

1 **STATE OF CALIFORNIA**
2 Department of Industrial Relations
3 Division of Labor Standards Enforcement
4 EDNA GARCIA EARLEY, State Bar No. 195661
5 320 W. 4th Street, Suite 430
6 Los Angeles, California 90013
7 Tel.: (213) 897-1511
8 Fax: (213) 897-2877

9 Attorney for the Labor Commissioner

10 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

11 **DEPARTMENT OF INDUSTRIAL RELATIONS**

12 **FOR THE STATE OF CALIFORNIA**

13 In the matter of the) Case No.: SAC 1042
14 Debarment Proceeding Against:)
15) **DECISION RE DEBARMENT OF**
16) **RESPONDENTS FROM PUBLIC**
17) **WORKS PROJECTS**
18 CEDAR DEVELOPMENT)
19 CORPORATION, a California) **[Labor Code §1777.1]**
20 Corporation; and SERGHON GABRIEL)
21 AFRAM, RMO/CEO/President of CEDAR)
22 DEVELOPMENT CORPORATION,)
23 Respondents.)

24 The attached Proposed Statement of Decision of Hearing Officer Edna
25 Garcia Barley, debarring CEDAR DEVELOPMENT CORPORATION, a California
26 Corporation; and SERGHON GABRIEL AFRAM, RMO/CEO/President of CEDAR
27 DEVELOPMENT CORPORATION, from working on public works projects in the State
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1 of California for three years, is hereby adopted by the Division of Labor Standards
2 Enforcement as the Decision in the above-captioned matter.
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4 This Decision shall become effective August 5, 2009.

5 IT IS SO ORDERED.

6
7 Dated: June 16, 2009

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

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10 By: _____

Angela Bradstreet

11 ANGELA BRADSTREET
12 State Labor Commissioner
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 West Fourth Street #430, Los Angeles, CA 90013.

On June 17, 2009, I served the foregoing document described as DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS [Labor Code §1777.1], on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, addressed as follows:

Serghon G. Afram, Agent for Service of Process
Cedar Development Corporation
12477 Feather Drive
Mira Loma CA 91752

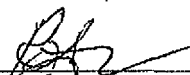
Serghon G. Afram, RMO/CEO/President
Cedar Development Corporation
12477 Feather Drive
Mira Loma CA 91752

Sherry Gentry, DLC
Division of Labor Standards Enforcement
Department of Industrial Relations
5555 California Avenue #200
Bakersfield CA 93309

Sarah Cheung, DLC
Division of Labor Standards Enforcement
Department of Industrial Relations
State of California
300 Oceangate, Suite 850
Long Beach CA 90802

By Mail: I am readily familiar with the firm's business practices 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 with postage fully prepaid thereon.

Executed this 17th day of June, 2009, at Los Angeles, California, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Randi Guerrero

1 STATE OF CALIFORNIA
2 Department of Industrial Relations
3 Division of Labor Standards Enforcement
4 EDNA GARCIA EARLEY, State Bar No. 195661
5 320 W. 4th Street, Suite 430
6 Los Angeles, California 90013
7 Tel.: (213) 897-1511
8 Fax: (213) 897-2877

9 Attorney for the Labor Commissioner

10 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**
11 **DEPARTMENT OF INDUSTRIAL RELATIONS**
12 **FOR THE STATE OF CALIFORNIA**

13 In the matter of the) Case No.: SAC 1042
14 Debarment Proceeding Against:)
15) **PROPOSED STATEMENT OF**
16) **DECISION RE DEBARMENT OF**
17) **RESPONDENTS FROM PUBLIC**
18 CEDAR DEVELOPMENT) **WORKS PROJECTS**
19 CORPORATION, a California)
20 Corporation; and SERGHON GABRIEL) **[Labor Code §1777.1]**
21 AFRAM, RMO/CEO/President of CEDAR)
22 DEVELOPMENT CORPORATION,) **Hearing Date: April 24, 2009**
23) **Time: 10:00 a.m.**
24) **Hearing Officer: Edna Garcia Earley**
25 Respondents.)
26)
27)
28)

