

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

In the Matter of the Request for Review of:

**Zusser Company, Inc.**

Case No. 19-0134-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Zusser Company, Inc. (Zusser) submitted a request for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on March 11, 2019, with respect to work Zusser performed on the LADWP Lagoon Refurbishment (Project) for the Metropolitan Water District of Southern California (Awarding Body or MWD) in Los Angeles County.<sup>1</sup> The Assessment determined that the following amounts were due: \$209,439.87 in unpaid prevailing wages,<sup>2</sup> \$277,600.00 in Labor Code section 1775 statutory penalties,<sup>3</sup> \$150.00 in section 1813 statutory penalties, and \$60,000.00 in section 1777.7 statutory penalties.

A Hearing on the Merits occurred in Los Angeles, California, before Hearing Officer Ann Wu on November 20, 2019, October 23, 2020, October 28, 2020, and June 16, 2021. <sup>4</sup> Thomas Kovacich of the law firm Atkinson, Andelson, Loya, Ruud & Romo appeared as counsel for Zusser. Lance Grucela appeared as counsel for DLSE. Labor

---

<sup>1</sup> LADWP is the Los Angeles Department of Water and Power.

<sup>2</sup> The Assessment found \$207,714.55 in unpaid wages and \$1,725.32 in unpaid training fund contributions, for a total of \$209,439.87 unpaid prevailing wages.

<sup>3</sup> All subsequent section references are to the California Labor Code, unless specified otherwise.

<sup>4</sup> On the first day of hearing, the parties requested bifurcation of the issue of the proper classification of the workers who performed the piping work on the project. The Hearing Officer denied the parties' request as there was no procedural basis for bifurcation of the issues. On the third day of hearing, Zusser renewed its request for bifurcation; the Hearing Officer denied the request.

Relations Representative Reisee Salamero testified in support of the Assessment.<sup>5</sup> Zusser Chief Financial Officer Mikhail (Misha) Fyodorov testified for Zusser. DLSE Exhibit Numbers 1 through 19, 21, and 25 through 38 were admitted into evidence, as well as Zusser Exhibits A, C, D, and G through O. The parties filed simultaneous closing briefs on August 3, 2021. Zusser filed an optional reply brief on August 17, 2021. The matter was submitted for decision on August 17, 2021.

Prior to the Hearing on the Merits, DLSE presented an amended audit that lowered the unpaid prevailing wages from \$207,714.55 to \$188,363.85.<sup>6</sup> The amended audit made no changes to the unpaid training fund contributions of \$1,725.32, the section 1775 statutory penalties of \$277,600.00, the section 1813 statutory penalties of \$150.00, or the section 1777.7 statutory penalties of \$60,000.00. At the Hearing, DLSE moved to amend the Assessment accordingly. There being no objection or prejudice to Zusser, the Hearing Officer granted the motion.

Prior to the Hearing on the Merits, the parties stipulated to the following:

- The work subject to the Civil Wage and Penalty Assessment was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
- The Assessment was served timely.
- The Request for Review was filed timely.
- The enforcement file was requested and produced in a timely fashion.
- No back wages were paid nor deposit made with the Department of Industrial Relations as a result of the Assessment.

---

<sup>5</sup> As of November 20, 2019, the first day of hearing, Salamero was employed by DLSE as a Labor Relations Representative. She left her employment with DLSE as of March 31, 2020, and thereafter became employed by the Department of State Hospitals as an Employee Relations Analyst.

<sup>6</sup> The audit was revised downwards due to additional credit provided to Zusser for fringe benefits attributed to workers Eduardo Martinez and Joshua Rodriguez.

The issues for decision are:

- Whether Zusser timely paid its employees the correct prevailing wage for all hours worked on the Project.
- Whether Zusser classified workers properly for all work performed on the Project.
- Whether Zusser paid the required overtime premium rates to employees on the Project.
- Whether Zusser paid the required training fund contributions for all hours worked on the Project.
- Whether Zusser took credit properly towards the prevailing wage payment requirement for fringe benefit contributions it made.
- Whether Zusser is liable for penalties assessed pursuant to sections 1775 and 1813.
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to section 1775.
- Whether Zusser is liable for liquidated damages on wages found due and owing.
- Whether Zusser submitted contract award information to all applicable apprenticeship committees in a timely and factually sufficient manner.
- Whether Zusser employed apprentices in the required minimum ratio of apprentices to journeypersons on the Project.
- Whether Zusser is liable for penalties assessed pursuant to section 1777.7.
- Whether the Labor Commissioner abused her discretion in assessing penalties pursuant to section 1777.7.

For the reasons set forth below, the Director of Industrial Relations finds that, for the most part, DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Assessment, and that Zusser failed to carry its burden of proving the basis for the Assessment was incorrect. (See Cal. Code Regs.,

tit. 8, § 17250, subds. (a), (b).) Accordingly, the Director issues this Decision affirming and modifying the Assessment.

## FACTS

### The Project.

The Awarding Body advertised the Project for bid on October 6, 2014. (DLSE Exhibit No. 11, p. 237.) The notice inviting bids summarized the work as follows:

The work consists of construction of approximately 7,000 feet of 6-inch to 8-inch PVC pipe, 500 feet of 2-inch PVC pipe, 1,700 feet of utility ductbanks [sic], and three maintenance holes; modification of two existing maintenance holes; installation of two standpipes, five submersible pumps and two turbidity meters; on-site screening of approximately 6,100 cubic yards of underdrain rock; disposal of approximately 2,000 cubic yards of hazardous material; installation of approximately 12,500 cubic yards of crushed rock; refurbishment of existing decant valve structures for four lagoons including asbestos and PCB abatement; installation of local electrical panels and a utility cabinet; and other appurtenant work as specified and shown on the drawings.

(*Ibid.*) The notice inviting bids specified that the successful bidder shall comply with the California Labor Code, including prevailing wage requirements. (*Ibid.*) The lagoons are on property owned by LADWP, and the project is to refurbish the lagoons for use by MWD's Joseph Jensen Water Treatment Plant (Jensen Plant).<sup>7</sup> (DLSE Exhibit No. 12, pp. 238-239.)

---

<sup>7</sup> MWD's Jensen Plant, located in Granada Hills, treats water from the State Water Project and delivers water to service areas in the water distribution system. (DLSE Exhibit No. 12, p. 238.) In December of 2012, LADWP and MWD entered into an agreement enabling MWD to use four existing solids lagoons on the grounds of LADWP's Aqueduct Filtration Plant for a period of 50 years, for the purpose of increasing the Jensen Plant's capacity to process the solids collected by its sedimentation basins. (*Ibid.*) At that time, MWD was utilizing a temporary solids transfer system to transport solids to two existing lagoons on the LADWP property. (*Ibid.*) Although the Awarding Body for the lagoon refurbishment project is MWD, LADWP agreed to reimburse MWD for the cost of the Project. (DLSE Exhibit No. 12, pp. 238-244.) The lagoon refurbishment project is the second component of the construction of MWD's new solids handling system; the first component of MWD's solids handling system included the construction of a solids transfer pipeline from the Jensen Plant to the lagoons that was under construction at the time MWD awarded the lagoon refurbishment project to Zusser. (DLSE Exhibit No. 12, pp. 238-239.) In that regard, MWD awarded a construction contract in July of 2014 for the construction of a solids transfer system to convey thickened residual solids from the Jensen Plant to the additional four LADWP lagoons. (*Ibid.*)

The successful bidder was Zusser, which entered into a contract with the Awarding Body on or about January 13, 2015.<sup>8</sup> (DLSE Exhibit No. 10, pp. 218-219.) Zusser had workers on the Project from July 27, 2015 to August 22, 2017.<sup>9</sup> (DLSE Exhibit No. 25, pp. 806-895.) On September 28, 2017, the Awarding Body acknowledged completion of the Project, and a Notice of Completion was recorded in the Official Records of the Los Angeles County Registrar-Recorder/County Clerk's Office on October 4, 2017. (DLSE Exhibit No. 13, p. 245.)

#### The Public Works Complaint.

On July 25, 2018, DLSE received a complaint against Zusser from employee Eduardo Martinez. He alleged non-payment and/or underpayment of wages, worker misclassification, and failure to pay fringe benefits for work he performed on the Project. (DLSE Exhibit No. 6, pp. 163-164.) Salamero conducted an investigation of the complaint.

