**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

In the Matter of the Requests for Review of:

**Mega Air Co., Inc.** Case No. 20-0002-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

## DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Mega Air Co., Inc. (Mega) submitted a Request for Review of a Civil Wage and Penalty Assessment (Assessment) issued on October 31, 2019, by the Division of Labor Standards and Enforcement (DLSE) with respect to work Mega performed for the City of Signal Hill (Awarding Body or City) in connection with the Signal Hill Public Library project (Project) located in Los Angeles County. The Assessment determined that Mega owed $78,887.17 in unpaid prevailing wages and statutory penalties. Pursuant to notice, a Hearing on the Merits was conducted on June 24 and July 21, 2021, via Webex Video Conference before Hearing Officer Steven A. McGinty. Luong Chau appeared as counsel for DLSE; Jae Il Bae appeared for Mega. DLSE Deputy Labor Commissioner Christopher Hightower testified in support of the Assessment.

At the beginning of the Hearing on the Merits, the parties appearing stipulated as follows:

- The Request for Review was timely;
- No wages were paid or deposited with the Department of Industrial Relations as a result of the Assessment.

At the beginning of the Hearing on the Merits, the parties appearing stipulated that the following were the issues for decision:

- Whether the Project was a public work subject to the payment of prevailing wages and the employment of apprentices.

- Whether the Assessment was timely served by DLSE in accordance with Labor Code section 1741.[1]
- Whether DLSE timely made available to the requesting party its enforcement file.
- Whether Mega under-reported hours worked on its Certified Payroll Records (CPR).
- Whether Mega paid its employees for all hours worked on the Project.
- Whether Mega timely paid its employees the correct prevailing wage rates for all hours worked on the Project.
- Whether Mega paid all required training fund contributions for the Project.
- Whether Mega is liable for penalties assessed pursuant to sections 1775 and 1813.
- Whether Mega is liable for liquidated damages for unpaid wages found due and owing.
- Whether Mega submitted contract award information to all applicable apprenticeship committees for the classification Sheet Metal Worker in a timely and sufficient manner, as required by section 1777.5, and California Code of Regulations, title 8, section 230.
- Whether Mega employed apprentices in the required minimum ratio of apprentices to journeypersons required by section 1777.5 for the classification Sheet Metal Worker on this Project.
- Whether Mega is liable for penalties assessed pursuant to section 1777.7.

For the reasons set forth below, the Director finds that DLSE carried its initial burden of presenting evidence at the hearing that provided prima facie support for the Assessment. The Director also finds that Mega failed to carry its burden of proving that the basis of the Assessment was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subds.

[1] All subsequent section references are to the California Labor Code, unless otherwise specified.

(a), (b).) However, there was one discrepancy in the DLSE Audit that establishes the basis for finding that the Assessment was incorrect in part. Accordingly, the Director issues this Decision affirming the Assessment as modified herein.

## FACTS

The Project.

The Awarding Body advertised the Project for bids on September 22, 2017.[2] The project entailed construction of a new two-story library building.[3] The Notice Inviting Bids[4] includes the following Description of Work:

> Work includes removal of the trash enclosure along Jessie Nelson, upper portions of the retaining wall, new electrical transformer and distribution, over excavation of site soils/earthwork, foundations, installation of concrete footing, approximately 15,000 square foot steel monument framed building and interior wood framed office areas, parking lot, new trash enclosure, onsite water infiltration system, landscaping and irrigation and electrical car charging station.

The prime contract was awarded to Tobo Construction, Inc. (Tobo), which entered into a contract with the Awarding Body dated December 20, 2017.[5] Attached to the contract was a list of Tobo's subcontractors for the Project, identifying Mega as the heating, ventilation and air conditioning (HVAC) subcontractor on the Project.[6] The contract documents included language to effectuate the requirements of sections 1771, 1774-1776, 1777.5, 1813, and 1815.[7]

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[2] DLSE Exhibit No. 3, at p. 42.

[3] DLSE Exhibit No. 4, at p. 43.

[4] DLSE Exhibit No. 3, at p. 41.

[5] DLSE Exhibit No. 5, at pp. 44-47.

[6] *Id.* at p. 48.

[7] DLSE Exhibit No. 4, at p. 43.

Mega employees worked on the Project from September 25, 2018, through July 15, 2019, in the City of Signal Hill.[8] According to DLSE's Penalty Review, the Project was near completion as of the date of writing.[9]

The Assessment.

DLSE served the Assessment by ordinary first class mail and by certified mail upon Mega's agent for service of process, Jae Il Bae, on October 31, 2019. The Assessment found that Mega did the following: failed to pay prevailing wages to Sheet Metal Workers and Sheet Metal Apprentices, and failed to report all hours worked. It further found that Mega failed to meet apprenticeship requirements by failing to submit Contract Award Information (DAS 140) to all applicable committees for Sheet Metal Workers, and failed to meet the required minimum ratio for apprentices to journeypersons for Sheet Metal Workers.

The Assessment found that Mega underpaid the required prevailing wages in the amount of $28,747.17. The Public Works Audit Worksheet attached to the Assessment indicated that penalties were assessed under section 1775 in the mitigated amount of $180.00 per violation for 165 violations, in a total amount of $29,700.00. Penalties were also assessed under section 1777.7 in the mitigated amount of $80.00 per day for 293 days, totaling $23,440.00.

The Enforcement File.

