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**Julie A. Su***California Labor Commissioner**Division of Labor Standards Enforcement***2012–2013 FISCAL YEAR REPORT ON THE EFFECTIVENESS
OF THE BUREAU OF FIELD ENFORCEMENT**

Labor Code section 90.5(d) requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the Bureau of Field Enforcement (Bureau). This report shall include the following: (1) the enforcement plan adopted by the Labor Commissioner and the rationale for the priorities, (2) the number of establishments investigated by the Bureau and the number and types of violations found, (3) the amount of wages found to be unlawfully withheld from workers and the amount of unpaid wages recovered for workers, and (4) the amount of penalties and unpaid wages transferred to the General Fund as a result of the efforts of the Bureau.

The Bureau investigates complaints and takes enforcement actions to ensure employees are not being required or permitted to work under unlawful conditions. Authority for enforcement action taken by Bureau investigators involves the enforcement of minimum wage and overtime requirements and child labor laws; the requirement that employers carry workers' compensation insurance; audits of payroll records, collection of unpaid wages, including prevailing wages on public works jobs; the issuance of citations for violations of any applicable Labor Code sections; the confiscation of illegally manufactured garments; and injunctive relief to preclude further violations of the law.

Over the last fiscal year, the Labor Commissioner has reinforced the Division's core mission of collecting wages for California's wage earners and penalizing employers who participate in the underground economy. It is unacceptable that businesses violating labor laws should gain a competitive advantage over law-abiding employers. As a result, the Bureau has targeted businesses that are intentionally cheating and the Bureau will use every tool in its arsenal to prosecute these violators to the fullest extent of the law. These efforts included working in collaboration with sister state agencies, local law enforcement, and other governmental agencies, as well as other stakeholders from community-based organizations to industry associations.

The Division has continued specialized industry training as well as additional field enforcement training to provide staff a better understanding of various schemes used by unscrupulous employers to avoid compliance with the law. These training sessions have helped the Bureau secure better leads and conduct more in-depth investigations. This commitment to staff training has led the Bureau to conduct deeper, more meaningful investigations that have increased the number and amount of wage audits and penalty assessments this year.

CRIMINAL INVESTIGATION AND PROSECUTION OF WAGE THEFT

With the establishment of the Criminal Investigation Unit (CIU), made up of sworn peace officers, the Division has sent a strong message that law-breaking will not be tolerated and that wage theft is a threat to workers, law-abiding employers, and our economy. CIU has increased the number of criminal filings the Division has made with the District Attorney's Offices (DA) and increased joint investigations. The CIU handles cases involving theft of labor (which can be a felony or misdemeanor), felony arrest, misdemeanor arrest, misdemeanor citations, payment of wages with insufficient fund checks, and kickbacks on public works projects. CIU filed 24 misdemeanors in fiscal year 2012—2013. CIU also filed eight felonies in this fiscal year. Some of the other highlights for fiscal year 2012—2013 include the following:

- A criminal complaint for conspiracy and grand theft was filed against a car wash and its parent company.
- The owners of a restaurant in San Marcos were charged with felony counts of workers' compensation fraud and forgery following a referral by our CIU to the San Diego District Attorney's office.
- Security guards had over \$45,000 in wages stolen from them. CIU investigated the business and filed a felony criminal complaint affecting 22 employees with the Fresno District Attorney's office.
- CIU investigated a restaurant located in San Diego and found that the owner would make employees work a week or more without pay as a "training program." Violations included over \$57,000 in wage theft, payroll tax violations, and no workers' compensation. CIU filed the case with the San Diego District Attorney's office.
- CIU investigated a car wash in Los Angeles County and found theft of labor, premium fraud, tax fraud, and Labor Code section 226 violations. At the time of the filing with the Los Angeles District Attorney's office, four victims were identified as being owed over \$125,000.

