BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT

DEPARTMENT OF INDUSTRIAL RELATIONS

FOR THE STATE OF CALIFORNIA

In the matter of the Debarment Proceeding Against: GUILLERMO IBAIBARRIAGA dba SIERRA NEVADA STUCCO and 2K ROOFING, Respondent.	Case No. SC 6037 DECISION RE DEBARMENT OF RESPONDENT FROM PUBLIC WORKS PROJECTS [Labor Code § 1777.1]

The attached Statement of Decision and Order of Debarment making GUILLERMO IBAIBARRIAGA dba SIERRRA NEVADA STUCCO and 2K ROOFING ineligible to bid on or be awarded a contract for a public works project and ineligible to perform work as a subcontractor on a public works project in the State of California for three years, is hereby adopted by the Division of Labor Standards Enforcement as the Decision in the above-captioned matter.

The decision shall become effective 45 days from the date of this Order.

IT IS SO ORDERED.

Dated: March 30, 2017

JULIE A. SU
Labor Commissioner and Chief of the California Division of Labor Standards Enforcement

PROOF OF SERVICE

STATE OF CALIFORNIA)
) **S.S.**
COUNTY OF LOS ANGELES)

I, Tina Provencio declare and state as follows:

I am employed in the State of California, County of Los Angeles; I am over the age of 18 years old and not a party to the within action; my business address is: 300 Oceangate, Suite 850, Long Beach, California 90802.

On March 30, 2017, I served the foregoing document(s) described as: **DECISION RE DEBARMENT OF RESPONDENT FROM PUBLIC WORKS PROJECTS [Labor Code section 1777.1]**,on the interested parties to this action by delivering a copy thereof in a sealed envelope at the following addresses:

Guillermo Ibaibarriaga
dba Sierra Nevada Stucco
P.O. Box 8472
Reno, NV 89502

Guillermo Ibaibarriaga
dba 2K Roofing
820 Kuenzli Street
Reno, NV 89502

David Cross, Esq.
State of California
Department of Industrial Relations
DLSE/Legal
2031 Howe Avenue #100
Sacramento, CA 95825

☑ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ **(BY OVERNIGHT DELIVERY)** I served the foregoing document(s) by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.

☑ **(STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed this 28th day of March, 2017, at Long Beach, California.

Tina Provencio

Tina Provencio

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: GUILLERMO IBAIBARRIAGA dba SIERRA NEVADA STUCCO and 2K ROOFING, Respondent.	Case No. SC 6037 STATEMENT OF DECISION RE DEBARMENT OF RESPONDENT FROM PUBLIC WORKS PROJECTS [Labor Code section 1777.1]

Debarment proceedings pursuant to Labor Code section1777.1 were initiated by the Division of Labor Standards Enforcement ("DLSE") on January 17, 2017, by the filing and service of a Statement of Alleged Violations against the following named respondent: GUILLERMO IBAIBARRIAGA, an individual, dba SIERRA NEVADA STUCCO and 2K ROOFING, (hereinafter "Respondent").

The hearing on the alleged violations was held on March 21, 2017, at the Oakland Office of the Labor Commissioner. Susan A. Dovi served as Hearing Officer. David D. Cross, appeared on behalf of Complainant, Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of

California. Respondent did not appear for the hearing although he was duly served with Notice of Hearing and the Statement of Alleged Violations by First Class and Certified Mail to the addresses for both Sierra Nevada Stucco and 2K Roofing 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 Respondent received lawful notice of the March 21, 2017, 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).

II. VIOLATIONS OF THE PUBLIC WORKS LAW

1. Sierra Nevada Stucco and 2K Roofing are businesses that were licensed by the Contractor's State Licensing Board under license numbers 915812 and 954551, respectively.

2. Respondent was the sole owner of Sierra Nevada Stucco and 2K Roofing at all relevant times for purposes of these proceedings.

3. Respondent was a subcontractor on four public works projects, namely the CRC Elk Grove Center project in Sacramento County, California, from November, 2012

through March, 2013; the Mission San Jose High School Special Education Classroom Wing Project in Alameda County, California, from June, 2013 through August, 2013; the Jordan Starr Middle School Modernization and New Construction Project in Santa Clara County, California from July, 2012 through April, 2013; and the Jane Lathrop Stanford Middle School Modernization and new Construction Project in Santa Clara County, California from July, 2012 through August, 2013 (hereinafter "projects"). Sierra Nevada Stucco was a subcontractor on the Elk Grove and Mission San Jose High School projects. 2K Roofing was a subcontractor on the Jordan Starr Middle School and the Jane Lathrop Stanford Middle School projects.

