

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)
14 Debarment Proceeding Against:)

Case No.: SAC 1037

15) **DECISION RE DEBARMENT OF**
16) **RESPONDENTS FROM PUBLIC**
17) **WORKS PROJECTS**

18 1-AMD CONSTRUCTION, INC.; GINA)
19 MORDOKI; ALBERTO MORDOKI;)
20 JACQUES MORDOKI; DIEGO)
21 MORDOKI; MIRELLA MORDOKI; and)
22 MARCELO FERNANDO MUSI,)

[Labor Code §1777.1]

23 Respondents.)
24)
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23 The attached Proposed Statement of Decision of Hearing Officer Edna Garcia
24 Earley, debarring 1-AMD CONSTRUCTION, INC., ALBERTO MORDOKI and
25 MIRELLA MORDOKI, from working on public works projects in the State of California
26 for three years, is hereby adopted by the Division of Labor Standards Enforcement as the
27 Decision in the above-captioned matter.

28 This Decision shall become effective March 16, 2009.

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IT IS SO ORDERED

Dated: January 27 2009 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

By: Angela Bradstreet
ANGELA BRADSTREET
State Labor Commissioner

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
5 not a party to the within action. My business address is DIVISION OF LABOR STANDARDS
6 ENFORCEMENT, Department of Industrial Relations, 320 W. 4th Street, Suite 430, Los Angeles, CA
7 90013.

8 On January 29, 2009, I served the following document described as:

9 **DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS**

10 on the interested parties in this action [SAC 1037] by placing

11 [] the originals

12 [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

13 Mirella Mordoki, Agent of Service
14 1-AMD CONSTRUCTION, INC.
15 5300 Beach Blvd., Suite 110-416
16 Buena Park, CA 90621

Alberto Mordoki
1-AMD CONSTRUCTION, INC.
5300 Beach Blvd., Suite 110-416
Buena Park, CA 90621

17 Gina Mordoki
1-AMD CONSTRUCTION, INC.
18 5300 Beach Blvd., Suite 110-416
19 Buena Park, CA 90621

Jacques Mordoki
1-AMD CONSTRUCTION, INC.
5300 Beach Blvd., Suite 110-416
Buena Park, CA 90621

20 Diego Mordoki
1-AMD CONSTRUCTION, INC.
21 5300 Beach Blvd., Suite 110-416
22 Buena Park, CA 90621

Mirella Mordoki
1-AMD CONSTRUCTION, INC.
5300 Beach Blvd., Suite 110-416
Buena Park, CA 90621

23 Marcelo Fernando Musi
1-AMD CONSTRUCTION, INC.
24 5300 Beach Blvd., Suite 110-416
25 Buena Park, CA 90621

David Cross, Esq.
Department of Industrial Relations
Division of Labor Standards Enforcement
2031 Howe Ave., Suite 100
Sacramento, CA 95825

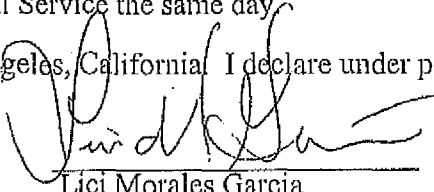
26 Lola Beavers, DLC
27 Department of Industrial Relations
28 Division of Labor Standards Enforcement
2031 Howe Ave., Suite 100
Sacramento, CA 95825

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BY MAIL I deposited such envelope in the United States Mail at Los Angeles, California, postage prepaid.

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

Executed on January 29, 2009 at Los Angeles, California. I declare under penalty of perjury the foregoing is true and correct.



Lici Morales Garcia

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 1037
14 Debarment Proceeding Against:)
15) **PROPOSED STATEMENT OF**
16) **DECISION RE DEBARMENT OF**
17) **RESPONDENTS FROM PUBLIC**
18) **WORKS PROJECTS**
19 1-AMD CONSTRUCTION, INC.; GINA) **[Labor Code §1777.1]**
20 MORDOKI; ALBERTO MORDOKI;)
21 JACQUES MORDOKI; DIEGO)
22 MORDOKI; MIRELLA MORDOKI; and)
23 MARCELO FERNANDO MUSI,) **Hearing Date: January 16, 2009**
24) **Time: 10:30 a.m.**
25) **Hearing Officer: Edna Garcia Earley**
26 Respondents.)
27)
28)

23 Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the
24 Division of Labor Standards Enforcement, State Labor Commissioner ("DLSE") on
25 November 3, 2008, by the filing of a *Statement of Alleged Violations* against the
26 following named Respondents: 1-AMD CONSTRUCTION, INC.; GINA MORDOKI;
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1 ALBERTO MORDOKI; JACQUES MORDOKI; DIEGO MORDOKI; MIRELLA
2 MORDOKI; and MARCELO FERNANDO MUSI.