Mega's undated Request for Review was received by DLSE on December 30, 2019. On January 8, 2020, DLSE served upon Mega a "Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)." The Notice stated in part: "In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the DLSE at the hearing on the Request for Review, and the procedures for reviewing such evidence." It concluded by stating that the procedure to exercise the opportunity to review evidence was to transmit an

[8] DLSE Exhibit No. 8, at pp. 260, 367.

[9] DLSE Exhibit No. 16, at p. 1196.

attached Request to Review Evidence to DLSE at a specified address within five calendar days.[10] There is no evidence in the record that Mega ever submitted such a request.

The Hearing on the Merits.

Prior to the commencement of testimony, the parties appearing stipulated to the admission of DLSE Exhibit numbers 1 through 24. Those exhibits were admitted into evidence. Mega's requests for review of two other assessments were also heard on June 24 and July 21, 2021, and the parties also stipulated to the admission of DLSE's exhibits in those cases. Case Numbers 19-0209-PWH and 19-0317-PWH involved a project for the University of California, Los Angeles (UCLA) for which prime contractor Tobo also filed a request for review. Case Number 20-0010-PWH involved a related UCLA project. Some of the workers on the instant Project also worked on one or both of those other two projects. Accordingly, some of the evidence presented in those cases is also relevant to the present case.

DLSE called Christopher Hightower as a witness. He testified that he was employed by DLSE as a Deputy Labor Commissioner I, and that his duties entailed investigating complaints of labor law violations on public works projects. Hightower testified that he conducted the investigation that resulted in the Assessment at issue. His investigation stemmed from the investigation of a complaint filed by Public Works Contract Compliance regarding the project that was the subject of Case Numbers 19-0209 and 19-0317. Hightower testified that his investigation of this Project resulted in the Assessment at issue. His investigation included obtaining and reviewing documents from the Awarding Body and Mega, sending questionnaires to workers, and reviewing the one returned completed questionnaire. Hightower identified various DLSE exhibits and testified regarding their contents. He was cross-examined by Mega.

Mega called as its only witness Jae Il Bae, who did not contradict Hightower's testimony. Mega did not introduce any documentary evidence.

[10] DLSE Exhibit No. 19, at pp. 1245-1246.

The matter was submitted at the conclusion of testimony on July 21, 2021.

Applicable Prevailing Wage Determinations (PWDs).

Set forth below are the two relevant PWDs that were in effect on the date the Project was advertised for bids:

1. Sheet Metal Worker for Los Angeles County (LOS-2017-2), issued August 22, 2017. The basic hourly rate for this classification for work performed through June 30, 2018, was $42.78, the combined fringe benefits were $27.81 per hour, and the training fund contribution rate was $0.82 per hour, for a total of $71.41 for each straight-time hour.[11] A predetermined increase of $2.00 per hour, effective July 1, 2018, brought the total straight-time hourly rate to $73.41; an additional predetermined increase of $2.00 per hour, effective July 1, 2019, brought the total straight-time hourly rate to $75.41.[12]
2. Sheet Metal Worker (HVAC) Apprentice Rates for Inyo, Los Angeles (Portions South of a Straight Line Drawn Through Gorman and Big Pines), Mono, Orange, Riverside and San Bernardino Counties (2017-2). Effective August 22, 2017, for First Period and Second Period Apprentice, the basic hourly rate was $17.11, benefit contributions were $11.93, training fund contributions were $0.82, and other hourly payments were $0.65, for a total hourly rate of $30.51. For Fourth Period Apprentice, the basic hourly rate was $21.39, benefit contributions were $12.36, training fund contributions were $0.82, and other hourly payments were $0.65, for a total hourly rate of $35.22.[13]

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[11] DLSE Exhibit No. 14, at p. 1183.

[12] DLSE Exhibit No. 24, at p. 1269. A note accompanying the predetermined increases states: "The predetermined increase shown is to be allocated to wages and/or employer payments. Please contact the Office of the Director-Research Unit at (415) 703-4774 when the predetermined increase becomes due to confirm the distribution. Please also examine the important notices to see if any modifications have been issued, as there may be reductions to predetermined increases." (*Id.* at p. 1,270.) In its Penalty Review, DLSE states that the basic hourly rate was $44.28 as of July 1, 2018, and $46.28 as of July 1, 2019, indicating that $1.50 of the first predetermined increase was allocated to the wage, and the remaining $0.50 to employer payments. (DLSE Exhibit No. 16, at p. 1,196.)

[13] DLSE Exhibit No. 14, at p. 1189.

Underpayment of Wages and Underreporting of Hours Worked.

The Assessment found that Mega underpaid workers for their work on the Project. This was primarily due to Mega's failure to pay the correct prevailing wage rate required by the PWD for Sheet Metal Worker, as well as its failure to pay for all hours worked. Mega's CPRs consistently reported payment to Sheet Metal Workers of a basic hourly rate of $44.48 and a total hourly rate of $74.53 for work done prior to June 2019. (DLSE Exhibit No. 8, at pp. 260-344.)