#### The Prevailing Wage Rate Determinations.

DLSE contends that Zusser misclassified workers who performed pipe work on the Project, such that those workers should be reclassified within the Plumber classification from the subclassifications of Sewer and Storm Drain Pipelayer (Pipelayer) and Sewer and Storm Drain Pipe Tradesman (Pipe Tradesman), to the subclassification of Plumber, Industrial and General Pipefitter (Industrial Pipefitter). Accordingly, the prevailing wage determination (PWD) at issue in this matter is that of Plumber, LOS-2014-2 (Plumber).<sup>10</sup> (DLSE Exhibit No. 14, p. 247.) The applicable scope of work for the

---

<sup>8</sup> Of the five bids received by the Awarding Body, Zusser was the lowest bidder on the project, with a bid of \$3,067,900. (DLSE Exhibit No. 12, pp. 238, 239, 242.) The four higher bids ranged from approximately \$3.2 million to \$4.3 million, and the engineer's estimate for the project was \$3,452,582. (*Ibid.*)

<sup>9</sup> Salamero testified that Zusser had workers on the Project from August 3, 2015 to August 22, 2017. However, the Certified Payroll Records show that workers first worked on the Project on July 27, 2015. (DLSE Exhibit No. 25, p. 806.)

<sup>10</sup> The basic hourly rate for Plumber: Sewer and Storm Drain Pipelayer is \$32.24, with hourly fringe benefit payments of \$17.75, not including training fund contributions of \$1.33, for a total hourly rate of \$51.32. (DLSE Exhibit No. 14, p. 247.) The basic hourly rate for Plumber: Sewer and Storm Drain Pipe Tradesman is \$16.55, with hourly fringe benefit payments of \$9.03, not including training fund

Industrial Pipefitter subclassification includes, in relevant part: "A.1.36 All piping in connection with central distributing filtration treatment stations, boosting stations, waste sewage disposal plants, central chlorination and chemical treatment work and all underground supply lines to cooling wells, suction basins, filter basins, settling basins and aeration basins." (DLSE Exhibit No. 15, p. 259.) The applicable scope of work for the Sewer and Storm Drain subclassification includes, in relevant part: "D.5.10 All sewer, storm drain, and underground piping inside property lines, but which is outside of the building."<sup>11</sup> (DLSE Exhibit No. 15, p. 269.)

DLSE contends that Zusser also misclassified and underpaid other workers on the Project. Accordingly, the other PWDs at issue in this case are those of Operating Engineer, SC-23-63-2-2014-2 (Operating Engineer) (DLSE Exhibit No. 16, pp. 273-276),<sup>12</sup> Laborer (SC-23-102-2-2014-1 (Laborer) (DLSE Exhibit No. 17, p. 299-301),<sup>13</sup>

---

contributions of \$0.76, for a total hourly of \$26.34. (*Ibid.*) The basic hourly rate for Plumber: Plumber, Industrial and General Pipefitter is \$41.68, with hourly fringe benefit payments of \$22.74, not including training fund contributions of \$1.60, for a totally hourly rate of \$66.02. (*Ibid.*) The subclassifications of Plumber, Industrial and General Pipefitter and Sewer and Storm Drain Pipelayer are subject to predetermined increases, and the Plumber craft is apprenticeable. (*Id.* at pp. 247-248, 251-252.) There was no particular allocation for the predetermined increases for the Plumber, Industrial and General Pipefitter subclassification effective July 1, 2015, July 1, 2016, or July 1, 2017. (*Id.* at pp. 251-252.) For the Sewer and Storm Drain Pipelayer subclassification, there was no particular application for the predetermined increases effective July 1, 2015 or July 1, 2016, but the predetermined increase effective July 1, 2017 was allocated as follows: \$1.30 to the base hourly rate, \$0.10 to pension, \$0.22 to vacation, \$0.10 to training funds, and \$0.15 to other. (*Ibid.*)

<sup>11</sup> The Sewer and Storm Drain scope of work provisions do not distinguish between the Pipelayer or Pipe Tradesman subclassifications. (See DLSE Exhibit No. 15, pp. 253-272.) Salamero testified that the Pipe Tradesman assists the Pipelayer as a helper.

<sup>12</sup> The basic hourly rate for Laborer Group 1 was \$30.19, with hourly fringe benefit payments of \$18.05, not including training fund contributions of \$0.64, for a total hourly rate of \$58.88. (DLSE Exhibit No. 17, p. 299.) This was an apprenticeable craft. (*Ibid.*)

<sup>13</sup> The basic hourly rate for Laborer Group 1 was \$30.19, with hourly fringe benefit payments of \$18.05, not including training fund contributions of \$0.64, for a total hourly rate of \$58.88. (DLSE Exhibit No. 17, p. 299.) This was an apprenticeable craft. (*Ibid.*)

and Cement Mason, SC-23-203-2-2014-1 (Cement Mason) (DLSE Exhibit No. 18, pp. 312-313).<sup>14</sup>

The Assessment.

The Assessment found that Zusser misclassified and underpaid workers on the Project, underpaid fringe benefits and training fund contributions on behalf of its workers on the Project, and underpaid overtime premiums. It also found that Zusser failed to timely submit contract award information to the applicable committees for the classification of Plumber and Cement Mason, and failed to timely request dispatch of apprentices to the applicable committees for those classifications and for the Laborer classification. Finally, it found that Zusser failed to employ any apprentices on the Project for the classifications of Plumber and Cement Mason, that it did not employ Laborer apprentices in the required ratio, and employed apprentices without journeyman supervision. Altogether, the Assessment found that Zusser underpaid the required prevailing wages in the amount of \$188,363.85, and underpaid training fund contributions in the amount of \$1,725.32. The Assessment imposed section 1775 penalties of \$277,600.00, section 1813 penalties of \$150.00, and section 1777.7 penalties of \$60,000.00.

Investigation of Labor Relations Representative Salamero and DLSE's Exhibits.

Labor Relations Representative Salamero conducted an investigation of the Project and issued the Assessment against Zusser on March 11, 2019. (DLSE Exhibit No. 3, pp. 16-26.) As set forth in the Penalty Review, in the investigation, Salamero used the contract and project specifications provided by MWD, the certified payroll records (CPRs) and supporting documentation provided by Zusser,<sup>15</sup> the scope of work

---

<sup>14</sup> The basic hourly rate for Cement Mason was \$31.85, with hourly fringe benefit payments of \$21.25, not including training fund contributions of \$0.55, for a total hourly rate of \$53.65. (DLSE Exhibit No. 18, p. 312.) The Cement Mason was subject to predetermined increases and is apprenticeable. (*Id.*, at pp. 312-313.)

<sup>15</sup> The certified payroll records provided by Zusser lacked the declaration under penalty of perjury required by section 1776. (See DLSE Exhibit No. 25, pp. 806-895.) At Salamero's request, Zusser provided copies of paystubs, documentation of fringe benefit payments and explanation of same, documentation of restitution payments to workers classified as Operating Engineers, and copies of

provisions for the Plumber classification and subclassifications as well as the classifications of Operating Engineer and Laborer, along with the applicable PWDs. Also, Salamero used information provided by Zusser employees as to the work they performed on the Project. As a result of the investigation, Salamero determined that Zusser misclassified workers who performed piping work as Sewer and Storm Drain Pipelayers and Pipe Tradesman, and underpaid them, when they should have been classified and paid as Industrial Pipefitters on the Project.<sup>16</sup> In addition, Zusser misclassified and underpaid workers who performed work in the Operating Engineer and Laborer classifications, Zusser underpaid workers classified as Cement Masons, and Zusser employed Laborer apprentices without journey person supervision. (DLSE Exhibit No. 1, pp. 8-14; DLSE Exhibit No. 10, pp. 177-236; DLSE Exhibit No. 14, pp. 246-252; DLSE Exhibit No. 15, pp. 253-272; DLSE Exhibit No. 16, pp. 273-298; DLSE Exhibit No. 17, pp. 299-311; DLSE Exhibit No. 19, pp. 319-415; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 896-1295; DLSE Exhibit No. 30, pp. 1367-1673; DLSE Exhibit No. 32.) Because of the misclassifications, Salamero reclassified John Atwood, Jose Jesus Dorado aka Jose Martinez, Anton Fyodorov, Mikhail Fyodorov,<sup>17</sup> Javier Garcia,

---

cancelled checks. (See DLSE Exhibit No. 26, pp. 896-1295; DLSE Exhibit No. 27, pp. 1296-1335; DLSE Exhibit No. 28, pp. 1336-1354; DLSE Exhibit No. 29, pp. 1355-1366; DLSE Exhibit No. 30, pp. 1367-1673.) Salamero accepted Zusser's documentation of these payments, and relied on the CPRs and Zusser's documentation in conducting the audit.

<sup>16</sup> Salamero testified that the workers she interviewed during the course of her investigation told her that the Project was part of the Jensen Plant filtration system, and that her understanding of the Project was that the lagoons were connected to the Jensen Plant. After issuance of the Assessment, Zusser asserted that the Jensen Plant is not connected to the Lagoons, such that reclassification of employees for the piping work was inappropriate. (DLSE Exhibit No. 31, pp. 1674-1676.) In response, Salamero performed a Google search of the Project and located, on the MWD website, the MWD Board of Directors Engineering and Operations Committee Board Meeting memo dated 1/13/2015. (DLSE Exhibit No. 12, pp. 238-244.) The memo, which confirmed that the Jensen Plant and the lagoons were part of the same water filtration system, further reinforced Salamero's rationale for reclassification of the piping work performed on the Project.

