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

In the matter of the  
  
Debarment Proceeding Against,  
  
**MICHAEL FLOORING, INC.; BENNY  
MICHAEL; SOLLY MICHAEL,**  
  
Respondents.

**Case No.: SC 7278**

**AMENDED ORDER RE:  
DEBARMENT**


The attached Amended Proposed Statement of Decision of Hearing Officer Max Norris, debarring MICHAEL FLOORING, INC. and BENNY MICHAEL, from working on public works projects in the State of California for three years, is hereby adopted by the Division of Labor Standards Enforcement as the final Decision in the above-captioned matter.

The Decision shall become effective, and the debarment shall commence on September 13, 2024.

IT IS SO ORDERED.

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

Dated: July 11, 2024

By:   
Lilia Garcia-Brower  
California Labor Commissioner

1 STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
3 DIVISION OF LABOR STANDARDS ENFORCEMENT  
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9 Attorney for the Labor Commissioner

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

13 In the matter of the Debarment Proceeding  
14 Against,

15 MICHAEL FLOORING, INC.; BENNY  
16 MICHAEL; SOLLY MICHAEL,

17 Respondents.

**CASE NO.: SC 7278**

**DECISION AFTER REMAND RE:  
DEBARMENT OF RESPONDENTS  
FROM PUBLIC WORKS PROJECTS**

[Labor Code section 1777.1 and 8 CCR §  
16801, subd. (a)(2)(1)]

18 On April 10, 2023, the Labor Commissioner issued her Decision re: Debarment of  
19 Respondents from Public Works Projects. Thereafter on May 9, 2023, Respondents filed a writ  
20 of administrative mandamus per Code of Civil Procedure section 1094.5 in Kern County  
21 Superior Court, Case No. BCV-23-101451-TMS. On January 30, 2024, the Court granted the  
22 writ petition in part, ruling that substantial evidence supported the undersigned's conclusion that  
23 Respondents MICHAEL FLOORING, INC. and BENNY MICHAEL committed fraud, and/or  
24 carried out the underlying Labor Code violations with an intent to defraud. The Court granted the  
25 writ in part, remanding the matter to the undersigned Hearing Officer for the limited purpose of:  
26 (1) setting aside the decision, as well as its proposed findings of fact and conclusions of law  
27 dated April 5, 2023; and, (2) give appropriate consideration of the factors set forth in 8 CCR  
28 §16802 in determining the appropriate term of debarment in light of the Court's ruling issued  
January 30, 2024. The undersigned's revised decision in light of the Court's ruling follows.

1 **FINDINGS OF FACT**

2 Respondent MICHAEL FLOORING, INC., a California Corporation has been, at all  
3 times herein, a contractor licensed by the Contractors State License Board under license number  
4 874947. Respondent BENNY MICHAEL was at all relevant times herein the Responsible  
5 Managing Officer, Chief Executive Officer and President registered with the Contractors State  
6 Licensing Board and Secretary of State for corporation MICHAEL FLOORING, INC. BENNY  
7 MICHAEL also signed most relevant certified payroll reports under penalty of perjury.  
8 Respondent SOLLY MICHAEL was listed as the Secretary of MICHAEL FLOORING, INC. on  
9 the Statement of Information filed with the Secretary of State on October 27, 2020, and Officer  
10 under the Contractors State Licensing Board’s Contractor’s License Details since May 26, 2010.

11 **(a) County of Kern - Kern County Justice Facility at Ledro Detention Facility.**

12 MICHAEL FLOORING, INC. worked on the Lerdo Detention Facility Project as a  
13 subcontractor of Balfour Beatty Construction LLC, the prime contractor who contracted with the  
14 awarding body, the County of Kern. MICHAEL FLOORING, INC. performed work on this  
15 project as a flooring subcontractor from March 13, 2017, to December 13, 2017.

