

JUN 23 2014

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
By: Johanna Y. Hsu, SBN 164247
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(714) 558-4914

Attorneys for the State Labor Commissioner

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

In re the DEBARMENT
proceeding against:

Case No. SAC 5506

NATIONAL DRYWALL CORPORATION,
a Dissolved California Corporation;
MIGUEL CONTRERAS, an Individual and
Responsible Managing
Officer/CEO/President; DORA MARIA
CONTRERAS, an Individual and
Agent/Officer of the Corporation,

Respondents.

Assigned for All Purposes to the
Honorable Edna Garcia Earley, Hearing
Officer

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

[Labor Code section 1777.1]

The attached *Proposed Statement of Decision* of Hearing Officer Edna Garcia Earley,
DEBARRING Respondents NATIONAL DRYWALL CORPORATION, a Dissolved
California Corporation; MIGUEL CONTRERAS, an Individual and Responsible Managing
Officer/CEO/President; DORA MARIA CONTRERAS, an Individual and Agent/Officer of
the Corporation, from bidding, being awarded or performing any work on public works
projects in the State of California for THREE YEARS, is hereby adopted in full by the

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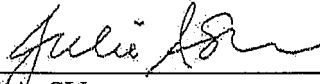
1 Division of Labor Standards Enforcement as the FINAL *Decision* in the above-captioned
2 matter.

3
4 This *Decision* shall become effective 45 days from the execution of the *Order* below.

5
6 **IT IS SO ORDERED.**

7
8 Dated: June 18, 2014 DIVISION OF LABOR STANDARDS ENFORCEMENT

9
10 Department of Industrial Relations
11 State of California

12 By: 
13 JULIE A. SU
14 State Labor Commissioner

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.

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

On June 19, 2014, I served the following document(s) as described below:

DECISION AND ORDER OF DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECT

the original(s)

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

See attached "Service List"

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

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

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

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

BY CERTIFIED MAIL.

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

Executed on June 19, 2014, at Fresno, California.

Christina Othon

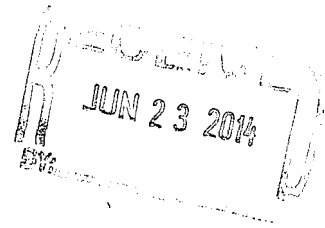
In re National Drywall Corporation, et al.
SAC Case No. 5506

SERVICE LIST

National Drywall Corporation 603 S. Milliken Avenue, Ste. F Ontario, California 91761	Miguel Contreras 603 S. Milliken Avenue, Ste. F Ontario, California 91761
Dora Maria Contreras 603 S. Milliken Avenue, Ste. F Ontario, California 91761	David Cross Staff Counsel, Legal Unit DLSE 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 US MAIL ONLY

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1 **STATE OF CALIFORNIA**
2 Department of Industrial Relations
3 Division of Labor Standards Enforcement
4 EDNA GARCIA EARLEY, State Bar No. 195661
5 300 Oceangate, Suite 850
6 Long Beach, California 90802
7 Tel.: (562) 590-5461
8 Fax: (562) 499-6438
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10 Attorney for the Labor Commissioner

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

14 In the matter of the) Case No.: SAC 5506
15 Debarment Proceeding Against:)
16) **PROPOSED STATEMENT OF**
17) **DECISION RE DEBARMENT OF**
18) **RESPONDENTS FROM PUBLIC**
19) **WORKS PROJECTS**
20 NATIONAL DRYWALL)
21 CORPORATION; MIGUEL)
22 CONTRERAS, AN INDIVIDUAL AND) **[Labor Code §1777.1]**
23 RESPONSIBLE MANAGING)
24 OFFICER/CEO/PRESIDENT; DORA)
25 MARIA CONTRERAS, AN)
26 INDIVIDUAL AND AGENT/OFFICER)
27 OF THE CORPORATION,)
28 Respondents.)

