

**STATE OF CALIFORNIA**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**

In the Matter of the Request for Review of:

**Dufau Landscape, Inc.**

Case No. 21-0084-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor Dufau Landscape, Inc. (Dufau) submitted a timely Request for Review of a Civil Wage and Penalty Assessment (Assessment) issued on February 11, 2021, by the Division of Labor Standards and Enforcement (DLSE) with respect to work Dufau performed for the Oxnard School District (District or Awarding Body) in connection with the Lease Lease-Back for Marshall New Classroom Building (Project) located in Ventura County. The Assessment determined that Dufau owed \$36,793.73 in unpaid prevailing wages, training fund contributions, and statutory penalties. Pursuant to notice, a Hearing on the Merits was conducted on October 21, 2021, via Webex Video Conference before Hearing Officer Maureen Home. Lance A Grucela appeared as counsel for DLSE; there was no appearance by Dufau. Pursuant to California Code of Regulations, title 8, section 17246, subdivision (a), the Hearing on the Merits proceeded. DLSE Deputy Labor Commissioner Deisy Dvorak testified in support of the Assessment. Dufau did not file a motion seeking relief from its nonappearance as permitted under California Code of Regulations, title 8, section 17246, subdivision (b).

Prior to the Hearing on the Merits, the parties stipulated as follows:

- The work subject to the Assessment was performed on a public work and required the payment of prevailing wages and the employment of apprentices under the California Prevailing Wage Law, Labor Code sections 1720 – 1861;<sup>1</sup>

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

- The Request for Review was timely; and,
- No wages were paid or deposited with the Department of Industrial Relations as a result of the Assessment under section 1742.1.

The issues for decision are:

- Whether the Assessment was timely served by DLSE in accordance with section 1741.
- Whether DLSE timely made available to Dufau its enforcement file.
- Whether Dufau timely paid its employees the correct prevailing wage rates for all hours worked on the Project.
- Whether Dufau is liable for penalties assessed pursuant to sections 1775 and 1813.
- Whether Dufau is liable for liquidated damages for unpaid wages found due and owing.
- Whether Dufau submitted contract award information to all applicable apprenticeship committees in a timely and sufficient manner.
- Whether Dufau employed apprentices in the required minimum ratios of apprentices to journeypersons on this Project.
- Whether Dufau 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 Dufau failed to carry its burden of proving that the basis of the Assessment was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subds. (a), (b).) Accordingly, the Director issues this Decision affirming the Assessment.

## **FACTS**

### Failure to Appear.

On June 11, 2021, Peter Dufau appeared telephonically on behalf of Dufau for a prehearing conference. He entered into the stipulations set forth herein. Also at that prehearing conference, a second telephonic prehearing conference was scheduled for

July 9, 2021. There was no appearance for Dufau at the second prehearing conference. At the second prehearing conference, the matter was set for Hearing on the Merits on October 21, 2021, at 10:00 a.m., via Webex Video Conference. On July 13, 2021, a document titled "Minutes of Prehearing Conference; and Order Setting Hearing on the Merits" was served by first class mail on Dufau at its mailing address of record, a Post Office box in Oxnard, California, and on Peter Dufau, Dufau's agent for service of process, at his street address of record in Ventura, California. The Minutes provided notice of the date and time of the Hearing on the Merits, as well as instructions for participating via video conference.

On October 21, 2021, the Hearing on the Merits Commenced at 10:27 a.m. Dufau did not appear for the Hearing. The matter proceeded as scheduled.

#### The Project.

The Awarding Body determined that it was in its best interests to pursue the Project through a lease-leaseback (LLB) mechanism. California Education Code section 17406 permits a school district's governing board to lease to a contractor, who has gone through a competitive selection process, property owned by the district, if the lease instrument requires the lessee to construct, or provide for the construction, on the leased property, of a facility for the use of the district during the term of the lease, and provides that title to the facility shall vest in the district at the expiration of the lease. Consequently, the Awarding body did not advertise the Project for bids, but rather entered into a Construction Services Agreement (Contract) with Bernards Bros., Inc. (Contractor). The Awarding Body selected the Contractor after conducting a Request for Qualifications (RFQ) process.

The Contract was entered into on August 24, 2017. It provided for construction and modernization of improvements to portions of the Marshall Elementary School facility, specifically construction of a new classroom building. Attached to the Contract is a Prevailing Wage and Related Labor Requirements Compliance Certification executed by the Contractor on October 6, 2017, which states: "I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing

wages, benefits, on-site audits with 48-hour notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.” (DLSE Exhibit No. 9, p. 193.) Also attached is a List of Subcontractors executed by the Contractor, which identifies Dufau as the subcontractor responsible for Irrigation and Landscape work. (*Id.* at p. 196.)