16 As part of her investigation into Respondents’ employment practices, Deputy Labor  
17 Commissioner Lori Rivera compared the Certified Payroll Reports (“CPRs”) submitted by  
18 MICHAEL FLOORING, INC., signed by BENNY MICHAEL under penalty of perjury, with the  
19 project inspector’s logs and the prime contractor’s sign-in sheets. This comparison showed that  
20 on more than half of the CPRs submitted by MICHAEL FLOORING, INC., fewer workers were  
21 listed as working than reflected on the project inspector’s logs and the prime contractor’s sign-in  
22 sheets. As Deputy Labor Commissioner Rivera noted in her Penalty Review (DLSE 0041):

23 **[MICHAEL FLOORING, INC.] submitted CPRs showing only two workers**  
24 **per day, 2-3 days per week 6-8 hours/day on a very large jail project. ...**  
25 **However, according to the daily logs provided by the awarding body (AB),**  
26 **[MICHAEL FLOORING, INC.] was on site several more days than what was**  
27 **reflected on the CPRs and with several additional workers who were not**  
28 **reported on the CPRs.**

(DLSE 0041, emphasis added.) The project daily logs and sign-in sheets showed many more than  
two workers per day, and hours of work longer than those reported on the CPRs.

1           Alonso Guerrero, an employee of MICHAEL FLOORING, INC., came forward in  
2 Rivera's investigation and informed Rivera that although he was not on the CPRs, he worked on  
3 that project. (DLSE 0036-57.) Rivera corroborated Guerrero's assertion with the project sign-in  
4 sheets provided by the prime contractor, which showed that Guerrero signed in on the project.  
5 (*Id.*) Guerrero worked on this project but was not reported at any time on MICHAEL  
6 FLOORING, INC.'s CPRs signed by BENNY MICHAEL under penalty of perjury. (*Id.*)

7           During Rivera's investigation, Guerrero also informed her that he was only paid \$12.00  
8 per hour for his work on this project, well below the required prevailing wage package of \$31.10  
9 per hour cash rate and fringe benefit contributions of \$14.28 per hour. (*Id.*, see also DLSE 0030-  
10 31.) This gross underpayment was not a mistake made based on choosing the wrong  
11 classification, but MICHAEL FLOORING, INC. and BENNY MICHAEL's intentional omission  
12 of Guerrero on the CPRs that they declared to be true and correct under penalty of perjury.

13           Guerrero told Rivera that it was not only him missing from the CPRs but that there were  
14 many more workers on the project with him than the two reported on the CRPs each day by  
15 MICHAEL FLOORING, INC. and BENNY MICHAEL. (DLSE 0036-57.) Rather than two  
16 workers, Guerrero indicated there were at least six other workers whose names he knew that  
17 were left off the CPRs, as well as other workers whom he did not know by name who worked on  
18 the projects. (*Id.*) Rivera's Penalty Review explains the logic of her audit which compares the  
19 CPRs submitted by MICHAEL FLOORING, INC. signed by BENNY MICHAEL and  
20 documents kept by the awarding body and prime contractor such as the project daily logs and  
21 sign-in sheets. (*Id.*) Those documents show a significant number of workers that MICHAEL  
22 FLOORING, INC. failed to report on their CPRs. (*Id.*) Respondents underreported labor to the  
23 awarding body and prime contractor, and later as to Complainant, with an intent to defraud them.  
24 Respondent Benny Michael signed all CPRs under penalty of perjury.

25           MICHAEL FLOORING, INC. failed to submit any of the required apprenticeship  
26 information (DAS 140 and 142) to the relevant local apprenticeship committees and did not  
27 employ any apprentices on the project. (*Id.*)

1           **(b) Cawelo Water District – Cawelo Office Remodel/Expansion.**

2           MICHAEL FLOORING, INC. performed worked on the Cawelo Office Remodel/  
3 Expansion Project as a subcontractor of Simile Construction Service, Inc., the prime contractor  
4 who contracted with the awarding body, the Cawelo Water District. MICHAEL FLOORING,  
5 INC. was the flooring subcontractor on the project, working from December 19, 2017 to  
6 February 19, 2018. (DLSE 0368-377.) MICHAEL FLOORING, INC. reported only two workers  
7 on the CPRs submitted under penalty of perjury. (*Id.*)

