

1 DIVISION OF LABOR STANDARDS ENFORCEMENT

Department of Industrial Relations

2 State of California

By: Johanna Y. Hsu, SBN 164247

3 605 W. Santa Ana Blvd.

Bldg. 28, Room 625

4 Santa Ana, California 92701

(714) 558-4914

6 Attorneys for the State Labor Commissioner

8 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

9 DIVISION OF LABOR STANDARDS ENFORCEMENT

10 STATE LABOR COMMISSIONER

12 In re the DEBARMENT
13 proceeding against:

14 TITAN ELECTRICAL CONSTRUCTION,
15 INC.; LUCAS OLIVER STICKNEY, an
16 Individual; JAMIE NOEL FURR, an
17 Individual,

17 Respondents.

} Case No. SC 5539

} Assigned for All Purposes to the
Honorable Susan A. Dovi, Hearing Officer

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

[Labor Code section 1777.1]

20 The attached *Proposed Statement of Decision* of Hearing Officer Susan A. Dovi,
21 DEBARRING Respondents TITAN ELECTRICAL CONSTRUCTION, INC.; LUCAS
22 OLIVER STICKNEY, an Individual; JAMIE NOEL FURR, an Individual, from bidding,
23 being awarded or performing any work on public works projects in the State of California

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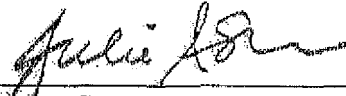
1 for THREE YEARS, is hereby adopted in full by the Division of Labor Standards
2 Enforcement as the FINAL *Decision* in the above-captioned matter.

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This *Decision* shall become effective 45 days from the execution of the *Order* below.

IT IS SO ORDERED.

Dated: Sept. 17, 2014 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

By: 

JULIE A. SU
State Labor Commissioner

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF FRESNO) ss.

4 I am employed in the County of Fresno, State of California. I am over the age of 18 and not a
5 party to the within action. My business address is DIVISION OF LABOR STANDARDS
6 ENFORCEMENT, Department of Industrial Relations, 770 E. Shaw Avenue, Suite 222, Fresno,
California 93710.

7 On September 17, 2014, I served the following document(s) as described below:

8 **DECISION AND ORDER OF DEBARMENT OF RESPONDENTS FROM**
9 **PUBLIC WORKS PROJECTS**

10 the original(s)

11
12 true and correct copy(s) thereof enclosed in a sealed envelope addressed as follows:

13 *See attached "Service List"*

14 BY MAIL: I am readily familiar with the firm's practice of collection and processing of
15 correspondence for mailing with the United States Postal Service and said
correspondence is deposited with the United States Postal Service the same day.

16 BY FACSIMILE: I sent a copy of said document(s) by fax machine for instantaneous
17 transmittal via telephone line to the offices of addressee(s) listed above using the above-
listed facsimile number(s).

18 BY PERSONAL SERVICE: I delivered a copy of said document(s) to the party(s) set
19 forth above.

20 FEDERAL EXPRESS. Next Day Delivery. I deposited or delivered to a courier or
21 driver authorized by FedEx to receive documents, in the county of Fresno for overnight
(next day) delivery, a true copy of the foregoing document(s) in a sealed envelope with
fees provided for.

22 BY CERTIFIED MAIL.

23
24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

25 Executed on September 17, 2014, at Fresno, California.

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27 _____
28 Christina Othon

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In re Titan Electrical Construction, Inc., et al.
SAC Case No. 5539

SERVICE LIST

Titan Electrical Construction, Inc. 630 Natoma Street San Francisco, California 94103	Titan Electrical Construction, Inc. James Schroeder, Agent for Service 7545 Irvine Center Drive #200 Irvine, California 92618
Lucas Oliver Stickney 630 Natoma Street San Francisco, California 94103	Jamie Noel Furr 630 Natoma Street San Francisco, California 94103
David D. Cross DIR - DLSE - LEGAL SECTION 2031 Howe Avenue, Suite 100 Sacramento, California 95825	

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
BY: SUSAN A. DOVI, CA Bar #145543
1515 Clay Street, Suite 801
Oakland, California 94612
Telephone: (510) 622-3246 Fax: (510) 622-3258

Attorney for the Labor Commissioner

BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT
DEPARTMENT OF INDUSTRIAL RELATIONS
FOR THE STATE OF CALIFORNIA

In the matter of the
Debarment Proceeding Against:

TITAN ELECTRICAL CONSTRUCTION, INC.,
LUCAS OLIVER STICKNEY, an individual;
JAMIE NOEL FURR, an individual,

Respondents.

