

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Sinanian Development, Inc. and
Newport Construction, Inc.**

**Case Nos. 16-0247-PWH
and 16-0251-PWH**

From a Civil Wage and Penalty Assessment issued by:

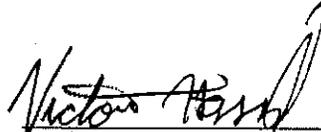
Division of Labor Standards Enforcement

ORDER DENYING RECONSIDERATION

Newport Construction, Inc. seeks reconsideration of the Decision of the Director issued on August 2, 2019 (Decision) on several bases. Some of the bases rely on evidence not presented at the Hearing on the Merits, and to that extent the request to reconsider is denied. The other bases for the request for reconsideration assert facts and argument that were considered and rejected for the reasons stated in the Decision.

Accordingly, the entirety of Newport Construction Inc.'s request for reconsideration is denied.

Dated: August 16, 2019


Victoria Hassid,
Chief Deputy Director
Department of Industrial Relations¹

¹ See Government Code sections 7 and 11200.4.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Sinanian Development, Inc. and
Newport Construction, Inc.**

Case No. **16-0247-PWH**
Case No. **16-0251-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor Sinanian Development, Inc. (Sinanian) and affected subcontractor Newport Construction, Inc., (Newport) (collectively, the Requesting Parties) timely submitted requests for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on May 26, 2016, with respect to work Newport performed for the Pasadena Unified School District (Awarding Body) in connection with the McKinley K-8 Phase 1 Construction Project (Project). The Assessment determined that \$42,636.83 in unpaid prevailing wages, training fund contributions, and statutory penalties under Labor Code sections 1775, 1777.7, and 1813, respectively, were due.¹

A Hearing on the Merits took place in Los Angeles, California on February 8, 2017, May 31, 2017, October 9 and 20, 2017, and January 31, 2018, before Hearing Officer Jessica Pirrone. Newport was represented by counsel until December 17, 2017, at which time it gave notice that it would be represented by Michael E. Mojaver, President and owner of Newport. Sinanian's Executive Vice President, Serge Sinanian, submitted a request for review on behalf of Sinanian, but did not appear at the Hearing. Abdel Nassar appeared as counsel for DLSE. Testimony at the Hearing was presented by DLSE Deputy Labor Commissioner Kenneth Mayorga and Newport workers Aaron Ramon, Jr.²

¹ All subsequent section references are to the California Labor Code unless otherwise specified.

² At the conclusion of the first day of Hearing, Newport estimated it had twenty minutes left of its cross-examination of Aaron Ramon, Jr. The Hearing Officer ordered the witness to return, but the witness did

and Aaron Ramon, Sr. in support of the Assessment. Mojaver testified on behalf of Newport. The case was deemed submitted on March 20, 2018.

The parties entered the following stipulations:

- The work subject to the Assessment was performed on a public work and required the payment of prevailing wages under the California Prevailing Wage Law, sections 1720 through 1861.

- The Requesting Parties' requests for review were timely.

- The DLSE enforcement file was timely made available to the Requesting Parties.

- No wages were paid or deposited with the Department of Industrial Relations as a result of the Assessment under section 1742.1.

The issues for decision are as follows:

- Whether the Assessment correctly found that Newport failed to pay the required prevailing wages for all hours worked on the Project.

- Whether the Assessment correctly found that Newport failed to make the required training fund contributions to an approved apprenticeship program or the California Apprenticeship Council, as required by section 1777.5, subdivision (m).

- Whether the Labor Commissioner abused her discretion in assessing penalties under section 1775 at the mitigated rate of \$120.00 per violation for 69 violations.

- Whether the Assessment correctly found that Newport failed to pay the required overtime prevailing wage rate for all overtime hours worked, thereby making Newport liable for penalties under section 1813 at the rate of \$25.00 per violation for 64 violations.

- Whether the Assessment correctly found that Newport failed to comply with section 1777.5 governing employment of apprentices on public works projects.

- Whether the Assessment correctly imposed penalties under section 1777.7 at the mitigated rate of \$60.00 per violation for 188 violations.

not return on any subsequent day of Hearing. Newport did not subpoena the witness or otherwise enforce the Hearing Officer's order that he return.

- Whether Newport is liable for liquidated damages under section 1742.1, subdivision (a), in the amount of \$21,476.83.

For the reasons set forth below, the Director of Industrial Relations finds that DLSE carried its initial burden of presenting evidence at the Hearing that provided prima facie support for the Assessment, and that the Requesting Parties failed to carry their burden of proving the basis for the Assessment was incorrect. (See Cal. Code Regs., tit. 8, § 17250, subds. (a), (b).) The Director also awards liquidated damages against Newport. Accordingly, the Director issues this Decision affirming the Assessment.

FACTS

The Awarding Body advertised the Project for bid on October 25, 2012, and November 1, 2012. Sinanian and the Awarding Body entered into a contract dated February 26, 2013. Sinanian and Newport entered into a subcontract dated May 8, 2013 (Subcontract). Newport's scope of work under the Subcontract included supplying and installing all tiling, resilient flooring, resilient base and accessories, hybrid resilient sheet flooring, and sheet carpeting.

The Assessment covers the work of just two Newport employees: Aaron Ramon, Sr. (Ramon) and his son, Aaron Ramon, Jr. (Ramon, Jr.) (collectively, the Ramons).³ Newport classified the Ramons as Tile Finishers for which the applicable prevailing wage determination is Commercial Building, Highway, Heavy Construction and Dredging Projects for Los Angeles County (LOS-2012-2) (Tile Finisher PWD).

