

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
2 State of California  
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5

6 Attorneys for the State Labor Commissioner  
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8 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS  
9 DIVISION OF LABOR STANDARDS ENFORCEMENT  
10 STATE LABOR COMMISSIONER  
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12 In re the DEBARMENT  
proceeding against:

14 DICK EMARD ELECTRIC, INC. dba  
EMARD ELECTRIC; LUKE RICHARD  
15 EMARD, an Individual and RMO,

16 Respondents.  
17

) Case No. SC 5521

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

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

[Labor Code section 1777.1]

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20 The attached *Proposed Statement of Decision* of Hearing Officer Susan A. Dovi,  
21 DEBARRING Respondents DICK EMARD ELECTRIC, INC. dba EMARD ELECTRIC;  
22 LUKE RICHARD EMARD, an Individual and RMO, from bidding, being awarded or  
23 performing any work on public works projects in the State of California for THREE YEARS,  
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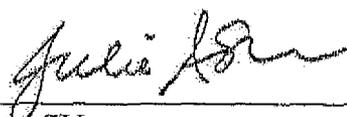
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1 is hereby adopted in full by the Division of Labor Standards Enforcement as the FINAL  
2 *Decision* in the above-captioned matter.

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

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6 **IT IS SO ORDERED.**

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9 Dated: Sept. 17, 2014 DIVISION OF LABOR STANDARDS ENFORCEMENT  
10 Department of Industrial Relations  
11 State of California

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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF FRESNO ) ss.

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

7 On September 17, 2014, I served the following document(s) as described below:

8 **DECISION AND ORDER OF DEBARMENT OF RESPONDENTS FROM**  
9 **PUBLIC WORKS PROJECTS**

10  the original(s)

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

12 *See attached "Service List"*

13  
14  BY MAIL: I am readily familiar with the firm's practice of collection and processing of  
15 correspondence for mailing with the United States Postal Service and said  
correspondence is deposited with the United States Postal Service the same day.

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listed facsimile number(s).

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forth above.

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

22  BY CERTIFIED MAIL.

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

25 Executed on September 17, 2014, at Fresno, California.

26  
27 \_\_\_\_\_  
Christina Othon



DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
State of California  
BY: SUSAN A. DOVI, CA Bar #145543  
1515 Clay Street, Suite 801  
Oakland, California 94612  
Telephone: (510) 622-3246 Fax: (510) 622-3258

Attorney for the Labor Commissioner

BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT  
DEPARTMENT OF INDUSTRIAL RELATIONS  
FOR THE STATE OF CALIFORNIA

In the matter of the  
Debarment Proceeding Against:

Dick Emard Electric, Inc. dba Emard Electric,  
Luke Richard Emard, an individual and RMO,

Respondents.

Case No. SC 5521

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

Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the Division of Labor Standards Enforcement ("DLSE") on March 12, 2014, by the filing and service of a Statement of Alleged Violations against the following named respondents: DICK EMARD ELECTRIC, INC. dba EMARD ELECTRIC; LUKE RICHARD EMARD, an individual and RMO; JUSTIN ROBERT SWANSON, an individual and RME, (hereinafter "Respondents"). DLSE dismissed respondent JUSTIN ROBERT SWANSON, an individual and RME prior to the hearing.

The hearing on the alleged violations proceeded against Respondents Dick Emard Electric, Inc., and Luke Richard Emard, an individual and RMO on September 10, 2014,

[PROPOSED] STATEMENT OF DECISION RE DEBARMENT

at the Sacramento Office of the Labor Commissioner. Susan A. Dovi served as the Hearing Officer. David D. Cross, appeared on behalf of Complainant, the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. None of the Respondents appeared for the hearing although they were duly served with Notice of Hearing, and the Statement of Alleged Violations by First Class and Certified Mail to the address currently listed with the Contractors State License Board. All notices were subsequently returned as undeliverable. Title 8 CCR section 16801(a)(2)(A) provides that notice of the hearing and Statement of Alleged Violations shall be complete when mailed, by first class postage, to the last address of record for the Respondent listed with the State Contractors License Board. Present as a witness for Complainant were Deputy Labor Commissioners Jessica Kaiser and Jerry McClain.

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

## **FINDINGS**

### **I. NOTICE**

The Hearing Officer finds Respondents received lawful notice of the September 10, 2014, hearing. The proofs of service for the Notice of Hearing and Statement of Alleged Violations indicate notice was served both by First Class and Certified Mail to the last address of record for the Respondents listed with the State Contractors License Board as provided for in 8 CCR section 16801(a)(2)(A).

### **II. VIOLATIONS OF THE PUBLIC WORKS LAW**

1. Emard Electric, Inc. dba Emard Electric is a business that was licensed by the Contractor's State Licensing Board under license number 794007.

2. Respondent Luke Richard Emard is an owner of Emard Electric Inc. and is the Responsible Managing Officer of the corporation at all relevant times for purposes of these proceedings.

3. Respondent Emard Electric was the general contractor on a public works project known as the Science, Math Central Plant Complex, Increment No.1, Site Development Utilities 305c project for the Marin Community College District in Marin County, California, during the period September, 2008 through May, 2010. Emard Electric was a subcontractor on two other public works projects, namely the Carnegie Art Center School project in Stanislaus County, California and the Levya Middle School project in Santa Clara County, California during the periods, July, 2010 through November, 2010 and June, 2010 through January, 2011, respectively. All three projects are hereinafter collectively referred to as the ("projects").

5. Deputy Labor Commissioners Jessica Kaiser and Jerry McClain, for all relevant time periods were assigned to the Public Works Unit and have been Deputy Labor Commissioners in the Public Works Unit for six years and one and one half years, respectively. Deputy Kaiser is now assigned to the Wage Adjudication Unit, where she transferred in March, 2012.