The tasks performed by Dufau included demolition, reworking existing irrigation, installing new irrigation (including new mainlines, automatic controller, rain shut-off sensor and valves), planters, grass and groundcover, and cleanup. Dufau employees worked on the Project from October 4, 2017 through August 9, 2019, in the City of Oxnard. On March 4, 2020, the Awarding Body’s Board of Trustees approved a Notice of Completion indicating that work on the Project was substantially completed on August 23, 2019. On March 13, 2020, Awarding Body filed the Notice of Completion with the Ventura County Clerk and Recorder.

#### The Assessment.

DLSE served the Assessment by first class mail and by certified mail upon Dufau’s agent for service of process, Peter Charles Dufau, on February 11, 2021. The Assessment found that Dufau did the following: misclassified and failed to pay correct prevailing wages to workers performing the work of Landscape/Irrigation Laborer (Landscape Laborer); underreported hours; failed to pay holiday pay; failed to pay all required training fund contributions; and improperly employed an apprentice without a journeyman present. It further found that Dufau failed to meet apprenticeship requirements by failing to submit Contract Award Information (DAS 140) for plumbers and pipefitters, and failed to meet the required five-to-one ratio for plumber pipefitters and Landscape Laborers.

The Assessment found that Dufau underpaid the required prevailing wages and training fund contributions in the amount of \$10,223.73. Penalties were assessed under section 1775 in the mitigated amount of \$120.00 per violation for 107 violations, in a total amount of \$12,840.00, and under section 1813 in the amount of \$25.00 per violation for ten violations, totaling \$250.00. Penalties were also assessed under section

1777.7 in the mitigated amount of \$20.00 per day for 674 days, totaling \$13,480.00.

#### The Enforcement File.

Dufau's Request for Review, dated April 2, 2021, was received by DLSE on April 12, 2021. On April 14, 2021, DLSE served upon Dufau 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 attached Request to Review Evidence to DLSE at a specified address within five calendar days.<sup>2</sup>

DLSE's investigative notes include the following entry for May 5, 2021: "Sent reply email regarding request to review evidence. Waiting for contractor to let me know whether they prefer to come in person or if they would like a scanned copy ... dd236." The next entry, dated July 6, 2021, states: "Prehearing set for 7/9/21. Contractor has yet to make arrangements to copy or get filed scanned and email [sic] to him ... dd236." (DLSE Exhibit No. 31, PW 900 Notes Listing, at p. 440.) There is no evidence of Dufau ever making such arrangements.

#### The Hearing on the Merits.

DLSE called as a witness Deisy Dvorak. She testified that she was employed by DLSE as a Deputy Labor Commissioner I, and that her duties entailed investigating complaints of labor law violations on public works projects. Dvorak was assigned a complaint from the Labor Management Compliance Council alleging prevailing wage violations by Dufau on this Project. (DLSE Exhibit No. 4.) Dvorak testified that she conducted the investigation that resulted in the Assessment at issue. Her investigation included obtaining documents from the Awarding Body and Dufau, sending

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<sup>2</sup> A copy of the Notice and Proof of Service is in the Hearing Officer's file. DLSE transmitted the documents to the Lead Hearing Officer along with the Request for Review and other pertinent documents. The Director takes official notice of the Notice and Proof of Service and their content pursuant to California Code of Regulations, title 8, section 17245.

questionnaires to workers, and interviewing the two workers who returned completed questionnaires. Dvorak identified various DLSE exhibits and testified regarding their contents.

At the conclusion of testimony, the Hearing Officer conditionally admitted DLSE Exhibits 1 through 31 into evidence, but directed DLSE to submit a set of substitute exhibits with personal information redacted, no later than October 28, 2021. DLSE did so, and the matter was deemed submitted as of October 28, 2021. DLSE's Exhibits 1 through 31 with redactions are hereby admitted into evidence in lieu of the unredacted versions.

Applicable Prevailing Wage Determinations (PWDs).

Set forth below are the two relevant PWDs that were in effect on the date of the Contract.<sup>3</sup>

1. Landscape/Irrigation Laborer for Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties (SC-102-X-14-2017-1); Landscape/Irrigation Tender for Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties (SC-102-X-14-2017-1A) (jointly, Landscape Laborer PWD).<sup>4</sup>

The scope of work provision for the Landscape Laborer PWD provides, in relevant part:

Work covered ... includes all work in the landscape industry, defined as follows: Decorative landscaping, such as decorative walls, pools, ponds, reflecting units, lighting displays low voltage, handgrade landscaped areas, tractor grade landscaped areas, finish rake landscape areas, spread

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<sup>3</sup> Because there was no bid advertisement, the Assessment relied upon the determinations in effect on the date of the Contract.