The Tile Finisher PWD establishes the total rate of \$33.63 per hour, consisting of the basic wage rate of \$23.26 per hour, the combined fringe benefit rate of \$9.66 per hour, and training fund rate of \$.89 per hour. The daily overtime and Saturday work hourly rate is \$45.26 per hour.

///

///

³ Newport employed a total of eleven workers on the Project. DLSE does not allege any unpaid wages or other prevailing wage violation as to nine of the workers.

The Assessment.

In response to a complaint filed by Ramon, DLSE personnel conducted an investigation and prepared the Assessment.⁴ Mayorga testified that as part of DLSE's investigation, his predecessor obtained records from Newport, including certified payroll records (CPRs) and fringe benefit statements. Mayorga met with the Ramons on January 14, 2016. At the meeting, the Ramons prepared calendars for June through October 2015, reflecting the days and hours they performed work on the Project, according to their pay stubs and recollection. Mayorga testified he compared the CPRs with the calendars the Ramons had provided. Based on that review and the other information DLSE collected in its investigation, the Assessment found that the Ramons worked the hours that were reflected in the calendars they prepared during DLSE's investigation, rather than the hours that were reflected in the CPRs. Accordingly, DLSE assessed: (1) unpaid prevailing wages and fringe benefits in the total amount of \$21,476.83; (2) unpaid training funds in the amount of \$509.49;⁵ (3) section 1775 penalties at the rate of \$120.00 for each calendar day on which Newport failed to pay the required prevailing wage rate to two workers on 69 occasions, for a total amount of \$8,280.00; and (4) section 1813 penalties at the rate of \$25.00 for each calendar day on which Newport failed to pay the required overtime rate to two workers on 64 occasions, for a total amount of \$1,600.00.

The Assessment also found that Newport failed to submit the required public works contract award information to, and request dispatch of apprentices from, the Joint Apprenticeship Committee, Tile & Terrazzo Industry for the Tile Layer craft, in violation of section 1777.5, subdivision (e), and section 230.1, subdivision (a), of title 8, California Code of Regulations, and failed to meet the minimum apprentice-to-journeyman ratio for the Tile Layer craft, in violation of section 1777.7, subdivision (g). Therefore, the Assessment determined that Newport is liable for section 1777.7 penalties at the rate of

⁴ Mayorga testified that another Deputy Labor Commissioner started the investigation, and he took it over in December 2015.

⁵ The Assessment credited Newport with \$76.13 in training fund contributions that it had made.

\$60.00 per each of 188 calendar days of noncompliance, in the total amount of \$11,280.00.

Alleged Failure to Report All Hours Worked on the Project.

Newport's Case and Evidence. Mojaver testified that he prepared the CPRs based on worker-completed timesheets. He admitted that Newport worked on several projects at the same time and relied on his foreman, Raul Pablo, to supervise the workers on the Project. According to the CPRs: (1) the Ramons worked on the Project in July 2015 only; (2) Ramon worked 73.5 hours over eleven days and Ramon, Jr. worked 40.2 hours over eight days; and (3) neither of the Ramons worked overtime or weekend hours.

As to the timesheets, Mojaver testified that he would bring them on a clipboard to daily morning meetings he held with the workers at the jobsite. Mojaver filled out the dates on the timesheets, and thereafter the workers would write in the time they started on the current day and the time they ended on the prior day. Mojaver further testified that he did not submit the timesheets to the Awarding Body or Sinanian, nor did he retain them. Instead, his practice was to dispose of the timesheets once Newport got paid because he did not have room in his home office to save them.

As to overtime and Saturday work, Mojaver testified that the Ramons could not have worked after 3:00 p.m. on weekdays or on Saturdays. He testified that the Project site was locked around 3:30 p.m. on weekdays and all day on weekends, unless special authorization was obtained from Sinanian, and Newport never obtained such authorization. Mojaver also testified that about 50% of the time he was onsite around 3:30 p.m., and the Ramons were not there working. Mojaver did not know whether other subcontractors worked on the Project after 4:00 p.m. or on the weekends. As to the dates the Ramons claim to have worked on the Project, Mojaver testified that Newport did not do any work on the Project after July 2015, and therefore the Ramons could not have worked there after that month.

In the course of their work on the Project, the Ramons accidentally damaged a refrigerator. Newport submitted into the Hearing record correspondence with the Ramons, Newport's insurance carrier, Associated Industries Insurance Company, Inc., and court documents related to the damaged refrigerator. (Newport Exhibit CC.) Exhibit

CC reflects that the insurance company recorded the date of loss as Saturday, August 1, 2015, which is consistent with the Ramons' testimony that they damaged the refrigerator while working on a Saturday, but inconsistent with the CPRs and Mojaver's testimony that the Ramons only worked in July and did not work on Saturdays.⁶

According to Mojaver's testimony, Newport's insurance claim on the refrigerator was denied on November 25, 2015. In an April 19, 2016 letter to Ramon, Jr., Mojaver wrote that Newport would sue Ramon, Jr. unless he paid \$10,683.00 for the damaged refrigerator. Receiving no response, on June 23, 2016, Mojaver filed a complaint in small claims court against the Ramons, seeking reimbursement for the damaged refrigerator. Mojaver testified that a hearing in small claims court took place on September 29, 2016, and Mojaver and the Ramons appeared. He testified that on the date of the hearing, the Ramons told Mojaver that "they have no claim against Newport," and the Ramons and Mojaver shook hands. Mojaver then agreed to dismiss his complaint and the small claims court dismissed the complaint without prejudice.