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4 The hearing on the alleged violations was held on January 16, 2009 in Los
5 Angeles, California. All named Respondents were duly served with the *Notice of*
6 *Hearing and Statement of Alleged Violations* but only Respondent MARCELO
7 FERNANDO MUSI appeared for the hearing. Edna Garcia Earley served as the Hearing
8 Officer. David D. Cross, appeared on behalf of Complainant the Labor Commissioner,
9 Chief of the Division of Labor Standards Enforcement, Department of Industrial
10 Relations, State of California. Respondent MARCELO FERNANDO MUSI appeared on
11 behalf of himself only. Present as a witness for Complainant was Deputy Labor
12 Commissioner Lola Beavers ("Deputy Beavers").
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15 The hearing was tape recorded. The witnesses took the oath and evidence was
16 received. At the conclusion of the hearing, the matter was taken under submission.
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18 FINDINGS OF FACT

19 1. Respondent 1-AMD CONSTRUCTION INC., A California
20 corporation is a contractor licensed by the Contractor's State Licensing Board under
21 license number 787533 which is currently revoked. The Contractor's State License
22 Board's website lists Respondent MIRELLA MORDOKI as 1-AMD CONSTRUCTION
23 INC.'s CEO/President. Respondent MARCELO FERNANDO MUSI is listed as the
24 RMO with a disassociation date of July 26, 2007. Respondents GINA MORDOKI,
25 ALBERTO MORDOKI, JACQUES MORDOKI, and DIEGO MORDOKI are listed as
26 Officers of the corporation.
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1 2. Deputy Beavers has been a Deputy Labor Commissioner with the DLSE for
2 7 years in the Public Works unit.

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4 3. On October 13, 2006, Deputy Beavers issued a Civil Wage and Penalty
5 Assessment ("CWPA") to Respondent 1-AMD Construction, Inc. for work performed as
6 a subcontractor on the *Ventura County Fire Protection District* public works project
7 known as *Fire Communication Center Building*. Deputy Beavers testified that she issued
8 this CWPA after conducting an investigation concerning violations committed in 2005.
9 Specifically, Deputy Beavers testified that she interviewed and/or reviewed claims
10 submitted by at least seven 1-AMD CONSTRUCTION, INC. workers on this project.
11 Based on these interviews and her investigation, Deputy Beavers concluded that there
12 was underpayment of the prevailing wage for the type of work performed as Carpenters
13 and Drywallers. Additionally, the investigation revealed that check stubs submitted to
14 Deputy Beavers by the workers did not match Certified Payroll Records ("CPR")
15 submitted by Respondent 1-AMD CONSTRUCTION, INC. to the DLSE. One worker
16 who provided Deputy Beavers with an affidavit declared that Respondent ALBERT
17 MORDOKI instructed the workers to state they were paid prevailing wage rates if anyone
18 asked, despite being paid at least \$19 less than the prevailing wage rate for the type of
19 work performed. Another worker who received check stubs did not even appear on the
20 CPRs. Additionally, there was a rate increase for the work done that was not applied by
21 Respondent 1-AMD CONSTRUCTION, INC.
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27 4. On numerous occasions from August 3, 2006 through September 29, 2006,
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1 Deputy Beavers requested copies of the cancelled payroll checks for the project from
2 Respondents 1-AMD CONSTRUCTION, INC. and MIRELLA MORDOKI. Deputy
3 Beavers testified that she never received any response to any of her requests for the
4 cancelled checks.
5