<sup>4</sup> The Landscape Laborer PWD and Landscape Tender PWD appear under one heading, Landscape/Irrigation Laborer/Tender, but different rates of pay apply. Landscape Tenders assist Landscape Laborers in a manner and ratio specified in the scope of work for Landscape Tenders. The basic hourly rate for Landscape Laborers for work performed through July 31, 2017, was \$30.53, the combined fringe benefits are \$18.92 per hour, and the training fund contribution rate is \$0.69 per hour, for a total of \$50.14 for each straight-time hour. A predetermined increase effective August 1, 2017, added \$0.85 to the Basic Hourly Wage, bringing it to \$31.38; \$0.80 to combined fringe benefits, bringing them to \$19.72; and no increase to the training fund contribution rate, resulting in a total of \$51.79. The basic hourly rate for Landscape Tender in effect for this Project was \$14.21, the combined fringe benefits were \$3.73 per hour, and there was no training fund contribution, for a total of \$17.64 for each straight-time hour. There was no predetermined increase for the Tender classification.

top soil, build mounds, trench for irrigation manual or power, layout for irrigation, backfill trenches, asphalt, plant shrubs, trees, vines, set boulders, seed lawns, lay sod; hydro seed; use ground covers such as flatted plant materials; rock rip rap, colored rock, crushed rock, pea gravel, and any other landscapable ground covers; installation of header boards and cement mowing edges; soil preparation such as wood shavings, fertilizers, organic, chemical or synthetic; top dress ground cover areas with bark or any wood residual or other specified top dressing, operation of any equipment, as directed by the Contractor, for the installation of landscaping and irrigation work.

The scope of work for the Landscape Tender portion of the Landscape Laborer\_PWD provides, in relevant part:

Tenders may only perform the following work on landscape/irrigation projects:

Assisting the Landscape Laborer with the wire installation, unloading of materials, distribution of pipe, stacking of sprinkler heads and risers, the setting of valve boxes and thrust block, both precast and poured in place, cleaning and backfilling trenches with a shovel, cleanup and watering during construction and all other landscaping, planting and all work involved in laying and installation of landscape irrigation systems.

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2. Plumber: Plumber, Industrial and General Pipefitter for Ventura County (Ven-2017-1).

This determination provides for a training fund contribution of \$1.85 per hour for the Plumber-Pipefitter classification. The only violation found in the Assessment for this classification pertained to payment of such contributions.

#### Underpayment of Wages.

The Assessment found that Dufau underpaid its workers (other than owner Peter Dufau) for their work on the Project. This was primarily due to Dufau's failure to pay the correct prevailing wage rate required by the Landscape Laborer PWD. Dvorak noted that the applicable PWD required a basic hourly rate of \$31.38 for Landscape Laborer. (DLSE Exhibit No. 1, p. 6.) However, while Dufau listed the workers as Laborers in their Certified Payroll Records (CPRs), it listed the basic hourly rate of \$17.64, that for Landscape Tender. After reviewing Dufau's CPRs, Dvorak stated in the Penalty Review:

Owner Peter Dufau is classified as a pipefitter. All other workers have been classified as laborers. No group number has been listed for any of the workers. Contractor was the landscape and irrigation subcontractor on this project. Based on the scope of work, I pulled out the applicable wage determination for Landscape/Irrigation\_Laborer/Tender. The hourly rate listed for Landscape/Irrigation Tender is \$17.94 per hour.

(DLSE Exhibit No. 1, p. 7.)

The CPRs submitted by Dufau consistently classify the following workers simply as "Laborer" and state their straight time rate of pay as \$17.94 per hour: Aaron Baltazar; Garrett Ehritt; Francisco Perez; Carlos Alvarez; David Sanchez; Juan Reyes; Domingo Cahuantzi; Alejandro Armenta; and Jose Ruiz. (DLSE Exhibit No. 12, pp. 201-298.) With two exceptions, no more than two of these workers are listed on the CPRs for any given day. Three are listed on Wednesday, April 18, 2018 (Baltazar, Ehritt, and Perez) (*Id.* at p. 243), and five are listed on Tuesday, July 23, 2019 (Cahuantzi, Baltazar, Reyes, Armenta, and Ruiz). (*Id.* at pp. 291-292.)

Dvorak reviewed the applicable PWDs and summarized the problem with the rate of pay provided. She quoted Footnote c to the Landscape Laborer/Tender PWD, which states in part:

The first employee on the jobsite must be a Landscape/Irrigation Laborer; the second employee on the jobsite must be an Apprentice or a Landscape/Irrigation Laborer; and the third and fourth employees may be Tenders. The fifth employee on the jobsite shall be a Landscape/Irrigation Laborer; the sixth employee must be an Apprentice or a Landscape/Irrigation Laborer; and the seventh and eight [sic] employees may be Tenders. Thereafter, Tenders may be employed with Landscape/Irrigation Laborers in a 50/50 ratio on each jobsite.