23 Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the
24 Division of Labor Standards Enforcement, State Labor Commissioner (hereinafter,
25 "DLSE") on February 3, 2009, by the filing of a *Statement of Alleged Violations* against
26 Respondents CEDAR DEVELOPMENT CORPORATION, a California Corporation;
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1 and SERGHON GABRIEL AFRAM, RMO/CEO/President of CEDAR
2 DEVELOPMENT CORPORATION.
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4 The hearing on the alleged violations was held on April 24, 2009 in Los Angeles,
5 California. All named Respondents were duly served with the *Notice of Hearing* and
6 *Statement of Alleged Violations* but failed to appear at the hearing. Edna Garcia Earley
7 served as the Hearing Officer. David D. Cross, appeared on behalf of Complainant, the
8 Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department
9 of Industrial Relations, State of California. Present as witnesses for Complainant were
10 Deputy Labor Commissioners Sherry Gentry and Sarah Cheung.
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13 The hearing was tape recorded. The witnesses took the oath and evidence was
14 received. At the conclusion of the hearing, the matter was taken under submission.
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16 FINDINGS OF FACT

17 1. Respondent CEDAR DEVELOPMENT CORPORATION, A California
18 Corporation is a contractor licensed by the Contractor's State Licensing Board under
19 license number 839898, which is currently active. The Contractor's State License
20 Board's website lists Respondent SERGHON GABRIEL AFRAM as the
21 RMO/CEO/PRES for CEDAR DEVELOPMENT CORPORATION with an association
22 date of June 3, 2004.
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24
25 2. Sherry Gentry and Sarah Cheung are Deputy Labor Commissioners with
26 DLSE, assigned to the Public Works unit.

27 3. The *Statement of Alleged Violations* against CEDAR DEVELOPMENT
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1 CORPORATION, a California Corporation; and SERGHON GABRIEL AFRAM,
2 RMO/CEO/President of CEDAR DEVELOPMENT CORPORATION (hereinafter,
3 collectively referred to as "CEDAR DEVELOPMENT") states that Civil Wage and
4 Penalty Assessments ("CWPA") were issued concerning CEDAR DEVELOPMENT'S
5 underpayment of workers, pattern and practice of shaving hours, misclassifying workers,
6 falsifying certified payroll records, failing to make required payments for travel and
7 subsistence, and defrauding employees for failing to pay the required prevailing wage on
8 two different jobs: (1) the *Remove & Replace Patios (07-SR#5, #21, #23, #31) Porterville*
9 *Developmental Center* project; and (2) the *San Gabriel River Bike Trail* project.

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13 **Remove & Replace Patios (07-SR#5, #21, #23, #31) Porterville Developmental**
14 **Center**

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16 4. Deputy Gentry testified that she conducted an investigation of CEDAR
17 DEVELOPMENT on work performed as a Prime Contractor on the State of California –
18 Department of Developmental Services' public works project known as *Remove &*
19 *Replace Patios (07-SR#5, #21, #23, #31) Porterville Developmental Center* which
20 revealed violations of Labor Code §1771, §1774, §1776 and §1815.
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22
23 Specifically, Deputy Gentry testified that the certified payroll records
24 ("CPR") received by CEDAR DEVELOPMENT were false because the workers were
25 paid much lower rates than what was reported on the CPRs. Deputy Gentry explained
26 that she reviewed copies of paycheck stubs provided by some of the workers and
27 compared them to the actual CPRs submitted by CEDAR DEVELOPMENT. The
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1 paycheck stubs listed hourly rates much lower than the prevailing wage rates listed on the
2 CPRs submitted by CEDAR DEVELOPMENT. For instance, Deputy Gentry submitted
3 as evidence paycheck stubs submitted by one worker showing he was paid \$20.00 per
4 hour. Deputy Gentry also submitted the CPRs for the same worker, for the same time
5 period, showing he was paid \$53.03 per hour. Additionally, the same worker's paycheck
6 stub showed that he worked 76.5 hours yet the CPRs indicated that he worked 55 regular
7 hours. Deputy Gentry provided other examples of paychecks being different than
8 information provided on the CPRs for this job. Deputy Gentry explained that CPRs are
9 required to be kept by contractors who work on public works projects and that the
10 contractor is required to certify under penalty of perjury that all the amounts, hours, days
11 of work, and workers shown on the CPRs are correct.
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16 Deputy Gentry also testified that travel and subsistence payments were not
17 made by CEDAR DEVELOPMENT on this project, as required. Deputy Gentry
18 explained that all prevailing wage determinations issued by the state require a contractor
19 to make travel and subsistence payments to the different classifications and that such
20 requirements are set pursuant to collective bargaining agreements on file with the State.
21 Deputy Gentry testified that the Ironworkers on this project were entitled to subsistence
22 payments of \$75.00 per day because their job site was over 50 miles from their nearest
23 City Hall. The Ironworkers, however, received no such pay. Similarly, Laborers and
24 Masons also did not receive the travel and subsistence payments they were entitled to
25 under their collective bargaining agreement.
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1 Deputy Gentry also testified that her investigation revealed that some
2 workers were misclassified, some workers were paid cash and that CEDAR
3 DEVELOPMENT failed to make training fund contributions, as required on this project.
4