Mojaver further testified that after the hearing in small claims court, he called Ramon, Jr. and asked whether the Ramons would meet him at a restaurant of their choice to sign some "papers." Mojaver and Ramon, Jr. agreed to meet on October 6, 2016, at an Applebee's restaurant in El Monte. On the appointed date, Ramon, Jr. came without his father, explaining that his father was tired. Mojaver presented Ramon, Jr. with a copy of the calendars that Ramon, Jr. had previously filled out at the Labor Commissioner's office reflecting the hours he claimed to have worked on the Project,⁷ as well as a copy of the calendar reflecting Ramon, Jr.'s hours as reported on the CPRs.⁸ Mojaver added to the first page of the copy of the calendars a signature block with the following text:

I; Aaron Ramon Jr., the undersigned; herewith attest, declare, and confirm, that I have no labor claim or complaint against Newport Construction.
This Calendar Sheet and the following three are herewith signed and/or

⁶ The Ramons both testified that they were working on a Saturday when they damaged the refrigerator. Ramon, Jr.'s calendar has hours for August 1, 2015, but Ramon's calendar does not.

⁷ The 2015 calendars that Ramon, Jr. filled out for DLSE show his work on the Project in the months of June, July, August, and October of 2015.

⁸ The 2015 calendar that Mojaver presented to Ramon, Jr. shows Ramon, Jr.'s hours as they appear on the CPRs for the month of July 2015.

initialed by me declaring that the same has no basis in fact and cannot be so supported by me. I so declare under no duress or pressure and it is my free will to so.

Ramon, Jr. signed and dated the calendars, as well as initialed each month.

(Newport Exhibit W.)

Mojaver testified that he did not demand that the Ramons reimburse him for the damaged refrigerator in order to coerce them to abandon their wage claims. He testified that he was not even aware of the Ramons' prevailing wage claims when he sent Ramon, Jr. the April 19, 2016 demand letter for the damaged refrigerator or when he filed the June 23, 2016 small claims court complaint. Mayorga's case notes (DLSE Exhibit No. 4), however, disclose that Mojaver contacted DLSE regarding Ramon's wage complaint on October 1, 2015 – seven months before Mojaver's April 19, 2016 demand letter.

As further support for its claim that the Ramons were paid in full for their work on the Project, Newport Exhibit Q contains eleven forms signed by eleven workers Newport employed for the Project. Each form has a printed statement in English on the top with the Spanish translation on the bottom. All eleven forms are dated August 4, 2015. Each statement, without the personal information inserted, reads:

To whom it may concern,

The undersigned, _____ herewith confirm and verify (*sic*) that as I worked at the project known as (Project Name), **McKinley School K-8 – Phase – 1- New Const. Project** at (Location) **325 Oak Knoll Ave., S. Pasadena, CA 91101** for Newport Construction, Inc. between (date) **4/22/2015** and (date) **7/31/2015**, that I have been paid regularly at the end of each work for the week I worked.

I have received my pay as per hours I worked and as was required by the Project Construction Schedule and as reported on Certified Payroll Record (CPR) submitted by Newport Construction, Inc., consistent with my Classification and pay rate.

Signed by (Full Name): _____

I have received a copy of this _____

Last 4 digits of Social Security Number: _____

Date: _____

(Newport Exhibit Q, emphasis in original.)

The first two forms in Newport Exhibit Q bear the names Aaron Ramon Jr. and Aaron Ramon written in the first blank. They are signed at the bottom,

however, by “Raul Pablo foreman.” Pursuant to the Hearing Officer’s February 5, 2018 Minutes of Hearing and Orders, Newport supplemented the record with copies of the Ramon and Ramon Jr. forms that have a signature above where the foreman had signed. (Newport Exhibit Y.) The signature on each form appears to be “Aaron Ramon.” No date appears on the forms for the signatures of “Aaron Ramon.”

Mojaver testified that the Ramons made meritless wage claims with DLSE because they were coerced by a labor union which had allegedly vowed earlier to put Newport out of business.

DLSE’s Case and Evidence. Mayorga testified that based on his investigation of the Project, he prepared the DLSE’s audit and penalty review, which in turn formed the basis of the Assessment. DLSE obtained information from the Awarding Body, the Requesting Parties, and the workers; conducted interviews; and reviewed records.

DLSE Exhibit 4 contains case notes, which reflect the case was received in Van Nuys on September 9, 2015. DLSE sent an initial packet to all of the parties on September 16, 2015, and Mojaver contacted DLSE regarding the case on October 1, 2015.

The Ramons and Mayorga testified as to a meeting at the Labor Commissioner’s office on January 14, 2016, during which the Ramons provided DLSE with information regarding their claims including calendars, as described above.

Ramon’s calendars reflect that between June 2015 and October 2015, he worked on the Project for 358 hours over a period of 37 days.⁹ Of those 37 days, five were Saturdays. The calendars also reflect that he worked overtime on 33 days. Ramon Jr.’s calendars reflect that between June 2015 and October 2015, he worked on the Project on

⁹ For June 2015, Ramon’s calendar indicates that he worked on eight days, including one Saturday. The calendar also shows he worked overtime hours on each day of June, except for the Saturday. For July 2015, his calendar reflects that he worked on 26 days, including three Saturdays and overtime hours on each day including Saturdays. Finally, for October 2015, Ramon’s calendar indicates that he worked on three days, which included one Saturday, and no overtime hours on any day.

33 days.¹⁰ Of those 33 days, five were Saturdays and the calendars show he worked overtime on 29 days.

Mayorga testified that he met with Juan Jose Zoquiapa, another worker on the Project. Zoquiapa arrived unannounced at the Labor Commissioner's office in Van Nuys on February 6, 2017, and signed a sworn declaration stating, among other things, that he had worked on the Project from April 2015 to August 2015, he worked on Saturdays, and he was not paid the prevailing wage. After that meeting, Mayorga was unable to reach Zoquiapa and Mayorga did not include him in the Assessment.