(DLSE Exhibit No. 1, p.7, quoting DLSE Exhibit No. 14, p. 300.)

The Assessment found that each of the ten workers listed above was underpaid by the difference between the Landscape Laborer rate and the Landscape Tender rate for all hours worked on the Project, with certain exceptions for work on April 18, 2018, and July 23, 2019.<sup>5</sup>

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<sup>5</sup> Dufau did not classify any of these workers as Tenders in the CPRs; rather, it classified them as Laborers but paid them at the Tender rate. Dvorak nonetheless characterized this issue as



The Assessment found one additional pay rate violation regarding Juan Espinoza. Dufau's CPR classified Espinoza as a Landscape Laborer Apprentice for four days during the week ending August 11, 2019. However, the CPR showed no journeyman working during the seven hours Espinoza worked on Friday, August 9, 2019.<sup>6</sup> The Assessment reclassified Espinoza as a Landscape Laborer for that day only, and found Dufau liable for the difference in pay.

The Assessment further found that Dufau underreported hours and failed to pay some workers for all hours worked. Dvorak stated in the Penalty Review: "I have reviewed timesheets and paystubs submitted by contractor. There are hours that are reflected on the timesheets that have not been reported on the certified payroll records and have not been paid." (DLSE Exhibit No. 1, p. 7.) She presented a week-by-week analysis documenting multiple discrepancies between the hours shown on the timesheets and those reported in the CPRs and reflected on check stubs. The unreported hours included both straight time and overtime hours.

Finally, the Assessment found that Dufau failed to pay the holiday wage rate required by the applicable PWD for work performed on July 4, 2019 (Independence Day). This violation affected only one worker, Cahuantzi, who was the only one other than Peter Dufau who worked that day. The audit further found that Cahuantzi worked four hours that day per his timesheet, but was paid for only three hours at straight time Tender pay.

As set forth on DLSE's Public Works Audit Worksheet (DLSE Exhibit No. 3, p. 34) the Assessment found that the workers in question were underpaid by the amounts shown in the table below, for the straight time, overtime, and holiday hours listed:

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misclassification of workers. (DLSE Exhibit No. 1, p. 6.) She stated with regard to April 18, 2018, "I have reclassified these two first tender employees to landscape/irrigation laborers. I have not reclassified the third worker as this might be a tender." (*Id.* at p.13.) With regard to July 23, 2019, she stated: "Footnote c calls for the first employee to be a landscape/irrigation laborer and the second one either an apprentice or a landscape/irrigation laborer. Third and fourth can be tenders and the fifth shall be a laborer. I have reclassified workers accordingly." (*Id.* at p.20.)

<sup>6</sup> The Penalty Assessment erroneously states that Espinoza worked without a journeyman on Thursday of that week. The CPR shows that no one worked on Thursday, but Espinoza worked without a journeyman the following day. This discrepancy regarding the date of the violation makes no difference in the amount of wages found owing.

<b>Worker</b>	<b>S.T. Hours</b>	<b>O.T. Hours</b>	<b>Hol. Hours</b>	<b>Amount Owing</b>
A. Baltazar	45.25	8.75	0	\$1,923.90
G. Ehritt	52.75	6.75	0	\$2,196.86
F. Perez	8.00	0	0	\$ 301.16
C. Alvarez	0	5.5	0	\$ 229.63
D. Sanchez	2.25	2.0	0	\$ 162.57
J. Reyes	16.50	0	0	\$ 225.87
D. Cahauntzi	112.00	4.0	4.0	\$4,167.84
A. Armenta	2.75	0	0	\$ 91.19
J. Ruiz	12.25	0	0	\$ 323.99
J. Espinoza	7.00	0	0	\$ 217.63
<b>TOTAL:</b>				\$9,840.63

Underpayment of Training Fund Contributions.

The Assessment found that Dufau had underpaid the required training fund contributions by \$383.10. Dvorak explained in the Penalty Review that Dufau had provided a copy of a check for training funds paid to the Construction Laborers Trust Fund, and that she gave Dufau credit for the amount of that check. "However, contractor also employed [a] plumber pipefitter and no training funds were paid. I have checked the California Apprenticeship Council to verify that no training funds have been paid." (DLSE Exhibit No. 1, pp. 7-8.)

Dufau's check to the Construction Laborers Trust Fund, dated September 13, 2019, is in the amount of \$423.36. However, the stub indicates that \$94.08 is for a different project, leaving a balance of \$329.28 for this Project. (DLSE Exhibit No. 21.) DLSE's audit summary worksheet sets forth the training fund contributions owed for each employee. The sum of the required Landscape Laborer contributions is \$199.93.