5 5. Deputy Gentry testified that she tried, on numerous occasions, to contact
6 CEDAR DEVELOPMENT to discuss the violations but never received a response.
7

8 6. Deputy Gentry also testified that while there was no previous history of
9 violations by CEDAR DEVELOPMENT, at the time of her investigation, there were two
10 other pending investigations of CEDAR DEVELOPMENT on different public works
11 projects regarding allegations of failure to pay prevailing wages. Deputy Gentry
12 concluded the failure to pay the correct rate of per diem wages was "willful" because
13 CEDAR DEVELOPMENT was expressly notified in its contract with the Awarding
14 Body, State of California – Department of Developmental Services, of its legal
15 obligations on this public works project and deliberately prepared false CPRs in an effort
16 to hide non-compliance with such obligations.
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20 7. Accordingly, on October 16, 2008, Deputy Gentry issued a CWPA to
21 CEDAR DEVELOPMENT for failure to pay prevailing wages to all workers by
22 misclassifying workers, paying workers a secret lower wage, paying in cash, and then
23 preparing and submitting falsified payroll documents to the awarding body, in violation
24 of Labor Code §§1771 and 1774. Additionally, the CWPA was issued for failing to
25 report or pay overtime in violation of Labor Code §1815; failing to make training fund
26 contributions, failing to produce certified payroll documents to the DLSE upon request in
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1 violation of Labor Code §1776, and failing to make required travel and subsistence
2 payments to workers as required in the applicable travel/subsistence provisions for
3 Laborers, Masons, Ironworkers. The total amount of wages assessed in the CWPA was
4 \$41,682.03. Penalties under Labor Code §1813 were \$12,250.00 and penalties under
5 Labor Code §1776 were \$13,950.00.
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8 **San Gabriel River Bike Trail Project**

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10 10. Deputy Cheung testified that she conducted an investigation of CEDAR
11 DEVELOPMENT on the Los Angeles County Department of Public Works project
12 known as *San Gabriel River Bike Trail* project, which revealed violations of Labor Code
13 §1774 and §1776.
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15 Specifically, Deputy Cheung testified that CEDAR DEVELOPMENT
16 failed to pay the required prevailing wage rates to its workers in violation of Labor Code
17 §1774. Paycheck stubs were produced showing that one worker was paid \$15.00 per
18 hour. Additionally, an Employee Questionnaire was produced showing that another
19 worker, who worked as an Operator, Foreman and Laborer, was paid \$20.00 per hour.
20 CPRs for the same time period for both workers, however, showed that the workers
21 received \$37.50 per hour.
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23
24 Deputy Cheung testified that she had trouble obtaining the CPRs from
25 CEDAR DEVELOPMENT. Specifically, she attempted on four separate occasions to
26 obtain the CPRs from the CEDAR DEVELOPMENT and finally was faxed a copy on
27 December 4, 2008. The copy she received was partially illegible so she requested
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1 another copy to be sent by mail but received no response from CEDAR
2 DEVELOPMENT, in violation of Labor Code §1776(g).
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4 11. Based on her interviews with the workers and documents submitted,
5 Deputy Cheung determined that workers were misclassified, were not paid overtime and
6 that required training funds had not been paid.
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8 12. Accordingly, on December 22, 2008, Deputy Cheung issued a CWPA to
9 CEDAR DEVELOPMENT for work performed as a Prime Contractor on the *San Gabriel*
10 *River Bike Trail* project. The CWPA was issued to CEDAR DEVELOPMENT for
11 nonpayment of prevailing wages in violation of Labor Code §1774, failure to report on
12 the CPRs all hours worked by workers on the project and failure to provide proof of wage
13 payments, fringe benefit payments, including training fund contributions, made on behalf
14 of all workers on the project and failure to provide CPRs to the DLSE upon receipt of a
15 written notice, in violation of Labor Code §1776(g). The total amount of wages assessed
16 in the CWPA was \$28,487.10. Penalties under Labor Code §1813 were \$8,950.00 and
17 penalties under Labor Code §1776 were \$25,575.00.
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22 CONCLUSIONS OF LAW