Ramon and Ramon, Jr. testified that the calendars they provided to DLSE were an accurate record of the hours they worked on the Project, although Ramon, Jr., conceded on cross-examination that where his June and July calendars indicated he had worked ten hours on a particular day, he had actually only worked nine hours on that day.

The Ramons also testified that they complained to their supervisor, Raul Pablo, about not getting paid for all of the hours they worked. According to Ramon, Pablo admitted that Ramon worked more than the hours reflected on the pay stubs, but still insisted "that is what you get paid."

Ramon, Jr. testified that he asked Pablo, "What is up with these hours?" because "the pay stubs were always wrong." Ramon, Jr. stated to him, "Look at the hours, man; you can't do that, it's wrong." In response, Pablo would "try to cover it up with another question," or state that Mojaver would "take care of it." Ramon, Jr. testified he did not ask Mojaver about the pay stubs because he "did not have the guts," and was scared he would "get laid off."

With respect to timesheets used on the Project, Ramon, Jr. testified that Mojaver would bring a clipboard with timesheets to the morning meetings at the start of the work shift. Immediately after the meetings, Mojaver gave the timesheets to each worker to individually sign. Ramon, Jr. testified that when he was presented with the timesheets, the names, dates, and daily start and end times were already written on the sheet. On one

¹⁰ For June 2015, Ramon Jr.'s calendar indicates that he worked on nine days, including one Saturday and overtime hours on eight days. For July 2015, his calendar shows that he worked on 21 days, including three Saturdays, and overtime hours on 20 days. For August 2015, Ramon Jr.'s calendar reflects that he worked on one Saturday. For October 2015, his calendar indicates that he worked on two days, which did not include either overtime hours or Saturday work.

occasion in July, Mojaver presented a timesheet to Ramon, Jr. stating the hours 7:30 – 2:00. Ramon, Jr. knew he had worked later than 2:00, and when he attempted to insert the correct end time, Mojaver told him “to leave it.” Ramon, Jr. “felt under pressure” and “didn’t say anything else.”

On days that Mojaver was not there, according to Ramon, Jr.’s testimony, he did not sign a timesheet or otherwise record his hours. Ramon testified that he remembered the clipboard, but he did not remember signing off on hours on the timesheets held on the clipboard.

The Ramons both testified that they damaged a refrigerator while working on a Saturday. Ramon testified that there was no supervisor present because it was a Saturday. They both testified that they admitted to Mojaver what happened and Mojaver responded that it was good that the Ramons did not get hurt. Ramon further testified that Mojaver said “not to worry about it.”

Alleged Failure To Make All Required Training Fund Contributions.

Mayorga calculated that Newport failed to make \$509.49 in training fund contributions. Mayorga made this calculation based on the amount of training fund contributions that would be due if the Ramons had worked the number of hours the Assessment found that they worked, over and above the number of hours in the CPRs, less a credit for training funds Newport showed it had paid. Although Newport disputed the hours worked, it did not contend that Mayorga made any mathematical errors in his calculation of training fund contributions.

Alleged Failure to Comply With Apprenticeship Requirements.

Newport’s alleged failure to comply with apprenticeship requirements did not relate to the Ramons or their work on the Project, but rather to the work of other employees on the Project classified as Tile Layers. Newport sent to the Joint Apprenticeship Committee, Tile & Terrazzo Industry (JAC), the committee for the Tile Layer craft, contract award information, utilizing a form of the Division of Apprenticeship Standards (DAS), the DAS 140 form, on November 11, 2013. The form specified the craft of Tile Finisher, however, rather than Tile Layer. Because the DAS

140 form did not give notice of the particular craft for which apprentices would be needed, Mayorga found that it did not comply with the notice requirements.

Newport also sent to the JAC requests for dispatch of apprentices, utilizing a DAS 142 form, on June 8, 2014 and July 14, 2015. Again, however, the DAS 142 forms requested dispatch of “ceramic tile setter and finisher” apprentices, not Tile Layer apprentices. Additionally, the DAS 142 form dated June 8, 2015, requested dispatch two days later and the DAS 142 dated July 14, 2015, requested dispatch for work commencing the next day. Based on that information, Mayorga determined that Newport did not properly issue the DAS 142 forms for dispatch of apprentices in the Tile Layer craft and did not give the required 72-hour notice, as the face of the form states.

Lastly, Newport’s CPRs reflect 629.29 Tile Layer journeyman hours and 104 hours of Tile Layer apprentice hours. Based on that information, Mayorga found that the 1:5 apprentice to journeyman ratio in the apprenticeship requirements was not met.

DISCUSSION

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

The overall purpose of the prevailing wage law . . . is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees.

(Lusardi Construction Co. v. Aubry (1992) 1 Cal.4th 976, 987, citations omitted *(Lusardi)*.) DLSE enforces prevailing wage requirements not only for the benefit of workers, but also “to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a), and see *Lusardi*, at p. 985.)

Section 1775, subdivision (a), requires, among other provisions, that contractors

and subcontractors pay the difference to workers who were paid less than the prevailing wage rate, and also prescribes penalties for failing to pay the prevailing wage rate. Section 1813 provides additional penalties for failure to pay the correct overtime rate. Section 1742.1, subdivision (a), provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following service of a civil wage and penalty assessment under section 1741.