ENFORCEMENT RESULTS

In fiscal year 2012—2013, the Bureau conducted a total of 5,905 inspections, resulting in a total of 3,743 citations.¹ Due to the increased attention to unpaid wages, the amount of wages found due to workers in California has significantly increased, from \$28.2 million in fiscal year 2011—2012 to \$48.6 million in fiscal year 2012—2013. This reflects the ongoing commitment this Administration has made to identifying and combating wage theft. The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance, with 1,513 citations and a total assessment amount of \$28,550,817. Although significantly fewer citations were issued for the failure to issue an itemized wage statement (957 violations), the dollar amount of assessments for this citation category, in the amount of \$20,087,750, is second to the lack of workers' compensation insurance. As stated in the footnote below, the following three tables illustrate the performance by the Bureau *inclusive* of all special programs within the Bureau including prevailing wage enforcement through the Public Works Unit and the collaborative efforts of the Labor Enforcement Task Force (LETF).

¹ The total number of inspections and citations and all statistics throughout this report formatted as a "total" statistic encompass the performance of all Bureau programs including the performance of the Public Works Unit and the Labor Enforcement Task Force (LETF).

TABLE 1

BUREAU (including Public Works)			
2012—13 Results by Citation Category			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected²</i>
Workers' Compensation	1,513	\$28,550,817	\$4,283,036
Itemized Statement	957	\$20,087,750	\$2,906,878
Overtime	260	\$870,700	\$303,865
Minimum Wage	191	\$1,294,150	\$114,058
Child Labor	118	\$117,000	\$77,051
Non-registration ³	113	\$676,000	\$504,569
Unlicensed Construction Contractor	81	\$837,800	\$137,199
Garment	62	\$100,100	\$44,417
Rest, Meal Period, and Reporting Time Pay	52	\$462,400	\$6,889
Unlicensed Farm Labor Contractor	2	\$5,900	\$0
<i>Subtotals</i>	<i>3,349</i>	<i>\$53,002,617</i>	<i>\$8,377,916</i>
Public Works	394	\$11,930,853 ⁴	\$1,336,513
<i>LESS citations dismissed/modified</i>		<i><\$15,104,322></i>	
TOTALS	3,743	\$49,829,148	\$9,714,475

² Penalties collected in fiscal year 2012—2013 may include collection of penalties assessed and found due in earlier reporting periods.

³ “Non-registration” includes penalties for non-registration issued for car washes and garment manufacturers.

⁴ Includes the assessment of \$1,534,684.00 in Labor Code section 1777.7 penalties.

TABLE 2

BUREAU (including Public Works)				
2012–13 Results by Industry				
		Total Inspections		5,905
		Total Citations Issued		3,743
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed</i> ⁵	<i>Penalties Collected</i> ⁶
Agriculture	376	111	\$1,527,277	\$174,840
Auto Repair	415	421	\$3,765,130	\$640,642
Car Wash	181	181	\$1,620,514	\$670,091
Construction	985	595	\$5,332,572	\$959,995
Garment	159	227	\$2,319,236	\$359,934
Restaurant	862	718	\$8,670,511	\$1,717,492
Retail	67	93	\$1,328,657	\$375,349
Other ⁷	1,757	1,003	\$28,438,720	\$3,479,619
<i>Subtotals</i>	<i>4,802</i>	<i>3,349</i>	<i>\$53,002,617</i>	<i>\$8,377,961</i>
<i>LESS citations dismissed/modified</i> ⁸			<i><\$15,104,322></i>	
<i>Subtotals</i>	<i>4,802</i>	<i>3,349</i>	<i>\$37,898,295</i>	<i>\$8,377,961</i>
<i>PLUS Public Works</i> ⁹	<i>1,103</i>	<i>394</i>	<i>\$11,930,853</i> ¹⁰	<i>\$1,336,513</i>
TOTALS	5,905	3,743	\$49,829,148	\$9,714,475

⁵ All figures in all dollar amount categories are rounded to the next dollar. Therefore, all columns/rows may not total to the exact dollar.

⁶ Penalties collected in fiscal year 2012–2013 may include collection of penalties assessed and found due in earlier reporting periods.