4. Deputy Labor Commissioner McClain, for all relevant time periods was assigned to the Public Works Unit and has been a Deputy Labor Commissioner for approximately 4 years. Deputy McClain testified his investigation revealed Respondent violated Labor Code sections 1774, and 1776 by failing to pay the prevailing wage rates to employees, and willfully violated Labor Code section 1776 by failing to maintain accurate certified payroll records. Deputy McClain testified Respondent failed to pay the prevailing wage rate on the four projects by underreporting hours and not reporting all workers who actually worked on the jobs, and the certified payroll records were false, reflecting payment of the prevailing wage rate when Respondent failed to pay that rate to the workers. The certified payroll records falsely stated the workers were paid the prevailing wages for all their hours by reporting for example, 5.01 or 3.24 hours per day when in fact workers were working eight hours per day, at least. In addition, not all workers were listed on the certified payroll records. For example, on the Jordan Starr Middle School project only 33 of at least 38 workers were listed on the certified payroll records. The investigation revealed that five workers who filed complaints were not listed at all on the certified payroll records. In addition, on the Stanford Middle School project,

employees reported working 10 hours per day. However, the certified payroll reports listed employees as working 2.33 , 4.97 or 5.1 hours per day. Only a foreman was listed as working 40 hours. The workers reported that they were paid in cash by the foreman who had money deposited into his account. The foreman was paid $40.00 per hour and the workers were paid $25.00 per hour. The prevailing rate either required $46.97 or $79.93, depending on whether the employee was a roofer or a sheet metal worker, respectively. In addition to underreporting hours and failing to list all workers on the certified payroll records, Respondent did not pay training or subsistence on the Stanford Middle School project. Many of the workers traveled more than 60 miles entitling them to $35.00 per day for mileage and all expenses for lodging and meals. None of these payments were made. Deputy McClain's investigation revealed that workers were paid only $16.00 and $14.00 per hour and no travel or subsistence.

8. DLSE issued Civil Wage and Penalty Assessments against Respondent on all four projects and in each case, after an administrative hearing, the hearing officer issued a decision upholding the Civil Wage and Penalty Assessment. DLSE exercised its discretion and assessed penalties pursuant to Labor Code § 1775 due to the egregious nature of the violations. The amounts of the underpayments of wages were $79,574.20, $67,418.01, $162,074.78 and $130,443.61, on each of the four projects.

CONCLUSIONS OF LAW

Labor Code section1777.1 provides in part:

> (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**, 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 have committed **two or more separate willful violations** of this chapter within a three-year period, 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 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."

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.*)*

Labor Code section1777.1(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.

The credible and unrefuted evidence presented by Deputy McClain established

Respondent failed to pay the proper prevailing wage rates, and falsified certified payroll reports. The testimony of Deputy McClain, corroborated by documentary evidence, establishes Labor Code sections 1774 and 1776 were violated with an intent to defraud Respondents' workers and the awarding bodies. Furthermore, the violations were willful within the meaning of Labor Code section 1777.1(d) and 8 CCR § 16800. 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.

Workers were paid in cash and less than half, and in some instances $14.00 or $16.00 per hour.

ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered Respondent, 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 sections 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 Respondent willfully and fraudulently prepared false certified payroll records and certifications, underpaid workers on four separate projects well within a three year period and where the underpayments were substantial, justifying a three year period of debarment.

Dated: March 30, 2017

SUSAN A. DOVI
Hearing Officer

PROOF OF SERVICE

STATE OF CALIFORNIA)
) **S.S.**
COUNTY OF LOS ANGELES)

I, Tina Provencio declare and state as follows:

I am employed in the State of California, County of Los Angeles; I am over the age of 18 years old and not a party to the within action; my business address is: 300 Oceangate, Suite 850, Long Beach, California 90802.

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☑ **(STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed this 28th day of March, 2017, at Long Beach, California.

Tina Provencio

Tina Provencio