6 5. Deputy Beavers testified that she concluded the aforementioned violations
7 were "willful" based on the following factors: (1) the records submitted by the workers
8 (paycheck stubs) did not match the Certified Payroll Records; (2) 1-AMD
9 CONSTRUCTION's complete failure to respond to any of Deputy Beaver's numerous
10 requests to submit information to substantiate what was on their payroll records; (3)
11 Workers' statements to her that they had been coached by Respondent ALBERTO
12 MORDOKI, if anyone asked them what they were paid, to respond that they were paid
13 the prevailing wage rates when in actuality they were paid \$10-\$19 less than what they
14 should have been paid.
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18 6. Based on the foregoing, Deputy Beavers issued a CWPA against
19 Respondent 1-AMD CONSTRUCTION, INC. for \$139,997.76 reflecting \$106,372.76 in
20 unpaid wages and \$33,625.00 in penalties assessed under Labor Code §1775 and §1813.
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22 7. Deputy Beavers also submitted copies of two written requests submitted by
23 The Office of Contract Compliance which administers the City of Los Angeles' Labor
24 Compliance Program ("City") to the DLSE requesting approval of assessments issued
25 against Respondent 1-AMD CONSTRUCTION, INC. on two different projects. In their
26 investigation of Respondent 1-AMD CONSTRUCTION, INC.'s business practices, the
27 City, like Deputy Beavers, determined that Respondent 1-AMD CONSTRUCTION, INC.
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1 failed to report the correct number of workers and days and hours worked on those
2 projects as well as failing to pay the proper prevailing wages to workers who performed
3 work on the projects. The City's request for approval of assessments to Respondent
4 1-AMD CONSTRUCTION, INC. on the projects it investigated, stated the following:
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6 AMD admitted non-payment of training fund contributions
7 and failure to utilize apprentices. AMD is aware that they
8 failed to pay the predetermined increases, and thus, underpaid
9 the prevailing wages on this project. However, these are
10 relatively minor concerns. What is of more concern are the
11 facts that AMD misclassified [sic] and intentionally
12 underpaid their workers while submitting falsified certified
13 payrolls which indicated that all workers were paid correctly.
14 Furthermore, AMD coached their workers to state that they
15 had been paid a certain wage which was significantly more
16 than they were actually paid. AMD submitted fraudulent
17 certified payrolls which did not accurately record either [sic]
18 the number of workers, the days and hours worked, or the
19 wages paid. AMD also submitted a fraudulent document to
20 "prove" that their employees were covered by workers'
21 compensation when, in fact, they had none.

22 8. When Respondent MARCELO FERNANDO MUSI was asked at the
23 hearing if he had any questions for Deputy Beavers regarding her testimony and the
24 evidence she had presented, he indicated that he had no idea what she was talking about.
25 When he was asked if he wanted to present his case or make any statements regarding the
26 case, he testified that he did not know anything about the alleged violations and did not
27 know what his responsibilities were in relation to Respondent 1-AMD
28 CONSTRUCTION, INC. He testified that he was a real estate agent in Las Vegas,
Nevada and in Florida and that he does not perform work in California. While he
admitted he obtained a California Contractor's State License, he testified that he only got

1 it "just to have it." Furthermore, Respondent MARCELO FERNANDO MUSI testified
2 that his only relationship with Respondent 1-AMD CONSTRUCTION, INC. was that he
3 was Respondent ALBERTO MORDOKI's friend. Upon further questioning, he admitted
4 he was an officer (RMO) but did not work with the company and had no role in the
5 company and did not know anything about contracting. Additionally, he testified that
6 when he heard Respondent ALBERTO MORDOKI was having trouble with the
7 company, he disassociated with the company.
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10 9. When asked by Complainant who ran 1-AMD CONSTRUCTION, INC.,
11 Respondent MARCELO FERNANDO MUSI testified that Respondent ALBERTO
12 MORDOKI and his wife, MIRELLA MORDOKI, ran the business. He did not know
13 what role the remaining named Respondents had in the company.
14

15 CONCLUSIONS OF LAW

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18 1. Labor Code §1777.1 provides:

19 (a) Whenever a contractor or subcontractor performing a
20 public works project pursuant to this chapter is found
21 by the Labor Commissioner to be in violation of this
22 chapter **with intent to defraud**, except Section 1777.5,
23 the contractor or subcontractor or a firm, corporation,
24 partnership, or association in which the contractor, or
25 subcontractor has any interest is ineligible for a period
26 of not less than one year or more than three years to do
27 either of the following:

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

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

- 12 (1) Bid on or be awarded a contract for a public
13 works project.
- 14 (2) Perform work as a subcontractor on a public
15 works project.