8           A representative of MICHAEL FLOORING, INC., Roopkamal Uppal, admitted to Rivera  
9 that Guerrero had worked on the project despite not being listed on the CPRs. (*Id.*)

10           Guerrero’s story matched Uppal’s initial admission. Guerrero credibly named the  
11 workers he worked with on that job, as well as described his work performed in detail. (*Id.*)  
12 While later, Ms. Uppal recanted her admission in a subsequent phone call with Rivera,  
13 attempting to explain that Guerrero was only a delivery driver, the evidence supported  
14 Guerrero’s assertions and Uppal’s initial admission. (*Id.*) Guerrero was paid only \$12.00 per  
15 hour for his work on the project, when the required prevailing wage was \$32.35 per hour cash  
16 rate, plus \$14.21 per hour fringe benefit contribution. (*Id.*)

17           Rivera further corroborated Guerrero’s story and Uppal’s initial admission by securing a  
18 copy of the daily sign-in sheets and superintendent’s reports from the prime contractor, Simile  
19 Construction Service, Inc. (*Id.*) The prime contractor’s superintendent reports showed six  
20 workers, not two, and included Guerrero by name as working on at least four separate dates that  
21 MICHAEL FLOORING, INC. and BENNY MICHAEL failed to report on its CPRs despite  
22 signing them as true and correct under penalty of perjury. (DLSE 0378-382.) Further, MICHAEL  
23 FLOORING, INC. reported fewer hours for the two workers reported on their CPRs than they  
24 actually worked, as shown by comparison to the prime contractors’ documents. (*Id.*) MICHAEL  
25 FLOORING, INC. and BENNY MICHAEL submitted falsified CPRs on this project leaving  
26 four out of six workers completely off of the CPRs it submitted. BENNY MICHAEL certified  
27 the CPRs on this project using the same signature he had in the last project, but marked the CPRs

1 as being certified by Renee Carabajal, further subterfuge with intent to defraud.

2 As to Apprenticeship requirements, MICHAEL FLOORING, INC. failed to submit  
3 contract award information (DAS 140) timely, and only requested an apprentice (DAS 142) after  
4 its work on the project was completed, and they had failed to employ any apprentices.

5 **(c) Kern Valley Healthcare District – Kern Valley Rural Health Clinic Renovation.**

6 MICHAEL FLOORING, INC. worked on the Kern Valley Rural Health Clinic  
7 Renovation & Expansion project as a subcontractor to James E Thompson, Inc., a California  
8 corporation dba JTS Construction, the prime contractor. (DLSE 0405-416.) JTS Construction  
9 contracted with the awarding body, Kern Valley Healthcare District to complete this project.  
10 MICHAEL FLOORING, INC. performed work on this project as a flooring subcontractor to JTS  
11 Construction from November 21, 2017, to April 6, 2018. (*Id.*)

12 MICHAEL FLOORING, INC. reported starting work on November 27, 2018, on its  
13 CPRs, but again this did not match the prime contractor's daily logs. (*Id.*) Rivera found that the  
14 daily logs showed that MICHAEL FLOORING, INC. began work on site on November 21 and  
15 24, 2018 failing to report four workers working eight hours on each of those days. (*Id.*) Here  
16 again, MICHAEL FLOORING, INC. underreported entire workers for full days, but this time  
17 omitted all workers, as shown by the prime contractor's daily logs. (*Id.*) These CPRs were  
18 submitted with the intent to defraud the awarding body, the prime contractor, and Complainant  
19 as they omitted whole days of work and whole workers therein.