When added to the required Plumber contribution of \$512.45, the total is \$712.38. DLSE applied a credit of \$329.28 to reduce the balance of training fund contributions due to \$383.10.<sup>7</sup> (DLSE Exhibit No. 3, p. 34.)

Applicable Apprenticeship Committees in the Geographic Area.

According to DLSE's Penalty Review (DLSE Exhibit No. 1), there was one apprenticeship committee in the geographic area of the Project for the trade of Landscape Laborer: Laborers Southern California Landscape And Irrigation Fitter J.A.T.C. There were five such committees for the trade of Plumber-Pipefitter: Landscape & Irrigation Fitter of Southern California J.A.T.C.; Los Angeles & Vicinity Steamfitters And Industrial Pipefitters J.A.T.C.; Northern California Local 355 J.A.T.C.; Southern California Chapter of the Associated Builders & Contractors, Inc.; and, Ventura County Plumbing & Pipefitting J.A.C.

Notice of Contract Award Information.

Dufau began work on the Project on October 4, 2017, according to Dufau's CPRs. It provided DLSE with a copy of a notice of contract award information form (DAS 140) dated October 1, 2017, addressed to the "Laborers S.C. Joint Apprenticeship Committee" in Azusa, California. Dufau provided no notices to any of the apprenticeship committees for the Plumber-Pipefitter craft.

Request for Dispatch of Apprentices.

On July 24, 2019, Dufau faxed a request for the dispatch of apprentices to the Southern California Landscape & Irrigation Fitter J.A.C. in Azusa, California, requesting one apprentice to report for work on the Project on July 29, 2019, and stating that the apprentice would be used for one day. There is no evidence that Dufau submitted any request for the dispatch of Plumber-Pipefitter apprentices.

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<sup>7</sup> Thus, Dufau paid the Laborers Trust more training fund contributions than were owed for the Project, and DLSE applied the excess amount as a credit against the total unpaid Plumbers contributions.

Assessment of Statutory Penalties.

DLSE's Penalty Review states that a search of DLSE's internal database showed that Dufau did not have prior violations. The investigator made the following recommendation:

My findings show that Dufau Landscape, Inc. failed to pay prevailing wages by misclassifying workers, underreporting hours, failing to pay holiday rate, failing to pay all training funds and employing an apprentice without a journeyman. Contractor also failed to submit contract award information for electricians<sup>8</sup> and laborers. Contractor failed to submit contract award information for plumbers, pipefitters, and failed to meet the five-to-one ratio for plumbers, pipefitters and landscape/irrigation laborers. I recommend we assess at \$120 per LC 1775 violation based on the nature of the violations. I also recommend we assess at \$20 per LC 1777 violation.

(DLSE Exhibit No. 1, pp. 23-24.) Penalties were assessed under section 1775 for 107 violations at the mitigated rate of \$120.00 per violation, for a total of \$12,840.00, with the Senior Deputy Labor Commissioner stating that he set the rate at \$120.00 "due to underreporting of hours." (*Id.* at p. 2.) The Assessment also included ten section 1813 violations, resulting in a statutory penalty of \$250.00. Finally, penalties were assessed under section 1777.7 for 674 violations at the mitigated rate of \$20.00 per violation, for a total of \$13,480.00, with the Senior Deputy stating that the mitigation was "due to the nature of the violations and lack of prior history." (*Ibid.*) In the Penalty Review, the DLSE investigator explained that she assessed penalties for 674 days, based on Dufau's failure "to submit evidence of submission of Contract Award Information for plumber." (*Id.* at p. 22.) She found 52 additional violations for Dufau's failure to submit evidence of submission of a DAS 142 (Request for Dispatch of Apprentice) for Plumbers, and 39 additional violations because:

Laborers began work on 10/04/2017. A request for the dispatch of an apprentice was not sent until 07/24/2019, with a request for 7/29/2019. This request was made about 10 days before the completion of

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<sup>8</sup> It appears that Dvorak inadvertently wrote "electricians" when she meant plumbers. Dufau employed no electricians on the Project.

contractor's portion of this project. 50.38 [hours] were required, only 21 were employed.

(*Id.* at p. 23.) No additional penalties were assessed for these additional violations, however, as they were subsumed within the original penalty for 674 days.

## **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 in one case as follows:

The overall purpose of the prevailing wage law . . . is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987, citations omitted (*Lusardi*)). DLSE enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (§ 90.5, subd. (a); 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 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.)

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 Dufau failed to meet its burden to prove the basis of the Assessment was incorrect.