16 2. The evidence presented at the hearing does not establish any violation of
17 the Public Works laws by Respondent MARCELO FERNANDO MUSI. While
18 Respondent MARCELO FERNANDO MUSI is listed as the Responsible Managing
19 Officer (RMO) for the period of November 16, 2000 until his disassociation date of July
20 26, 2007, it was evident from his testimony that he did not understand his role as RMO
21 for Respondent 1-AMD CONSTRUCTION, INC. No evidence was presented by
22 Complainant or by Respondent MARCELO FERNANDO MUSI that he understood his
23 responsibilities as an RMO or that he had any involvement with the day to day operations
24 of the corporation, including selecting classifications, setting pay rates and other duties
25 associated with the compliance with California's Public Works laws. Accordingly, the
26 evidence presented does not support a finding that Respondent MARCELO FERNANDO
27 MUSI is in violation of the Public Works laws in connection with this project. Likewise,
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1 no evidence was presented that supports a finding that Respondents JACQUES
2 MORDOKI, DIEGO MORDOKI or GINA MORDOKI were involved in the day to day
3 operations of the corporation. As such, Respondents MARCELO FERNANDO MUSI,
4 JACQUES MORDOKI, DIEGO MORDOKI and GINA MORDOKI are all dismissed
5 from this proceeding.
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8 3. For the reasons explained below, the evidence presented does establish that
9 Respondents 1-AMD CONSTRUCTION, INC., ALBERTO MORDOKI and MIRELLA
10 MORDOKI violated the Public Works laws willfully and with intent to defraud.
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12 **"Willful" Violation of The Public Works Laws**

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14 4. The unrefuted evidence supports a finding that Respondents 1-AMD
15 CONSTRUCTION, INC., ALBERT MORDOKI, and MIRELLA MORDOKI
16 "willfully" violated Labor Code §§1774, 1815 and 1776. Under Labor Code §1771.1(c),
17 "A willful violation occurs when the contractor or subcontractor knew or reasonably
18 should have known of his or her obligations under the public works law and deliberately
19 fails or refuses to comply with its provisions." A person's knowledge of the law is
20 imputed to him and an unlawful intent may be inferred from the doing of an unlawful act.
21
22 *People v. McLaughlin* (1952) 111 Cal.App.2d 781.
23

24 5. The unrefuted testimony and exhibits presented by Complainant establishes
25 that Respondents ALBERT MORDOKI and MIRELLA MORDOKI were running the
26 corporation and making the decisions to violate the Public Works laws. In running the
27 company, they "willfully" violated Labor Code §1774 by failing to pay prevailing rates to
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1 its workers and "willfully" violated Labor Code §1815 by failing to pay the correct
2 overtime rate to its workers. Respondents 1-AMD CONSTRUCTION, INC., ALBERTO
3 MORDOKI and MIRELLA MORDOKI knew of their obligation to pay the proper
4 prevailing wage rate and correct overtime but deliberately failed to comply with such
5 laws as evidenced by the fact that Respondent ALBERTO MORDOKI "coached" the
6 workers to state they were properly paid for all hours if questioned by any third parties.
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9 The unrefuted evidence also establishes that Respondents 1-AMD
10 CONSTRUCTION, INC., ALBERTO MORDOKI and MIRELLA MORDOKI
11 "willfully" violated Labor Code §1776 by failing to maintain accurate payroll records.
12 By forwarding certified payroll records to the DLSE signed under penalty of perjury
13 which did not correspond with check stubs given to the workers and by not reporting all
14 the workers on those CPRs, Respondents 1-AMD CONSTRUCTION, ALBERTO
15 MORDOKI and MIRELLA MORDOKI, engaged in a deliberate refusal to comply with
16 the Public Works laws.
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19 Moreover, the evidence submitted by Complainant showing that the City of
20 Los Angeles' Labor Compliance Program also found Respondent 1-AMD
21 CONSTRUCTION, INC. to have violated the same Public Works laws on other projects
22 shows that Respondents 1-AMD CONSTRUCTION, INC., ALBERTO MORDOKI and
23 MIRELLA MORDOKI have a complete disregard for the Public Works laws and their
24 obligations under such laws.
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1 Violation of the Public Works Laws With an Intent to Defraud

