STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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Attorney for the State 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: BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION; OMAR MALOOF, An Individual Respondents.	**CASE NO.: SC 5517** **DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS** [Labor Code § 1777.1]

The Proposed Statement of Decision Re Debarment of Respondents from Public Works Projects of the undersigned attorney Patricia Salazar, debarring Respondents BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION; OMAR MALOOF, an individual, from working on public works projects 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.

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This Decision shall become effective May 26, 2017. The debarment shall commence in 45 days on May 12, 2017.

IT IS SO ORDERED.

Dated: 3/22/2017

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

JULIE A. SU
STATE LABOR COMMISSIONER

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 28, 2017, I served the foregoing document(s) described as: **DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS,** on the interested parties to this action by delivering a copy thereof in a sealed envelope at the following addresses:

Mark A. Feldman, Esq.
Kevin M. Hannifan, Esq.
FELDMAN & ASSOCIATES, INC.
11030 Santa Monica Boulevard
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Los Angeles, CA 90025

David Cross, Esq.
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Jeffrey Pich, DLC II
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Norbert Flores, DLC I
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Monica Curi, IRR
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DLSE Public Works Unit
605 West Santa Ana Blvd., Room 641
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☑ **(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.

☑ **(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

STATE OF CALIFORNIA
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DIVISION OF LABOR STANDARDS ENFORCEMENT
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DEPARTMENT OF INDUSTRIAL RELATIONS

FOR THE STATE OF CALIFORNIA

In the Matter of the Debarment Proceeding Against: BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION; OMAR MALOOF, An Individual Respondents.	**CASE NO.: SC 5517** **PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS** [Labor Code § 1777.1]

Debarment proceedings pursuant to Labor Code section 1777.1 were initiated by the DIVISION OF LABOR STANDARDS ENFORCEMENT, STATE LABOR COMMISSIONER by the filing of a Statement of Alleged Violations against the following named respondents: BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION; OMAR MALOOF, an individual (collectively referenced hereinafter as "Respondents").

Respondents were duly served the Notice of Hearing and Statement of Alleged Violations.

The hearing on the alleged violations was held in Los Angeles, California on two days: July 30, 2014 and September 30, 2014. Zoe Yuzna, formerly of the Labor Commissioner's office, served as the Hearing Officer. At the close of the hearing proceedings, the parties filed

respective post-hearing briefs and the matter was submitted for decision.[1]

Attorney William A. Snyder appeared on behalf of Complainant, the LABOR COMMISSIONER, CHIEF OF THE DIVISION OF LABOR STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL RELATIONS, STATE OF CALIFORNIA (sometimes referenced herein as "Complainant" or the "Division"). Attorney Mark A. Feldman of Feldman & Associates, Inc. appeared on behalf of Respondents, with Respondent OMAR MALOOF ("MALOOF") appearing in his individual capacity and as CEO/RMO/President of Respondent BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION ("BANNAOUN"). Present as witnesses for Complainant were Jeffrey Pich, Monica Curi, and Norbert Flores.

While the Statement of Alleged Violations filed by the Division lists four projects with Civil Wage and Penalty Assessments issued between 2010 and 2013 – (1) the Stringer Avenue project (Assessment No. 40-25917/557) (the "Stringer Project"), (2) the Del Aire Pavement Preservation project (Assessment No. 40-29436/557) (the "Del Aire Project"), (3) the 87th Street East Avenue T project (Assessment No. 40-26378/120) (the "87th Street Project"), and (4) the Hawthorne Boulevard/Atlantic Avenue Landscaping project (Assessment No. 40-35416/596) (the "Hawthorne Project") – the Division subsequently struck the allegations regarding the Hawthorne Project. This decision addresses only the Del Aire and 87th Street projects.[2]

The hearing was tape recorded and electronically recorded. The witnesses testified under oath and exhibits were admitted into evidence. At the conclusion of the hearing, the matter was taken under submission.

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[1] Following the conclusion of the hearing proceedings, Hearing Officer Yuzna was no longer employed with the State. The undersigned attorney was assigned to review the matter. Before Ms. Yuzna stopped working for the State, she prepared a proposed draft decision based on her independent review of the matter. The undersigned attorney hereby adopts Ms. Yuzna's draft proposed decision for the Labor Commissioner based on Ms. Yuzna's and the undersigned attorney's independent review of the case.