20 In the daily log for March 8, 2018, Superintendent Josh Shadden noted that one of  
21 MICHAEL FLOORING, INC.'s workers complained to him about wages leading to him  
22 discussing wages with several workers who were on site that day. Shadden left the following  
23 note:

24 Today a concern became apparent as to the payment requirements  
with Michael's flooring.

25 Today the lead Installer with Michael's Flooring approached me  
26 about working this weekend to make repairs lo [sic] the installation  
of the portion of phase 1

27 I reiterated "have you talked to Benny about this? It is a prevailing  
28 wage".

1 Tom the lead stated "He is responsible for this work and would not  
2 be charging for this work"

3 I stated "This Is a CPA job and all work done at this site is required  
4 to be certified."

5 Tom (Paraphrasing) "He can not [sic] charge for inadequate work  
6 and that he is responsible for the quality control"

7 I asked "if he is a third tier sub? Because I thought he was working  
8 for Benny". He said "he is paid by the yard" I asked "if it was piece  
9 work? And If he was working as a third tier and if these are his  
10 employees?"

11 Because that is contrary to what I was told by him or Benny on  
12 phase 1"

13 He stated "He works for Benny along with all employees onsite."

14 It was very odd and in my opinion somewhat evasive, I was  
15 confused and concerned. I stated directly the pay requirements and  
16 terms of the project and his responses seemed contrary to them. I  
17 asked him directly "If his guys new [sic] what they were supposed  
18 to be paid?" He sated [sic] "they know it is a prevailing wage job"  
19 but he could state emphatically what his wage was. He stated "he  
20 believed the union rate was somewhere around \$32."

21 I called the 3 workers into office 34 and showed them the wage  
22 posters. Told them all that "this is a prevailing wage job and asked  
23 if they knew what they were supposed to be paid?" They stated  
24 "they understood and knew their wage. One stated he makes \$12  
25 per hour" This was a definite red flag for me and I asked the other  
26 if he knew the rate he is supposed to be paid and he said "yes it is  
27 \$15 per hour". At this I suggested they look into the wage for an  
28 apprentice or installer.

I immediately called my project manager (Troy Brookins) to voice  
my concerns that the employees of Michael's Flooring are not  
being paid the correct wage. Troy was equally concerned and told  
me he was going to talk to payroll and take a look at the CPA.  
After doing so, he called me and stated he was notifying Benny of  
the concerns addressed in this report.

(DLSE – 000412-413.)

**(d) Respondent's Testimony Was Not Convincing.**

Respondent BENNY MICHAEL testified that at the time of these projects he was new to public works projects and that these violations were not intentional or willful. BENNY MICHAEL further testified, that a worker suggested to him to underreport his workers on the CPRs, a curious admission against interest. But leaving whole workers off certified payroll reports submitted under penalty of perjury and paying them a rate well below half of the prevailing wage off the books in and of itself is both fraud and demonstrates an intent to defraud

1 on the part of BENNY MICHAEL and MICHAEL FLOORING, INC. BENNY MICHAEL  
2 points to a lack of compliance actions against MICHAEL FLOORING, INC. on subsequent  
3 projects that were larger than those herein, where no compliance action was made. Respondents  
4 also confuse the discussion of how DLSE assessed penalties in its penalty reviews with its  
5 assertions in this action, with Respondents focusing on a lack of “prior history” rather than the  
6 egregious omissions on its instant CPRs.

7 **(e) Respondent Submitted CPRs With Intent to Defraud.**

8 MICHAEL FLOORING, INC. submitted falsified CPRs on these projects with the intent  
9 to defraud the respective awarding bodies, the prime contractors and later Complainant by: (1)  
10 underreporting whole days it worked as non-performance days on its CPRs; (2) leaving workers  
11 who performed work wholly off of the CPRs on days it did report work; and, (3) underreporting  
12 the hours worked by those workers it did report on the CPRs. These are not mistakes, but a  
13 pattern and practice of deceit to increase profit margins on these small projects.

14 **CONCLUSIONS OF LAW**

15 LCO seeks to debar Respondents MICHAEL FLOORING, INC., BENNY MICHAEL  
16 and SOLLY MICHAEL for a period of three (3) years based on its allegations that Respondents  
17 (1) “willfully” violated the public works laws with “intent to defraud”; (2) failed to respond to  
18 LCO demands for CPRs timely; and, (3) committed multiple apprenticeship violations. (Labor  
19 Code section 1777.1, subs. (a) – (d).)

