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California Labor Commissioner
Division of Labor Standards Enforcement

2016-2017 FISCAL YEAR REPORT ON THE EFFECTIVENESS OF THE BUREAU OF FIELD ENFORCEMENT

Labor Code section 90.5(d) requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the Bureau of Field Enforcement (the Bureau or BOFE). This report should include: (1) the enforcement plan adopted by the Labor Commissioner and the rationale for the priorities, (2) the number of establishments investigated by the Bureau and the number and types of violations found, (3) the amount of wages found to be unlawfully withheld from workers and the amount of unpaid wages recovered for workers, and (4) the amount of penalties and unpaid wages transferred to the General Fund as a result of the Bureau's efforts.

The Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement or DLSE) consists of several units working together to provide a wide variety of essential services for California workers and employers, including adjudication of wage claims, inspections of workplaces, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of businesses, investigations of retaliation complaints, criminal prosecution for wage theft, and education of the public on labor laws. The mission of the California Labor Commissioner is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, the Division puts earned wages into workers' pockets and helps level the playing field for law-abiding employers.

One of the Division's key enforcement arms is the Bureau of Field Enforcement. The Bureau investigates complaints and takes enforcement actions to ensure that employees are neither required nor permitted to work under unlawful conditions. Actions taken by Bureau investigators include the enforcement of minimum wage and overtime requirements and child labor laws and of employers' requirement to carry workers' compensation insurance; audits of payroll records, collection of unpaid wages, such as prevailing wages on public works jobs; issuing citations for violations of any applicable Labor Code sections; confiscating illegally manufactured garments; and seeking injunctive relief to prevent further violations of the law.

California has over 711,000 businesses, which report employing 13.4 million workers in the state. This does not include nearly three million small businesses in California that report no payroll employees. Numerous studies put the incidence of wage theft at staggering levels. The US Department of Labor reported in 2014 that the minimum wage law is violated in California 372,000 times per week and that more than one in 10 workers in California is paid less than the minimum wage.¹ An often-cited 2010

¹ US Department of Labor, "The Social and Economic Effects of Wage Violations", available at <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>

study by the UCLA Labor Center found that frontline workers in Los Angeles County lose \$26.2 million per week in stolen wages.²

BOFE focuses on major underground economy industries in California where labor law violations are the most rampant, including agriculture, garment work, construction, car washing, and restaurants. In the past few years, the Division has increased its focus in industries where wage theft has been particularly challenging to combat, such as janitorial work, residential care homes, and warehousing.

Strategic Enforcement Plan

In the past five years, the Bureau has reinforced the Labor Commissioner’s core mission of collecting wages for California’s wage earners and penalizing employers that participate in the underground economy. It is unacceptable for businesses that violate labor laws to gain a competitive advantage over law-abiding employers.

One of the key components of this administration’s enforcement plan is strategic targeting of law-breaking employers. In lieu of broad “sweeps” and random inspections, the Labor Commissioner has adopted an approach that utilizes active collaboration with key partners on the ground and improved data to target businesses that are intentionally cheating. We have also devoted considerable resources to ensuring that we are using every tool at our disposal to prosecute these violators to the full extent of the law. This includes working in collaboration with sister state agencies; local law enforcement; other government agencies as well as non-governmental stakeholders, from community-based organizations to industry associations. Those partnerships have resulted in better leads to uncover wage theft and strengthened the Division’s ability to interview workers in a safe environment so that we can understand the nature of violations in the workplace. Deputy Labor Commissioners in BOFE interview workers off-site and outside regular business hours to maximize our ability to gain worker trust and participation. The Bureau does not rely solely on complaint-based investigations but also engages in proactive, strategic enforcement based on leads obtained by organizations, associations, and industry representatives.