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 Awarding Body filed a Notice of Completion with the Ventura County Clerk and Recorder on March 13, 2020. The Notice stated that the Project was “substantially completed on the 23<sup>rd</sup> Day of August, 2019.” At its meeting on March 4, 2020, the Awarding Body’s Board of Trustees voted to approve the Notice of Completion and the filing thereof. (DLSE Exhibit No. 10.) DLSE further established that the Assessment was served on Dufau and the other appropriate parties by first class and certified mail on February 11, 2021.

California Civil Code section 8182, subdivision (a) provides: “An owner may record a notice of completion on or within 15 days after the date of completion of a work of improvement.” Subdivision (d) of that section states: “A notice of completion that does not comply with the provisions of this section is not effective.” Here, on its face, the Notice of Completion is not effective, and is therefore invalid, because it was not filed within 15 days after the stated date of substantial completion. Thus, March 4, 2020, the date the school board approved the filing of the Notice, is deemed to be the date of acceptance of the work. The Assessment was served within 12 months of that date, and was thus timely under section 1741. Even if the work were deemed to have been accepted as of August 23, 2019, the date of substantial completion, service of the Assessment was still within the 18-month statutory period.

DLSE Timely Made Its Enforcement File Available to Dufau.

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 the Request for Review, dated April 2, 2021, and postmarked April 8, 2021, was received by DLSE on April 12, 2021. Two days later, on April 14, 2021, DLSE served Dufau with the Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b). On May 5, 2021, Dvorak followed up with an email to Dufau inquiring as to which procedure it wished to utilize to review the evidence. No evidence has been submitted to show that Dufau ever responded. Accordingly, it must be concluded that DLSE satisfied its obligations under section 1742 and the above regulation.

Dufau Failed to Pay the Proper Prevailing Wage Rate to Landscape Laborers.

The Assessment found that throughout the Project, Dufau consistently paid Landscape Laborers at the Landscape Tender rate. This finding is proven by Dufau's own CPRs, which routinely classify the workers as "Laborer" and state their rate of pay as \$17.94 per hour, the prescribed prevailing rate for Landscape Tender. The CPRs did not list any worker as a Tender, but even if they had, the use of the Landscape Tender classification is strictly limited by the ratio requirement set forth in footnote c of the Landscape Laborer/Tender PWD.

Dufau's Request for Review states in part: "Assessment is being contested on the basis of Incorrect Listing of Labor on Reports as **Plumber Pipefitter** which should have been **Landscape Irrigation Labor.**" (Emphasis and capitalization in original.) In essence, Dufau's contention was that it consistently misclassified Peter Dufau, its owner and president, on its own CPRs. Dufau had the burden of proving such misclassification, but offered no evidence thereof. Even if Dufau had been able to prove that Peter Dufau should have been classified as a Landscape Laborer, it would not have cured the majority of the violations. Under the ratio requirement, there must be at least two Landscape Laborers before a Landscape Tender may be used. On the majority of days,



no more than one worker in addition to Peter Dufau worked. On those days, even if Peter Dufau were classified as a Landscape Laborer, the Tender classification would not have been available. Even on days that two Landscape Laborers were working, the reclassification of Peter Dufau would have allowed the use of only one Tender. But since Dufau has offered no proof that Peter Dufau was misclassified, the Assessment must be affirmed in this regard.

Similarly, the Assessment reclassified Landscape Laborer Apprentice Juan Espinoza as a Landscape Laborer for seven hours worked on Friday, August 9, 2019, because an apprentice cannot work without a journeyman present, and the CPR shows no journeyman working that day. The only other person working that day was Peter Dufau. Again, in the absence of any evidence that he was misclassified, the Assessment must be affirmed in this respect.

The Assessment further found that Dufau failed to pay multiple workers for all hours worked, including straight time and overtime hours. This finding was based on discrepancies between the worker timesheets and Dufau's CPRs, and is further supported by the completed questionnaire of Garrett Ehritt. Dufau offered no evidence that this finding was incorrect, and the Assessment must be affirmed as to unpaid hours.

Finally, the Assessment found that Dufau failed to pay Domingo Cahuantzi the required holiday rate for hours worked on July 4, 2019. The applicable PWD specifies that the double time holiday rate must be paid for hours worked on Independence Day. Again, this violation is proven by Dufau's own CPR, and Dufau has offered no evidence to the contrary. The Assessment must be affirmed as to the holiday pay violation.

DLSE Has Established that Dufau is Liable for Unpaid Training Fund Contributions.