20 **(a) Respondents Submitted CPRs With Intent to Defraud.**

21 Labor Code section 1777.1 provides in pertinent part:

22 (a) Whenever a contractor or subcontractor performing a public  
23 works project pursuant to this chapter is found by the Labor  
24 Commissioner to be in violation of this chapter with intent to  
25 defraud, 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:

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

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

28 (b) Whenever a contractor or subcontractor performing a public



1 works project pursuant to this chapter is found by the Labor  
2 Commissioner to have committed two or more separate willful  
3 violations of this chapter within a three-year period, the contractor  
4 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 to do either of the  
following:

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

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

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

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

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

27 (d) (1) In the event a contractor or subcontractor is determined by  
28 the Labor Commissioner to have knowingly committed a serious  
violation of any provision of Section 1777.5, the Labor  
Commissioner may also deny to the contractor or subcontractor,  
and to its responsible officers, the right to bid on or to be awarded  
or perform work as a subcontractor on any public works contract  
for a period of up to one year for the first violation and for a period  
of up to three years for a second or subsequent violation. Each  
period of debarment shall run from the date the determination of  
noncompliance by the Labor Commissioner becomes a final order.

(2) The Labor Commissioner shall consider, in determining  
whether a violation is serious, and in determining whether and for  
how long a party should be debarred for violating Section 1777.5,  
all of the following circumstances:

(A) Whether the violation was intentional.

(B) Whether the party has committed other violations of Section  
1777.5.

1 (C) Whether, upon notice of the violation, the party took steps to  
2 voluntarily remedy the violation.

3 (D) Whether, and to what extent, the violation resulted in lost  
4 training opportunities for apprentices.

5 (E) Whether, and to what extent, the violation otherwise harmed  
6 apprentices or apprenticeship programs.

7 (Labor Code section 1777.1, subd. (a) – (d).)

8 Intent to defraud is defined for our purposes here as: “the intent to deceive another person  
9 or entity, as defined in this article, and to induce such other person or entity, in reliance upon  
10 such deception, to assume, create, transfer, alter or terminate a right, obligation or power with  
11 reference to property of any kind.” (8 C.C.R. § 16800.) An intent to defraud may be inferred  
12 from the facts. (*People v. Kiperman* (1977) 69 Cal.App.Supp. 25.) The higher bar, “fraud”, is  
13 defined as:

14 a suggestion, as a fact, of that which is not true; or the assertion, as  
15 a fact, of that which is not true, by one who has no reasonable  
16 ground for believing it to be true; or the suppression of a fact, by  
17 one who is bound to disclose it, or who gives information of other  
18 facts which are likely to mislead for want of communication of that  
19 fact, or a promise, made without intention of performing it.

20 (8 CCR § 16800.)

21 Here, MICHAEL FLOORING, INC. and BENNY MICHAEL fraudulently underreported  
22 whole days of work, omitted entire workers who performed work from days it did report work,  
23 and underreported many hours worked for those employees it did report on its CPRs.  
24 Complainant demonstrated this through examination of the awarding body and prime  
25 contractor’s respective project documents and comparing those to Respondent’s CPRs. In doing  
26 so Complainant showed conclusively that these were not accidental omissions. Nor were these  
27 mistakes made due to the complicated nature of compliance involved. Instead, MICHAEL  
28 FLOORING, INC. and BENNY MICHAEL deliberately underreported labor on its CPRs  
relevant here, submitting falsified CPRs certified under penalty of perjury for the purpose of  
defrauding the government. The lower bar of willful violations with an “intent to defraud” is also  
clearly met across all three projects.

1 “Although debarment can have severe economic impact on contractors, it is not intended  
2 as punishment. It is instead, a necessary means to enable the contracting governmental agency to  
3 deal with irresponsible bidders and contractors, and to administer its duties with efficiency.” (*S.*  
4 *California Underground Contractors, Inc. v City of San Diego* (2003) 108 Cal.App. 533, 542.)

5 **(b) Three Year Debarment Is Reasonable Based on Factors at 8 C.C.R. §16802.**

6 Title 8 of the California Code of Regulations provides that:

7 In the event that the Labor Commissioner determines that a  
8 violation of chapter 1 of part 7 of the Labor Code has occurred, the  
9 Hearing Officer may recommend the penalty to be imposed on the  
10 Respondent.