) Case No. SC 5539

) PROPOSED STATEMENT OF
) DECISION RE DEBARMENT
) OF RESPONDENTS FROM
) PUBLIC WORKS PROJECTS
) [Labor Code § 1777.1]

Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the Division of Labor Standards Enforcement ("DLSE") on July 2, 2014, by the filing and service of a Statement of Alleged Violations against the following named respondents: TITAN ELECTRICAL CONSTRUCTION, INC., LUCAS OLIVER STICKNEY, an individual; JAMIE NOEL FURR, an individual, (hereinafter "Respondents").

The hearing on the alleged violations was held on August 27, 2014, at the Oakland Office of the Labor Commissioner. Susan A. Dovi served as the Hearing Officer. David D. Cross, appeared on behalf of Complainant, the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of

[PROPOSED] STATEMENT OF DECISION RE DEBARMENT

California. None of the Respondents appeared for the hearing although they were duly served with Notice of Hearing and the Statement of Alleged Violations by First Class and Certified Mail to the address currently listed with the Contractors State License Board. Title 8 CCR section 16801(a)(2)(A) provides that notice of the hearing and Statement of Alleged Violations shall be complete when mailed, by first class postage, to the last address of record for the Respondent listed with the State Contractors License Board. Present as a witness for Complainant was Deputy Labor Commissioner Jerry McClain.

The hearing was tape recorded. Witness McClain took the oath and evidence was received. At the conclusion of the hearing, the matter was taken under submission.

FINDINGS

I. NOTICE

The Hearing Officer finds the Respondents received lawful notice of the August 27, 2014, hearing. The proof of service for the Notice of Hearing and Statement of Alleged Violations indicate notice was served both by First Class and Certified Mail to the last address of record for the Respondents listed with the State Contractors License Board as provided for in 8 CCR section 16801(a)(2)(A) and with the address of the Agent for Service of process listed with the Secretary of State. Corporations Code section 1502 requires a corporation to keep the Secretary of State apprised of the current address.

II. VIOLATIONS OF THE PUBLIC WORKS LAW

1. Titan Electrical Construction, Inc. is a business that was licensed by the Contractor's State Licensing Board under license number 919516.
2. Respondent Lucas Oliver Stickney is an owner of Titan Electrical Construction, Inc. and is the Responsible Managing Officer, Chief Executive Officer and President of the corporation at all relevant times for purposes of these proceedings.

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3. Respondent Jamie Noel Furr is an owner of Titan Electrical Construction, Inc., and is an officer of the corporation at all relevant times for purposes of these proceedings.

4. Respondents were subcontractors on three public works projects, namely the Los Lomas High School project in Contra Costa County, California, the Acalanes High School project in Contra Costa County, California and the Platform Elevators Ashby & Lake Merritt Stations project in Alameda County, California (hereinafter "projects"), during the periods, April, 2011 through December, 2011, April, 2011 through October, 2012, and July, 2009 through September, 2010, respectively.

5. Deputy Labor Commissioner Jerry McClain, for all relevant time periods was assigned to the Public Works Unit and has been a Deputy Labor Commissioner since 2012. Deputy McClain testified on the Las Lomas project his investigation revealed Respondents violated Labor Code §§ 1774, 1776(a) and 1815 by failing to pay the prevailing wage rates to employees, failing to pay the correct overtime rate to employees, and willfully violating Labor Code section 1776 by failing to maintain accurate certified payroll records. Mr. McClain testified Respondents failed to pay the prevailing wage rate for the inside wireman classification and apprentices, failed to pay pension contributions for certain workers, and that the certified payroll reports were false, reflecting payment when Respondents failed to pay all the fringe benefit contributions for the workers, either timely or at all.

6. Deputy McClain testified on the Acalanes High School project his investigation revealed Respondents violated Labor Code §§ 1774, 1776, and 1813 by paying less than the required prevailing wage, including overtime wages and failure to make all fringe benefit contributions for the workers, either timely or at all.

7. Deputy McClain testified on the Platform Elevators Job, on the BART Ashby and Lake Merritt Stations jobs, DLSE's investigation showed Titan falsified certified

payroll records, paid less than the required prevailing wage rate and overtime rate and did not pay all fringe benefit contributions for the workers and failed to pay the applicable wage rate to all apprentices. The certified payroll records falsely stated the workers were paid the prevailing wages which were due.

8. DLSE issued three Civil Wage and Penalty Assessments against Respondents based on the violations on the projects listed in Paragraph 4 above. DLSE exercised its discretion and assessed penalties pursuant to Labor Code § 1775 due to the egregious nature of the violations. Certain workers were told pension contributions were being made; but in seeking verification the workers found out the pension contributions had in fact not been made. Respondent Furr signed most of the certified payroll records. Certified payroll records listed fringe benefits withheld but not paid. In addition, certified payroll records listed no contribution for pension. Furr told some workers they were being paid but in fact pension was not paid for all except two workers. In addition, Respondent Stickney represented pension contributions would be paid yearly. Fringe benefits are required to be paid at least quarterly. Stickney also admitted contributions were not made in order to keep the business afloat.