[2] Respondents claim that a release agreement on the Stringer Project, dated June 26, 2012 (Exhibit I), precludes the Division from seeking debarment based on that project. This decision does not address the release agreement because the inclusion or lack of inclusion of the Stringer Project in the foregoing analysis does not alter the conclusion reached herein.

FINDINGS OF FACT

1. BANNAOUN has been, at all times relevant herein, a contractor licensed by the Contractors State License Board under license number 827829.

2. MALOOF has, at all times relevant herein, served as CEO/RMO/President of BANNAOUN. He has a business management degree from California State University, Long Beach, and a Masters of Business Administration from the University of Southern California. As BANNAOUN's principle, MALOOF runs its operations.

3. MALOOF started handling public works projects in 2003.

Del Aire Project

4. BANNAOUN served as the Prime Contractor on the Del Aire Project. The Awarding Body on the project was the County of Los Angeles.

5. In connection with the Del Aire Project, the Division issued a Civil Wage and Penalty Assessment (the "CWPA"), which was ultimately amended to assess $12,901.44 in unpaid prevailing wages and $8,100.00 in statutory penalties.

6. BANNAOUN requested review of the CWPA. A hearing on the merits was consequently conducted on June 25, 2012, with a decision issued on October 8, 2012 (Exhibit 20). BANNAOUN did not seek review of the decision, which includes the following findings (among other findings):

a. BANNAOUN incorrectly classified workers Alvaro Ledezma, William Cron, and Timothy Bitner for their work;

b. BANNAOUN "failed to apply required predetermined increases to wages it paid to its workers in the Laborer classification;" and

c. Due to its misclassifications of workers and failure to apply required wage increases, BANNAOUN underpaid its employees on the project.

(*Id.*) The decision provides, "Bannaoun's own [certified payroll records] showed that [it] failed to apply the correct prevailing wage rates. . ." (*Id.* at 13.)

7. In the decision, the Director of the Department of Industrial Relations imposed

penalties for the violation under Labor Code section 1775 at the maximum rate for willful violations because BANNAOUN's own certified payroll records evidenced its failure to pay proper prevailing wages, BANNAOUN provided no explanation or reason for its failure to pay proper prevailing wages or for its misclassification of workers, and BANNAOUN had several past violations where the maximum penalty rate was applied. (*Id.* at 13.)

8. At the hearing in this matter, MALOOF testified that he did not understand the predetermined increase on wages for workers in the Labor classification (*i.e.*, Exhibits J and K) and did not realize the increase had gone into effect. MALOOF stated he did not know that William Cron should have been paid as an Operating Engineer, rather than a Laborer, for work performed fueling machines, including transporting fuel and adding fuel to trucks.

9. MALOOF further testified that the certified payroll records for the Del Aire Project are accurate.

87th Street Project

10. BANNAOUN served as the Prime Contractor on the 87th Street Project. The Awarding Body on the project was the Los Angeles County Public Works.

11. In connection with the 87th Street Project, the Division issued a CWPA, dated August 19, 2011, assessing $11,159.91 in unpaid prevailing wages and $7,050.00 in statutory penalties. (Exhibit 21.) The CWPA was signed on behalf of the State Labor Commissioner by Monica Curi, Management Services Technician. (*Id.*)

12. The CWPA was based on a Labor Code Section 1775 Penalty Review (the "Penalty Review"), prepared by Monica Curi. (Exhibit 24.) The Penalty Review lists as issues identified with respect to the 87th Street Project that "Workers were not paid the correct prevailing wages or overtime prevailing wages. Misclassification of workers. Workers were shorted hours. No proof of Training Fund Payments made to a valid fund." (*Id.*) The Penalty Review has a signature line for a Senior Deputy Labor Commissioner without a signature. (*Id.*)

13. Evidence was submitted that 6 workers were paid less than prevailing wages for their work as Operating Engineers and one worker was paid less than the prevailing wage for his

work as a Laborer; another worker, James Meyers, was not included on the certified payroll records for work performed as a Laborer and was paid less than the prevailing wage for the work he performed. (*Id.*)

14. Ms. Curi's findings were based on her review of BANNAOUN's certified payroll records, as well as questionnaires received from workers.