Hightower testified that in the course of his investigation, he obtained CPRs and copies of paycheck stubs from Mega, and sent questionnaires to the employees identified in the CPRs. In the Penalty Review, he reported:

> The payroll records provided by the contractor were deemed unreliable due to inconsistencies found. The contractor submitted copies of paycheck stubs, which were inconsistent in reporting the hours and rate of pay. Some paycheck stub [*sic*] contained the hours and rate, while others did not. Additionally, the inspectors [*sic*] logs received revealed that workers were on site for 8 hours daily, while the contractor reported 5 or 6 hours worked per day. Employee questionnaires were sent and one response was received from Chance Allen. The worker indicated that he was an apprentice, worked 8 hours each day and was paid at the rate of $17.17 per hour. The account by the worker also disputes the contractors [*sic*] records provided.

(DLSE Exhibit No. 16, at p. 1198.)

In his questionnaire responses, Allen stated that he was employed on the Project as a Sheet Metal Apprentice from December 11, 2018, through December 28, 2018. He stated that he worked eight hours on each day he worked, and was paid by check at the rate of $17.71 per hour. (DLSE Exhibit No. 15, at p. 1190.) Mega's CPR for the week ending December 16, 2018, shows Allen working eight hours per day from Tuesday, December 11, 2018, through Friday, December 14, 2018, for a total of 32 hours, at a base hourly rate of $17.71. It shows a total hourly rate of $32.23, and a gross amount earned of $566.72. (DLSE Exhibit No. 8, at p. 293.) The paycheck stub provided by Mega for that week, dated December14, 2018, confirms that Allen was paid $17.71 per hour for 32 hours, for total gross pay of $566.72, of which he was paid a

net of $473.71. (DLSE Exhibit No. 9, at p. 437.) DLSE's Audit Worksheet for Allen shows that the total wages required for that week were $950.08, the total wages paid were $566.72, leaving an amount due and owing of $383.36. (DLSE Exhibit No. 2, at p. 35.) The Audit Worksheet shows the same numbers for the following week, with Allen working eight hours per day from Monday through Thursday. (*Ibid*.)

Paycheck stubs provided by Mega for pay periods in September through November 2018 omit both the rate of pay and the number of hours worked. (DLSE Exhibit No. 9, at pp. 372-427.) Mega began including this information on the stubs beginning with the pay period ending December 9, 2018. Thus, for example, the stub for Sheet Metal Worker Jorge A. Rocha for that week indicates that he received gross pay of $880.92, reflecting 12 hours of work at the rate of $73.41 per hour. (*Id*. at p. 430.) Mega's CPR for the same pay period also shows that Rocha received gross pay of $880.92 for twelve hours of work, six each on Monday and Tuesday. (DLSE Exhibit No. 8, at p. 291.) The inspector's Daily Logs for Monday, December 3, 2018, and Tuesday, December 4, 2018, show that Mega employed two Sheet Metal Workers for eight hours on each day. (DLSE Exhibit No. 11, at pp. 724, 728.) The Audit Worksheet for Rocha credits him with eight hours of work each day on Monday and Tuesday of the week in question, shows total wages required of $1,161.44, credits Mega with $880.92 in wages paid, and finds $280.52 due and owing. (DLSE Exhibit No. 2, at p. 29.)

In the Penalty review, Hightower identified an additional discrepancy in the CPRs—the misclassification of certain workers:

> The contractor also misclassified Sheet Metal Workers as Asbestos apprentices. However, the inspector log does not indicate any asbestos work was completed, there were no journey[person] asbestos workers, and the contractor is not licensed to complete asbestos removal work. The workers classified as Asbestos apprentices were reclassified as Sheet Metal Workers.

(DLSE Exhibit No. 16, at p. 1198.) Mega's CPRs show that three workers were classified as Asbestos Worker Apprentice. The CPR for the week ending March 17, 2019, showed Augustin Hernandez working eight hours each day on Thursday, March 14, and Friday,

March 15, and receiving gross pay of $410.40, at a basic hourly rate of $25.65, and a total hourly rate of $26.69. (DLSE Exhibit No. 8, at p. 335.) The CPR for the week ending March 24, 2019, showed Anthony Adame working eight hours each day on Thursday, March 21, and Friday, March 22, and receiving gross pay of $484.48, at a basic hourly rate of $30.28, and a total hourly rate of 31.32. (*Id*. at p. 338.) The CPR for the week ending July 15, 2019, showed Luis Saenz working seven hours on Thursday, July 11, and eight hours on Friday, July 12, and receiving gross pay of $473.70, at a basic hourly rate of $31.58, and a total hourly rate of 32.70 per hour. (*Id.* at p. 365.)

DLSE's Audit reclassified all three workers as Sheet Metal Workers. It found that Hernandez and Adame were required to be paid a basic hourly wage of $44.78 for 16 hours, that total wages of $1,161.44 were required, and that $1,161 was due and owing to Hernandez, and $676.96 was due and owing to Adame. (DLSE Exhibit No. 2, at p. 38, 39.) It found that Saenz was required to be paid a basic hourly wage of $46.78 (reflecting the predetermined increase effective July 1, 2019) for 16 hours, that total wages of $1,193.44 were required, and that $719.74 was due and owing. (*Id*. at p. 40.)