In addition, legislative changes have given the Bureau more power to issue civil citations for certain violations that were once enforceable only through the Berman wage claim process or through private lawsuits. For example, the Bureau is now able to issue citations for liquidated damages when minimum wage violations occur and for waiting-time penalties under Labor Code section 203. These changes do not expand liability for employers breaking the law but streamline the Division’s ability to crack down on perpetrators of underground economy violations, protecting honest employers and resulting in a more efficient use of government resources. Other changes expand liability, including the creation of a “client employer” definition that addresses violations created by entities that subcontract for labor by making those entities responsible for wage theft under certain circumstances.

As part of our renewed effort to fight wage theft, BOFE investigators not only focus on civil penalties but also conduct detailed audits for unpaid wages, in particular, minimum and overtime wages owed to workers. BOFE’s efforts help ensure that workers are paid their lawful wages and legitimate employers are not forced out of business by those operating illegally in the underground economy. We have hired

² University of California, Los Angeles Labor Center, “Wage Theft and Workplace Violations in Los Angeles”, available at <http://ccacla-laborcenter.electricmembers.net/wp-content/uploads/downloads/2014/04/LAwagetheft.pdf>

more auditors for this purpose, and have organized and conducted statewide training for deputies on wage auditing.

In addition, the Labor Commissioner’s office partners with other state agencies, community groups, industry associations, and other law enforcement agencies in order to better enforce the laws. Our enforcement efforts generate substantial revenue for the State in the form of penalties paid by employers that are caught breaking the law. As a direct result of an enforcement plan that prizes quality over quantity and in-depth investigations over quick “in-and-out” inspections, the Division has performed fewer inspections overall compared to the years before this administration but has found more wages owed to workers in California than at any time in BOFE’s history. Notably, the ratio of citations to inspections has increased dramatically. In other words, better targeting leads fewer law-abiding employers to be inspected, more unpaid wages to be found, and more citations to be issued per employer.

The Division has continued to offer training, particularly on conducting wage audits to determine the extent of wage theft and to put wages back into workers’ pockets, as well as additional field enforcement training to give staff a better understanding of various schemes used by unscrupulous employers to avoid compliance with the law. This commitment to staff training has enabled the Bureau to conduct deeper, more substantive investigations.

This report focuses primarily on the Bureau’s activities pursuant to Labor Code section 90.5(d).

Enforcement Results

In fiscal year 2016–2017, the Bureau conducted 2,181 inspections, which led to the issuance of citations for 3,236 violations.³ The total wages assessed continues the trend of this administration to crack down on wage theft and focus on identifying unpaid wages. The largest single source of violations and citations continues to be the failure to carry workers’ compensation insurance: citations for this violation numbered 1,434, and a total of \$36,440,626.41 was assessed in penalties. The second-highest number of citations was for the failure to issue an itemized wage statement (507 violations), which also had the second-highest penalty assessment in its citation category, \$6,768,250.00. The following tables illustrate the Bureau’s performance, including its special programs, such as prevailing wage enforcement through the Public Works Unit and the collaborative efforts of the Labor Enforcement Task Force (LETF).

³ The *total* number of inspections and citations and all statistics throughout this report formatted as a “total” statistic encompass the performance of all Bureau programs, including those of the Public Works Unit and the Labor Enforcement Task Force. It does not include violation for wages found due that were not citable.

BUREAU (including Public Works)				
FY 2016–2017, Results by Industry				
		Total Inspections		2,181
		Total Violations Found & Issued		3,236^a
<i>Industry</i>	<i>Inspections</i>	<i># of Violations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Agriculture	80	51	\$990,859.52	\$147,684.16
Auto Repair	216	338	\$2,052,825.66	\$410,404.44
Car Wash	181	303	\$2,755,692.33	\$579,785.18
Construction	285	306	\$1,899,383.03	\$504,600.21
Garment	121	344	\$4,466,279.89	\$96,696.21
Hotel	19	20	\$723,065.30	\$12,250.00
Janitorial	10	24	\$977,434.17	\$151,508.66
Nail Salon	17	32	\$192,720.29	\$11,535.89
Other	567	714	\$23,413,835.60	\$1,846,113.82
Restaurant	561	941	\$8,871,290.51	\$1,445,121.54
Retail	118	156	\$1,941,541.63	\$237,595.23
Security	5	7	\$214,343.20	\$0.00
Warehouse	1	0	\$0.00	\$14,000.00
Grand Total	2,181	3,236	\$48,499,271.13	\$5,457,295.34
LESS citations dismissed/modified^b			\$16,009,472.95	
Subtotals	2,181	3,236	\$32,489,798.18	\$5,457,295.34
PLUS Public Works^c	1,877	574	\$22,671,120.00	\$4,372,785.18^d
TOTALS	4,058	3,810	\$55,160,918.18	\$9,830,080.52