11 (a) In setting a penalty, due consideration shall be given to the  
12 nature of the offense; the amount of underpayment of wages per  
13 worker; the experience of the Respondent in the area of public  
14 works; and the Respondent's compliance with Labor Code section  
15 1776. The above considerations shall be based upon evidence  
16 presented at the hearing and made a part of the record.

17 (8 C.C.R. §16802.)

18 **i. The Nature of the Offenses Here Supports a Three-Year Debarment.**

19 MICHAEL FLOORING, INC. and BENNY MICHAEL lied openly on certified payroll  
20 reports certified under penalty of perjury and submitted to their prime contractor, to the public  
21 agency that awarded the contract, and later to Complainant here, the Labor Commissioner. An  
22 omission of whole workers is not a technical violation corrected by further education regarding  
23 compliance by any stretch of the imagination. Several physical human workers were present on  
24 the public works job sites MICHAEL FLOORING, INC. contracted to work on, performing  
25 work for MICHAEL FLOORING, INC. and BENNY MICHAEL, yet these workers were  
26 intentionally omitted from the certified payroll reports for those projects. The workers left off the  
27 CPRs were paid well below half of the prevailing wage, a windfall that motivated Respondents’  
28 lies. These lies are not the type that reflect a mistake or oversight, but rather an intentional  
omission to defraud those monitoring the project for ones’ own profit.

No credible evidence has been offered as to why these workers were omitted from the  
certified payroll reports signed under penalty of perjury. Instead, Respondents try to excuse these

1 egregious violations of public works law as mistakes by a beginner in a highly regulated  
2 industry. A contractor’s lack of “prior history” does not excuse cheating workers out of money  
3 and then lying about it on documents certified under penalty of perjury. No amount of  
4 subsequent efforts to come into compliance with public works laws makes up for the fact that  
5 MICHAEL FLOORING, INC. and BENNY MICHAEL have shown their propensity to lie under  
6 penalty of perjury for their own pecuniary interest. Further, these violations had nothing to do  
7 with Respondents being properly appraised of the admittedly complicated compliance on public  
8 works projects. Instead, these were outright lies about the number of workers they employed on  
9 these projects. The nature of the offenses are such that a three year debarment is appropriate.

10 **ii. The Amount of Underpayment of Wages Per Worker is Significant, Supporting a**  
11 **Three Year Debarment.**

12 In performing work as a subcontractor on the Kern County Justice Facility at Lerdo  
13 Detention Facility job in Kern County, California, from March 13, 2017 through December 13,  
14 2017, MICHAEL FLOORING, INC. and BENNY MICHAEL withheld from fifteen workers at  
15 least \$76,587.31. In performing work as a subcontractor on the Cawelo Office  
16 Remodel/Expansion job in Kern County, California, from December 19, 2017 through February  
17 19, 2018, MICHAEL FLOORING, INC. and BENNY MICHAEL withheld from six workers at  
18 least \$2,451.84. In performing work as a subcontractor on the Kern Valley Rural Health Clinic  
19 Renovation & Expansion job in Kern County, California, from November 21, 2017 through  
20 April 6, 2018, MICHAEL FLOORING, INC. and BENNY MICHAEL withheld from nine  
21 workers at least \$8,036.77. For these three subcontracted jobs MICHAEL FLOORING, INC. and  
22 BENNY MICHAEL withheld at least \$87,075.92 in wages from workers it employed on those  
23 projects. That is a significant withholding here in a short span of time, defrauding the State of  
24 California and County of Kern of that amount in only a couple of months in late 2017 and early  
25 2018. The large amount of wages stolen within only a couple of months supports a three year  
26 debarment here.