<sup>17</sup> Salamero testified that she did not include in her audit any hours worked by Misha Fyodorov or Larissa Sass, as they are the owners of Zusser. She included in her audit hours worked by Mikhail Fyodorov. Salamero was unaware that Misha is a diminutive of the name Mikhail at the time she conducted her investigation, and she conceded that Mikhail "Misha" Fyodorov should be excluded from the audit.



Juan Lopez a.k.a. John Betancourt, Eduardo Martinez, Carmelo Ortiz, and Cipriano Ponce, for the piping work they performed on the Project from Pipelayers and Pipe Tradesman to Industrial Pipefitters.<sup>18, 19</sup> (*Ibid.*)

With regard to Operating Engineer and Laborer work, Salamero reclassified several workers. Salamero reclassified Eduardo Martinez to Operating Engineer Group 6 and Laborer Group 1 for the work he performed in those classifications, reclassified Dorado to Operating Engineer Group 8 for the work he performed in that classification, reclassified Ponce to Operating Engineer Group 6 and Laborer Groups 3 and 5 for the work he performed in those classifications. (*Ibid.*) Salamero determined that Darrell Coppenger, Gilbert Valenzuela, and Tomas Martinez were properly classified as Cement Masons, but were underpaid the correct prevailing wage rates. (DLSE Exhibit No. 4, pp. 92-96, 99, 144, 160; DLSE Exhibit No. 18, pp. 312-313; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 969-976, 1027-1033, 1267-1272; DLSE Exhibit No. 30, pp. 1367-1673.) Finally, Salamero upgraded Oscar Gomezacruz from apprentice to journey level Laborer for the work he performed while no journey level Laborer was on site. (DLSE Exhibit No. 1, p. 9; DLSE Exhibit No. 4, pp. 92-96, 123-124; DLSE Exhibit No. 25, pp. 813-819, 830, 832.) To calculate the amount of underpayment of wages by Zusser due to the reclassifications and underpayments, Salamero utilized the applicable PWDs, gave credit for wage payments made by Zusser as recorded on the CPRs and supported by the paystubs and cancelled checks for those workers, and placed the amount of total wages due those workers on the Amended Public Works Audit Worksheet (Amended Audit Worksheet) and the Public Works Investigation Worksheets

---

<sup>18</sup> Salamero utilized the hours set forth on the CPRs for each worker, with the exception of Cipriano Ponce who provided a daily log of his hours worked and a description of the work he performed. (DLSE Exhibit No. 1, p. 8; DLSE Exhibit No. 21, pp. 505-514.)

<sup>19</sup> Workers will be referred to by their last name, except that workers with the same last name will be referred to by their first and last name. In addition, Anton Fyodorov is referred to by his first and last name to distinguish him from Mikhail "Misha" Fyodorov an owner and not a worker, who is referred to as Fyodorov.

(Investigation Worksheets) she prepared.<sup>20</sup> (DLSE Exhibit No. 4, pp. 92-161; DLSE Exhibit No. 14, pp. 246-252; DLSE Exhibit No. 15, pp. 253-272; DLSE Exhibit No. 16, pp. 273-298; DLSE Exhibit No. 17, pp. 299-311; DLSE Exhibit No. 18, pp. 312-313; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 969-976, 1027-1033, 1267-1272; DLSE Exhibit No. 30, pp. 1367-1673.)

According to the Penalty Review and Amended Audit Worksheet, Salamero found six instances where Zusser underpaid overtime premiums on the Project. (DLSE Exhibit No. 1, p. 1; DLSE Exhibit No. 4, pp. 92-96, 106-109, 114-117, 125-131, 145-146.) Based on Amended Audit Worksheets and Investigation Worksheets, as well as the CPRs and supporting paystubs, the underpayment of overtime premiums resulted from the reclassification of workers to Industrial Pipefitter. (DLSE Exhibit No. 4, pp. 92-96, 106-109, 114-117, 125-131, 145-146; DLSE Exhibit No. 25, pp. 835-836; DLSE Exhibit No. 26, pp. 938-964, 1049-1174; 1220-1258.) The workers affected by the underpayment of overtime premiums were Dorado, Fyodorov,<sup>21</sup> Lopez, and Ortiz. (*Ibid.*)

Salamero testified that she found underpayment of fringe benefits resulting from the reclassification of workers who performed piping work as well as the upgrading of the Laborer apprentice working on site without journeyman supervision. Salamero gave credit to Zusser for the fringe benefit amounts as stated on the paystubs and

---

<sup>20</sup> Zusser made restitution payments to Lopez, Joshua Rodriguez, Ponce, and Jose Martinez for Operating Engineer work. (DLSE Exhibit No. 29, pp. 1355-1366.) Salamero provided credit to Zusser for these restitution payments. (DLSE Exhibit No. 1, p. 9.)

<sup>21</sup> Mikhail "Misha" Fyodorov later removed from the audit.

supported by the additional documentation provided by Zusser.<sup>22, 23</sup> (DLSE Exhibit No. 1, pp. 8-15; DLSE Exhibit No. 4, pp. 92-161; DLSE Exhibit No. 5, p. 162; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 896-1295; DLSE Exhibit No. 27, pp. 1296-1335; DLSE Exhibit No. 28, pp. 1336-1354.)

As reflected in the Amended Audit Worksheet, and supported by the Investigation Worksheets, Salamero determined that Zusser owed \$188,363.85 in unpaid wages. (DLSE Exhibit No. 4, pp. 92-161.) This amount represents the total amount of the underpayment of prevailing wages for the workers who were reclassified as Industrial Pipefitters, Operating Engineers and Laborers, the workers who were underpaid as Cement Masons, the Laborer apprentice who was upgraded to Laborer journeyman, as well as the underpayment of fringe benefits and overtime premiums for all of the workers on the Project. (*Ibid.*)

According to the Amended Audit Worksheet, Salamero found underpayment of training fund contributions for seven workers. The workers were as follows: Coppenger, Dorado, Tomas Martinez, Ortiz, Ponce, Rodriguez, and Valenzuela.<sup>24</sup> (DLSE Exhibit No. 4, p. 92-96.) Salamero testified that she determined the required training fund

---

<sup>22</sup> Salamero determined the hourly rate attributed to health and welfare benefits by annualizing Zusser's payments to Health Net and Aetna on behalf of the workers. (DLSE Exhibit No. 27, pp. 1296-1335.) Salamero explained that she obtained the hourly rate for each worker by taking the monthly health premium Zusser paid for the worker and dividing it by 177.33, which represents the hours worked per month based on 2080 hours worked per year. Salamero accepted Zusser's explanation that the Health Net and Aetna premiums were paid by the Zusser Health and Welfare Trust, and that the account balances in the Trust for each worker were later transferred to the Principal Financial Group retirement accounts for each worker. Fyodorov explained another way to calculate the annualization of the medical insurance, which is to take the monthly premium, multiply it by 12 months, and then divide by 2080 hours to obtain the cost per hour. Both methods achieve the same result.

<sup>23</sup> Salamero explained that she gave Zusser additional credit for fringe benefits based on the amounts in each worker's individual accounts with Principal Financial Group. (DLSE Exhibit No. 1, pp. 8-15; DLSE Exhibit No. 5, p. 162.)

<sup>24</sup> Although Salamero testified during cross-examination that the underpayment of training fund contributions resulted from the reclassification of workers to Industrial Pipefitters, it is noted that the Amended Audit Worksheet indicated that training fund contributions were also owed for other workers who were not reclassified as Industrial Pipefitters. (DLSE Exhibit No. 4, p. 92-96.)

contributions per classification, and that she gave Zusser credit for payments it made to the California Apprenticeship Council (CAC) and to the Associated General Contractors of America (AGC), San Diego Chapter, Inc., Training and Apprenticeship Trust Fund. (DLSE Exhibit No. 14, pp. 246-252; DLSE Exhibit No. 15, pp. 253-272; DLSE Exhibit No. 16, pp. 273-298; DLSE Exhibit No. 17, pp. 299-311; DLSE Exhibit No. 18, pp. 312-313; DLSE Exhibit No. 35, pp. 1824-1846.) As reflected in the Penalty Review and Amended Audit Worksheet, Salamero determined that Zusser owed a total of \$1,725.32 in unpaid training fund contributions. (DLSE Exhibit No. 1, pp. 1-15; DLSE Exhibit No. 4, p. 92-96.)