29 Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the
30 Division of Labor Standards Enforcement, State Labor Commissioner (hereinafter,
31 “DLSE”), by the filing of a *Statement of Alleged Violations* against the following named
32 Respondents: NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN
33 INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT;

1 DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE
2 CORPORATION, (hereinafter, also referred to as "Respondents").
3

4 Respondents were duly served with the Notice of Hearing and Statement of
5 Alleged Violations on November 26, 2013 and served with an Amended Notice of
6 Hearing on January 17, 2014.
7

8 The hearing on the alleged violations was held on February 20, 2014 in Long
9 Beach, California. Edna Garcia Earley served as the Hearing Officer. David Cross
10 appeared on behalf of Complainant, the Labor Commissioner, Chief of the Division of
11 Labor Standards Enforcement, Department of Industrial Relations, State of California.
12 There was no appearance by Respondents. Present as witnesses for Complainant were
13 Deputy Labor Commissioner Alice Okubo, Deputy Labor Commissioner Monica Curi
14 and Christa Schott, President of Alliant Consulting Labor Compliance Program (LCP).
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17 The hearing was tape recorded. The witnesses took the oath and evidence was
18 received. At the conclusion of the hearing, the matter was taken under submission.
19

20 FINDINGS OF FACT

21 1. Respondent NATIONAL DRYWALL CORPORATION was at all relevant
22 times mentioned, a contractor licensed by the Contractors State License Board under
23 license number 834335, and a corporation duly organized and existing under and by
24 virtue of the State of California.
25

26 2. Respondent MIGUEL CONTRERAS was at all relevant times mentioned,
27 listed as RMO/CEO/President of NATIONAL DRYWALL CORPORATION with the
28 Contractors State License Board.

1 3. Respondent DORA MARIA CONTRERAS was at all relevant times
2 mentioned, listed as an officer of NATIONAL DRYWALL CORPORATION with the
3 State Contractors State License Board, and the agent for service of process with the
4 California Secretary of State.
5

6 **Million Air Airport US Customs and Immigration Building Project**
7

8 4. Respondents served as the subcontractor on the Million Air Airport US
9 Customs and Immigration Building Project in the County of San Bernardino, (“San
10 Bernardino Airport project”), from July 18, 2011 to July 22, 2012. The Awarding Body
11 for this project was San Bernardino International Airport Authority. V2 Construction, a
12 Joint Venture of T. Viole Construction, Inc. and Vanir Construction Management Inc.
13 served as Prime Contractor on the project.
14

15 5. On October 16, 2012, Deputy Labor Commissioner Alice Okubu, (“Deputy
16 Okubu”) issued a Civil Wage and Penalty Assessment (“CWPA”) against Respondents
17 for their work as subcontractors on this project. The CWPA assessed \$239,173.16 in total
18 wages and \$40,950.00 in penalties under Labor Code §§1775 and 1813. These amounts
19 were revised on March 18, 2013 for a total assessment of \$125,276.16 in total wages and
20 \$26,300.00 in total penalties.
21

22 6. Deputy Okubu testified Respondents engaged in misclassification of
23 workers and shaving of hours on this project.
24

25 Specifically, Deputy Okubu credibly testified workers were misclassified as
26 “drywall installers” and “stock scrappers.” However, the description of the work done, as
27 given by the workers, along with Deputy Okubu’s review of the scope of work for the
28

1 project revealed the work being done should have been classified as “carpenter” work at a
2 higher prevailing wage rate.