Employers on public works must keep accurate payroll records, recording the work classification, straight time and overtime hours worked and actual per diem wages paid for each employee. (§ 1776, subd. (a).) This is consistent with the requirements for construction employers in general, who are required to keep accurate records of the hours employees work and the pay they receive. (Cal. Code Regs., tit. 8, § 11160, subd. 6.) Under Industrial Welfare Commission Order No. 16-2001 regulating wages, hours and working conditions in the construction industry and other industries (Wage Order No. 16-2001), section 6, subdivisions (A)(1) and (C), contractors are required to maintain for three years “[t]ime records showing when the employee begins and ends each work period.”¹¹

When an employer fails to maintain accurate time records, a claim for unpaid wages may be based on credible estimates from other sources sufficient to allow the decision maker to determine the amount by a just and reasonable inference from the evidence as a whole. In such cases, the employer has the burden to come forward with evidence of the precise amount of work performed to rebut the reasonable estimate. (See, e.g., *Furry v. E. Bay Publ'g, LLC* (2019) 30 Cal. App. 5th 1072, 1079 [“[A]n employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn

¹¹ On the third day of the hearing, DLSE requested that the Hearing Officer take Official Notice of the IWC Order. The Hearing Officer took the request under submission. By this Decision, the Director takes official notice of Wage Order No. 16-2001 in accordance with 8 California Code of Regulations, title 8, section 17245.

from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate”], citing *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726-727 and *Anderson v. Mt. Clemens Pottery Co.* (1945) 328 U.S. 680, 687–688, 66 S.Ct. 1187; see also *In re Gooden Construction Corp.* (U.S. Dept. of Labor Wage Appeals Board 1986) 28 WH Cases 45 (BNA) [applying same rule to prevailing wage claims under the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq.].) This burden is consistent with an affected contractor's burden under section 1742 to prove that the basis for an Assessment is incorrect.

When DLSE determines that a violation of the prevailing wage laws has occurred, it may issue a written civil wage and penalty assessment pursuant to section 1741. An affected contractor or subcontractor may appeal the assessment by filing a request for review under section 1742. The request for review is transmitted to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) At the hearing, DLSE has the initial burden of presenting evidence that “provides prima facie support for the Assessment” (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, “the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect.” (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

In this case, for the following reasons, DLSE presented prima facie support for the Assessment, and the Requesting Parties failed to prove the basis for the Assessment is incorrect. The Hearing Officer noted that Ramon and Ramon, Jr. both exhibited some difficulty remembering the exact times they started and ended work each day. Based on the totality of the evidence presented at the Hearing, however, the Hearing Officer determined that the workers' calendars that formed the basis for the Assessment constituted the most reliable evidence.

Both Ramons testified that their calendars were accurate. Ramon, Jr. did admit on cross-examination that he worked only nine hours on certain days when his June and July

calendars showed ten hours of work. He prepared his calendars, however, in January 2016, while he testified over a year later, on February 8, 2017. Accordingly, the calendars were prepared closer in time to when the work was performed and, therefore, are likely to be more accurate than Ramon, Jr.'s testimony about hours on a particular date. Further, the Ramons lived and commuted to work together on most days, and Ramon testified credibly to working ten hours per day on many occasions. Last, Newport did not rebut the evidence that the Ramons' supervisor basically admitted that they worked more than the hours reflected on the pay stubs and did nothing to rectify the shortfall. That state of the record overcomes any doubt associated with Ramon Jr.'s testimony as to nine-hour days.

The testimony and documentary evidence DLSE offered at the Hearing presents a credible showing that Newport repeatedly under-reported hours worked by the Ramons. DLSE's evidence also shows that Mojaver used pre-filled in timesheets, refused to pay for overtime hours worked, and created incomplete CPRs to under-report hours of work. In particular, the workers' testimony that they worked more hours than those shown on the CPRs was corroborated, albeit through hearsay evidence, by Ramon's testimony that the foreman, Pablo, admitted to him that he worked more than the hours reflected on the pay stubs. While hearsay evidence alone will not suffice to support a finding (see Cal. Code Regs., tit. 8, § 17244, subd. (d)), the fact that the CPRs under-reported the hours was also corroborated by the Ramons' calendars and their testimony in other respects. Along with the DLSE audit and penalty review, DLSE presented sufficient prima facie support for the Assessment's determination regarding the hours the Ramons worked on the Project.

Given the showing made by DLSE, the burden then shifted to Newport to present evidence of the precise amount of work performed to negate the reasonableness of the inferences drawn. (*Furry*, 30 Cal. App. 5th at p. 1079.) Newport failed to carry that burden for the following reasons. First, Newport denies it presented workers with timesheets with start and end times pre-filled out, but it did not maintain timesheets to back-up the CPRs; nor did it provide a credible reason for its failure to do so. Mojaver testified that he would typically dispose of the timesheets after Newport received

payment because he did not have space to maintain them in his small office. But he did not explain why he chose to retain all the other documentation that he offered as exhibits, such as his correspondence with his insurer, the Ramons, and DLSE, but disposed of the only back-up documentation he had that could confirm the accuracy of the CPRs. Additionally, he did not explain why he did not electronically scan and save the timesheets if, as he testified, he did not have physical space to keep them as hard copies. Finally, Ramon, Jr. credibly testified that when Mojaver presented him and other workers with the timesheets at the start of a given workday, the start and end times were already filled out, those times were not accurate, and Mojaver prevented Ramon, Jr. from correcting them

Second, Mojaver testified that the Ramons did not work on Saturdays and only worked in July, but Newport Exhibit CC corroborates the Ramons' testimony that they worked on at least one Saturday in August.

Third, Newport did not offer any corroborating evidence for Mojaver's testimony that the Ramons were not on site after 3:30 p.m., even though the Hearing Officer suggested it would be helpful to have testimony from the Awarding Body, other subcontractors, Newport's foreman, other workers, or representatives from the security company that Mojaver testified was used for protecting the job site. In fact, Mojaver did not attempt to rebut Ramon's specific testimony that the foreman, Pablo, admitted to him that he worked more than the hours reflected on the pay stubs.