As set forth on DLSE's Public Works Audit Worksheet (DLSE Exhibit No. 2, p. 13) the workers in question were underpaid by the amounts shown in the table below, for the straight time hours listed:[14]

| Worker | Hours | Amount Owing |
|---|---|---|
| Jose Arriega | 96.0 | $ 1,555.96 |
| Jae Bae | 688.0 | $ 0.00 |
| Federico Bonilla | 184.0 | $ 2,825.28 |
| Si Kim | 456.0 | $ 6,104.79 |
| Wan Kim | 456.0 | $ 0.00 |

[14] Campos, Sandoval and Allen were all classified as Sheet Metal Apprentices. All other workers listed were classified in the Audit as Sheet Metal Workers, including the three Mega had classified as Asbestos Worker Apprentices in its CPRs. The Assessment found no overtime hours worked.

| Worker | Hours | Amount Owing |
|---|---|---|
| Jorge Rocha Alfaro | 128.0 | $ 2,552.82 |
| Jorge A. Rocha | 480.0 | $ 6,521.27 |
| Ezekiel R. Campos | 24.0 | $ 287.52 |
| Jae Yang Kim | 80.0 | $ 775.53 |
| Austin P. Sandoval | 48.0 | $ 677.04 |
| Chance S. Allen | 64.0 | $ 766.72 |
| Margarito Lopez | 16.0 | $ 280.52 |
| Ismael Alfaro | 48.0 | $ 841.56 |
| Augustin Hernandez | 16.0 | $ 1,161.44 |
| Antony Adame | 16.0 | $ 676.96 |
| Luis Saenz | 16.0 | $ 719.74 |
| Total Amount Owing and Unpaid | | $25,747.17 |

Applicable Apprenticeship Committees in the Geographic Area.

According to DLSE's Penalty Review (DLSE Exhibit No. 16), there were three apprenticeship committee in the geographic area of the Project for the trade of Sheet Metal Worker: Southern California Chapter of Associated Builders and Contractors, Inc. (ABC) Sheet Metal U.A.C.; Kern & Northern Los Angeles Counties Air Conditioning and Sheet Metal Workers J.A.T.C.; and Southern California Sheet Metal J.A.T.C. Hightower testified that he obtained this information by searching the DAS public works apprenticeship database for Sheet Metal Worker apprenticeship committees serving Los Angeles County.

Notice of Contract Award Information.

Mega began work on the Project on September 25, 2018, according to Mega's CPRs.[15] On February 28, 2018, it faxed notice of contract award information forms (DAS

[15] Hightower noted in the Penalty Review that the inspector logs indicate that Mega began working on the Project on September 17, 2018, but its first CPR is for the following week. (DLSE Exhibit No. 16, at p. 1198. Nonetheless he used the date indicated in the CPR, September 25, 2018, as the first day journeyperson Sheet Metal Workers worked on the Project. (*Id.* at p. 1199.)

140) to the Southern California Chapter of Associated Builders and Contractors, Inc. Sheet Metal U.A.C. (DLSE Exhibit No. 17, at p. 1201), and the Southern California Sheet Metal J.A.T.C. (DLSE Exhibit No. 18, at p. 1203).

The Assessment found that Mega did not submit a DAS 140 to the Kern & Northern Los Angeles Counties Air Conditioning and Sheet Metal Workers J.A.T.C. (DLSE Exhibit No. 16, at pp. 1197, 1199.) Mega did not dispute this finding. Rather, in his cross-examination of Hightower, Bae maintained that he telephoned that committee and was told not to submit the form because it did not dispatch apprentices to the geographic area of the Project.

Request for Dispatch of Apprentices.

On September 21, 2018, Mega faxed a DAS 142 to the Southern California Sheet Metal J.A.T.C., requesting one apprentice to report for work on the Project on September 26, 2018. However, the J.A.T.C notified Mega that it was unable to fill that request, and Mega cancelled it. (DLSE Exhibit No. 18, at p. 1204, 1207-1208.) On September 27, 2018, Mega faxed another DAS 142 to the same committee, requesting one apprentice to report for work on the Project on October 1, 2018. The committee was also unable to fill that request, and it too was cancelled. (*Id*. at pp. 1209, 1211.) On October 2, 2018, Mega faxed a third request to the same committee, requesting one apprentice to report for work on the Project on October 5, 2018. The committee was able to dispatch an apprentice in response to that request, but with a start date of October 9, 2018. (*Id*. at pp. 1215, 1217.) Mega faxed several additional DAS 142 forms to the same committee over the course of the Project. (*Id.* at pp. 1219-1243.)

The Assessment credited Mega with submitting a DAS 142 to the Southern California Sheet Metal J.A.T.C. on September 21, 2018, but found that it had failed to submit that form to either of the other two applicable committees. (DLSE Exhibit No. 16, at pp. 1197, 1199.) Mega did not dispute these findings. In his cross-examination of Hightower, Bae asserted that he did not send a DAS 142 to the ABC Committee because it said it could not dispatch apprentice "because they are not part of the union, union shop."

Minimum Ratio Requirement.

The Assessment found that Mega had failed to employ apprentices on the Project at the minimum ratio of apprentices to journeypersons. As explained by Hightower in the Penalty Review:

> Pursuant to Labor Code section 1777.5(d), if the contractor … in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio of one hour of apprentice work for every five hours of journey[person] work.
>
> Mega … failed to meet the 20% required ratio for hired Sheet Metal Worker apprentices. The Certified Payroll Records had 132 apprentice hours reported during the project. Based on the hours reported by the contractor the amount of apprentice hours required was 431.40 hours. The contractor worked a total of 150 days on the project and is subject to penalties authorized by the Labor Code [for 150 violations].

(DLSE Exhibit No. 16, at p. 1199.) Mega offered no testimony or documentary evidence that it had met the required ratio.