The Assessment found that Dufau had underpaid the required training fund contributions by \$383.10. DLSE's evidence established that the required contributions for Landscape Laborers on the Project totaled \$199.93, and that Dufau paid contributions to the Laborers Trust in the amount of \$329.28. DLSE's evidence further established that the required contributions for Plumber-Pipefitter on the Project totaled

\$512.45, and that Dufau failed to pay any of those contributions. DLSE applied the full amount of the Laborers Trust payment as a credit against the aggregate required training fund contributions, reducing \$712.38 by \$329.28 to produce net unpaid contributions of \$383.28. Dufau provided no evidence or argument to rebut DLSE's evidence, and thus failed to meet its burden of proving the Assessment incorrect in this respect. Accordingly, the Assessment is affirmed as to unpaid training fund contributions.

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.<sup>[9]</sup>

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." (*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 \$120.00. This was in keeping with the nature of Dufau's violations (Penalty Review, DLSE Exhibit No. 1.), and evidence that they were willful as defined by section 1777.1, subdivision (e).

The burden was on Dufau 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 to \$120.00 per violation, a 40 percent reduction. In requesting review, Dufau essentially disputed that it had misclassified workers and underpaid them. However, Dufau, having not appeared at the Hearing, did not establish that the Labor Commissioner abused her discretion in assessing \$120.00 per violation. Accordingly, as determined by DLSE and specified in the Assessment, Dufau is liable for 17775 penalties at \$120.00 per violation for 107 violations, for a total amount of \$12,840.00.

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<sup>9</sup> 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."

### DLSE's Penalty Assessment Under Section 1813.

Section 1813 provides in pertinent part:

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

Thus, the contractor is liable for section 1813 penalties whenever it fails to pay the overtime rate as required in the applicable PWD. The Assessment found that Dufau was liable for \$250.00 in section 1813 penalties for ten violations, attributed to hours worked by Aaron Baltazar, Ehritt Garret, David Sanchez and Domingo Cahuantzi. The Public Works Investigation Worksheets for each of these individual workers document that the penalties were assessed for days on which the workers were not properly paid for overtime work. (DLSE Exhibit No. 3.)

Section 1813 provides no discretion as to the penalty rate, and DLSE has demonstrated that each of the penalties assessed was for an actual overtime violation. Dufau has not met its burden of proving that the Assessment was incorrect with regard to section 1813 penalties. Accordingly, the Assessment must be affirmed in this regard.

### Dufau 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 provided 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 required 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, Dufau 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, Dufau is liable for liquidated damages in the full amount of the unpaid wages found herein.<sup>10</sup> Accordingly, liquidated damages are due in the aggregate amount of \$9,840.63, as provided in the Findings, *post*.

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<sup>10</sup> A former version of section 1742.1 provided that if the contractor or subcontractor demonstrated, to the satisfaction of the Director, substantial grounds for appealing the assessment with respect to a portion of the unpaid wages, the Director had discretion to waive liquidated damages with respect to that portion of the unpaid wages. However, that provision was repealed by enactment of Senate Bill No. 96, effective June 27, 2017. Thus, the Director had no such discretion on the date of the Contract in this case. In any event, Dufau has made no showing of substantial grounds to appeal, so no waiver could be justified even absent the change of law.

### 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 Six Applicable Committees in the Geographic Area.

DLSE established that there were five applicable apprenticeship committees for Plumber in the geographic area of the Project. Further, DLSE established that there was one applicable apprenticeship committees for Landscape Laborer. Dufau stated in its

Request for Review: "Assessment is being contested on the basis of Incorrect Listing of Labor on Reports as Plumber Pipefitter which should have been Landscape Irrigation Labor." In essence, Dufau apparently claimed that its president, Peter Dufau, was mistakenly classified as a Pipefitter in Dufau's CPRs throughout his work on the Project. If, in fact, Peter Dufau's correct classification was Landscape Laborer, there would be no Pipefitter employed on the Project, and hence no need to contact Plumber apprenticeship committees. But Dufau had the burden of proving that it consistently and continually misclassified Peter Dufau in CPRs certified under penalty of perjury. Dufau produced no evidence of such misclassification, and accordingly it must be concluded that the Plumber committees were applicable to this Project.

Dufau Failed to Properly Notify All Six Applicable Committees of Contract Award Information.

DLSE established that Dufau failed to notify any applicable Plumber committee of contract award information. Dufau produced no evidence to the contrary. Thus, Dufau 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).

Dufau Failed to Request the Dispatch of A Plumber Apprentice.

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 Dufau made no such request for a Plumber apprentice, and that no Plumber apprentice was employed on the Project. Dufau 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.

Dufau Failed to Employ Plumber and Landscape Laborer Apprentices in the Required Ratios.