Salamero testified that the Senior Deputy Labor Commissioner assessed penalties under section 1775 of \$200.00 per day for underpayment of wages.<sup>25</sup> (DLSE Exhibit No. 1, pp. 2, 15; DLSE Exhibit No. 2, p. 21.) Salamero identified 1388 days where Zusser underpaid its workers. (*Ibid.*; DLSE Exhibit No. 4, pp. 92-96.) Accordingly, Salamero determined that penalties under section 1775 totaled \$277,600.00 ( $\$200.00 \times 1388 = \$27,600$ ). (*Ibid.*)

In addition, Salamero testified that she assessed penalties under section 1813 of \$25.00 per day for underpayment of overtime. (DLSE Exhibit No. 1, p. 1; DLSE Exhibit No. 4, pp. 92-96.) Salamero determined that the penalties under section 1813 at the \$25.00 rate totaled \$150.00, indicating that she identified six days where Zusser failed to pay overtime premium rates to its workers. (*Ibid.*)

With regard to the apprenticeship violations, Salamero determined that Zusser submitted contract award information (DAS 140 form) to the applicable apprenticeship committees for the Laborer and Operating Engineer classifications but did not submit contract award information to the applicable apprenticeship committees for the Plumber

---

<sup>25</sup> Salamero listed Zusser's prior history of prevailing wage violations in the Penalty Review she prepared. (DLSE Exhibit No. 1, p. 15.) In three prior cases against Zusser, DLSE issued assessments for unpaid or underpaid wages and training fund contributions, as well as penalties under sections 1775, 1813, and 1777.7. (*Ibid.*) Salamero testified that she considered the prior assessments against Zusser as constituting prior history. She conceded that there is no prior decision by the Director of Industrial Relations finding that Zusser violated prevailing wage or apprenticeship requirements.

and Cement Mason classifications. Also, Zusser did not submit requests for dispatch (DAS 142 form) to the applicable apprenticeship committees for the classifications of Laborers, Plumber and Cement Mason.<sup>26</sup> (DLSE Exhibit No. 1, p. 6.) These determinations were based on several sources: (1) search results Salamero obtained from the Department of Industrial Relations website of the applicable apprenticeship programs in the geographic area of the Project; (2) her review of documentation provided by Zusser including the Public Works Contract Award Information, Requests for Dispatch of Apprentices, and facsimile transmission verification reports and emails; and (3) her email communications with the Southern California Chapter of the Associated Builders and Contractors, Inc. Plumbers U.A.C.<sup>27</sup> (DLSE Exhibit No. 33, pp. 1801-1805; DLSE Exhibit No. 34, pp. 1806-1807, pp. 1808-1822.)

Using the CPRs, Salamero determined the total journeyperson hours worked for each classification of worker employed on the Project. She applied the 1:5 ratio of apprentice to journey level hours to determine the minimum number of apprentice hours required on the Project. (DLSE Exhibit No. 1, pp. 6-8.) Salamero determined that Zusser did not employ any apprentices on the Project for the classifications of Plumber and Cement Masons, and that Zusser did not employ sufficient apprentices for the Laborer classification to meet the minimum number of apprentice hours required in the

---

<sup>26</sup> As indicated in the Penalty Review, for the Operating Engineer classification, Zusser is exempt from the requirements of requesting dispatch of apprentices and from having to meet the 1:5 apprentice to journeyperson hourly ratio.

<sup>27</sup> Salamero explained that although Zusser submitted Contract Award Information to the San Diego Associated General Contractor J.A.C. for the classifications of Operating Engineer, Laborer, Carpenter, and Cement Mason, as well as a Request for Dispatch to the San Diego Associated General Contractor J.A.C. for Laborer apprentices, the San Diego Associated General Contractor J.A.C. is not an applicable apprenticeship committee for these classifications for the geographic region of Los Angeles County. (DLSE Exhibit No. 33, pp. 1801-1805; DLSE Exhibit No. 34, pp. 1814-1816, pp. 1818-1822.) Salamero also explained that Zusser is not a signatory to any apprenticeship committees given that Zusser checked off Box No. 3 on the DAS 140 forms. (DLSE Exhibit No. 34, pp. 1808, 1810, 1812, 1818-1821.) Based on the DAS 140 forms provided by Zusser, it is not signatory to any apprenticeship committees for the classifications of Operating Engineer, Laborer, Carpenter, or Cement Mason. (*Ibid.*) Zusser did not provide any DAS 140 form that was submitted to any applicable apprenticeship committees for the Plumber classification. (See DLSE Exhibit No. 34, pp. 1806-1822.)

Project.<sup>28</sup> (DLSE Exhibit No. 1, pp. 6-8, 14-15.) Salamero testified that the basis for the apprenticeship violations in the Assessment was Zusser's failure to submit contract award information and requests for dispatch to the applicable apprenticeship committees for the Plumber classification.<sup>29</sup> As reflected in the Penalty Review, Salamero determined that there were 750 apprenticeship violations between August 3, 2015, and August 22, 2017. <sup>30</sup> (DLSE Exhibit No. 1, pp. 1, 6-7.)

Salamero testified that the Senior Deputy Labor Commissioner assessed penalties under section 1777.7 of \$80.00 per day for apprenticeship violations.<sup>31</sup> (DLSE Exhibit No. 1, p. 2.) Based on the 750 days of apprenticeship violations she identified in the Penalty Review, Salamero determined that the penalties under section 1777.7 totaled \$60,000.00 (\$80.00 x 750 = \$60,000). (DLSE Exhibit No. 1, pp. 1-2.)

Testimony of Chief Financial Officer Fyodorov and Zusser Exhibits.

Fyodorov testified that he is the Chief Financial Officer and Secretary for Zusser, a non-union contractor in business since 2005. He is an estimator, a project manager, and he also performs labor on various projects. As an estimator, Fyodorov selects public works projects, attends preconstruction meetings, reviews plan specifications, and

---

<sup>28</sup> As set forth in the Penalty Review, Zusser employed Laborer apprentices for 482 hours, but the minimum required number of Laborer apprentice hours was 751 hours based on the 3,757 hours worked by journey level Laborers on the Project. (DLSE Exhibit No. 1, p. 6.)

<sup>29</sup> Salamero explained that DLSE does not stack penalties. Although Zusser did not submit contract award information to the applicable apprenticeship committees for the Plumber or Cement Mason classifications, Zusser did not submit requests for dispatch to the applicable apprenticeship committees for the Laborer, Plumber or Cement Mason, and Zusser did not satisfy the minimum number of apprenticeship hours for the Laborer, Plumber or Cement Mason classifications, Salamero based the apprenticeship violation solely on Zusser's failure to submit contractor award information and requests for dispatch for the Plumber classification.

<sup>30</sup> The CPRs show the first day of work on the Project was July 27, 2015, and workers classified as Pipe Tradesman and "Hourly Wage Pipe", Operating Engineer and Laborer were on site that day. (DLSE Exhibit No. 25, p. 806.)

<sup>31</sup> Salamero listed Zusser's prior history of apprenticeship violations in the Penalty Review she prepared. (DLSE Exhibit No. 1, p. 15.)

estimates the project for labor, material, and equipment costs. Fyodorov was the estimator for the Project, and he prepared the bid.

Fyodorov disagreed with the reclassification of the piping work performed on the Project. He testified that three weeks after he received the Assessment, he emailed Salamero with his explanation of why the piping work performed on the Project was correctly classified under the Sewer and Storm Drain subclassification, rather than the Industrial Pipefitter subclassification. (DLSE Exhibit No. 31, pp. 1674-1676.) In his email, Fyodorov advised Salamero that the lagoons belong to LADWP, not MWD, and that the lagoons were not connected to MWD's Jensen Plant.<sup>32</sup> (*Id.* at p. 1675.) Fyodorov testified that the Project had nothing to do with the Jensen Plant.

According to Fyodorov, the scope of work described in the Industrial Pipefitter subclassification describes work typically contained in a water filtration plant. But the work performed on the Project did not involve work inside a water filtration plant, and that the lagoons were located about a mile away from Jensen Plant. Fyodorov further testified that the scope of work described in the Sewer and Storm Drain subclassification as including "all sewer, storm drain, and underground piping inside property lines but which is outside of the building" was a "perfect" description of work that was done at the lagoons.<sup>33</sup> Fyodorov testified regarding the sequence of work Zusser performed on the lagoons, including digging trenches, lining the trenches with

---

<sup>32</sup> Salamero testified that after she received Fyodorov's email, she obtained the MWD Board of Directors Engineering and Operations Committee Board Meeting memo dated 1/13/2015. (DLSE Exhibit No. 12, pp. 238-244.) According to this memo, the lagoon refurbishment project awarded to Zusser was the second component of the construction of MWD's new solids handling system. (*Ibid.*) The first component was construction of a solids transfer pipeline to convey thickened residual solids from the Jensen Plant to the four LADWP lagoons. (*Ibid.*) Fyodorov testified that at the time he was doing work on the Project, he had no idea whether the lagoons were connected to Jensen Plant, and that he had no understanding of the connection between Jensen Plant and the lagoons or the purpose of the lagoon refurbishment project. On cross-examination, Fyodorov testified that storm drain water is one of the sources of water into the lagoon, and that he did not know the other source of water into the lagoons. He also testified on cross-examination that he would not be surprised to learn that the purpose of the lagoons are to handle the solids discharge from the Jensen Plant.