3
4 As part of her investigation, Deputy Okubu also reviewed daily reports from the
5 prime contractors and compared them to the certified payroll records submitted by
6 Respondents for this project. The records did not match. For example, for February 21,
7 2012, the daily reports for the prime contractor show 11 workers reported on the site yet
8 Respondent DORA CONTRERAS submitted a *Statement of Non-Performance Payroll*
9 *Form* under penalty of perjury stating that no persons employed by National Drywall
10 Corporation performed work on this project for the payroll period commencing on
11 February 20, 2012 and ending February 26, 2012. Deputy Okubu testified of other
12 similar examples of under-reporting workers and hours for this project.
13
14

15
16 **Joe Baca Middle School aka Colton Middle School #5**

17 7. Respondents also served as the subcontractor on the Joe Baca Middle School
18 aka Colton Middle School #5 job in San Bernardino County, California (“Colton Middle
19 School project”) from July, 2011 through April, 2012.
20

21 8. Christa Schott, President of Alliant Consulting Labor Compliance Monitoring
22 testified telephonically about the investigation her company conducted of Respondents on
23 this project. According to Ms. Schott, her company’s investigation was commenced as a
24 result of workers complaining about underpayment of prevailing wages and
25 misclassification of work performed. Ms. Schott’s investigation and audit found
26 \$1,557,750.34 in unpaid wages plus penalties were owed to workers on this project.
27

28 Consequently, Ms. Schott submitted a *Request for Approval of Forfeiture* to the Division

1 of Labor Standards Enforcement. The request included Ms. Schott's investigative report,
2 audit report, recommendations and other pertinent information.

3
4 9. In discussing her investigative report, Ms. Schott testified workers were
5 reported as drywall installers for one hour per week and as stockers/ scrappers for the
6 remaining hours. Ms. Schott explained this was proof of misclassification of workers by
7 Respondents for the purpose of paying the lower stocker/scrapper prevailing wage rate.
8 Additionally, this practice showed falsification of hours on the certified payroll records
9 because, according to Ms. Schott, it is not possible to install drywall on a school project
10 for one hour a week and have 31 hours of stocking and scrapping. Ms. Schott explained
11 those numbers are usually reversed since stockers/scrappers, as defined in the scope of
12 work for the project, can only stock the drywall and pick up the scrap. They cannot
13 perform lathing and installation of the actual drywall itself. Their main function is to
14 *assist* the worker who is performing the drywall and installation.

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18 Ms. Schott also testified her investigation of Respondents on this project revealed
19 there were different workers under the same name and social security numbers. Workers
20 were told at the beginning of the week what name and social security they would be
21 working under that week. Consequently, the actual names on payroll did not match the
22 actual workers' names.
23

24
25 10. An investigative report completed by the late DLSE Lead Special Investigator,
26 Lee Pearson, corroborated Ms. Schott's testimony regarding underpayment of prevailing
27 wages, misclassification and falsification of payroll records on this project. The report
28

1 included summaries of statements given by workers such as Ruben Diaz, who worked on
2 this project as a framer but was only paid \$22.00 per hour instead of \$47.00 per hour.
3

4 LEGAL ANALYSIS

5 1. DLSE seeks to debar Respondents NATIONAL DRYWALL
6 CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE
7 MANAGING OFFICER/CEO/PRESIDENT; DORA MARIA CONTRERAS, AN
8 INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION, for a period of three
9 (3) years based on its position Respondents "willfully" violated the public works laws
10 with "intent to defraud" on both projects.
11
12

13 Labor Code §1777.1 provides:

- 14 (a) Whenever a contractor or subcontractor performing a
15 public works project pursuant to this chapter is found
16 by the Labor Commissioner to be in violation of this
17 chapter **with intent to defraud**, except Section 1777.5,
18 the contractor or subcontractor or a firm, corporation,
19 partnership, or association in which the contractor or
20 subcontractor has any interest is ineligible for a period
21 of not less than one year or more than three years to do
22 either of the following:
- 23 (1) Bid on or be awarded a contract for a public
24 works project.
 - 25 (2) Perform work as a subcontractor on a
26 public works project.
- 27 (b) Whenever a contractor or subcontractor performing a
28 public works project pursuant to this chapter is found
by the Labor Commissioner to have committed two or more
separate **willful violations** of this chapter, except Section
1777.5, within a three-year period, the contractor or
subcontractor or a firm, corporation, partnership, or
association in which the contractor or subcontractor has any

1 interest is ineligible for a period up to three years to do either
2 of the following:

3 (1) Bid on or be awarded a contract for a public
4 works project.