Fourth, the inference to be drawn from the evidence on the damaged refrigerator and related small claims court action is that Mojaver used the fact that the Ramons damaged a \$10,683.00 refrigerator in an attempt to coerce them into withdrawing and disavowing their prevailing wage claims. Despite his testimony to the contrary, Mojaver was aware of the Ramons' wage claims when he wrote the demand letter to them and filed the small claims court action seeking payment for the refrigerator. Further, he agreed to withdraw his claim related to the refrigerator if the Ramons would withdraw their wage claims. Given the Hearing Officer's view of the evidence, DLSE's evidence amounted to the "credible estimates sufficient to allow the decision maker to determine the amount by a just and reasonable inference from the evidence as a whole." (*Anderson*,

supra, 328 U.S. at pp. 687-688; *Hernandez, supra*, 199 Cal.App.3d at pp. 726-727.)

The preponderance of the evidence shows that Newport has not carried its burden of proving that the Assessment was incorrect as to the underpayment of prevailing wages. Accordingly, the Assessment's determination of unpaid prevailing wages in the amount of \$21,476.83 is affirmed.

The Assessment Correctly Found That Newport Failed to Make Required Training Fund Contributions.

Absent an exemption, section 1777.5, subdivision (m)(l), requires contractors on public works projects who employ journeyman or apprentices in any apprenticeable craft to pay training fund contributions to the California Apprenticeship Council or to an apprenticeship committee approved by the Department of Apprenticeship Standards. Here, there is no dispute that training fund contributions were due under the Tile Finisher PWD at the rate of \$.89 per hour worked on the Project, and that Mayorga gave Newport a credit of \$76.13 for payments made. The only issue left in order to calculate the amount of underpayment is the number of hours worked on the Project. In that the Assessment is affirmed with respect to the number of hours worked on the Project, the amount of underpayment of training fund contributions is \$509.49.¹²

The Labor Commissioner Did Not Abuse Her Discretion in Assessing Penalties Under Section 1775.

Section 1775, subdivision (a), as it read on October 25, 2012, the Project's bid advertisement date, states in relevant part

(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner

¹² This figure for the underpayment consists of the total amount of training fund contributions due for work on the Project, less a credit of \$76.13 that Newport paid.

based on consideration of both of the following:(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) . . . unless the failure of the . . . subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the . . . subcontractor.(ii) The penalty may not be less than eighty dollars (\$80) . . . if the . . . subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.(iii) The penalty may not be less than one hundred twenty dollars (\$120) . . . if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.^[13]

Section 1775, subdivision (a)(2)(D) states, “The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.” Further, “the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.” (Cal. Code Regs. tit. 8, §17250, subd. (c).) Abuse of discretion is established if the “agency’s nonadjudicatory action . . . is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy.” (*Pipe Trades v. Aubry* (1996) 41 Cal.App.4th 1457, 1466.) In reviewing for abuse of discretion, however, the Director is not free to substitute his or her own judgment “because in [her/his] own evaluation of the circumstances the punishment appears to be too harsh.” (*Pegues v. Civil Service Commission* (1998), 67 Cal.App.4th 95, 107.)

Here, the Labor Commissioner assessed section 1775 penalties against Newport at the rate of \$120.00 per violation based on the evidence that Newport’s underpayment of prevailing wages was willful. Given the evidence that Newport did not report all hours

¹³ The reference to section 1777.1, subdivision (c) is a typographical error in the statute. The correct subdivision of section 1777.1 as it existed on the bid advertisement date, October 25, 2012, is subdivision (d), which defines a willful violation as one in which “the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.”

worked on the Project, and therefore underpaid its workers, Newport failed to carry its burden of proving that the Labor Commissioner's assessment of section 1775 penalties was inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy. Accordingly, the Assessment is affirmed against Newport as to section 1775 penalties at the rate of \$120.00 per violation for 69 violations, totaling \$8,280.00.

The Assessment Correctly Imposed Penalties for Newport's Failure to Pay the Overtime Prevailing Wage Rate for All Overtime Hours the Ramons Worked.

Section 1815 states:

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

Section 1813 states:

The contractor or any subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the ... contractor ... for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

Here, the Assessment is affirmed with respect to the number of hours the Ramons worked on the Project, which includes overtime hours for which they were not paid. Unlike section 1775 above, section 1813 does not give DLSE any discretion to reduce the amount of the penalty; nor does it give the Director any authority to limit or waive the penalty. On that basis the Assessment of section 1813 penalties of \$1,600.00 for 64 violations at \$25.00 per violation is affirmed.

The Assessment Correctly Found That Newport Failed to Meet the Requirements for Employment of Apprentices on the Project.

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. These requirements are further addressed in regulations promulgated by the California Apprenticeship Council (CAC). California Code of Regulations, title 8, section 227 provides that the regulations "shall

govern all actions pursuant to . . . Labor Code sections 1777.5 and 1777.7.”¹⁴ DLSE enforces the apprenticeship requirements not only for the benefit of apprentices, but to encourage and support apprenticeship programs, which the Legislature has recognized as “a vital part of the educational system in California.” (Stats. 1999, ch. 903, § 1 [Assem. Bill 921].) When DLSE determines that a violation of the apprenticeship laws has occurred, “. . . the affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.” (§ 1777.7, subd. (c)(2)(B).)¹⁵

Section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeymen in the applicable craft or trade (unless the contractor is exempt, which is inapplicable to the facts of this case). (§ 1777.5, subd. (g); § 230.1, subd. (a).) However, a contractor shall not be considered in violation of the regulation if it has properly requested the dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatches apprentices during the pendency of the project, provided the contractor made the request in enough time to meet the required ratio. (§ 230.1, subd. (a).) The DAS has prepared a form (DAS 142) that a contractor may use to request dispatch of apprentices from apprenticeship committees.