<sup>33</sup> However, Fyodorov testified that the piping work Zusser performed on the Project was not inside the property lines of the Jensen Plant.

filter fabric, placing solid and perforated pipe into the trenches, constructing the maintenance holes, backfilling the lagoons with drainage rock, as well as establishing the required elevation of the lagoons for the capacity and flow of the water.<sup>34</sup> (Zusser Exhibit L, p. 2; Zusser Exhibit O, Eddi [sic] Martinez Pictures pp. 1-11, Zusser Project Pictures pp. 1-6.) Fyodorov testified that he was unable to persuade Salamero on the reclassification of piping work.

With regard to the reclassification issue, Fyodorov testified that he never saw any scope of work from MWD requiring any work on the Project be performed by Industrial Pipefitters. According to Fyodorov, there was no discussion in preconstruction meetings regarding the utilization of Industrial Pipefitters, the MWD project inspector did not take issue with the classification of workers as Pipe Tradesman when approving extra work (Zusser Exhibit K), and Zusser's CPRs were not rejected because Zusser failed to classify workers as Industrial Pipefitters. In addition, Fyodorov testified that the employment agreements signed by Zusser's workers and the individual timesheets provided by Zusser show that Zusser correctly classified the workers under the Sewer and Storm Drain subclassification for the piping work. (Zusser Exhibit N.) On cross-examination, Fyodorov conceded that he did not discuss the classification of workers on the Project with the Awarding Body, and that he did not request a Director's determination on the scope of work of the Project. Although the notice inviting bids indicated that a pre-bid conference would be held at the Jensen Plant, Fyodorov testified that the pre-bid conference took place at the lagoons. (DLSE Exhibit 10, p. 184; DLSE Exhibit No. 11, p. 237.)

According to Fyodorov, Zusser made various fringe benefit payments on behalf of the workers on the Project. It made health and welfare payments to the Zusser Health and Welfare Trust for journey level workers, and the AGC Health and Welfare

---

<sup>34</sup> Fyodorov explained that the purpose of drainage rock is to filter sediments from the water that goes into the lagoon, so that clean water percolates into the ground down to the water table.



Trust for Laborer apprentices (Zusser Exhibit C).<sup>35</sup> Also, it made payments to the Zusser Prevailing Wage Pension Plan administered by the Principal Financial Group (Zusser Exhibits C, D, and G),<sup>36</sup> and payments to Health Net and Aetna for medical benefits (Zusser Exhibit J). Fyodorov testified that Zusser made training fund contributions to the CAC and the AGC Training and Apprenticeship Trust Fund. (Zusser Exhibit H.) Fyodorov believed that Salamero gave Zusser credit for the amount of wages listed on the CPRs, as well as credit for health and welfare payments and pension payments paid by Zusser, and training fund contributions made to the CAC and AGC Training and Apprenticeship Trust Fund on behalf of workers on the Project. (Zusser Exhibit H.) However, Fyodorov testified that he did not understand Salamero's credit calculations for the pension payments. (See DLSE Exhibit No. 5, p. 162.)

Fyodorov testified that Zusser submitted DAS 140 forms to all of the applicable apprenticeship programs that existed at the time of the bid advertisement.<sup>37</sup> (Zusser Exhibit I; compare with DLSE Exhibit No. 34, pp. 1806-1822.) According to Fyodorov, he was responsible for preparing the DAS 142 forms on behalf of Zusser, and testified that only Laborer apprentices were dispatched to the Project.

## **DISCUSSION**

The California Prevailing Wage Law (CPWL), set forth at Labor Code sections 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects. The purpose of the CPWL was summarized by the California Supreme Court in one case as follows:

---

<sup>35</sup> Fyodorov testified that Zusser was a participant in the AGC apprenticeship program, and that Zusser employed Laborer apprentices on the project.

<sup>36</sup> On cross-examination, Fyodorov testified that Zusser made pension contributions on an annual basis prior to 2017, and that Zusser made pension contributions on a quarterly basis beginning in 2017, except that the first two quarters of 2017 were combined in one payment.

<sup>37</sup> Zusser failed to provide any documentation of the applicable apprenticeship committees at the time of the bid advertisement. (Compare DLSE Exhibit No. 33, pp. 1801-1805.)

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, supra*, at p. 985.) Section 1775, subdivision (a), requires that contractors and subcontractors pay the difference to workers who were paid less than the prevailing wage rate, and prescribes penalties for failing to pay the prevailing wage rate. Section 1742.1, subdivision (a), provides for the imposition of liquidated damages (essentially a doubling of the unpaid wages) if the unpaid wages are not paid within 60 days following 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 or subcontractor may appeal the assessment by filing a request for review under section 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 presenting 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).)

DLSE Presented Prima Facie Evidence in Support of the Assessment.

The documentary and testimonial evidence in this case is generally undisputed. DLSE based its Assessment that Zusser misclassified and underpaid wages on the CPRs and supporting information provided by Zusser, the information provided by the Awarding Body and individual workers on the Project, and the applicable scope of work provisions and PWDs for the worker classifications at issue.

Every employer in the on-site construction industry, whether the project is a public work or not, must keep accurate information with respect to each employee. Industrial Welfare Commission (IWC) Wage Order No. 16-2001, which applies to on-site occupations in the construction industry, provides as follows:

Every employer who has control over wages, hours, or working conditions, must keep accurate information with respect to each employee including . . . name, home address, occupation, and social security number . . . [t]ime records showing when the employee begins and ends each work period . . . [t]otal wages paid each payroll period . . . [and] [t]otal hours worked during the payroll period and applicable rates of pay . . . .

(Cal. Code Regs., tit. 8, § 11160, subd. (6)(A).) Also, the employer must furnish each employee with an itemized statement in writing showing all deductions from wages at the time of each payment of wages. (Cal. Code Regs., tit. 8, § 11160, subd. (6)(B); see also Lab. Code, § 226.) Employers on public works have the additional requirement to keep accurate certified payroll records. (§ 1776; Cal. Code Regs., tit. 8, § 11160, subd. (6)(D).) Those records must reflect, among other information, “the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey[person], apprentice, worker, or other employee employed by him or her in connection with the public work.” (§ 1776, subd. (a).)

In this case, DLSE presented prima facie support for the underpayment of wages to workers on the Project. With regard to DLSE’s reclassification of Sewer and Storm

Drain Pipelayers and Sewer and Storm Drain Pipe Tradesman to Industrial Pipefitters, DLSE relied on the CPRs which showed that Zusser classified its workers who performed piping work as Pipelayers and Pipe Tradesman, the scopes of work for the Plumber subclassifications, as well as Salamero's understanding that the scope of work for the Project was to refurbish the lagoons connected to the Joseph Jensen Water Treatment Plant. Salamero's understanding was based on information provided to her by both the Awarding Body and by the workers she interviewed. (DLSE Exhibit No. 1, p. 8; DLSE Exhibit No. 10, pp. 177-236; DLSE Exhibit No. 11, p. 237; DLSE Exhibit No. 14, pp. 246-252.) The scope of work for the Industrial Pipefitter subclassification includes "[a]ll piping in connection with central distributing filtration treatment stations, boosting stations, waste sewage disposal plants, central chlorination and chemical treatment work and all underground supply lines to cooling wells, suction basins, filter basins, settling basins and aeration basins." MWD's Jensen Plant is a water treatment plant that delivers water into the water distribution system. (DLSE Exhibit No. 12, p. 238). As part of its water treatment process, Jensen Plant transfers solids through a pipeline to the lagoons on the LADWP's Aqueduct Filtration Plant.<sup>38</sup> (*Id.* at pp. 238-239.) For these reasons, the piping work underneath the drainage rock in the lagoons constituted piping in connection with a central distributing filtration treatment station as well as underground supply lines to filter basins.

Based on these facts, DLSE's reliance on the CPRs and supporting documentation concerning the hours and hourly rate paid to the workers who performed piping work, along with the PWD for the Industrial Pipefitter subclassification, DLSE met its burden to present evidence showing prima facie support for the finding in the Assessment that Zusser underpaid prevailing wages based on worker misclassification for piping work performed by Atwood, Dorado, Anton Fyodorov, Javier Garcia, Lopez, Eduardo Martinez, Ortiz, and Ponce.<sup>39</sup> (DLSE Exhibit No. 1, pp. 8-14; DLSE Exhibit No. 4, pp. 92-

---

<sup>38</sup> Fyodorov testified at hearing that the drainage rock in the lagoons filter sediments thus cleaning the water that then percolates into the ground down to the water table.