Assessment of Statutory Penalties.

In the "Conclusions & Recommendations" section of the Penalty Review, Hightower summarized the violations found in his investigation. He then stated:

> In addition to these violations, the contractor submit[ted] in-accurate and fraudulent documents during the investigation. The contractor has four CWPA's issued against them in the last three years, and an additional 5 CWPA's issued to them dating back to 2013. The contractor is aware of the prevailing wage laws and has been assessed wages in addition to 1775 and 1777.5 penalties multiple times. The contractor continues to blatantly disregard the prevailing wage laws and prior assessments. Penalties recommended to be assessed at the maximum amount allowed due to multiple willful violations and attempt to willfully mislead the DLSE during its investigation.

(DLSE Exhibit No. 16, p. 1200.) Penalties were assessed under section 1775 for 165 violations at the rate of $180.00 per violation, for a total of $29,700.00. (DLSE Exhibit No. 16, pp. 1193-1194.) Additionally, penalties were assessed under section 1777.7 for 293 violations at the rate of $80.00 per violation, for a

total of $23,440.00. (*Ibid.*) In the Penalty Review, Hightower explained the basis of the section 1777.7 violations as follows:

> Upon review of the Certified Payroll Records, Mega Air Co., Inc. failed to submit the DAS 140 and DAS 142 in a timely manner to all approved apprentice committees. The first day a journey[person] began work was on 9/25/2018 and the contractor failed to submit the DAS 140 and DAS 142 by this date. The DAS 140 was only submitted to two of the three committees, and the DAS 142 was only sent to one committee. The 150 day ratio violation penalty will be included with the DAS 140/142 penalties, but only one penalty per day will be assessed. The penalty calculation of 1777.7 is based on the DAS 140 violation, which begins on the 2nd day after the 1st journey[person]'s working day, and ended on the last day a journey[person] worked on the project. The penalty accrual began on 9/26/2018 and ended on 7/15/2019 totaling 293 calendar days.

(*Id.* at p. 1199.)

## DISCUSSION

The California Prevailing Wage Law (CPWL), set forth at Labor Code section 1720 et seq., requires the payment of prevailing wages to workers employed on public works projects. The purpose of the CPWL was summarized by the California Supreme Court 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); see also *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 unpaid wages, if unpaid prevailing wages are not paid within 60 days following the service of a civil wage and penalty assessment under section 1741.

When DLSE determines that a violation of the prevailing wage laws has occurred, it may issue a written civil wage and penalty assessment pursuant to section 1741. An affected contractor may appeal that assessment by filing a request for review. (§ 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 initial burden of producing evidence that "provides prima facie support for the Assessment …." (Cal. Code Regs. tit. 8, § 17250, subd. (a).) When that 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).)

Additionally, employers on public works must keep accurate payroll records, recording, among other information, the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, § 11160, subd. 6.)

When an employer fails to maintain accurate time records, a claim for unpaid wages may be based on credible estimates from other sources sufficient to allow the

decision maker to determine the amount by a just and reasonable inference from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (See, e.g., *Furry v. E. Bay Publ'g, LLC* (2019) 30 Cal.App.5th 1072, 1079 ["'[A]n employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.'"], citing *Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, 687-688, 66 S.Ct. 1187; see also *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726-727; *In re Gooden Construction Corp.* (U.S. Dept. of Labor Wage Appeals Board 1986) 28 WH Cases 45 (BNA) [applying same rule to prevailing wage claims under the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq.].) This burden is consistent with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect. In this case, for the reasons detailed below, the Director determines that, based on the totality of the evidence presented, DLSE met its initial burden of presenting prima facie support for the Assessment, and that Mega failed to meet its burden to prove the basis of the Assessment was incorrect.

The Project was a public work subject to the payment of prevailing wages and the employment of apprentices.

Section 1720, subdivision (a)(1) defines "public works" in part as: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority." Here the City contracted for construction of a new public library. Its Notice Inviting Bids included a provision stating: "No Contractor or subcontractor may

be listed on the proposal unless they are registered with the Department of Industrial Relations (DIR) pursuant to Labor Code Section 17255 [sic]." The intended citation is to section 1725.5, which requires registration of contractors bidding on or performing work on public works contracts. The City, a political subdivision of the state, entered into a construction contract with Tobo under which it was obligated to pay Tobo money or the equivalent of money within the meaning of section 1720, subdivision (b)(1). (DLSE Exhibit No. 5, at pp. 44, 45.) The contract included language to effectuate the requirements of sections 1771, 1774-1776, 1777.5, 1813 and 1815. (DLSE Exhibit No. 4, at p. 43.)

DLSE's exhibits thus provide prima facie support for a finding that the Project was a public work. Mega provided no evidence or argument to the contrary. Therefore, DLSE established by a preponderance of the evidence that the Project was a public work subject to the Labor Code's prevailing wage and apprenticeship requirements.

The Assessment was timely served by DLSE in accordance with section 1741.

Section 1741, subdivision (a) provides in pertinent part:

> The assessment shall be served no later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first class and certified mail to the contractor, subcontractor, and awarding body.