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24 1. Labor Code §1777.1 provides:

25 (a) Whenever a contractor or subcontractor performing a
26 public works project pursuant to this chapter is found
27 by the Labor Commissioner to be in violation of this
28 chapter **with intent to defraud**, except Section 1777.5,
the contractor or subcontractor or a firm, corporation,
partnership, or association in which the contractor, or

1 subcontractor has any interest is ineligible for a period
2 of not less than one year or more than three years to do
3 either of the following:

- 4 (1) bid or be awarded a contract for a public
5 works project.
6 (2) Perform work as a subcontractor on a
7 public works project.

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

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

22 2. The evidence presented at the hearing establishes that CEDAR
23 DEVELOPMENT violated the Public Works laws "willfully" and with "intent to
24 defraud."

25 **"Willful" Violation of The Public Works Laws**

26 3. "A willful violation occurs when the contractor or subcontractor knew or
27 reasonably should have known of his or her obligations under the public works law and
28 deliberately fails or refuses to comply with its provisions." A person's knowledge of the

1 law is imputed to him and an unlawful intent may be inferred from the doing of an
2 unlawful act. *People v. McLaughlin* (1952) 111 Cal.App.2d 781.

3
4 4. The uncontested testimony and exhibits presented by Complainant
5 establishes that CEDAR DEVELOPMENT knew of its legal obligations on the
6 *Porterville Developmental Center* project when it accepted a contract with Awarding
7 Body State of California – Department of Developmental Services. Deputy Gentry
8 testified that her investigation revealed that the express terms of the contract between
9 CEDAR DEVELOPMENT and the State for this project provided specific instructions to
10 CEDAR DEVELOPMENT to maintain accurate payroll records and to pay prevailing
11 wages as well as the penalty for non-compliance. Thus, CEDAR DEVELOPMENT was
12 put on notice from the inception of the *Porterville Developmental Center* project of its
13 legal obligations. CEDAR DEVELOPMENT’S violations on this project are “willful”
14 because CEDAR DEVELOPMENT knowingly paid much lower wage rates to its
15 workers than reflected on the CPRs submitted to the Awarding Body, the General
16 Contractor and the DLSE, under penalty of perjury. CEDAR DEVELOPMENT also
17 failed to pay overtime as required and failed to make travel and subsistence payments, in
18 “willful” violation of Labor Code §1815 and the public works laws.

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20 5. The evidence also supports a finding that CEDAR DEVELOPMENT
21 knowingly failed to pay prevailing wage rates on the *San Gabriel River Bike Trail*
22 *Project*. Like the *Porterville Developmental Center* project, CEDAR DEVELOPMENT
23 paid one rate to the worker and then represented, under penalty of perjury to the

1 Awarding Body, the General Contractor and to the DLSE, on the CPRs, that it paid the
2 proper (and higher) prevailing wage rate. This conduct shows that CEDAR
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4 DEVELOPMENT knew the proper rate that was required to be paid on this project but
5 deliberately chose not to pay it. By failing to pay the proper wage rate to the workers, as
6 reflected on the CPRs submitted to the Awarding Body, General Contractor and the
7
8 DLSE, CEDAR DEVELOPMENT "willfully" violated Labor Code §1774. Likewise, by
9 failing to provide Deputy Cheung with legible CPRs, as required, CEDAR
10 DEVELOPMENT also "willfully" violated Labor Code §1776(g).

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12 **Violation of the Public Works Laws With an Intent to Defraud**

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14 6. The uncontested evidence supports a finding that CEDAR
15 DEVELOPMENT also violated the Public Works laws with "intent to defraud."
16 California Code of Regulations, Title 8, Section 16800 defines "**Intent to Fraud**" as "the
17 intent to deceive another person or entity, as defined in this article, and to induce such
18 other person or entity, in reliance upon such deception, to assume, create, transfer, alter
19 or terminate a right, obligation or power with reference to property of any kind." Intent
20 to deceive or defraud can be inferred from the facts. *People v. Kiperman* (1977) 69
21 Cal.App.Supp. 25. Additionally, an unlawful intent can be inferred from the doing of an
22 unlawful act. *People v. McLaughlin, supra*.