<sup>39</sup> As the owner of Zusser, Fyodorov should not have been included in the DLSE's audit.

161; DLSE Exhibit No. 10, pp. 177-236; DLSE Exhibit No. 14, pp. 246-252; DLSE Exhibit No. 15, pp. 253-272; DLSE Exhibit No. 16, pp. 273-298; DLSE Exhibit No. 17, pp. 299-311; DLSE Exhibit No. 19, pp. 319-415; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 969-976, 1027-1033, 1267-1272; DLSE Exhibit No. 30, pp. 1367-1673; DLSE Exhibit No. 32.)

DLSE also made out a prima facie case with regard to the reclassifications of other workers. It was appropriate to reclassify Eduardo Martinez to Operating Engineer Group 6 and Laborer Group 1, Dorado to Operating Engineer Group 8, and Ponce to Operating Engineer Group 6 and Laborer Groups 3 and 5, for the work these workers performed in those classifications. DLSE relied on the CPRs and supporting documentation concerning the hours and hourly rate paid to these workers, as well as the information provided to Salamero by these workers in the course of her investigation, along with the applicable scope of work provisions and PWDs for the Operating Engineer and Laborer classifications. (*Ibid.*) DLSE's conclusion is reflected in the Penalty Review and the Amended Audit Worksheet. (DLSE Exhibit No. 1, pp. 8-14; DLSE Exhibit No. 4, pp. 92-96.)

DLSE also provided prima facie support for the underpayment of Coppenger, Valenzuela, and Tomas Martinez for their work as Cement Masons. As stated in the Penalty Review and Amended Audit Worksheet, and as supported by the CPRs and other wage documentation along with the PWD for the Cement Mason classification, these workers were classified as Cement Masons but were paid less than the applicable prevailing wage rate-s of \$32.30 per hour. (DLSE Exhibit No. 1, pp. 8-14; DLSE Exhibit No. 4, pp. 92-96, 99, 144, 160; DLSE Exhibit No. 18, pp. 312-313; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 969-976, 1027-1033, 1267-1272; DLSE Exhibit No. 30, pp. 1367-1673.) Specifically, these workers were paid \$31.85 per hour, an underpayment of \$0.45 per hour. (DLSE Exhibit No. 4, pp. 99, 144, 160.)

DLSE established a prima facie case for the upgrade of Gomezacruz from Laborer apprentice to journey level Laborer. Using the CPRs, Salamero determined that Gomezacruz worked on the Project as a Laborer apprentice without journey person

supervision. (DLSE Exhibit No. 1, p. 9; DLSE Exhibit No. 4, pp. 92-96, 123-124; DLSE Exhibit No. 25, pp. 813-819, 830, 832.)

DLSE also relied on the CPRs and supporting pay records, as well as the applicable PWDs to show that Zusser underpaid overtime premium rates during the Project due to the reclassifications of Dorado, Lopez, and Ortiz.<sup>40</sup> (DLSE Exhibit No. 1, p. 1; DLSE Exhibit No. 4, pp. 92-96, 106-109, 114-117, 125-131, 145-146; DLSE Exhibit No. 25, pp. 835-836; DLSE Exhibit No. 26, pp. 938-964, 1049-1174; 1220-1258.) Based on these facts, the record shows prima facie support for DLSE's finding that Zusser failed to pay required overtime rates.

DLSE made out a prima facie case that Zusser did not make required fringe benefit payments on the Project. First, Zusser failed to make any payments to a bona fide pension plan until after the Project was over. Second, Salamero testified that she found underpayment of fringe benefits resulting from the reclassification of Industrial Pipefitters and the upgrading of Gomezacruz from apprentice to journey level Laborer for work he performed on site without journey person supervision. Although DLSE argued that Zusser was not entitled to any credit for pension payments, Salamero gave credit to Zusser for the pension amounts and for the health and welfare benefit amounts stated on the paystubs and supported by the additional documentation provided by Zusser. (DLSE Exhibit No. 1, pp. 8-15; DLSE Exhibit No. 4, pp. 92-161; DLSE Exhibit No. 5, p. 162; DLSE Exhibit No. 25, pp. 806-895; DLSE Exhibit No. 26, pp. 896-1295; DLSE Exhibit No. 27, pp. 1296-1335; DLSE Exhibit No. 28, pp. 1336-1354.)

DLSE established prima facie support for Zusser's underpayment of training fund contributions. As summarized in the Amended Audit Worksheet, and supported by the CPRs, the applicable PWDs, and Zusser's documentation of training fund contributions paid to the CAC and to the AGC Training and Apprenticeship Trust, Zusser underpaid training fund contributions for workers Coppenger, Dorado, Tomas Martinez, Ortiz,

---

<sup>40</sup> For the reasons explained above, Fyodorov should not have been included in the DLSE's audit with regard to overtime. According to the Amended Audit Worksheet and Investigation Worksheets, there were two instances where Fyodorov was underpaid overtime premium rates. (DLSE Exhibit No. 4, pp. 92-96, 114-117.)

Ponce, Rodriguez, and Valenzuela. (DLSE Exhibit No. 14, pp. 246-252; DLSE Exhibit No. 15, pp. 253-272; DLSE Exhibit No. 16, pp. 273-298; DLSE Exhibit No. 17, pp. 299-311; DLSE Exhibit No. 18, pp. 312-313; DLSE Exhibit No. 35, pp. 1824-1846.) These facts present evidence showing prima facie support for DLSE's finding that Zusser failed to make the required training fund contributions.

Zusser Failed to Carry Its Burden of Proof to Show the Assessment Was Incorrect as to the Underpayment of Wages and Fringe Benefits.

The single prevailing rate of pay for a given "craft, classification, or type of work" is determined by the Director of Industrial Relations in accordance with the standards set forth in section 1773. (*Sheet Metal Workers Intern. Ass'n, Local Union No. 104 v. Rea* (2007) 153 Cal.App.4th 1071, 1082) (*Sheet Metal Workers*). The Director determines the rate for each locality in which public work is performed (as defined in section 1724), and publishes a general prevailing wage determination (PWD) for a craft, such as Tree Trimmer or Laborer, to inform all interested parties and the public of the applicable prevailing wage rates. (§ 1773.) Contractors and subcontractors are deemed to have constructive notice of the applicable prevailing wage rates. (*Division of Labor Standards Enforcement v. Ericsson Information Systems* (1990) 221 Cal.App.3d 114, 125 (*Ericsson*).)

Ultimately, the Director's PWDs determine the proper pay classification for a type of work. The nature of the work actually performed, not the title or classification of the worker, is determinative of the rate that must be paid. The Department publishes an advisory scope of work for each craft or worker classification for which it issues a PWD. The decision about which craft or classification is appropriate for the type of work requires comparison of the scope of work contained in the PWD with the actual work duties performed.

In response to DLSE's prima facie showing that the piping work was in the scope of work for the Industrial Pipefitter subclassification rather than the Sewer and Storm Drain Pipelayer and Sewer and Storm Drain Pipe Tradesman subclassifications, Zusser argued that the work it performed on the lagoons was not connected to the water

treatment functions performed by the Jensen Plant, and that Salamero was mistaken in her belief that the lagoons were part of the Jensen Plant.<sup>41</sup> Zusser's argument was undercut by its description of the Project in its Closing Brief:

Zusser was awarded a construction contract by Metropolitan Water Department ("MWD") to refurbish four existing solids lagoons on property owned by the Los Angeles Department of Water and Power ("LADWP"). The nearby Jensen [sic] Water Treatment Plant ("JWTP") exclusively treats water and delivers to MWD for distribution. Residual solids collected from the JWTP's sedimentation basins were previously thickened onsite, transported via a temporary solids transfer system, and then air-dried at two nearby lagoons on LADWP property. (See Exs. 10 and 12.)

Solids produced at the JWTP also were discharged in the City of Los Angeles Sanitary Sewer System. However, sewer disposal is expensive and is limited by the "discharge permit." (See Ex. 12.)

To solve this problem MSD sought to refurbish 4 lagoons owned by LADWP . . .