5 (2) Perform work as a subcontractor on a public
6 works project.

7 (c) Whenever a contractor or subcontractor performing
8 a public works project has failed to provide a timely
9 response to a request by the Division of Labor Standards
10 Enforcement, the Division of Apprenticeship Standards,
11 or the awarding body to produce certified payroll records
12 pursuant to Section 1776, the Labor Commissioner shall
13 notify the contractor or subcontractor that, in addition to
14 any other penalties provided by law, the contractor or
15 subcontractor will be subject to debarment under this
16 section if the certified payroll records are not produced
17 within 30 days after receipt of the written notice. If the
18 commissioner finds that the contractor or subcontractor
19 has failed to comply with Section 1776 by that deadline,
20 unless the commissioner finds that the failure to comply
21 was due to circumstances outside the contractor's or
22 subcontractor's control, the contractor or subcontractor
23 or a firm, corporation, partnership, or association in
24 which the contractor or subcontractor has any interest is
25 ineligible for a period of not less than one year and not
26 more than three years to do either of the following:

27 (1) Bid on or be awarded a contract for public works
28 project.

(2) Perform work as a subcontractor on a public works
project.

25 **Intent to Defraud – Labor Code §1777.1(a)**

26 *California Code of Regulations, Title 8, Section 16800 defines “Intent to*
27 **Defraud”** as “the intent to deceive another person or entity, as defined in this article, and
28

1 to induce such other person or entity, in reliance upon such deception, to assume, create,
2 transfer, alter or terminate a right, obligation or power with reference to property of any
3 kind.” An intent to deceive or defraud can be inferred from the facts. *People v. Kiperman*
4 (1977) 69 Cal.App.Supp.25. An unlawful intent can be inferred from the doing of an
5 unlawful act. *People v. McLaughlin, supra*.
6

7
8 The uncontested evidence established Respondents intended to defraud the DLSE
9 on both projects. On the San Bernardino Airport project, Respondents misclassified
10 workers as drywall installers and stock scrappers when they should have been classified
11 and paid as carpenters, a much higher prevailing wage rate. Additionally, the daily
12 reports submitted to the prime contractor by Respondents for this project differed from
13 the certified payroll records submitted under penalty of perjury. Actual workers and
14 hours worked on the project were often reported on the daily reports submitted to the
15 prime contractor but not on the certified payroll records signed under penalty of perjury
16 by Respondents.
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18
19 Likewise, on the Colton Middle School project, Respondents again misclassified
20 workers as scrappers and stockers when they should have been classified as drywall
21 installers in order to avoid paying a higher prevailing wage rate. Respondents’ “intent to
22 deceive and defraud” the DLSE, the awarding body, the Labor Compliance Program and
23 workers by knowingly submitting false certified payroll records, under penalty of perjury,
24 on both projects, is a basis for debarment under Labor Code §1777.1(a).
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1 **“Willful” Violation of the Public Works Laws – Labor Code §1777.1(b) and (d)**

2 Under Labor Code §1777.1(d), “a willful violation occurs when the contractor or
3 subcontractor knew or reasonably should have known of his or her obligations under the
4 public works law and deliberately fails or refuses to comply with its provisions.”