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26 7. The uncontested evidence presented establishes that CEDAR
27 DEVELOPMENT submitted CPRs, under penalty of perjury, to the Awarding Body,
28 General Contractor and to the DLSE, with "intent to defraud." Evidence was presented

1 that the workers' check stubs did not match the information on the CPRs. The check
2 stubs showed that workers were paid much lower hourly rates than the required
3 prevailing wage rate for the type of work performed and were not paid overtime.
4 Additionally, the hours on the paycheck stubs also did not match the hours listed on the
5 CPRs submitted by CEDAR DEVELOPMENT. The evidence establishes that CEDAR
6 DEVELOPMENT was attempting to deceive the Awarding Body, General Contractor
7 and the DLSE into believing that proper prevailing wage rates and overtime were paid
8 and that the CPRs accurately reflected the amount of hours worked by the workers. As
9 such, CEDAR DEVELOPMENT intended to defraud the Awarding Body, General
10 Contractor and the DLSE.
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15 9. Based on the foregoing circumstances, the proper period of debarment for
16 purposes of the sanctions mandated by Labor Code §1777.1 and California Code of
17 Regulations, Title 8, Section 16802(a), is three (3) years. The debarment applies to
18 Respondents CEDAR DEVELOPMENT CORPORATION, A California Corporation as
19 well as to SERGHON GABRIEL AFRAM, RMO, CEO, President and sole owner of
20 CEDAR DEVELOPMENT CORPORATION, who was responsible for authorizing the
21 fraudulent submission of CPRs to the Awarding Body, General Contractor and the DLSE
22 and who failed to ensure that all workers on the public works projects discussed herein,
23 were paid the proper prevailing wage rates and overtime, and other benefits provided for
24 under the collective bargaining agreements for such projects.
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ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered that Respondents CEDAR DEVELOPMENT CORPORATION, A California Corporation and SERGHON GABRIEL AFRAM, RMO, CEO, President and sole owner of CEDAR DEVELOPMENT CORPORATION, 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 by Labor Code §§1720, 1720.2 and 1720.3, for a period of three (3) years, effective August 5, 2009. A three year period is appropriate under these circumstances where Respondents CEDAR DEVELOPMENT CORPORATION, A California Corporation and SERGHON GABRIEL AFRAM, RMO, CEO, President and sole owner of CEDAR DEVELOPMENT CORPORATION deliberately and with complete disregard of the public works laws failed to pay their workers proper prevailing wage rates, applicable overtime, travel and subsistence benefits and knowingly and intentionally submitted false certified payroll reports under penalty of perjury.

This debarment shall also apply to any other contractor or subcontractor in which Respondents CEDAR DEVELOPMENT CORPORATION, A California Corporation and SERGHON GABRIEL AFRAM, RMO, CEO, President and sole owner of CEDAR DEVELOPMENT CORPORATION have any interest or for which either Respondent acts as a responsible managing employee, responsible managing officer, general partner, manager, supervisor, owner, partner, officer, employee, agent,

1 consultant, or representative. As defined under Labor Code §1777.1(f), “ ‘Any interest’
2 includes, but is not limited to, all instances where the debarred contractor or
3 subcontractor [Respondents] receive payments, whether cash or any other form of
4 compensation, from any entity bidding or performing work on the public works project,
5 or enters into any contracts or agreements with the entity bidding or performing work on
6 the public works project for services performed or to be performed for contracts that have
7 been or will be assigned or sublet, or for vehicles, tools, equipment or supplies that have
8 been or will be sold, rented or leased during the period of from the initiation of the
9 debarment proceedings until the end of the term of the debarment period.”
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15 Dated: June 16, 2009


16 EDNA GARCIA EARLEY
17 Hearing Officer
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 West Fourth Street #430, Los Angeles, CA 90013.

On June 17, 2009, I served the foregoing document described as PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS [Labor Code §1777.1], on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, addressed as follows:

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Mira Loma CA 91752


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Division of Labor Standards Enforcement
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5555 California Avenue #200
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Department of Industrial Relations
State of California
300 Oceangate, Suite 850
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By Mail: I am readily familiar with the firm's business practices 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 with postage fully prepaid thereon.

Executed this 17th day of June, 2009, at Los Angeles, California, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Randi Guerrero