DLSE established that the Assessment was served on Tobo, Mega, and the other appropriate parties by first class and certified mail on October 31, 2019. (DLSE Exhibit No. 1, at pp. 9-12.) Through the testimony of Hightower, DLSE further established that as of that date, no notice of completion had provided by the Awarding Body. DLSE further established that the last day Mega performed work on the Project was July 15, 2019. (DLSE Exhibit No. 16, at p. 1197.) There is no evidence that either specified triggering event had occurred prior to service of the Assessment, and in any event, the Assessment was served only three and a half months after Mega last worked on the Project. Accordingly, service was timely under section 1741.

DLSE timely made its enforcement file available to Mega.

Section 1742, subdivision (b) provides in pertinent part: "The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of a written request for a hearing." California Code of Regulations, title 8, section 17224 provides in pertinent part:

> (a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the Affected Contractor or Subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review.
>
> (b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.

Here Mega's Request for Review was received by DLSE on December 30, 2019. On January 8, 2020, DLSE served Mega with the Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742, subdivision (b). It appears from the record that Mega never responded to that notice or otherwise attempted to review DLSE's evidence. Accordingly, in the absence of any evidence to the contrary, it must be concluded that DSLE satisfied its obligations under section 1742 and the above regulation.

Mega Failed to Pay the Proper Prevailing Wage Rate to Sheet Metal Workers.

The Assessment found that throughout the Project, Mega consistently underpaid Sheet Metal Workers, and that it failed to accurately report all hours worked. These findings were amply supported by the evidence presented by DLSE, including inspector logs and a worker questionnaire, showing that Mega's CPRs were inaccurate. DLSE

further demonstrated that Mega misclassified three Sheet Metal Workers as Asbestos Worker Apprentices.

DLSE carried its initial burden of producing evidence that provides prima facie support for the Assessment. Thus, the burden was on Mega to prove that the basis for the Assessment was incorrect. Mega failed to produce any evidence that the Assessment was incorrect with regard to the underpayment of wages and underreporting of hours. Mega was given the opportunity to present witness testimony, and Jae Il Bae testified as its only witness. Despite repeated invitations by the Hearing Officer to respond to Hightower's testimony as to the violations he found, Bae declined to do so.

There is, however, a discrepancy in the Audit with regard to worker Augustin Hernandez. The Audit reclassified Hernandez from Asbestos Worker Apprentice to Sheet Metal Worker. It found that he worked a total of 16 hours on the week ending March 17, 2019, that the total wages required for those hours were $1,161.44, and that all $1,161.44 remained due and owing. (DLSE Exhibit No. 2, at p. 38.) However, Mega's CPR for that week shows that it paid Hernandez the gross amount of $410.40, and the net amount of $374.91. (DLSE Exhibit No. 8, at p. 355.) The CPR is corroborated by a copy of a cancelled paycheck submitted to DLSE by Mega. Check number 12384, dated March 18, 2019, was payable to Hernandez in the amount of $374.91. The check appears to have been endorsed by Hernandez. (DLSE Exhibit No. 10, at p. 557.) Thus, a preponderance of evidence supports a finding that Mega paid Hernandez the gross amount of $410.40 for the 16 hours he worked. Accordingly, the Audit must be modified to reduce the amount due and owing Hernandez from $1,161.44 to $751.04. This modification has the effect of reducing the Assessed total wages due and owing from $25,747.17 to $25,336.77. Accordingly, the Assessment must be so modified.[16]

[16] Despite the reduction in the assessed wages due and owing, Hernandez was underpaid for the two days he worked. Accordingly, there is no modification of the section 1775 penalties assessed for those days.

DLSE's Penalty Assessment Under Section 1775.

Section 1775, subdivision (a), 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 . . . subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the . . . subcontractor.

(ii) The penalty may not be less than eighty dollars ($80) . . . if the . . . subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars ($120) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.[17]

Abuse of discretion by DLSE is established if the "agency's nonadjudicatory action … is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy."

[17] The citation in section 1775 to section 1777.1, subdivision (c) is mistaken. Section 1777.1, subdivision (e), as it existed on the contract date, defines a willful violation as one in which "the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or deliberately refuses to comply with its provisions."

(*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute his or her own judgment "because in [his or her] own evaluation of the circumstances the punishment appears to be too harsh." (*Pegues v. Civil Service Commission* (1998) 67 Cal.App.4th 95, 107**.)**

A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment. Specifically, "the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty." (Cal. Code Regs., tit. 8, § 17250, subd. (c).)

DLSE assessed section 1775 penalties at the mitigated rate of $180.00. This was in keeping with the nature of Mega's violations (Penalty Review, DLSE Exhibit No. 16.), and evidence that they were willful as defined by section 1777.1, subdivision (e).

The burden was on Mega to prove that DLSE abused its discretion in setting the penalty amount under section 1775. Here the Labor Commissioner reduced the penalty from the maximum $200.00 per violation recommended by Hightower to $180.00 per violation, a ten percent reduction. Mega failed to establish that the Labor Commissioner abused her discretion in assessing section 1775 penalties at $180.00 per violation. Accordingly, as determined by DLSE, Mega is liable for 17775 penalties at $180.00 per violation for 165 violations, for a total amount of $29,700.00.

Mega Is Liable for Liquidated Damages.

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

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

The statutory scheme regarding liquidated damages provides contractors two alternative means to avert liability for liquidated damages (in addition to prevailing on the case, or settling the case with DLSE and DLSE agreeing to waive liquidated damages). These require the contractor to make key decisions within 60 days of the service of the CWPA on the contractor.