5 Moreover, a person’s knowledge of the law is imputed to him and an unlawful intent may
6 be inferred from the doing of an unlawful act. *People v. McLaughlin* (1952) 111
7 Cal.App.2d 781. 245 P.2d 1076.
8

9 The uncontested evidence presented by the Division established Respondents
10 “willfully” violated the public works laws by failing to pay proper prevailing wages,
11 failing to pay overtime in some cases, shaving hours and submitting false certified payroll
12 records to the DLSE or Labor Compliance Program.
13

14 Respondents deliberately misclassified workers and submitted information to the
15 prime contractor on the San Bernardino Project that differed from information being
16 submitted on the certified payroll records for the same time period. As a result, workers
17 were intentionally underpaid \$125,276.16 in wages on this project.
18

19 Likewise, on the Colton Middle School project, Respondents deliberately
20 submitted certified payroll records under penalty of perjury with wrong classifications,
21 pay and significantly, wrong names and social security numbers of workers. Worker
22 statements given to DLSE Lead Investigator Lee Pearson show Respondents knew of
23 their responsibilities under the public works laws but deliberately and intentionally
24 violated such laws for the benefit of their company. Violations of the public works laws
25 on this project were so widespread they resulted in \$1,557,750.34 in wages and penalties
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1 being owed to workers. Accordingly, debarment is also proper under these facts and
2 under Labor Code §1777.1(b).
3

4 CONCLUSION

5 Based on the evidence presented at the hearing, we find Respondents violated the
6 public works laws with an “intent to defraud” and “willfully” by not paying prevailing
7 wages and overtime, under-reporting hours and workers, misclassifying workers and
8 submitting false certified payroll records on a continuous basis on the San Bernardino
9 Airport and the Colton Middle School projects. “Although debarment can have a severe
10 economic impact on contractors, it ‘is not intended as punishment. It is instead, a
11 necessary means to enable the contracting governmental agency to deal with
12 irresponsible bidders and contractors, and to administer its duties with efficiency.’”
13 *Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108
14 Cal.App.4th 533, 542. Accordingly, we debar all three Respondents for a period of three
15 (3) years, as requested by the Division.
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20 ORDER OF DEBARMENT

21 In accordance with the foregoing, it is hereby ordered that Respondents
22 NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN
23 INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT;
24 DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE
25 CORPORATION, shall be ineligible to, and shall not bid on or be awarded a contract for
26 a public works project, and shall not perform work as a subcontractor on a public work as
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1 defined by Labor Code §§1720, 1720.2 and 1720.3, for a period of three (3) years,
2 effective 45 days after this decision is issued by the Labor Commissioner.
3

4 A three year period is appropriate under these circumstances where Respondents
5 NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN
6 INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT;
7 DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE
8 CORPORATION "willfully" violated the public works laws by misclassifying workers,
9 under-reporting hours, and submitting false certified payroll records with an "intent to
10 defraud."
11

12
13 This debarment shall also apply to any other contractor or subcontractor in which
14 Respondents NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN
15 INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT;
16 DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE
17 CORPORATION have any interest or for which respondents act as a responsible
18 managing employee, responsible managing officer, general partner, manager, supervisor,
19 owner, partner, officer, employee, agent, consultant, or representative. "Any interest"
20 includes, but is not limited to, all instances where respondents receive payments, whether
21 in cash or in another form of compensation, from the entity bidding or performing works
22 on the public works project, or enters into any contract or agreement with the entity
23 bidding or performing work on the public works project for services performed or to be
24 assigned or sublet, or for vehicles, tools, equipment or supplies that have been or will be
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1 sold, rented or leased during the period of debarment.

2 Dated: June 18, 2014


EDNA GARCIA EARLEY
Hearing Officer

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO

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

On June 19, 2014, I served the following document(s) as described below:

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

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

See attached "Service List"

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- BY CERTIFIED MAIL.

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

Executed on June 19, 2014, at Fresno, California.

Christina Othon

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SAC Case No. 5506

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Dora Maria Contreras 603 S. Milliken Avenue, Ste. F Ontario, California 91761	David Cross Staff Counsel, Legal Unit DLSE 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 US MAIL ONLY
<u>Courtesy Copy to:</u> Edna Garcia Earley Staff Counsel, Legal Unit DLSE 300 Oceangate, Suite 850 Long Beach, California 90802 US MAIL ONLY	

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