The regulations also require contractors to alert apprenticeship programs to the fact that they have been awarded a public works contract at which apprentices may be employed. DAS has prepared a form (DAS 140) that a contractor may use to notify apprenticeship committees for each apprenticeable craft in the area of the site of the project. The required information must be provided to the applicable committee within ten days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. (§ 230.1, subd. (a).) Thus, the contractor is required to both notify apprenticeship programs of upcoming opportunities and to request dispatch of apprentices.

¹⁴ All further regulatory references are to California Code of Regulations, title 8.

¹⁵ Section 1777.7 was amended, effective January 1, 2015. (See stats. 2014, ch. 297, § 3.) For purposes of this Decision, the Director has applied the language of section 1777.7 that was in effect at the time the Project was advertised for bid (October 25, 2012).

In this case, as determined by DLSE and specified in the Assessment, the apprenticeship violations occurred with respect to workers on the Project who were classified as Tile Layers (i.e., the violations did not relate to the Ramons, who were classified as Tile Finishers). Newport's DAS 140 form was sent to the correct committee, but did not specify the correct craft --the Tile Layer craft. Instead, it only specified the Tile Finisher craft. Newport argues that the form was valid because it was sent to the correct committee. But, Newport does not site any authority for its position, nor does Newport explain as a matter of logic how a form giving notice of the future need for apprentices in one craft is sufficient notice of the need for apprentices in another craft. Accordingly, Newport failed to issue for the Tile Layer craft a valid DAS 140 form or its equivalent.

As to the request for dispatch requirement, on June 8, 2015, and July 14, 2015, Newport submitted DAS 142 forms to the correct committee. But again, neither DAS 142 form specified a need for apprentices in the Tile Layer craft; the first form specifies ceramic tile finisher and the second form specifies ceramic tile setter & finisher. Further, neither DAS 142 form gave the requisite 72 hour notice. The June 8 DAS 142 form requested apprentices for June 10 and the July 14 form requested apprentices for July 15. Accordingly, Newport failed to properly request dispatch of apprentices for the Tile Layer craft.

Based on Newport's own CPRs, Newport had 629.29 Tile Layer journeyman hours on the Project. Therefore Newport would need 125.89 apprenticeship hours to meet the minimum one-to-five ratio. Newport only employed Tile Layer apprentices for 104 hours. Accordingly, the Assessment correctly determined that Newport did not comply with the requirements to notify applicable apprenticeship committees of the public work contract, properly request apprentices from those committees, or maintain the required 1:5 apprentice to journeymen on the Project.

On De Novo Review, the Penalties Under Section 1777.7 as Provided in the Assessment Are Affirmed.

If a contractor knowingly violates section 1777.5, a civil penalty is imposed under section 1777.7. Here, DLSE assessed a penalty under the following portion of former section 1777.7, subdivision (a)(1):

A contractor or subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation.... A contractor or subcontractor that knowingly commits a second or subsequent violation of section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance....

The phrase quoted above -- “knowingly violated Section 1777.5” -- is defined by a regulation, section 231, subdivision (h), as follows:

For purposes of Labor Code Section 1777.7, a contractor knowingly violates Labor Code Section 1777.5 if the contractor knew or should have known of the requirements of that Section and fails to comply, unless the failure to comply was due to circumstances beyond the contractor's control. There is an irrebuttable presumption that a contractor knew or should have known of the requirements of Section 1777.5 if the contractor had previously been found to have violated that Section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects.

In the Assessment, Newport was determined to be in violation of section 1777.5 for 188 days and was assessed a penalty at the mitigated rate of \$60.00 per day for a total penalty amount of \$11,280.00.¹⁶ To analyze whether the penalty is correctly calculated, under the version of section 1777.7 applicable to this case, upon a request for review the

¹⁶ The 188 days of noncompliance are calculated starting from the last date by which the notice of a public work contract should have been sent to applicable apprenticeship programs, through the last day Newport worked on the Project.

Director decides the appropriate penalty de novo.¹⁷ In setting the penalty, the Director considers all of the following circumstances (which also guide DLSE's Assessment):

- (A) Whether the violation was intentional,
- (B) Whether the party has committed other violations of Section 1777.5,
- (C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation,
- (D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices,
- (E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(§ 1777.7, subd. (f)(1) and (2).)

Here, the evidentiary record establishes the basis for the Assessment and Newport's liability under sections 1777.5 and 1777.7 and the implementing regulations. Applying the de novo standard for this case, the factors collectively favor a penalty rate at the lower end. Factor "A" relates to whether the violation was intentional. The Subcontract in this case put Newport on notice that it was required to comply with prevailing wage laws, including the requirement to employ apprentices. The applicable prevailing wage determinations stated that the relevant crafts were apprenticeable, and the Department of Industrial Relations website clearly identified the apprenticeship committees for the respective crafts in the geographic area of the Project. Newport did not bear its burden of proving by a preponderance of the evidence that the violations were not intentional.

Factor "B" concerns prior violations. The DLSE penalty review states that Newport had no prior history of apprenticeship violations. Mayorga testified that "this contractor" had two prior violations, but did not provide evidence of the prior violations.

¹⁷ As noted *ante*, section 1777.7 was amended effective January 1, 2015. Under former section 1777.7, subdivision (f)(2) that applies in this case, the statute provides for the Director to review the Assessment's penalty de novo.

This lack of evidence of prior violations supports the reason DLSE mitigated Newport's penalty rate from \$100.00 to \$60.00.

As to the de novo review factors "D" and "E," DLSE's evidence established that Newport's violations of the apprentice requirements deprived apprentices of 21.89 hours of paid on-the-job training and deprived the relevant apprenticeship committees of the opportunity to provide that on-the-job training to the apprentices in their programs. This amounts to approximately one-half week of lost apprenticeship hours, a relatively small number of hours in relation to overall apprenticeship opportunities.