First, the above-quoted portion of section 1742.1, subdivision (a), states that the contractor shall be liable for liquidated damages equal to the portion of the wages "that still remain unpaid" 60 days following service of the CWPA. Accordingly, the contractor had 60 days to decide whether to pay to the workers all or a portion of the wages assessed in the CWPA, and thereby avoid liability for liquidated damages on the amount of wages so paid.

Under section 1742.1, subdivision (b), a contractor would entirely avert liability for liquidated damages if, within 60 days from issuance of the CWPA, the contractor deposited into escrow with DIR the full amount of the assessment of unpaid wages, plus the statutory penalties under sections 1775. Section 1742.1, subdivision (b), states in this regard:

> [T]here shall be no liability for liquidated damages if the full amount of the assessment…, including penalties, has been deposited with the Department of Industrial Relations, within 60 days of the service of the assessment…, for the department to hold in escrow pending administrative and judicial review.

In this case, Mega did not pay any back wages to the workers in response to the Assessment or deposit with the Department the assessed wages and statutory penalties. Therefore, under the express language of section 1742.1, Mega is liable for liquidated damages in the full amount of the unpaid wages found herein. Accordingly, liquidated damages are due in the aggregate amount of $25,336.77, as provided in the Findings, *post*.

Apprenticeship Violations.

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. (Cal. Code Regs., tit. 8, §§ 227 to 232.70.)

Section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeypersons in the applicable craft or trade (unless the contractor is exempt, which is inapplicable to the facts of this case). (§ 1777.5, subd. (g); Cal. Code Regs., tit. 8, § 230.1, subd. (a).) A contractor shall not be considered in violation of the regulation if it has properly requested the dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatches apprentices during the pendency of the project.

Contractors are also required to notify apprenticeship programs to the fact that they have been awarded a public works contract at which apprentices may be employed. (§ 1777.5, subd. (e); Cal. Code Regs., tit. 8, § 230, subd. (a).) The Division of Apprenticeship Standards has prepared a form for this purpose (DAS 140), which a contractor may use to notify all apprenticeship programs for each apprenticeable craft in the area of the site of the Project. The required information must be provided to the applicable committees within ten days of the execution of the prime contract or subcontract, "but in no event no later than the first day in which the contractor has workers employed on the public work." (Cal. Code Regs., tit. 8, § 230, subd. (a).) Thus, the contractor is required to both notify apprenticeship programs of upcoming opportunities for training and work, and to request dispatch of apprentices for specified dates with sufficient notice. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).)

There Were Three Applicable Committees in the Geographic Area.

DLSE established that there were three applicable apprenticeship committees for Sheet Metal Worker in the geographic area of the Project. Mega offered no evidence to the contrary.

Mega Failed to Properly Notify All of the Applicable Committees of Contract Award Information.

DLSE established that Mega failed to notify one of the applicable committees, Kern & Northern Los Angeles Counties Air Conditioning and Sheet Metal Workers J.A.T.C., of contract award information. Mega offered no testimony or documentary evidence to the contrary. Rather, in the course of cross-examining Hightower, Bae made unsworn representations that the committee in question had instructed him not to submit the DAS 140 to it. Since Bae was not testifying under oath at that point, his representations were uncorroborated double hearsay, and he did not provide either the date or the identity of the person with whom he claimed to have spoken. In any event, apprenticeship committees have no legal authority to excuse compliance with the Labor Code's DAS 140 requirement. Accordingly, Mega has not met its burden of proving that the Assessment was incorrect in finding that it failed to notify all applicable apprentice committees of its public works contract and thereby violated section 1777.5, subdivision (e) and the applicable regulation, section 230, subdivision (a).

Mega Failed to Request the Dispatch of A Sheet Metal Apprentice From All Applicable Committees.

All requests for dispatch of apprentices must be in writing and provide at least 72 hours' notice of the date on which one or more apprentices are required. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) DLSE established that Mega made no such request of two of the three applicable committees. Mega produced no evidence that it complied with the above regulation in this respect, and accordingly failed to meet its burden of proving the Assessment incorrect.

Mega Failed to Employ Sheet Metal Worker Apprentices in the Required Ratio.

Sheet Metal Worker was the apprenticeable craft at issue in this matter. DLSE introduced evidence showing that Sheet Metal Workers began work on the Project on September 25, 2018, and last worked on the Project on July 15, 2019. The Assessment found that Mega employed journeyperson Sheet Metal Workers for 2157 hours on the Project. Thus, according to the Assessment, to meet the one to five

ratio, Mega was required to employ Sheet Metal Worker apprentices for a total of 431.4 hours. Mega employed Sheet Metal Worker apprentices for only 132 hours. Thus, the record establishes that Mega violated section 1777.5 and the related regulation, section 230.1, by failing to meet the required one to five apprentice to journeyperson hour ratios.

The Penalty for Noncompliance.

If a contractor knowingly violates Section 1777.5 a civil penalty is imposed under section 1777.7 in an amount not exceeding $100.00 for each full calendar day of noncompliance. (§ 1777.7, subd. (a)(1).) The phrase "knowingly violated Section 1777.5" is defined by regulation, 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.

In determining the penalty amount, the Labor Commissioner is to consider all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(§ 1777.7, subd. (b).) The Labor Commissioner's determination of the amount of the penalty, however, is reviewable only for abuse of discretion. (§ 1777.7, subd. (d).) A contractor or subcontractor has the burden of proof with respect to the penalty,

namely, that the Labor Commissioner abused discretion in determining that a penalty was due and the amount of the penalty. (Cal. Code Regs., tit. 8, § 17250.)