Deputy Kaiser testified that on the Science, Math Central Plant Complex, Increment No.1, Site Development Utilities 305c project for the Marin Community College District job her investigation revealed Respondents violated Labor Code §§ 1774 and 1776 by failing to pay the prevailing wage rates to employees and failing to make all pension contributions. Ms. Kaiser testified Respondents admitted they did not pay all pension contributions, that they were over a year behind in making contributions to the pension fund and did not know when they would be made. The certified payroll reports were false by stating all pension contributions were made. A number of workers

complained pension payments were not made and at least one worker complained about only being paid one half of the prevailing wage rate.

6. Deputy McClain testified on the Carnegie Art Center School project and the Levya Middle School project, his investigation revealed Respondents violated Labor Code §§ 1774 and 1776 by failing to pay the applicable prevailing wage rates and fringe benefit contributions, including pension fund contributions. The certified payroll reports were signed under penalty of perjury indicating pension fund contributions were made. Numerous workers complained that pension was not being paid into the pension fund. The investigation revealed only apprentices' pensions were paid into the apprenticeship pension fund but no journeyman pension contributions were made on the Middle School project. McClain was unable to verify that any pension contributions were paid on the Carnegie Art Center School project. In addition, one worker received insufficient fund checks on the Middle School project.

9. DLSE issued three Civil Wage and Penalty Assessments against Respondents based on the violations on the projects listed in paragraph 3 above. DLSE exercised its discretion and assessed penalties pursuant to Labor Code § 1775 due to the egregious nature of the violations.

#### CONCLUSIONS OF LAW

Labor Code §1777.1 provides:

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

(1) Bid or be awarded a contract for a public works project;

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

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

(1) bid on or be awarded a contract for a public works project;

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

California Code of Regulations, Title 8, Section 16800 defines "Intent to Defraud" as "the intent to deceive another person or entity, as defined in this article, and to induce such other person or entity, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property of any kind."

Labor Code §1777.1(d) defines a "willful violation" as "when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions." *California Code of Regulations* 8 CCR § 16800 defines "deliberately" as "premeditated and intentional."

Labor Code section 1777.1(b) provides that once a contractor or subcontractor willfully violates this section, that contractor or subcontractor is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation. An intent to defraud may be shown by circumstantial evidence. (*Ogundare v DLSE* (2013) 214 Cal.app.4<sup>th</sup> 822, 832.) "An unlawful intent is logically inferred from the doing of an unlawful act." (*People v. McLaughlin* (1952) 111 Cal. App.2d 781, 789.)

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The credible and unrefuted evidence presented by Deputies Kaiser and McClain established Respondents failed to pay the proper prevailing wage rates, including the failure to make certain workers' pension contributions and failed to maintain accurate certified payroll reports. Both deputies testified Respondents failed to maintain accurate certified payroll reports and that the reports were false by failing to make pension fund contributions on behalf of certain workers. The testimony of both Deputies Kaiser and McClain, corroborated by documentary evidence, establishes Labor Code §§ 1774, and 1776 were violated with an intent to defraud Respondents' workers and the awarding bodies. Furthermore, the violations were willful within the meaning of Labor Code § 1777.1(d) and 8 CCR § 16800. Further, the preparation of false and fraudulent certified payroll records was intentional and deliberate and also exhibits an intent to deceive Respondents' workers, the awarding body and the DLSE.

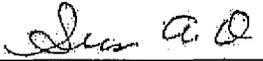
Respondents knew pension contributions were required yet did not pay them, admitting they were over a year behind in payments. Workers were told pension contributions were being made but they in fact were not. No pension contributions were made on the Carnegie Art Center job and only apprentices' pension contributions were made on the Middle School project. Respondents never made the contributions found owing, rather the bonding company or the prime contractor made the payments.

#### ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered Respondents DICK EMARD ELECTRIC, INC. dba EMARD ELECTRIC and LUKE RICHARD EMARD, an individual and RMO, shall be ineligible to, and shall not, bid on or be awarded a contract for a public works project, and shall not perform work as a subcontractor on a public work as defined in Labor Code §§ 1720, 1720.2 and 1720.3, for a period of three (3) years, effective 45 days from the date of this Order. A three year period is appropriate under these

circumstances where Respondents, experienced contractors, willfully and fraudulently prepared false certified payroll records and certifications, underpaid workers on three separate projects within a three year period and failed to make pension fund contributions yet certifying such contributions had been made, justifying a three year period of debarment.

Dated: September 17, 2014



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SUSAN A. DOVI  
Hearing Officer

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF FRESNO ) ss.

4 I am employed in the County of Fresno, State of California. I am over the age of 18 and not a  
5 party to the within action. My business address is DIVISION OF LABOR STANDARDS  
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8 **PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS**  
9 **FROM PUBLIC WORKS PROJECTS [Labor Code § 1777.1]**

10  the original(s)

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25 Executed on September 17, 2014, at Fresno, California.

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Christina Othon

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**In re Dick Emard Electric, Inc., dba Emard Electric,**  
**Luke Richard Emard, an individual and RMO**  
**SAC Case No. 5521**

**SERVICE LIST**

David H. Bartholomew Law Office of David H. Bartholomew <b>By Fax: (916) 962-1460</b>	Dick Emard Electric, Inc. 5930 Key Court, Suite A Loomis, California 95650
Luke Richard Emard 5930 Key Court, Suite A Loomis, California 95650	David D. Cross DIR - DLSE - LEGAL SECTION 2031 Howe Avenue, Suite 100 Sacramento, California 95825