(Zusser Closing Brief, 2:4-14.) This description contradicts Fyodorov's testimony that he was unaware of the connection between Jensen Plant and the lagoons, the purpose of the lagoon refurbishment project, or the sources of water into the lagoons. Zusser contends that it "performed no work outside of the lagoons nor was there any pipeline connection with any outside facility including the JWTP." (*Id.* at 3:1-2.) However, Salamero testified that the workers she interviewed during the course of her investigation advised her that the lagoons were part of the Jensen Plant. This is further supported by MWD's description of the lagoon project as the second component of the construction of MWD's new solids handling system, with the first component of the solids handling system being the construction of a solids transfer pipeline from the Jensen Plant to the four LADWP lagoons to be refurbished for MWD use.<sup>42</sup> (DLSE

---

<sup>41</sup> Zusser appears to rely on the reclassification of Industrial Pipefitters to dispute the entirety of the Assessment. However, as discussed above, the Assessment is not solely based on the reclassification of Industrial Pipefitters.

<sup>42</sup> Zusser takes issues with DLSE Exhibit No. 12, the MWD Board of Directors Engineering and Operations Committee Board Meeting memo dated January 13, 2015, which Salamero obtained from the MWD website after Fyodorov received the Assessment and emailed her advising that the Jensen Plant was not



Exhibit No. 12, pp. 238-239.) Fyodorov's self-serving testimony that he had no understanding of the connection between Jensen Plant and the lagoons or of the purpose of the lagoon refurbishment project must be discounted, particularly in light of his admission that he would not be surprised to learn that the purpose of the lagoons was to handle the solids discharge from the Jensen Plant.

The evidence shows that the four lagoons refurbished by Zusser on the Project were connected to the Jensen Plant by a solids transfer pipeline, and that the purpose of connecting the lagoons was to allow Jensen Plant to increase its capacity to process the solids collected by its sedimentation basins as part of its treatment of water. Accordingly, the piping work on the Project constituted piping work in connection with a central distributing filtration treatment station that falls under the Industrial Pipefitter scope of work. The lagoons are connected to the Jensen Plant, and constitute an integral part of its water treatment function. There is no credible evidence that the piping work performed on the lagoons was related to sewer or storm drain piping work.<sup>43</sup> Based on the scopes of work for the Plumber subclassifications and the totality of the evidence, the reclassification of workers from Sewer and Storm Drain Pipelayer and Sewer and Storm Drain Pipe Tradesman to Industrial Pipefitter was proper.

Zusser does not dispute DLSE's reclassification of workers who performed work in the Operating Engineer and Laborer classifications, and does not dispute DLSE's determination that Zusser underpaid workers classified as Cement Masons. While Zusser argues that Gomezacruz was always supervised on the Project by a journey level Laborer or Sewer and Storm Drain Pipelayer, the CPRs show that he was classified as a Laborer apprentice and that he worked without supervision by a journey level Laborer.

---

connected to the lagoons. (DLSE Exhibit No. 31, pp. 1674-1676.) It is undisputed that Salamero did not consider DLSE Exhibit No. 12 in issuing the Assessment. Instead, Salamero testified that she relied on the information she obtained from the workers during the course of the investigation that the lagoons were connected to the Jensen Plant. Salamero testified that DLSE Exhibit No. 12 further reinforced her reasoning for her reclassification of the workers who performed piping work on the Project.

<sup>43</sup> To the extent that Zusser contends that the Sewer and Storm Drain subclassifications is applicable because it covers all underground piping work inside property lines, there is no evidence that the four lagoons are within the property lines of MWD. Instead, the evidence shows that the four lagoons are located on the property of LADWP. (See DLSE Exhibit No. 12, p. 238.)

Zusser offers no legal or factual support for its contention that a Laborer apprentice may be appropriately supervised by a journey level Plumber.

Zusser offers no argument with regard to DLSE's finding of underpayment of overtime premium rates. The underpayment of overtime premium results from the misclassification of Sewer and Storm Drain Pipelayers and Sewer and Storm Drain Pipe Tradesman. For the reasons stated above, Zusser has not met its burden of proof with regard to DLSE's reclassification of workers to Industrial Pipefitter.

Zusser contends that it paid the correct amount of fringe benefits based on its classification of workers on the Project. DLSE's determination of underpayment of fringe benefits is based on the reclassification of Industrial Pipefitters and the reclassification of Gomezacruz from Laborer apprentice to Laborer journey person. As discussed previously, Zusser failed to meet its burden of proving that the reclassification of workers was incorrect. Zusser also failed to meet its burden of proving that DLSE's calculation of underpaid fringe benefits and application of credit for Zusser's fringe benefit payments were incorrect.

For these reasons, with regard to the wages and fringe benefits, Zusser failed its "burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect." (Cal. Code Regs., tit. 8, § 17250, subd. (b).) Accordingly, the Assessment with regard to unpaid prevailing wages is affirmed and modified to exclude Fyodorov, such that Zusser is liable for \$171,476.08 in unpaid wages and fringe benefits.<sup>44</sup>

Zusser Failed to Carry Its Burden of Proof to Show the Assessment Was Incorrect as to Failure to Pay Training Fund Contributions.

Section 1777.5, subdivision (m)(1), requires contractors on public works projects who employ journeypersons or apprentices in any apprenticeable craft to pay training fund contributions to the CAC or to an apprenticeship committee approved by the Division of Apprenticeship Standards (DAS). DLSE stated a prima facie case of underpayment of training fund contributions for Coppenger, Dorado, Tomas Martinez,

---

<sup>44</sup> This is the amount of the total unpaid wages and fringe benefits identified in the Amended Audit Worksheet, \$188,363.85, less the \$16,887.77 in unpaid wages and fringe benefits attributed to Fyodorov. (DLSE Exhibit No. 4, p. 92.)

Ortiz, Ponce, and Rodriguez. Zusser contends that it correctly paid training fund contributions based on its classification of Sewer and Storm Drain Pipelayer and Sewer and Storm Drain Pipe Tradesman. However, for the reasons stated previously, Zusser has not met its burden of proving that DLSE's reclassification of workers was incorrect. Moreover, the CPRs show that Coppenger and Tomas Martinez were classified as Cement Masons, Ortiz was classified as a Laborer, and Rodriguez was classified as a Laborer and Operating Engineer. Zusser does not address the underpayment of training fund contributions for these workers who were not reclassified as Industrial Pipefitter. Therefore, Zusser failed its burden of showing that the Assessment is incorrect as to its failure to pay training fund contributions, and Zusser is therefore liable for underpaid training fund contributions in the amount of \$1,725.32. (Cal. Code Regs., tit. 8, § 17250, subd. (b).)

Zusser Failed to Prove the Labor Commissioner Abused Her Discretion in Assessing Penalties 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 contractor . . . 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 . . .
- (ii) The penalty may not be less than eighty dollars (\$80) . . . if the contractor . . . 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>45</sup>

. . .

- (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

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).)

---

<sup>45</sup> Section 1777.1 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 refuses to comply with its provisions."

DLSE assessed section 1775 penalties at the rate of \$200.00. The burden was on Zusser to prove that DLSE abused its discretion in setting the penalty amount under section 1775. Although Zusser disputed that it had misclassified workers for the piping work or that it had underpaid wages, fringe benefits, or training fund contributions, it provided no compelling or probative evidence establishing that the workers had not been misclassified or underpaid, for the reasons addressed above. While Zusser argued that there were no prior Director's decisions finding that Zusser violated prevailing wage requirements, it is undisputed that DLSE had previously issued two assessments against Zusser for prevailing wage violations prior to the acceptance date of this Project. Zusser provided no evidence of abuse of discretion by DLSE in its selection of the penalty rate.

Section 1775, subdivision (a)(2), grants the Labor Commissioner the discretion to mitigate the statutory maximum penalty per day in light of prescribed factors, but it does not mandate mitigation in all cases. Further, the Director is not free to substitute her own judgment. Zusser has not shown an abuse of discretion in the rate selected by the Labor Commissioner. Accordingly, the assessment of section 1775 penalties at the rate of \$200.00 is affirmed, except that the total amount must be reduced by the section 1775 penalties assessed on behalf of Fyodorov. Zusser is liable for section 1775 penalties in the amount of \$248,400.00.<sup>46</sup>

Zusser Failed to Carry Its Burden of Proof to Show the Assessment Was Incorrect as to Failure to Pay Overtime Premiums.

Section 1815 states:

[w]ork performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

Section 1813 states:

The contractor or any 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

---

<sup>46</sup> This amount is the total section 1775 penalties in the amount of \$277,600.00 less the \$29,200.00 in penalties attributed to Fyodorov. (DLSE Exhibit No. 4, pp. 92.)

of the contract by the . . . contractor . . . 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.

Section 1813 prescribes a penalty of \$25.00 per calendar day for each worker found to have worked overtime without having been paid at the applicable hourly overtime wage rate. DLSE's un rebutted evidence established four such violations by Zusser, as the two instances that Fyodorov was underpaid overtime premium rates must be subtracted. (DLSE Exhibit No. 4, p. 92.) Accordingly, the \$150.00 penalty under section 1813 is reduced to \$100.00.