In this case, DLSE based section 1777.7 penalties on Mega's failure to submit contract award information as required by section 1777.5, subdivision (e), and section 230, subdivision (a) of the applicable regulations. Section 230, subdivision (a) states as follows:

> 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 the penalties under Labor Code Section 1777.7

Thus, per the regulation, a failure to provide contract award information is a violation that runs throughout the duration of the contract. DLSE imposed a mitigated penalty rate of $80.00 for each of 293 days of noncompliance, based on the period from the day on which the DAS 140 notice was required to be given through the last day Mega worked on the Project. (These penalties were assessed on the basis of Mega's failure to notify all applicable committees; no additional penalties were assessed for the additional section 1777.5 violations found.)

By sending a DAS 140 to two of the three applicable committees, and a DAS 142 to one of the three, Mega demonstrated that it knew or should have known of the requirements of section 1777.5, and thus its violations were "knowing" under the definition quoted, *ante*. DLSE established that Mega's violations resulted in lost training opportunities for apprentices and otherwise harmed apprentices and apprenticeship programs. At the same time, DLSE took into consideration that Mega had a record of previous violations of section 1777.5, and previous assessments of section 1777.7 penalties. On these facts, DLSE arguably would have been justified in setting the penalty rate at the maximum of $100.00, as Hightower recommended; yet the Labor Commissioner reduced that rate by twenty percent.

Mega failed to establish that the Labor Commissioner abused her discretion in assessing section 1777.7 penalties at the rate of $80.00 per violation. Accordingly, as

determined by DLSE and specified in the Assessment, Mega is liable for 1777.7 penalties at $80.00 per violation for 293 days, for a total amount of $23,440.00.

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

## FINDINGS AND ORDER

1. The Project was a public work subject to the payment of prevailing wages and the employment of apprentices.
2. The Civil Wage and Penalty Assessment was timely served by DLSE in accordance with section 1741.
3. Affected subcontractor Mega Air Co., Inc. filed a timely Request for Review of the Civil Wage and Penalty Assessment issued by DLSE with respect to the Project.
4. DLSE timely made available to Mega Air Co., Inc. its enforcement file.
5. No wages were paid or deposited with the Department of Industrial Relations as a result of the Assessment.
6. Mega Air Co., Inc. underpaid workers performing the work of Sheet Metal Worker and Sheet Metal Apprentice by paying them less than the rates specified in the applicable PWD for those classifications.
7. Mega Air Co., Inc. underreported the hours worked by Sheet Metal Workers in its Certified Payroll Records.
8. Mega Air Co., Inc. failed to pay Sheet Metal Workers for all hours worked.
9. Mega Air Co., Inc. misclassified Sheet Metal Workers Augustin Hernandez, Anthony Adame and Luis Saenz as Asbestos Worker Apprentice, resulting in the underpayment of wages to those workers.
10. In light of findings 6 through 9 above, Mega Air, Inc. underpaid its employees on the Project in the aggregate amount of $25,336.77.
11. The Labor Commissioner did not abuse her discretion in assessing penalties under Labor Code section 1775 at the rate of $180.00 per violation for 165 violations, resulting in the aggregate sum of $29,700.00.

12. Mega Air Co., Inc. is liable for liquidated damages in the full amount of the unpaid wages, which is $25,336.77.
13. There were three applicable apprenticeship committees in the geographic area of the Project in the craft of Sheet Metal Worker: Southern California Chapter of Associated Builders and Contractors, Inc. (ABC) Sheet Metal U.A.C.; Kern & Northern Los Angeles Counties Air Conditioning and Sheet Metal Workers J.A.T.C.; and Southern California Sheet Metal J.A.T.C.
14. Mega Air Co., Inc. failed to issue a Notice of Contract Award Information to one of the applicable apprenticeship committees for the craft of Sheet Metal Worker.
15. Mega Air Co., Inc. failed to properly request dispatch of Sheet Metal Worker apprentices from two of the three applicable apprenticeship committees in the geographic area of the Project, and it was not excused from the requirement to employ apprentices under section 1777.7.
16. Mega Air Co., Inc. violated section 1777.5 by failing to employ apprentices in the craft of Sheet Metal Worker on the Project in the minimum ratio required by the law.
17. The Labor Commissioner did not abuse her discretion in setting section 1777.7 penalties at the rate of $80.00 per violation for 293 violations, and such penalties are due from Mega Air Co., Inc. in the amount of $23,440.00.
18. The amount found due in the Assessment is affirmed as modified by this

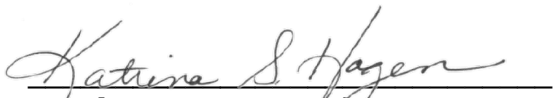
Decision as follows:

| Basis of the Assessment | Amount |
|---|---|
| Wages Due: | $ 25,336.77 |
| Penalties under section 1775: | $ 29,700.00 |
| Liquidated damages: | $ 25,336.77 |
| Penalties under section 1777.7: | $ 23,440.00 |
| **TOTAL:** | **$103,813.54** |

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

The Civil Wage and Penalty Assessment is affirmed as modified herein, 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: 11-17-2022



**Katrina S. Hagen, Director**
California Department of Industrial Relations