Sacramento, California 95825.

On 2/18, 2016, I served the following documents:

Decision and Order of Debarment of Respondents from Public Works Projects

A. First Class Mail - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

B. By Facsimile Service - I caused a true copy thereof to be transmitted on the date shown below from telecopier (916) 263-2920 to the telecopier number published for the addressee.

C. By Overnight Delivery - I caused each document identified herein to be picked up and delivered by Federal Express (FEDEX), for collection and delivery to the addressee on the date shown below following ordinary business practices.

D. By Personal Service - I caused, by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below.

A	Max Norris DLSE 300 Oceangate, Suite 850 Long Beach, CA 90802
A	RMV Construction Inc. 3562 Summit Trail Court Carlsbad, CA 92010
A	Robert Michael Vasil 3562 Summit Trail Court Carlsbad, CA 92010
A	RMV Construction 4079 Huerfano Avenue #118 San Diego, CA 92117

I declare under penalty of perjury that the foregoing is true and correct. Executed on 2/18, 2016, at Sacramento, California.



Ramina German
Legal Secretary