^a The total number of violations excludes 36 demands made for wage pursuant to Labor Code 223 for contract wages above minimum wages.

^b Citations may be dismissed or modified if the employer provides documentary evidence subsequent to the issuance of the citation or at an appeal hearing that it was in compliance at the time the citation was issued. The dollar amount of dismissed modified is only for citations issued during fiscal year 2016-2017.

^c The Public Works Unit does not conduct inspections but, rather, measures performance based on cases opened for audit purposes. Thus, the data in this table should be understood as 1,877 audits conducted, with 574 civil wage and penalty assessments (CWPAs) issued (rather than number of citations). These measurements are included here to provide a full picture of the Division's performance.

^d Includes Labor Code section 1777.7 penalty assessments.

BUREAU (including Public Works)			
FY 2016-2017, Results by Violation Category			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	1,434	\$36,440,626.41	\$3,144,447.63
Child Labor	106	\$126,500.00	\$52,914.83
Itemized Statement	507	\$6,768,250.00	\$1,480,653.04
Minimum Wage	430	\$939,300.00	\$59,322.76
Overtime	173	\$831,044.72	\$73,178.66
Garment	148	\$419,800.00	\$41,646.35
Car Wash Registration	147	\$1,255,800.00	\$435,246.32
Unlicensed Construction Contractor	37	\$435,600.00	\$35,687.52
Garment Registration	51	\$63,600.00	\$16,486.86
Rest and Meal Period	136	\$1,173,550.00	\$93,161.37
Misclassification	0	\$0.00	\$0.00
Unlicensed Farm Labor Contractor	5	\$40,300.00	\$24,500.00
Lactation Accommodation Violation	1	\$4,900.00	\$50.00
Other	61	\$0.00	\$0.00
<i>Subtotals</i>	<i>3,236</i>	<i>\$48,499,271.13</i>	<i>\$5,457,295.34</i>
<i>LESS citations dismissed/modified</i>		<i>\$16,009,472.95</i>	
Public Works	574	\$22,671,120.00 ^a	\$4,372,785.18 ^a
TOTALS	3,810	\$55,160,918.18	\$9,830,080.52

^a Includes Labor Code section 1777.7 penalty assessments.

BUREAU (including Public Works)		
Total Wages Assessed	\$41,302,685.87	
Total Wages Collected ^a	\$8,881,516.38	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$373,984.29	\$14,392.04
Auto Repair	\$688,282.24	\$62,155.83
Car Wash	\$301,971.07	\$98,151.00
Construction	\$1,124,876.09	\$10,793.43
Garment	\$4,855,910.13	\$4,310.12
Hotel	\$136,467.24	\$43,505.39
Janitorial	\$435,846.79	\$14,216.06
Other	\$11,001,664.04	\$830,375.98
Restaurant	\$7,505,626.84	\$281,859.39
Retail	\$427,112.11	\$29,040.88
Security	\$1,323.00	\$0.00
Subtotals	\$26,853,063.84	\$1,388,800.12
Dismissed/Modified	\$2,039,155.07	
Total	\$24,813,908.77	\$1,388,800.12
Public Works	\$16,488,777.10	\$7,492,716.26
Grand TOTALS	\$41,302,685.87	\$8,881,516.38

^a Wages collected in fiscal year 2016-2017 may include collection of wages found due in earlier reporting periods. This statistic also includes wages collected as the result of Bureau-assisted employer self-audits as well as actions taken by the Division’s Legal Unit, including such as litigation, settlements, and Legal Unit–assisted employer self-audits, all of which were initiated by the Bureau.