27 ///

28 ///

1           **iii. Respondent's Experience in the Area of Public Works Does Not Change the**  
2           **Analysis Here as to Length of Debarment.**

3           MICHAEL FLOORING, INC. and BENNY MICHAEL argue that they should receive  
4 leniency due to their limited experience on Public Works projects. It is conceded that many new  
5 public works contractors make mistakes when coming from only managing projects in the  
6 private sector. Such violations, where truly mistakes, usually involve misclassification of  
7 workers due to complicated public works determinations that set those wages and competing  
8 trades looking for work with overlapping jurisdiction. While MICHAEL FLOORING, INC. and  
9 BENNY MICHAEL may have had some of those types of violations *as well*, the concern here  
10 are not those mistakes. Instead, the debarment here is issued for three years because MICHAEL  
11 FLOORING, INC. and BENNY MICHAEL lied on numerous certified payroll reports that it  
12 submitted to its prime contractors, awarding bodies and the Labor Commissioner.

13           Inexperience of a contractor on a public works contract is not relevant when a contractor  
14 leaves several workers who performed whole days of work on the projects off their certified  
15 payroll reports signed under penalty of perjury, as that is not a training issue but fraud.  
16 Inexperience is not relevant here where fraud is shown, and three years is appropriate regardless  
17 of MICHAEL FLOORING, INC. and BENNY MICHAEL's xperience on public works projects.

18           **iv. Respondent's Willfully Disregarded Compliance with Labor Code section 1776.**

19           Labor Code section 1776 sets forth the requirements of contractors regarding the keeping  
20 and submitting of certified payroll reports on public works projects. (Lab. Code §1776.) Section  
21 1776 requires contractors to keep accurate payroll records and then prior to submitting them  
22 declare under penalty of perjury that they are true and correct and that the employer has  
23 complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work  
24 performed by that person's employees on the public works project. (*Id.*)

25           Here, MICHAEL FLOORING, INC. and BENNY MICHAEL engaged in a pattern and  
26 practice of fraud in its first three public works projects, submitting fraudulent certified payroll  
27 reports in violation of Labor Code section 1776. Respondents not only violated Labor Code  
28 section 1776, but disregarded the spirit and letter of the law entirely by lying on the CPRs.

1 BENNY MICHAEL certified each CPR under penalty of perjury that was submitted to  
2 the prime contractor, awarding body and later DLSE. In doing so, BENNY MICHAEL  
3 committed fraud. “A person’s knowledge of the law is imputed to him and an unlawful intent  
4 may be inferred from the doing of an unlawful act.” (*People v. McLaughlin* (1952) 111  
5 Cal.App.2d 781.) BENNY MICHAEL tries to excuse his behavior as mistakes made in his first  
6 three public works projects. Upon closer inspection, this falls flat as the deficiencies were not  
7 technical at all, but lies for personal gain.

8 The evidence supports a finding Respondents MICHAEL FLOORING, INC. and  
9 BENNY MICHAEL committed many willful violations of the prevailing wage laws with the  
10 intent to defraud the awarding body, the prime contractor and Complainant. Respondents  
11 MICHAEL FLOORING, INC. and BENNY MICHAEL willfully violated the public works laws  
12 by submitting fraudulent CPRs on a continuous basis. Accordingly, we debar Respondents  
13 MICHAEL FLOORING, INC., and BENNY MICHAEL for a period of three years.

14 **(c) Solly Michael is Dismissed in his Individual Capacity.**

15 While SOLLY MICHAEL is named in Complainant’s *Statement of Alleged Violations*,  
16 the record of his involvement was not developed sufficiently to debar him. Complainants argue  
17 that by virtue of him being an officer of the corporation, he should also be debarred. While a  
18 debarment of an individual imputes to any and all entities it has an interest in, it is not clear in  
19 the plain meaning of the statute that this is reciprocal. Thus, SOLLY MICHAEL is dismissed in  
20 his individual capacity. (See Labor Code section 1777.1, subs. (a) – (d).)