CONCLUSIONS OF LAW

Labor Code §1777.1 provides:

(a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter **with intent to defraud**, except Section 1777.5, the contractor or subcontractor or a 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:

- (1) Bid or be awarded a contract for a public works project;
- (2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in **willful violation** of this chapter, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter to do either of the following:

- (1) bid on or be awarded a contract for a public works project;
- (2) perform work as a subcontractor on a public works project.

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."

Labor Code §1777.1(d) defines a "willful violation" as "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." *California Code of Regulations* 8 CCR § 16800 defines "deliberately" as "premeditated and intentional."

Labor Code section 1777.1(b) provides once a contractor or subcontractor willfully violates this section, that contractor or subcontractor is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation. An intent to defraud may be shown by circumstantial evidence. (*Ogundare v DLSE* (2013) 214 Cal.app.4th 822, 832.) "An unlawful intent is logically inferred from the doing of an unlawful act." (*People v. McLaughlin* (1952) 111 Cal. App.2d 781, 789.)

The credible and unrefuted evidence presented by Deputy McClain established Respondents failed to pay the proper prevailing wage rates, including the failure to make

certain workers' pension contributions, failed to maintain accurate certified payroll reports, and failed to pay the required prevailing wage overtime rate for all overtime hours worked. Mr. McClain testified Respondents failed to maintain accurate certified payroll reports and that such reports were false by failing to make pension fund contributions on behalf of certain workers. The testimony of Deputy McClain, corroborated by documentary evidence, establishes Labor Code §§ 1774, 1776 and 1815 were violated with an intent to defraud Respondents' workers and the awarding bodies. Furthermore, the violations were willful within the meaning of Labor Code § 1777.1(d) and 8 CCR § 16800. Further, the preparation of false and fraudulent certified payroll records was intentional and deliberate and also exhibits an intent to deceive Respondents' workers, the awarding body and the DLSE.

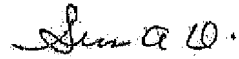
Respondent Furr signed some of the certified payroll reports. Respondent Stickney knew pension contributions were required yet did not pay them, admitting he did not pay them in order to keep the business afloat. Workers were told pension contributions were being made but they in fact were not. Workers were defrauded by being told pension contributions would be made once per year and that would comport with the law. This was false. Additionally, if payments were to be made once per year, they were not made for the last few months of 2009 on the BART stations project – in other words, the payment of at least quarterly pension contributions were not made and lapsed on the BART projects in the fall of 2009. Only two workers pension contributions were finally made, the other workers' pension contributions were paid by the general contractor through a settlement with the DLSE.

ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered Respondents TITAN ELECTRICAL CONSTRUCTION, INC., LUCAS OLIVER STICKNEY, an individual;

JAMIE NOEL FURR, an individual, shall be ineligible to, and shall not, bid on or be awarded a contract for a public works project, and shall not perform work as a subcontractor on a public work as defined in Labor Code §§ 1720, 1720.2 and 1720.3, for a period of three (3) years, effective 45 days from the date of this Order. A three year period is appropriate under these circumstances where Respondents, experienced contractors, willfully and fraudulently prepared false certified payroll records and certifications, underpaid workers on two separate projects within a two year period and where the underpayments were substantial, justifying a three year period of debarment.

Dated: September 17, 2014



SUSAN A. DOVI
Hearing Officer

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF FRESNO) ss.

4 I am employed in the County of Fresno, State of California. I am over the age of 18 and not a
5 party to the within action. My business address is DIVISION OF LABOR STANDARDS
6 ENFORCEMENT, Department of Industrial Relations, 770 E. Shaw Avenue, Suite 222, Fresno,
California 93710.

7 On September 17, 2014, I served the following document(s) as described below:

8 **PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS**
9 **FROM PUBLIC WORKS PROJECTS [Labor Code § 1777.1]**

10 the original(s)

11 true and correct copy(s) thereof enclosed in a sealed envelope addressed as follows:

12 *See attached "Service List"*

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14 correspondence for mailing with the United States Postal Service and said
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16 [] BY FACSIMILE: I sent a copy of said document(s) by fax machine for instantaneous
17 transmittal via telephone line to the offices of addressee(s) listed above using the above-
listed facsimile number(s).

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23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct.

25 Executed on September 17, 2014, at Fresno, California.

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David D. Cross DIR - DLSE - LEGAL SECTION 2031 Howe Avenue, Suite 100 Sacramento, California 95825	