Audits

The Labor Commissioner’s Office has provided additional training to staff to uncover issues involving nonpayment of wages, which has resulted in more audits of employers’ payroll records. The Division also initiated a program for employers to conduct self-initiated audits to augment the investigations conducted in response to specific complaints. If employers are unable or unwilling to complete the self-audit, the Division conducts a thorough investigation and audits to discover unpaid wages. A sampling of notable outcomes of payroll audits performed under the supervision and direction of Bureau staff, which resulted in the assessment of wages due to employees (shown in the statistics above), includes:

- An investigation of a restaurant for wage theft resulted in a criminal conviction with two years of jail time.
- \$1.1 million for multiple wage theft violations and damages against a residential care facility for 15 employees in San Diego.
- \$249,879 in citations for multiple wage theft against a construction company for 47 employees in Irvine. Both the subcontractor and the general contractor were held liable pursuant to Labor Code section 2810.3.
- \$1,499,619 for multiple wage theft violations and damages against a garment contractor for 31 employees in Los Angeles.
- \$998,531 in multiple violations for wage theft and damages against a garment contractor in Los Angeles.

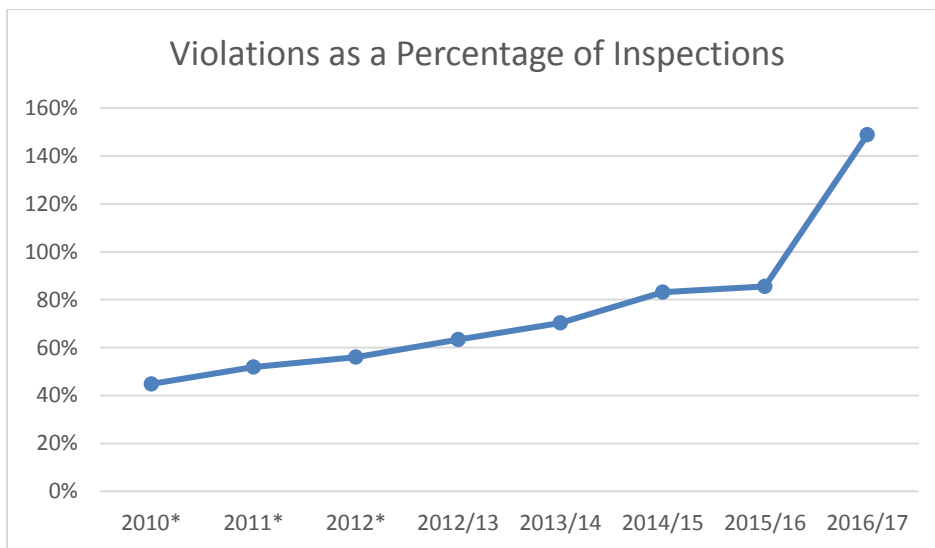
Strategic Enforcement Outcomes

The Division’s Strategic Enforcement Plan has proven effective in proactively targeting the worst violators and deterring bad actors throughout California.

The Division has entered into strategic partnerships with key stakeholders, including community organizations, associations, and industry representatives. Through these partnerships, the Bureau has been able to take on cases of far greater magnitude and impact in low-wage industries in California.