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3 6. Respondents 1-AMD CONSTRUCTION, INC., ALBERTO MORDOKI
4 and MIRELLA MORDOKI also violated the Public Works laws with "intent to
5 defraud." California Code of Regulations, Title 8, Section 16800 defines "Intent to
6 Fraud" as "the intent to deceive another person or entity, as defined in this article, and to
7 induce such other person or entity, in reliance upon such deception, to assume, create,
8 transfer, alter or terminate a right, obligation or power with reference to property of any
9 kind." Intent to deceive or defraud can be inferred from the facts. *People v. Kiperman*
10 (1977) 69 Cal.App.Supp. 25. Additionally, an unlawful intent can be inferred from the
11 doing of an unlawful act. *People v. McLaughlin, supra.*
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15 7. The unrefuted evidence presented establishes that Respondents 1-AMD
16 CONSTRUCTION, INC., ALBERTO MORDOKI AND MIRELLA MORDOKI
17 submitted certified payroll records, under penalty of perjury, to the DLSE with intent to
18 defraud the DLSE. Evidence was presented that the workers' check stubs did not match
19 the information on the CPRs. The check stubs showed that workers were paid
20 approximately \$10-\$19 below the prevailing wage rate for the type of work performed
21 and were not paid overtime. Additionally, at least one worker who was interviewed by
22 Deputy Beavers did not even appear on the CPRs. Deputy Beavers testified that she gave
23 Respondent MIRELLA MORDOKI numerous opportunities to provide records to
24 substantiate the CPRs submitted by the company. Respondent MIRELLA MORDOKI
25 ignored such requests. Accordingly, the evidence supports a finding that Respondents
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1 1-AMD CONSTRUCTION, INC., ALBERT MORDOKI, and MIRELLA MORDOKI
2 submitted CPRs which proved to be false, with the intent to deceive the DLSE.
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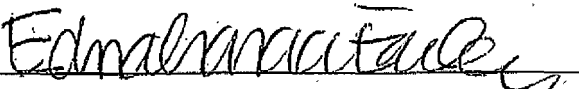
4 **ORDER OF DEBARMENT**

5 In accordance with the foregoing, it is hereby ordered that Respondents 1-
6 AMD CONSTRUCTION, INC., ALBERTO MORDOKI AND MIRELLA MORDOKI,
7 shall be ineligible to, and shall not, bid on or be awarded a contract for a public works
8 project, and shall not perform work as a subcontractor on a public work as defined by
9 Labor Code §§1720, 1720.2 and 1720.3, for a period of three (3) years, effective March
10 16, 2009. A three year period is appropriate under these circumstances where
11 Respondents 1-AMD CONSTRUCTION, INC., ALBERTO MORDOKI AND
12 MIRELLA MORDOKI deliberately and without complete disregard of the Public Works
13 laws failed to pay their workers proper prevailing wage rates, applicable overtime,
14 coached their workers to tell third parties, if asked, that they were paid properly and then
15 knowingly and intentionally submitted false certified payroll reports under penalty of
16 perjury.
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22 This debarment shall also apply to any other contractor or subcontractor in
23 which Respondents 1-AMD CONSTRUCTION, INC., ALBERTO MORDOKI AND
24 MIRELLA MORDOKI have any interest or for which either or all three said
25 Respondents act as a responsible managing employee, responsible managing officer,
26 general partner, manager, supervisor, owner, partner, officer, employee, agent,
27 consultant, or representative. As defined under Labor Code §1777.1(f), " 'Any interest'
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1 includes, but is not limited to, all instances where the debarred contractor or
2 subcontractor [Respondents] receive payments, whether cash or any other form of
3 compensation, from any entity bidding or performing work on the public works project,
4 or enters into any contracts or agreements with the entity bidding or performing work on
5 the public works project for services performed or to be performed for contracts that have
6 been or will be assigned or sublet, or for vehicles, tools, equipment or supplies that have
7 been or will be sold, rented or leased during the period of from the initiation of the
8 debarment proceedings until the end of the term of the debarment period.”
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13 Dated: January 27, 2009

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15 EDNA GARCIA EARLEY
16 Hearing Officer
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, 320 W. 4th Street, Suite 430, Los Angeles, CA 90013.

On January 29, 2009, I served the following document described as:

PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS

on the interested parties in this action [SAC 1037] by placing

the originals

a true copy thereof enclosed in a sealed envelope addressed as follows:

Mirella Mordoki, Agent of Service
1-AMD CONSTRUCTION, INC.
5300 Beach Blvd., Suite 110-416
Buena Park, CA 90621

Alberto Mordoki
1-AMD CONSTRUCTION, INC.
5300 Beach Blvd., Suite 110-416
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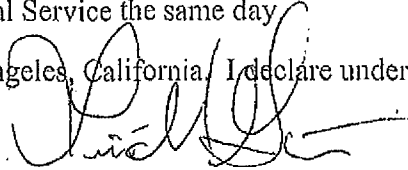
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BY MAIL I deposited such envelope in the United States Mail at Los Angeles, California, postage prepaid.

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

Executed on January 29, 2009 at Los Angeles, California. I declare under penalty of perjury the foregoing is true and correct.



Lici Morales Garcia