⁷ The “other” category includes janitorial, race tracks, pallet, and various other industries not falling into any of the industries specified.

⁸ Citations may be dismissed or modified if the employer provides documentary evidence subsequent to the issuance of the citation or at the appeal hearing proving that it was in compliance at the time the citation was issued.

⁹ The Public Works Unit does not conduct inspections but rather measures performance based on cases opened for audit purposes. Thus, the data on the Public Works Unit in this table should be understood as 1,103 *audits* conducted (rather than inspections) with 394 *civil wage and penalty assessments* (CWPAAs) issued (rather than number of citations). These measurements are included here to provide a full picture of the Division’s performance.

¹⁰ Includes the assessment of \$1,534,684 in Labor Code section 1777.7 penalties.

TABLE 3

BUREAU (including Public Works)		
2012—13 Results for Wages Due and Collected		
Total Wages Found Due	\$48,675,673	
Total Wages Collected¹¹	\$25,570,357	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Restaurant	\$4,735,061	\$759,562
Garment	\$4,572,262	\$129,296
Car Wash	\$1,986,264	\$189,909
Retail	\$1,076,888	\$310,265
Agriculture	\$768,773	\$151,954
Construction	\$346,206	\$220,924
Auto Repair	\$249,129	\$67,981
Other	\$16,250,277	\$6,638,963
<i>Subtotals</i>	<i>\$29,984,860</i>	<i>\$8,468,854</i>
Public Works	\$18,690,813	\$17,101,503
TOTALS	\$48,675,673	\$25,570,357

Audits

DLSE has provided additional training to staff to uncover issues involving non-payment of wages and this training has resulted in more audits of employers’ payroll records. The emphasis is on encouraging employers to conduct self-initiated audits to augment the investigations conducted in response to specific complaints. If employers are unable or refuse to complete the self-audit, DLSE has placed emphasis on conducting a thorough investigation and conducting the audits to recover unpaid wages. What follows is a sampling of notable outcomes of payroll audits performed under the supervision and direction of Bureau staff which resulted in the assessment of wages due to employees (included in the statistics of Table 3):

- \$3.6 million from a health care business for failure to pay wages in a timely manner
- \$1.26 million from a warehouse company for failure to pay overtime wages
- \$214,105 from a restaurant for failure to pay minimum wage and overtime
- \$103,384 from a country club for failure to provide required meal periods
- \$103,262 from a restaurant for failure to provide proper meal and rest periods
- \$91,519 from a healthcare provider for failure to provide the proper meal periods
- \$78,831 from a bakery for failure to pay overtime wages
- \$69,914 from a service business for failure to pay minimum wages
- \$47,852 from a car wash for failure to pay split shift premium wages

¹¹ Wages collected in fiscal year 2012—2013 may include collection of wages found due in earlier reporting periods. The total includes a large settlement in the amount of \$8,072,273 in one case for Public Works. This statistic also includes wages collected as the result of Bureau-assisted employer self-audits, as well as actions taken by the Division’s Legal Unit, including litigation, settlements, and Legal Unit-assisted employer self-audits, all initiated by the Bureau.

Targeting Unlawfully Uninsured Employers

As previously mentioned (and as evident in Table 1), the lack of workers’ compensation insurance continues to remain the violation most often identified in the Bureau’s enforcement efforts. In 2008, as a result of the passage of Senate Bill (SB) 869 (Ridley-Thomas, Chapter 662), the Bureau began a new program using a data-sharing partnership with the Employment Development Department (EDD), the Division of Workers’ Compensation, and the Workers’ Compensation Insurance Rating Bureau to proactively identify potentially unlawfully uninsured employers apart from its normal complaint-driven investigations. The Bureau issued 84 citations and assessed \$2,097,779 in penalties through the Uninsured Employer Enforcement Program for failure to provide workers’ compensation insurance.¹² The process and results of SB 869 enforcement activities are provided in a separate report, pursuant to Labor Code section 90.3(d).