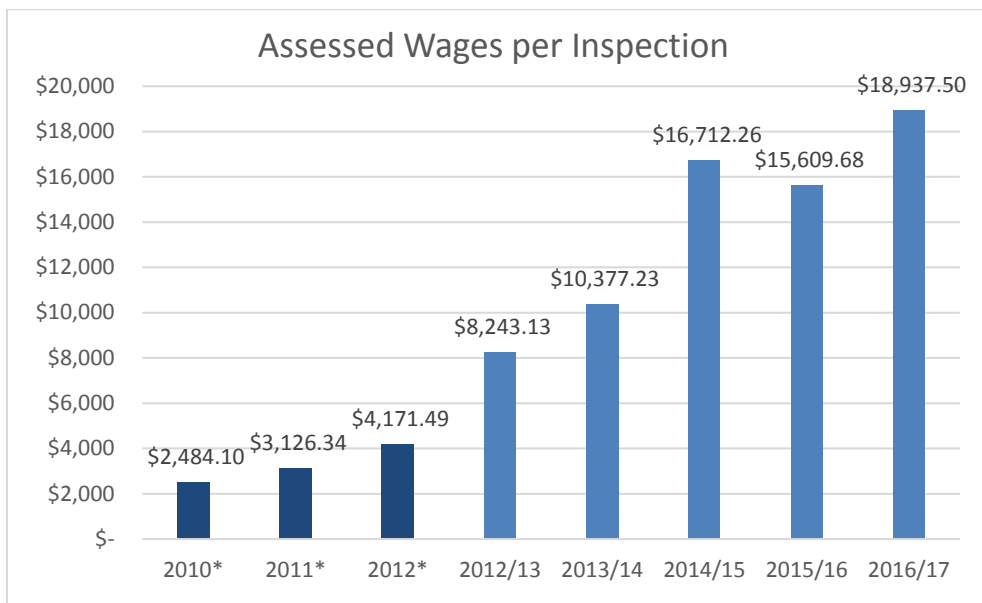
The Bureau is conducting complex investigations involving client-employer liability, holding every member of the chain responsible for labor violations committed by a contractor, discouraging bad actors, and leveling the playing field for law-abiding, compliant employers.

This new approach has been successful in producing high-quality, in-depth investigations that have uncovered both more violations per investigation and assessed more wages owed to workers than at any other time in the history of the Division. Although the ratio of citations to inspections was just 45% in 2010, the shift to strategic enforcement has resulted in steady improvement in that metric over the past six years. In fiscal year 2013-2014, it was 70%, in 2014-2015, 83%, in 2015-2016, 85%, and in 2016-2017, 149% (see the following graph).



* Prior to fiscal year 2012-2013, the DLSE collected and reported report data in calendar years.

In addition, the assessed wages per inspection have similarly increased steadily and dramatically. In 2010, it was \$2,484.10. For 2014-2015, it was \$16,712.26, in 2015-2016, \$15,609.68, and in 2016-2017, \$18,937.50 (see the following graph).



* Prior to fiscal year 2012-2013, the DLSE collected and reported report data in calendar years.

Enforcement Program Targets Unlawfully Uninsured Employers

As previously mentioned, the lack of workers’ compensation insurance remains the violation most often identified in the Bureau’s investigations. In 2008, as a result of the passage of Senate Bill 869 (Chapter 662), the Bureau began a new data-sharing partnership with the Employment Development Department (EDD), the Division of Workers’ Compensation, and the Workers’ Compensation Insurance Rating Bureau to proactively identify employers that are potentially uninsured unlawfully. In fiscal year 2016-2017, the Bureau issued citations for 125 violations and assessed \$4,919,211.23 in penalties arising from these efforts. The process and the results of the Senate Bill 869 enforcement activities are detailed in a separate report.

Car Washing and Polishing Businesses

On January 1, 2007, the Bureau began a concerted enforcement effort to ensure compliance with the registration requirements for car washing and polishing businesses (Labor Code sections 2050-2067 and California Code of Regulations, Title 8, division 1, chapter 6, subchapter 11, sections 13680–13693). Staff are being trained so that they can better identify wage-audit issues and acquire effective tools for uncovering wage theft, building on their previous training in the car washing industry, to enable them to go beyond looking only at registration when suspicion arises that other labor laws are being violated. In 2016-2017 fiscal year, 181 inspections were conducted, and 303 citations were issued, which led to assessments of \$2,755,692 for violations of various labor laws, including nonregistration and penalties. In addition, the Division assessed \$301,971 in wages and collected \$98,151 on behalf of workers as wages due. The results of inspections of car washing and polishing establishments, including re-inspections in the statistics above, are shown in the table below.