21 **(d) Settlement of Liability on Civil Wage and Penalty Assessments Not a Defense.**

22 Respondents raise the settlement agreements as a defense here, but they are not relevant.  
23 As a matter of course DLSE issues unilateral settlement agreements when contractors wish to  
24 settle liability on a Civil Wage and Penalty Assessment. The terms of the settlement and a  
25 release are memorialized in the unilateral agreement and become binding upon completion of the  
26 terms. The settlement agreements do not contain non-admission clauses, nor do they discuss  
27 debarment at all. The Civil Wage and Penalty Assessment process is separate and apart from the  
28

1 debarment process: one seeks to enforce the law retrospectively seeking unpaid wages for  
2 workers and penalties to deter future non-compliance; while the other is a control mechanism to  
3 prevent the state from continuing to do business with bad actors who seek to defraud it.

4 **ORDER OF DEBARMENT**

5 In accordance with the foregoing, it is hereby ordered that Respondents MICHAEL  
6 FLOORING, INC. and BENNY MICHAEL shall be ineligible to, and shall not, bid on or be  
7 awarded a contract for a public works project, and shall not perform work as a subcontractor on a  
8 public work as defined by Labor Code sections 1720-1720.9, for a period of three (3) years,  
9 effective forty five (45) days after this decision is issued by the Labor Commissioner. A three-  
10 year period is appropriate under these circumstances where Respondents MICHAEL  
11 FLOORING, INC. and BENNY MICHAEL willfully violated public works laws with an intent  
12 to defraud the awarding body, the prime contractor and later Complainant.

13 This debarment shall also apply to any other contractors or subcontractors in which  
14 Respondents MICHAEL FLOORING, INC. and/or BENNY MICHAEL have any interest or for  
15 which respondents act as a responsible managing employee, responsible managing officer,  
16 general partner, manager, supervisor, owner, partner, officer, employee, agent, consultant or  
17 representative. "Any interest" includes, but is not limited to, all instances where debarred  
18 Respondents receive payments, whether cash or in another form of compensation, from the entity  
19 bidding or performing works on the public works project, or enters into any contract or  
20 agreement with the entity bidding or performing work on the public works project for services  
21 performed or to be assigned or sublet, or for vehicles, tools, equipment or supplies that have been  
22 or will be sold, rented or leased during the period of debarment.

23 Respondent SOLLY MICHAEL is dismissed in his individual capacity.

24  
25  
26 Dated: May 30, 2024



27 MAX NORRIS  
28 Hearing Officer

**PROOF OF SERVICE**  
**IN THE MATTER OF THE DEBARMENT PROCEEDING AGAINST:**  
**MICHAEL FLOORING, INC.; BENNY MICHAEL; SOLLY MICHAEL**  
**DLSE Case No.: SC 7278**

I, LANCE A. GRUCELA, do hereby certify that I am a resident of or employed in the County of San Diego, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: 7575 Metropolitan Drive, Suite 210, San Diego, CA 92108-4424

On October 29, 2021, I served the within **AMENDED ORDER RE: DEBARMENT; DECISION AFTER REMAND RE: DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS** on the interested as follows:

**SEE ATTACHED SERVICE LIST**

**(A) (BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

**(B) (BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above-named addressee(s).

**(C) (BY OVERNIGHT DELIVERY)** I served the foregoing document(s) by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

**(D) (BY FACSIMILE)** I caused the above-referenced document to be transmitted to the interested parties via facsimile transmission to the fax number(s) as stated on the attached service list.

**(E) (BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.



**PROOF OF SERVICE**  
**IN THE MATTER OF THE DEBARMENT PROCEEDING AGAINST:**  
**MICHAEL FLOORING, INC.; BENNY MICHAEL; SOLLY MICHAEL**  
**DLSE Case No.: SC 7278**

TYPE OF SERVICE      ADDRESSEE & FAX NUMBER (IF APPLICABLE)

E	Daniel K. Klingenberg, Esq. <a href="mailto:dklingenberger@lebeauthelen.com">dklingenberger@lebeauthelen.com</a> LeBeau Thelen LLP 5001 E. Commercenter Drive, Suite 300 Bakersfield, CA 93389 VIA EMAIL ONLY	

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

Executed on July 12, 2024, at San Diego, California.

  
\_\_\_\_\_  
LANCE A. GRUCELA