Zusser Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, as follows:

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 . . .

At the time the Assessment was issued, 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 agreeing to waive liquidated damages). Under section 1742.1, subdivision (a), the contractor has 60 days to decide whether to pay the workers all or a portion of the wages assessed in the civil wage penalty assessment, and thereby avoid liability for liquidated damages on the amount of wages so paid. Under section 1742.1, subdivision (b), a contractor may entirely avert liability for liquidated damages if, within 60 days from issuance of the civil wage penalty assessment, the contractor deposits with the Department of Industrial Relations the full amount of the assessment of unpaid wages, including all statutory penalties.

In this case, Zusser neither paid any back wages in response to the Assessment, nor deposited with the Department the assessed wages and statutory penalties. Accordingly, Zusser is liable for liquidated damages under section 1742.1 for the unpaid prevailing wages found in this Decision in the amount of \$171,476.08.

Zusser Failed to Comply with the Apprenticeship Requirements of Section 1777.5.

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 CAC. (Cal. Code Regs., tit. 8, §§ 227 to 231.)

In general, and unless an exemption applies, 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. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) Prior to commencing work on a contract for public works, every contractor must submit contract award information to applicable apprenticeship programs that can supply apprentices to the project. (§ 1777.5, subd. (e).) "The information shall be provided to the applicable committees "within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed . . ." (Cal. Code Regs., tit. 8, § 230, subd. (a).) DAS has prepared a form, the DAS 140 form, that a contractor may use for that purpose.

A contractor does not violate the requirement to employ apprentices in the 1:5 ratio if it has properly requested dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatches apprentices during the pendency of the project, provided the contractor made the request in enough time to meet the required ratio. The request for dispatch must be made by "written notice of at least 72 hours (excluding Saturdays, Sundays, and holidays) before the date on which one or more apprentices are required." (Cal. Code Regs., tit. 8,

§ 230.1, subd. (a).) DAS has prepared another form, the DAS 142 form, that a contractor may use to request dispatch of apprentices from apprenticeship committees.

In this matter, the record demonstrates that Zusser violated the apprenticeship requirements. The Laborer, Plumber, Cement Mason, and Operating Engineer classifications are apprenticeable crafts, and it is undisputed that Zusser did not employ any apprentices for the Plumber and Cement Mason crafts, and that Zusser did not employ sufficient Laborer apprentices in the required ratio. It is also undisputed that Zusser did not submit contract award information to all of the applicable apprenticeship committees for the Plumber and Cement Mason crafts, and that Zusser did not request dispatch of apprentices to all applicable apprenticeship committees for any of the crafts. The basis for DLSE's assessment of apprenticeship violations was Zusser's failure to submit contract award information and requests for dispatch to the applicable apprenticeship committees for the Plumber classification.

Accordingly, the record establishes that Zusser violated the ratio requirement of section 1777.5 subdivision (g), the notice requirement of section 1777.5, subdivision (e), and the related regulations, sections 230 and 230.1. Therefore, Zusser is subject to penalties under section 1777.7.

Zusser Failed to Prove the Labor Commissioner Abused Her Discretion in Assessing Penalties Under Section 1777.7.

If a contractor "knowingly violate[s] Section 1777.5" a civil penalty is imposed under section 1777.7. Section 1777.7 provides, in relevant part:

(a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprentice training not being provided as required by this



chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

(§ 1777.7, subd. (a)(1).) The phrase quoted above -- "knowingly violated Section 1777.5" -- is defined by the 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 requirement 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, or the contractor had previously employed apprentices on a public works project.

(Cal. Code Regs., tit. 8, § 231, subd. (h).)

Failure to provide a contract award notice is a continuing violation for the duration of the work, starting no later than the first day in which the contractor has workers employed upon the public work, and ending when a notice of completion is filed by the awarding body. (Cal. Code Regs., tit. 8, § 230, subd. (a).) Penalties for that failure, as well as failure to meet the required 1:5 ratio, can be assessed "for each full calendar day of noncompliance . . ." (§ 1777.7, subd. (a)(1).) The determination of the Labor Commissioner as to the penalty is reviewable only for an abuse of discretion. (§ 1777.7, subd. (d).) A contractor or subcontractor has the same burden of proof with respect to the penalty determination as to the wage assessment, namely, the affected contractor has the burden of proving that the basis for assessment is incorrect. (Cal. Code Regs., tit. 8, § 17250, subd. (b).) Zusser did not submit contract award information to all of the applicable apprenticeship committees for the Plumber and Cement Mason crafts, and Zusser did not request dispatch of apprentices to all applicable apprenticeship committees for any of the crafts

DLSE calculates the calendar days of noncompliance with the ratio requirement based on the number of journey person calendar days of work on the Project in the craft at issue. Zusser "knowingly violated" the requirement of a 1:5 ratio of apprentice hours

to journey person hours because it employed no Plumber or Cement Mason apprentices, and employed insufficient Laborer apprentices. The irrebuttable presumption that Zusser knew or should have known of the apprenticeship requirements of section 1777.5 applies because Zusser was issued prior assessments for apprenticeship violations and because the notice of bid notified Zusser of its obligation to comply with the California Labor Code, including prevailing wage requirements. (DLSE Exhibit No. 11, p. 237.) Since Zusser was aware of its obligations under the law yet failed to submit contract award information or request for dispatch of apprentices to the applicable apprenticeship committees, Zusser failed to meet its burden of proof by providing evidence of compliance with section 1777.5. Since Zusser knowingly violated the law, a penalty should be imposed under section 1777.7.

DLSE imposed a penalty rate of \$80.00 per violation for 750 calendar days of noncompliance, based on the first day a Plumber worked on site at the Project, to the last day a Plumber worked on site according to the CPRs. (DLSE Exhibit No. 25, pp. 806, 895.) Zusser did not show an abuse of discretion under section 1777.7, subdivision (d), as to either the penalty rate or those number of days of violations as found in the Assessment. Accordingly, penalties at the rate of \$80.00 for 750 days in the amount of \$60,000.00 is affirmed.

Based on the foregoing, the Director makes the following findings:

### **FINDINGS AND ORDER**

1. The work subject to the Civil Wage and Penalty Assessment was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law, Labor Code sections 1720 through 1861.
2. The Labor Commissioner timely served the Civil Wage and Penalty Assessment.
3. The Request for Review was timely filed.

4. The Labor Commissioner's enforcement file was requested and produced in a timely fashion.
5. Zusser Company, Inc. did not timely pay its employees the correct prevailing wage rates for all hours worked on the LADWP Lagoon Refurbishment Project in the amount of \$171,476.08.
6. Zusser Company, Inc. did not properly classify workers for all work performed on the Project.
7. Zusser Company, Inc. did not properly pay the required overtime premium rates to workers on the Project.
8. Zusser Company, Inc. did not properly pay the required training fund contributions for all hours worked on the Project in the amount of \$1,725.32.
9. Zusser Company, Inc. was given credit towards the prevailing wage requirements for fringe benefit contributions.
10. Zusser Company, Inc. is liable for penalties assessed pursuant to Labor Code section 1775 in the amount of \$248,400.00.
11. Zusser Company, Inc. failed to establish that the Labor Commissioner abused her discretion in assessing penalties pursuant to section 1775.
12. Zusser Company, Inc. is liable for penalties assessed pursuant to Labor Code section 1813 in the amount of \$100.00.
13. Zusser Company, Inc. is liable for liquidated damages on wages found due and owing in the amount of \$171,476.08.
14. Zusser Company, Inc. failed to submit contract award information to all applicable apprenticeship committees for the crafts of Plumber and Cement Mason in a timely and factually sufficient manner.
15. Zusser Company, Inc. failed to employ apprentices in the required minimum ratio of apprentices to journeypersons on the Project for the crafts of Plumber, Cement Mason, and Laborer.

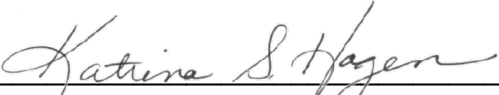
16. Zusser Company, Inc. is liable for penalties assessed pursuant to Labor Code section 1777.7 in the amount of \$60,000.00.
17. Zusser Company, Inc. failed to establish that the Labor Commissioner abused her discretion in assessing penalties pursuant to section 1777.7.
18. The amount found due under the Assessment is as follows:

<b>Basis of the Assessment</b>	<b>Amount</b>
Wages Due:	\$171,476.08
Training Fund Contributions Due:	\$ 1,725.32
Penalties under section 1775:	\$248,400.00
Penalties under section 1813:	\$ 100.00
Liquidated damages:	\$171,476.08
Penalties under section 1777.7	\$ 60,000.00
<b>TOTAL:</b>	<b>\$653,177.48</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 and modified as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 8/18/2022



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