**FY 2016-2017
 Results by Citation Category for Car Washing and Polishing
 Businesses^a**

<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	103	\$1,265,192.33	\$81,398.87
Child Labor	7	\$4,000.00	\$1,500.00
Nonregistration	146	\$1,245,800.00	\$433,296.32
Itemized Statement	25	\$163,000.00	\$41,988.86
Meal Period	3	\$17,550.00	\$3,750.00
Minimum Wage	8	\$25,000.00	\$8,118.26
Overtime	7	\$22,700.00	\$6,369.50
Reporting Time	1	\$3,000.00	\$0.00
Rest Period	2	\$6,950.00	\$2,236.37
Split Shift	1	\$2,500.00	\$1,100.00
TOTALS	303	\$2,755,692	\$579,758.18

^a The statistics reported here are included in the overall results of the Bureau summarized earlier in this report.

Units within the Labor Commissioner's Bureau of Field Enforcement

Public Works

The Bureau's Public Works Unit investigates complaints arising from violations of the state's prevailing wage and apprenticeship laws and conducts audits on behalf of workers for back wages owed. As a result of SB 1038, on July 1, 2012, the Bureau began enforcing Labor Code section 1777.5, which was previously enforced by the Division of Apprenticeship Standards. Labor Code section 1777.7 assessments are now being issued by Bureau investigators for up to \$300 per calendar day when contractors violate apprenticeship law, pursuant to Labor Code section 1777.5.

Public Works	FY 2016-2017
Cases Opened	1,877
Cases Closed	932
Civil Wage and Penalty Assessments (CWPA) Issued	574
Settlements	197
Wages Found Due	\$16,488,777.10
Wages Recovered (wages recovered and penalties collected may include monies found due in earlier reporting periods)	\$7,492,716.26
Penalties Assessed	\$22,671,120.00 ^a
Penalties Collected	\$4,372,785.18 ^b

^a Includes Labor Code 1777.7 penalties assessed.

^b Includes Labor Code 1777.7 penalties collected.

In fiscal year 2016–2017, the Labor Commissioner signed orders of debarment for 16 construction companies and individuals. The maximum statutory debarment period is three years, rendering individuals and legal entities ineligible to bid on or be awarded public works contracts or to perform work on a public works project as a subcontractor or an employee. The debarment orders can be accessed at <http://www.dir.ca.gov/dlse/debar.html>.

Judgment Enforcement Unit

The Division's Judgment Enforcement Unit (previously called the Collections Unit) has continued to increase monies recovered for Bureau citations and unpaid wages unlawfully withheld from workers. The Judgment Enforcement Unit files judgments for our wage claim offices and BOFE and processed 1,867 judgments for fiscal year 2016–2017, with total recovery by the unit of \$4,982,190.89.

Legal Unit

The Labor Commissioner's Legal Unit continued and enhanced its support for the Bureau's enforcement efforts in FY 2016–2017. The unit continued its traditional work of representing the Division in Superior Court in defense of penalty citation awards in writ of administrative mandamus challenges, prosecution of public works CWPA's in administrative hearings, enforcement of investigative subpoenas and conducting investigative depositions, obtaining tolling agreements, negotiating settlement agreements, and advising the Bureau in application of the law to its field investigation planning. The unit also assumed responsibility for prosecution of some select citation appeals before hearing officers in cases with complex legal or factual components and cases with large wage restitution amounts associated with the expanded authority provided by the Legislature for the Bureau to assess minimum wages and liquidated damages through citations.⁴ Some examples of the unit's work in 2016-2017:

- Jaime Zepeda Labor Contracting: successfully defended citations issued to a farm labor contractor and three growers (Anthony Vineyards, Sunworld International, and Richard Bagdasarian, Inc.) as client employers pursuant to Labor Code section 2810.3 for waiting-time penalties for failing to pay final wages when due. Waiting-time penalties were affirmed for employees in the aggregate amount of \$99,426.10.
- Dionysus Dream, Inc., and Morelos, LLC: filed a lawsuit and obtained permanent injunctions in Orange County Superior Court against two car washing entities to prohibit them from using employee labor and engaging in car washing without first registering with the Labor Commissioner.
- Doubletree Ontario and Extreme Services, Inc.: settled BOFE citations issued to Extreme Services and Doubletree Ontario as a client employer pursuant to Labor Code section 2810.3 for failing to pay overtime and provide meal and rest periods for housekeepers employed by Extreme Services at the Doubletree Ontario. On behalf of 18 employees, \$69,148.17 in wages was collected.
- Ponto Nursery: successfully defended a citation for \$34,000 in workers' compensation penalties against a nursery in a writ of mandamus proceeding in San Diego Superior Court.
- Magic Touch Commercial Cleaning/Cheesecake Factory: successfully defended a workers' compensation citation issued to Magic Touch Commercial Cleaning and the Cheesecake Factory as a client employer under Labor Code section 2810.3 for Magic Touch's failure to secure workers' compensation coverage for janitors supplied to the Cheesecake Factory.

⁴ The resulting penalties and/or wages collected are included in the Bureau statistics above, depending on the process used to achieve the end results.

- DLSE v. Edgardo David dba Sacred Heart Care Homes: assisted in the settlement of Bureau citations for violations of minimum wage, overtime, and wage statement laws against a caregiving business in Napa County. Legal also successfully defended the citation in this case, which was over \$676,000. The total recovery in this case is \$580,000, which will benefit seven workers. The seven caregivers worked approximately 19-20-hour shifts, but none of the timesheets in that case adequately recorded the actual hours worked.
- DLSE v. Resmex/Colibri: assisted in the settlement of Bureau citations for violations of meal periods and rest periods only against a restaurant business in San Francisco County. This matter was resolved prior to a citation hearing. The total recovery in this case is \$305,000. The restaurant workers often worked over five-hour shifts without a meal or rest period, and when they worked more than 10 hours, they did not get a second meal or rest period.
- DLSE v. American Airporter Shuttle: successfully halted the sale of a property where an employer was attempting to sell a parking lot unit for over \$4 million in an attempt to avoid paying a citation issued by the Bureau in the amount of \$216,000.

Other Partnerships

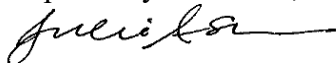
Labor Enforcement Task Force (LETF)

The LETF is a coalition of California State government enforcement agencies that works together and in partnership with local agencies to combat the underground economy. LETF partners include the Employment Development Department (EDD), the Division of Occupational Safety and Health (DOSH), the Contractors State License Board (CSLB), the California Department of Tax and Fee Administration (CDTFA), and the Bureau of Automotive Repair (BAR). Under this administration, the LETF's approach to combating the underground economy shifted from randomly conducting inspections to targeted inspections based on empirical data. The task force also reflects the Labor Commissioner's Office's new focus on improved targeting through better data and intelligence gathering and on assessing wages owed. LETF accomplishes its mission through targeted inspections for minimum wage and overtime violations, workers' compensation insurance coverage, child labor, illegal operation without the required licenses, and a focus on the garment, agriculture, construction, car wash, automotive repair, restaurant, and any other industry in which labor law violations are prevalent. This report contains LETF statistics only for the Labor Commissioner's Office, but a separate legislative report is produced biennially by LETF that includes these statistics and those of other LETF partners.

Transfers to the General Fund

In fiscal year 2016–2017, the Division deposited \$11,262,763.94 in fines and penalties collected into the General Fund. This amount includes a transfer from the Unpaid Wage Fund, in accordance with the provisional language in the annual Budget Act.

Respectfully submitted,



Julie A. Su
Labor Commissioner