

DIVISION OF LABOR STANDARDS ENFORCEMENT

Department of Industrial Relations
State of California

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Attorneys for the State Labor Commissioner

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

In re the DEBARMENT
proceeding against:

AMERIVET PLUMBING, INC.; WALTER
EDWARD JACOB KUHLMANN III,
Individually and dba AMERIVET
PLUMBING SERVICES,

Respondents.

) Case No. SC 5756

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

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

[Labor Code section 1777.1]

The attached *Proposed Statement of Decision* of Hearing Officer Susan A. Dovi,
DEBARRING Respondents AMERIVET PLUMBING SERVICES, INC.; WALTER
EDWARD JACOB KUHLMANN III, an individual and dba AMERIVET PLUMBING
SERVICES, from bidding, being awarded or performing any work on public works
projects

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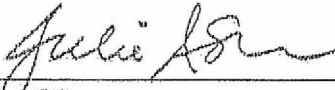
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3 in the State of California for THREE YEARS, is hereby adopted in full by the Division of
4 Labor Standards Enforcement as the FINAL *Decision* in the above-captioned matter.

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

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9 **IT IS SO ORDERED.**

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11 Dated: June 22, 2015 DIVISION OF LABOR STANDARDS ENFORCEMENT
12 Department of Industrial Relations
13 State of California

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15 By: 
16 JULIE A. SU
State Labor Commissioner

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DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
BY: SUSAN A. DOVI, CA Bar #145543
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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:

AMERIVET PLUMBING SERVICES, INC.;
WALTER EDWARD JACOB KUHLMANN III,
Individually and doing business as AMERIVET
PLUMBING SERVICES,

Respondents.

) Case No. SC 5756

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

Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the Division of Labor Standards Enforcement ("DLSE") on December 5, 2014, by the filing and service of a Statement of Alleged Violations against the following named respondents: AMERIVET PLUMBING SERVICES, INC., WALTER EDWARD JACOB KUHLMANN III, Individually and doing business as AMERIVET PLUMBING SERVICES, (hereinafter "Respondents").

The hearing on the alleged violations was held on February 27, 2015, 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

[PROPOSED] STATEMENT OF DECISION RE DEBARMENT

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

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

FINDINGS

I. NOTICE

The Hearing Officer finds the Respondents received lawful notice of the February 27, 2015, 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. Amerivet Plumbing Services, Inc. is a business that was licensed by the Contractor's State Licensing Board under license number 949048.
2. Respondent Walter Edward Jacob Kuhlmann III is an owner of Amerivet Plumbing Services, licensed by the Contractors State Licensing Board under license number 919761 and is the Chief Executive Officer/RMO and President of the corporation referenced in paragraph 1, above, at all relevant times for purposes of these proceedings.
3. Respondents were subcontractors on two public works projects, namely the

Stanley Mosk Library and Courts Building project in Sacramento County, California and the Shingle Springs Fire Department project in El Dorado County, California (hereinafter "projects"), during the periods, January, 2008 through April, 2013, and August, 2010 through May, 2011, respectively.

4. Deputy Labor Commissioner Ying Wu, for all relevant time periods was assigned to the Public Works Unit and has been a Deputy Labor Commissioner for approximately 4 years. Deputy Wu testified on the Stanley Mosk Library and Courts Building project and the Shingle Springs Fire Department project, her investigation revealed Respondents violated Labor Code §§ 1774 and 1776 by failing to pay the prevailing wage rates to employees and further willfully violated Labor Code section 1776 by failing to maintain accurate certified payroll records. Ms. Wu testified Respondents failed to pay the prevailing wage rate for plumbers and laborers on the two jobs and in fact paid less than one half the required rates. Ms. Wu further testified the certified payroll records were false, reflecting payment of the prevailing wage rate when Respondents failed to pay that rate to the workers. The certified payroll records falsely stated the workers were paid the prevailing wages which were due.

8. DLSE issued two Civil Wage and Penalty Assessments against Respondents based on the violations on the projects listed in Paragraph 3 above. DLSE exercised its discretion and assessed penalties pursuant to Labor Code § 1775 due to the egregious nature of the violations. Based on worker complaints alleging the failure to be paid the prevailing wage, Deputy Wu's investigation revealed less than half the required rate was being paid. Respondents supplied signed statements from workers during the investigation of the Shingle Springs Fire Department project indicating the workers were paid half of the prevailing wage rate in cash and Respondents contended that the cash was provided every week. When asked to provide bank records evidencing withdrawals

for the payments, Kuhlmann conceded there were no records and the workers confirmed that they were required to sign the statements but had not been paid half of the prevailing wage rate in cash. Respondent Kuhlmann signed the certified payroll records approximately half way through each project, as the President of Amerivet. The corporation was set up near the end of the Shingle Springs Project.

CONCLUSIONS OF LAW

Labor Code §1777.1 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 §1777.1(e) 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 to bid on, be awarded or perform work on a public works project 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 Wu established Respondents failed to pay the proper prevailing wage rates and falsified certified payroll reports. The testimony of Deputy Wu, corroborated by documentary evidence, establishes Labor Code §§ 1774 and 1776 were violated with the intent to defraud Respondents' workers and the awarding bodies. Furthermore, the violations were willful within the meaning of Labor Code § 1777.1(e) and 8 CCR § 16800. The preparation of false and fraudulent certified payroll records was intentional and deliberate and also exhibits the intent to deceive Respondents' workers, the awarding body and the DLSE.

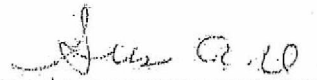
Respondent Kuhlmann signed some of the certified payroll reports. Workers were told to sign statements indicating that they had been paid half the prevailing wage rate in cash under duress, with fear of retribution, when in fact they had not been paid half of the prevailing wage rate in cash. Workers on the project only received approximately half of

the prevailing wage rate; and in at least one instance, a worker approximately received only one-fourth of the required prevailing wage rate.

ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered Respondents AMERIVET PLUMBING SERVICES, INC. and WALTER EDWARD JACOB KUHLMAN III individually and doing business as AMERIVET PLUMBING SERVICES, shall be ineligible to, and shall not, bid on or be awarded a contract for a public works project, and shall not perform work as a subcontractor on a public work as defined in Labor Code §§ 1720, 1720.2 and 1720.3, for a period of three (3) years, effective 45 days from the date of this Order. A three year period is appropriate under these circumstances where Respondents, experienced contractors, willfully and fraudulently prepared false certified payroll records and certifications, underpaid workers on two separate projects within a two year period and where the underpayments were substantial, justifying a three year period of debarment.

Dated: June 22, 2015



SUSAN A. DOVI
Hearing Officer

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO

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

On June 22, 2015, I served the following document(s) as described below:

Decision and ORDER OF DEBARMENT of Respondents from Public Works Projects

the original(s)

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

See attached "Service List"

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

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

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

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

[] BY CERTIFIED MAIL.

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

Executed on June 22, 2015, at Fresno, California.

Christina Othon

In re AMERIVET PLUMBING, INC., et al.
SAC Case No. 5756

SERVICE LIST

Amerivet Plumbing Services, Inc. 11151 Trade Center Drive, Suite 200A Rancho Cordova, California 95670	David D. Cross DIR - DLSE - LEGAL SECTION 2031 Howe Avenue, Suite 100 Sacramento, California 95825
Walter Edward Jacob Kuhlmann III, individually and doing business as Amerivet Plumbing Services, Inc. 11151 Trade Center Drive, Suite 200A Rancho Cordova, California 95670	

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