15. BANNAOUN submitted as evidence its certified payroll records for the week ending January 30, 2010, which list, for example, worker Alvaro Ladesma as an Operator with a $52.03 hourly rate of pay, but the correct prevailing wage for Mr. Ladesma was $56.46. (Exhibit Q.)

16. BANNAOUN did not pay required training funds to the California Apprenticeship Counsel resulting from BANNAOUN's employment of Operating Engineers on the project.

CONCLUSIONS OF LAW

The Division seeks to debar Respondents for a period of three (3) years based on its position that Respondents "willfully" violated public works laws with "intent to defraud," but first, this decision shall address the parties' respective arguments regarding (1) the binding effect of the Director of Department of Industrial Relations' decision on the Del Aire Project, and (2) the procedural issues and alleged "good faith mistake" finding on the 87th Street Project.

Del Aire Project Decision

The decision of the Director of Industrial Relations with respect to the Del Aire Project is final and binding. (Exhibit 20.) "'[U]nless a party to a quasi-judicial administrative agency proceeding challenges the adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.'" *Noble v. Draper* (2008) 160 Cal.App.4th 1, 11. Here, the five threshold requirements of collateral estoppel are met. (*Id.* at 10, n.5.) Given that (1) the Director of Industrial Relations reviewed the CWPA issued with respect to the Del Aire Project pursuant to Labor Code section 1742 to determine whether that decision (the Assessment) conformed to the law and was supported by substantial evidence (Exhibit 20), and (2) Respondents did not challenge the Director's decision by means of

a mandate action in superior court, the decision became final and binding in this proceeding.

87th Street Project Arguments

With respect to the 87th Street Project, Respondents' arguments as to procedural issues and the "explicit" finding of "good faith mistake" are unpersuasive. Respondents fail to provide any legal authority for their position that (1) a penalty review form must be signed by a Senior Deputy Labor Commissioner, and (2) an "unsigned investigative report…cannot be used to support the Commissioner's case for debarment." (Respondents' Bannaoun Engineers Constructors Corporation and Omar Maloof's Closing Brief ("Respondents' Closing Brief") at 10.) Respondents also fail to provide any legal authority for their position that a Management Services Technician, such as Monica Curi, lacks requisite authority to make findings for purposes of Labor Code section 1777.1, particularly where California Code of Regulations, Title 8 section 17202(i), which is cited by Respondents, "provides that the term 'Labor Commissioner' means the Chief of the Division of Labor Standards Enforcement or *a designee* who has been authorized to carry out her functions." (Respondents' Closing Brief at 9 (emphasis added).)

Respondents fail to establish any determination by the Labor Commissioner with respect to Respondents' alleged "good faith mistake(s)" in their violations on the 87th Street Project. Rather than providing credible evidence to establish such a determination, Respondents put forth only a legal inference that is not supported by facts.

Respondents' Willful Violation of Public Works Laws

Labor Code § 1777.1 provides in relevant 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 on 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.

Under Labor Code section 1777.1(e), "A willful violation occurs 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 deliberately refuses to comply with its provisions." Moreover, a person's knowledge of the law is imputed to him and an unlawful intent may be inferred from the doing of an unlawful act. *People v. McLaughlin* (1952) 111 Cal.App.2d 781, 245 P.2d 1076.

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." Intent to deceive or defraud can be inferred from the facts. *People v. Kiperman* (1977) 69 Cal. App. 3d Supp. 25. An unlawful intent can be inferred from the doing of an unlawful act. *People v. McLaughlin, supra.*

The evidence establishes that Respondents "willfully" violated public works laws by failing to pay proper prevailing wages, misclassifying workers, and failing to pay required training funds to the California Apprenticeship Counsel.

Failure to Pay Prevailing Wages

California Code of Regulations, Title 8, section 16100 (hereafter "Rule 16100"), subdivision (c), provides that a "contractor and subcontractor shall: (1) Pay not less than the

prevailing wage to all workers, as defined in Section 16000(a) of these regulations, and as set forth in Labor Code Sections 1771 and1774; [and] (2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites..."