Car Wash Industry

On January 1, 2007, the Bureau began a concerted enforcement effort to ensure compliance with the registration requirements of car washing and polishing businesses (Labor Code sections 2050–2067 and Title 8, California Code of Regulations [CCR], Division 1, Chapter 6, Subchapter 11, sections 13680–13693). Inspection results improved noticeably. This improvement was due to training and effective tools that staff received to better identify wage audit issues and uncover wage theft, as well as training held in 2012 encouraging staff inspecting car wash businesses to go beyond registration status when they suspect that other labor laws are being violated. The Division conducted 181 inspections in this industry and issued 181 citations, assessing \$1,620,514 for violations of various labor laws, including non-registration and penalties. Additionally, the Division assessed \$1,986,264 in wages and collected \$189,909 on behalf of workers as wages due. The results of total car wash inspections, inclusive of re-inspections included in the statistics cited just above, are as follows:

TABLE 4

2012–13 Results by Citation Category for Car Wash¹³			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Non-registration	74	\$600,600	\$435,444
Itemized Statement	32	\$440,500	\$120,670
Workers’ Compensation	32	\$378,514	\$93,658
Minimum Wage	20	\$107,500	\$14,969
Overtime	13	\$61,100	\$2,350
Child Labor	7	\$4,500	\$3,000
Rest, Meal Period, and Reporting Time Pay	3	\$27,800	\$0
TOTALS	181	\$1,620,514	\$670,091

¹² These penalties are a subset of the total amount of the assessed workers’ compensation penalties, reported in Table 1.

¹³ The statistics reported here are included in the overall results of the Bureau summarized in Tables 1–3.

Labor Enforcement Task Force (LETF)

The LETF is a partnership of state, federal, and local agencies. These partnerships consist primarily of the Division of Labor Standards Enforcement (DLSE), the Employment Development Department (EDD), the Division of Occupational Safety and Health (DOSH), the Contractors State License Board (CSLB), and the Board of Equalization (BOE). With the creation of the LETF by this Administration, the DIR’s approach to combating the underground economy shifted from randomly conducting inspections to conducting targeted inspections based on empirical data. The task force also reflects DLSE’s new focus on improved targeting through better data and intelligence gathering and on assessing wages owed. LETF accomplishes its mission through targeted inspections for minimum wage and overtime violations, workers’ compensation, child labor, illegally operating without the required licenses, and a focus on garment, agriculture, construction, auto body or repair, restaurants, and any industry in which labor law violations are prevalent.

Public Works

The Bureau’s Public Works Unit investigates complaints arising from violations of the State’s prevailing wage and apprenticeship laws and conducts audits on behalf of workers for back wages owed. As a result of SB 1038 (Budget Trailer Bill, Chapter 46, Statutes of 2012), on July 1, 2012, the Bureau began enforcing Labor Code section 1777.5, which had previously been enforced by the Division of Apprenticeship Standards. Labor Code section 1777.7 assessments are now being issued by Bureau investigators for up to \$300 per calendar day when contractors violate apprenticeship law pursuant to section 1777.5.

TABLE 5

2012—13 Results for Public Works	
Cases Opened	1,103
Cases Closed	1,302
CWPAs Issued	394
Determination of Civil Penalties—Apprenticeship Assessments	124
Settlements	83
Wages Found Due	\$18,690,813
Wages Recovered ¹⁴	\$17,101,503
Penalties Assessed	\$11,930,853 ¹⁵
Penalties Collected	\$1,336,513 ¹⁶

In June 2013, the Bureau recovered \$8,072,273 in back wages due to construction workers on the San Diego Hilton Bayfront Hotel project. This settlement was one of the largest in history for the Division.

¹⁴ Wages recovered and penalties collected may include monies found due in earlier reporting periods.

¹⁵ Includes \$1,534,684 assessed in Labor Code section 1777.7 penalties.

¹⁶ Includes \$137,110 collected in Labor Code section 1777.7 penalties.