Factor "C" is neutral in this case. DLSE's evidence shows that DLSE did not notify Newport of its violations until the very end of Newport's work on the Project. Hence, Newport did not have a meaningful opportunity to voluntarily remedy the violations after receiving notice.

Overall, based on a de novo review of the five factors above and in light of the evidence as a whole in this case, the Director finds that a penalty rate of \$60.00 is appropriate, and accordingly the Assessment is affirmed in this respect.

Newport Is Liable for Liquidated Damages.

Section 1742.1, subdivision (a), provides for the imposition of liquidated damages (essentially a doubling of the unpaid wages) on a contractor who has failed to pay the required prevailing wage. It provides in part:

After 60 days following the service of a Civil Wage and Penalty Assessment under Section 1741 . . . , the affected contractor, subcontractor, and surety . . . shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the Assessment . . . subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

As of May 26, 2016, when DLSE served the Assessment on the Requesting Parties, the statutory scheme regarding liquidated damages provided contractors who did not prevail at hearing three alternative ways to avert liability for liquidated damages. These required the contractor to make key decisions within 60 days of the service of the civil wage and penalty assessment. First, under section 1742.1, subdivision (a), the contractor could decide whether to pay to the workers all or a portion of the wages

assessed in the civil wage and penalty assessment, and thereby avoid liability for liquidated damages on the amount of wages so paid.

Second, under section 1742.1, subdivision (b), a contractor could avert liability for liquidated damages if, within 60 days from issuance of the civil wage and penalty assessment, the contractor deposited into escrow with the Department of Industrial Relations the full amount of the assessment of unpaid wages, plus the statutory penalties under sections 1775 and 1813.

Third, the contractor could choose to rely on the Director's discretion to waive liquidated damages under (former) section 1742.1, subdivision (a), which stated:

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment ... with respect to a portion of the unpaid wages covered by the assessment ..., the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.¹⁸

(Former § 1742.1, subd. (a).)

Here, following issuance of the Assessment, neither Sinanian nor Newport paid the unpaid prevailing wages or made a deposit in the amount of the Assessment with the Department. Additionally, Newport made no showing that it had substantial grounds for appealing the Assessment. Newport's evidence that the workers were paid the prevailing wage for all of the hours they worked was not credible. Accordingly, Newport is liable for liquidated damages in the amount of \$21,476.83.

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

¹⁸ On June 27, 2017, subsequent to the issuance of the Assessment and the filing of the Request for Review in this case, the Director's discretionary waiver power was deleted from section 1742.1 by Senate Bill 96 (SB 96) (stats. 2017, ch 28, § 16). Legislative enactments are to be construed prospectively rather than retroactively, unless the legislature expresses its intent otherwise. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 936.) Further, "[a] statute is retroactive if it substantially changes the legal effect of past events." (*Kizer v. Hannah* (1989) 48 Cal.3d 1, 7.) Here, the law in effect at the time the civil wage and penalty assessment was issued (in 2016) allowed a waiver of liquidated damages in the Director's discretion, as specified, which could have influenced the contractor's decision as to how to respond to the assessment. Applying the current terms of section 1742.1 as amended by SB 96 in this case would have retroactive effect because it would change the legal effect of past events (i.e., what the contractor elected to do in response to the assessment). Accordingly, this Decision finds that the Director's discretion to waive liquidated damages in this case under section 1742.1, subdivision (a) is unaffected by SB 96.

FINDINGS

1. The Assessment correctly found that Newport Construction, Inc. failed to report all hours worked on the Project resulting in an underpayment of prevailing wages in the amount of \$21,476.83.
2. The Assessment correctly found that Newport Construction, Inc. failed to make the required training fund contributions to an approved apprenticeship program or the California Apprenticeship Council in the amount of \$509.49.
3. The Labor Commissioner did not abuse her discretion in assessing penalties against Newport Construction, Inc. under section 1775 at the mitigated rate of \$120.00 per violation for 69 violations, for a total amount of \$8,280.00.
4. The Assessment correctly found that Newport Construction, Inc. failed to pay the overtime prevailing wage rate for all overtime hours worked, thereby making it liable for penalties under section 1813 of \$25.00 per violation for 64 violations, for a total amount of \$1,600.00.
5. The Assessment correctly found that Newport Construction, Inc. failed to comply with the laws governing employment of apprentices on public works projects.
6. The Labor Commissioner did not abuse her discretion in assessing penalties against Newport Construction, Inc. under section 1777.7 at the mitigated rate of \$60.00 per calendar day of noncompliance, for a total of \$11,280.00.
7. Newport Construction, Inc. is liable for liquidated damages under Labor Code section 1742.1, subdivision (a) in the amount of \$21,476.83.
8. The amounts found due in the Assessment as affirmed by this Decision are as follows:

Wages due:	\$21,476.83
Training Fund Contributions due:	\$ 509.49
Penalties under section 1775(a):	\$ 8,280.00
Penalties under section 1813:	\$ 1,600.00
Penalties under section 1777.7:	\$11,280.00
Liquidated damages:	\$21,476.83

TOTAL

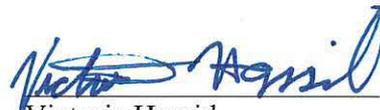
\$64,623.15

In addition, interest is due and shall continue to accrue on all unpaid wages as provided in section 1741, subdivision (b).

ORDER

The Civil Wage and Penalty Assessment is affirmed and liquidated damages are awarded as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: August 1, 2019



Victoria Hassid,
Chief Deputy Director
Department of Industrial Relations¹⁹

¹⁹ See Government Code sections 7, 11200.4.