Credible testimony and documentary evidence establishes that Respondents failed to pay prevailing wages to workers, including credible evidence that:

1. On the Del Aire Project, Respondents failed to apply required predetermined increases to wages they paid to their workers in the Laborer classification, with Respondents' own certified payroll records showing that it failed to apply the correct prevailing wages. (Exhibit 20.) MALOOF's representation that he did not understand the predetermined increase on wages for workers in the Labor classification and did not realize the increase had gone into effect does not excuse the violation. MALOOF should have known the correct prevailing wages and exercised due diligence in ensuring that correct prevailing wages were paid. As recognized by the Director of the Department of Industrial Relations, the willfulness of the violations is evidenced by BANNAOUN's own certified payroll records showing its failure to pay proper prevailing wages, BANNAOUN's lack of explanation for its failure to pay proper prevailing wages, and BANNAOUN's history of several past violations where the maximum penalty rate was applied. (*Id.* at 13.)

2. On the 87th Street Project, evidence was submitted, based on certified payroll records and worker questionnaires, providing that 6 workers were paid less than prevailing wages for their work as Operating Engineers and one worker was paid less than the prevailing wage for his work as a Laborer; while another worker, James Meyers, was not included on the certified payroll records for work performed as a Laborer and was paid less than the prevailing wage for the work he performed. Respondents' own certified payroll records for the week ending January 30, 2010 list, for example, worker Alvaro Ladesma as an Operator with a $52.03 hourly rate of pay, but the correct prevailing wage for Mr. Ladesma was $56.46. (Exhibit Q.)

Misclassification

Credible testimony and documentary evidence establishes that, on the Del Aire Project,

Respondents incorrectly classified workers Alvaro Ledezma, William Cron, and Timothy Bitner for their work, without any explanation.

Failure to Pay Required Training Funds

Credible evidence establishes that BANNAOUN did not pay required training funds to the California Apprenticeship Counsel resulting from BANNAOUN's employment of Operating Engineers on the 87th Street Project. Respondents provided no credible evidence to refute their failure to pay the training funds or to excuse this violation.

CONCLUSION

Based on the evidence presented at the hearing, we find that Respondents BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION and OMAR MALOOF "willfully" violated public works laws on two projects within three years by failing to pay proper prevailing wages, misclassifying workers, and failing to pay required training funds to the California Apprenticeship Counsel on the Del Aire and 87th Street Projects. As such, we find that Respondents are in violation of Labor Code section 1777.1.

"Although debarment can have a severe economic impact on contractors, it 'is not intended as punishment. It is instead, a necessary means to enable the contracting governmental agency to deal with irresponsible bidders and contractors, and to administer its duties with efficiency.'" *Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 542. Here, Respondents underpaid workers on multiple projects, misclassified workers, and failed to pay training funds, in spite of MALOOF's experience in public works exceeding 10 years and his advanced degree in business administration, and in spite of the notice Respondents received *vis-à-vis* several past penalty assessments where the maximum penalty rate was applied. Although the amounts of underpayment are low relative to the high hourly wage rates, the amounts are not nominal and Respondents' repeated failures to comply with public works requirements evidences a carelessness for compliance, at best, which amounts to numerous *willful* violations of public works provisions. Respondents have received several warnings of the need to improve their compliance with public works provisions, but they

continue to underpay and misclassify workers and fail to pay training funds. Accordingly, we debar Respondents for a period of three years, as requested by the Division.

ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered that Respondents BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION and OMAR MALOOF 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 works" project as defined by Labor Code sections 1720, 1720.2 and 1720.3, for a period of three (3) years, effective 45 days after this decision is issued by the Labor Commissioner. A three year period is appropriate under these circumstances where Respondents BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION and OMAR MALOOF "willfully" violated the public works laws, with a history of violations on numerous other public works projects.

This debarment shall also apply to any other contractor or subcontractor in which Respondents BANNAOUN ENGINEERS CONSTRUCTORS CORPORATION and OMAR MALOOF have any interest or for which Respondents act as a responsible managing employee, responsible managing officer, general partner, manager, supervisor, owner, partner, officer, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where Respondents receive payments, whether in cash or in another form of compensation, from the entity bidding or performing works on the public works project, or enters into any contract or agreement with the entity bidding or performing work on the public works project for services performed or to be assigned or sublet, or for vehicles, tools, equipment or supplies that have been or will be sold, rented or leased during the period of debarment. See Labor Code § 1777.1(h).

Dated: March 28, 2017

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

PATRICIA SALAZAR
Attorney for the Labor Commissioner

PROOF OF SERVICE

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

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