In fiscal year 2012—2013, the Labor Commissioner signed Orders of Debarment for one contracting company and principal. The Order imposed the maximum statutory debarment period of three years, rendering the principal ineligible to bid on or be awarded a contract for a public works project or to perform work as a subcontractor on these projects.

A major commitment of this fiscal year has been the active involvement of the Bureau in identifying criminal violations of the Labor Code. In 2012—2013, the Bureau worked closely with several district attorney offices within the state. In Orange County, Public Works Bureau staff assisted the Orange County District Attorney in establishing a Public Works Criminal Investigations Unit. This relationship proved successful when a contractor pled guilty for multiple wage theft and tax fraud crimes and will be serving a two-year prison sentence. In these cases, Bureau staff members have served as expert witnesses.

Judgment Enforcement Unit

The Division's Judgment Enforcement Unit (previously called the Collections Unit) has continued to increase monies collected from citations issued by the Bureau. The Judgment Enforcement Unit processed 1,560 judgments for fiscal year 2012—2013, with total penalty collections by the Unit of \$4,047,097.¹⁷

Despite the increase in monies collected, judgment enforcement (collection) remains a challenge. This is because of a number of factors, including the shell games played by many employers in the underground economy, efforts by scofflaws to abscond with whatever assets are available while an investigation is ongoing, and similar challenges that have plagued the Division for many years and hindered enforcement efforts.

Legal Unit

The Bureau continues to work closely with the Legal Unit in developing investigations in preparation for lawsuits, conducting accurate wage audits, and defending writs on Bureau citations. The Legal Unit staff spends a significant amount of time assisting the Bureau investigators in obtaining tolling agreements and negotiating settlement agreements for the collection of wages.¹⁸

- Lawsuit filed for \$109.8 million against a health care provider for non-payment of minimum wages and overtime wages, issuance of insufficient fund checks, liquidated damages, late payment of wages, recovery for employees of health care and other benefit premiums employer collected and failed to tender, civil penalties and additional wages pursuant to the California WARN (Worker Adjustment and Retraining Notification) Act.
- Lawsuit filed for \$1.6 million for non-payment of wages and penalties on behalf of 670 agricultural workers. This case is still pending in the courts, with trial set to begin later this year.

¹⁷ Judgment enforcement and collection of payments owed are performed by Deputy Labor Commissioners and DLSE Legal, in addition to the Judgment Enforcement Unit. This explains why the total amount of penalties collected by the Unit is lower than the total amount of penalty collections shown in Tables 1 and 2 (\$8,377,961).

¹⁸ It should be noted that the resulting penalties and/or wages collected are included in the Bureau statistics presented in Tables 1—3.

- Lawsuit filed for \$799,000 for non-payment of wages and penalties for 130 agricultural workers. Default Judgment entered on October 1, 2012, against a farm labor contractor.
- Lawsuit involving 865 employees filed, totaling more than \$1 million, against a Chino warehouse and distribution company for overtime violations and failure to provide a required 30-minute meal period to employees.
- Legal reached a settlement and collected \$8,072,273 in unpaid prevailing wages on behalf of 2,051 workers who built a hotel.
- Legal assisted in reaching a settlement of \$294,511 in a Bureau case against a garment manufacturer for unpaid minimum wages, overtime, and invalid itemized statements.
- Legal assisted in reaching a settlement of \$339,716 in a Bureau case against a restaurant for unpaid minimum wages, overtime, and invalid itemized statements.
- Legal assisted in reaching a settlement of \$212,518 in a Bureau case against a car wash for unpaid minimum wages, overtime, meal period, and invalid itemized statements.
- Legal reached a settlement of \$610,186 in wage assessments and penalties with four general contractors on four separate public works jobs.

Transfers to the General Fund

In fiscal year 2012—2013, DLSE deposited \$4,477,439 in fines and penalties collected, into the General Fund.

Respectfully Submitted,

Julie A. Su
Labor Commissioner