Plumber and Landscape Laborer were the apprenticeable crafts at issue in this matter. Dufau employed no Plumber apprentice on the Project. DLSE introduced evidence showing that while Landscape Laborers began work on the Project on

October 4, 2017, Dufau did not request a Landscape Laborer apprentice until July 24, 2019, with a requested report date of July 29, 2019. The request was made about ten days prior to the completion of Dufau's work on the Project. By the conclusion of its work on the Project, Dufau had employed journeyperson Laborers for 251.9 hours. Thus, to meet the one to five ratio Dufau was required to employ Landscape Laborer apprentices for a total of 50.38 hours. Dufau employed Laborer apprentices for only 21 hours. Accordingly, the record establishes that Dufau violated section 1777.5 and the related regulation, section 230.1, in its failure 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 of in the amount of the penalty. (Cal. Code Regs., tit. 8, § 17250.)

In this case, DLSE based section 1777.7 penalties on Dufau'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 \$20.00 for each of 674 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 Dufau worked on the Project. (These penalties were assessed on the basis of Dufau's failure to notify the applicable Plumber committees; no additional penalties were assessed for the additional section 1777.5 violations found.)

By sending a DAS 140 to the applicable Laborer committee, Dufau 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 Dufau'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 Dufau had no record of previous violations of section 1777.5, and mitigated the penalty significantly.

Having not appeared at the Hearing, Dufau did not establish that the Labor Commissioner abused her discretion in assessing \$20.00 per violation. Accordingly, as

determined by DLSE and specified in the Assessment, Dufau is liable for 1777.7 penalties at \$20.00 per violation for 647 days, for a total amount of \$13,480.00.

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 contractor Dufau Landscape, 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 Dufau Landscape, Inc. its enforcement file.
5. No wages were paid or deposited with the Department of Industrial Relations as a result of the Assessment.
6. Dufau Landscape, Inc. underpaid workers performing the work of Landscape/Irrigation Laborers by paying them at the Landscape/Irrigation Tender rate.
7. Worker Juan Espinoza was classified by Dufau Landscape, Inc. as a Landscape/Irrigation Laborer Apprentice but worked seven hours without a journeyman present, requiring payment at the journeyman rate.
8. Dufau Landscape, Inc. failed to pay workers for all hours worked.
9. Dufau Landscape, Inc. failed to pay worker Domingo Cahuantzi the correct holiday rate for four hours worked on July 4, 2019.
10. In light of findings 6 through 9 above, Dufau Landscape, Inc. underpaid its employees on the Project in the aggregate amount of \$9,840.63.
11. On ten occasions, Dufau Landscape, Inc. failed to pay workers the prevailing overtime rate for work performed. Accordingly, statutory

penalties under section 1813 are due from Dufau Landscape, Inc. in the amount of \$250.00.

12. Dufau Landscape, Inc. failed to pay \$383.10 in required training fund contributions.
13. The Labor Commissioner did not abuse her discretion in assessing penalties under Labor Code section 1775 at the rate of \$120.00 per violation for 107 violations in the aggregate sum of \$12,840.00.
14. Dufau Landscape, Inc. is liable for liquidated damages in the full amount of the unpaid wages, which is \$9,840.63.
15. There were five applicable apprenticeship committees in the geographic area of the Project in the craft of Plumber-Pipefitter: Landscape & Irrigation Fitter of Southern California J.A.T.C.; Los Angeles & Vicinity Steamfitters And Industrial Pipefitters J.A.T.C.; Northern California Local 355 J.A.T.C.; Southern California Chapter of the Associated Builders & Contractors, Inc.; and Ventura County Plumbing & Pipefitting J.A.C.
16. Dufau Landscape, Inc. failed to issue a Notice of Contract Award Information to any applicable apprenticeship committee for the craft of Plumber-Pipefitter.
17. Dufau Landscape, Inc. failed to properly request dispatch of Plumber-Pipefitter apprentices from the five applicable apprenticeship committees in the geographic area of the Project, and it was not excused from the requirement to employ apprentices under Labor Code section 1777.7.
18. Dufau Landscape, Inc. violated section 1777.5 by failing to employ apprentices in the crafts of Plumber-Pipefitter and Landscape Laborer on the Project in the minimum ratio required by the law.
19. The Labor Commissioner did not abuse her discretion in setting section 1777.7 penalties at the rate of \$20.00 per violation for 674 violations, and such penalties are due from Dufau Landscape, Inc. in the amount of \$13,480.00.

20. The amount found due in the Assessment is affirmed in full by this Decision as follows:

<b>Basis of the Assessment</b>	<b>Amount</b>
Wages Due:	\$ 9,840.63
Training Fund Contributions:	\$ 383.10
Penalties under section 1775:	\$12,840.00
Penalties under section 1813	\$ 250.00
Liquidated damages:	\$ 9,840.63
Penalties under section 1777.7:	\$13,480.00
<b>TOTAL:</b>	<b>\$46,634.36</b>

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 in full 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: 4-27-2022

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