

SUPREME COURT
FILED

JAN 31 2019

Jorge Navarrete Clerk

Deputy

S246911

IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA

JUSTIN KIM,
Plaintiff and Appellant,

v.

REINS INTERNATIONAL CALIFORNIA, INC.
Defendant and Respondent.

Appeal from the Court of Appeal, Second Appellate District, Division Four,
Case No. B278642

Superior Court of California, County of Los Angeles,
Case No. BC539194
Hon. Kenneth R. Freeman

MOTION FOR JUDICIAL NOTICE

Cynthia L. Rice (SBN 87630)
CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.
1430 Franklin Street, Suite 103
Oakland, CA 94612
Telephone: (510) 267-0762
Facsimile: (510) 267-0763
crice@crla.org
Attorney for *Amicus Curiae*
California Rural Legal Assistance, Inc.

Javier J. Castro (SBN 306294)
CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.
145 East Weber Avenue
Stockton, CA 95202
Telephone: (209) 946-0605
Facsimile: (209) 946-5730
jcastro@cral.org
Attorney for *Amicus Curiae*
California Rural Legal Assistance, Inc.

RECEIVED

JAN 18 2019

CLERK SUPREME COURT

S246911

IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA

JUSTIN KIM,
Plaintiff and Appellant,

v.

REINS INTERNATIONAL CALIFORNIA, INC.
Defendant and Respondent.

Appeal from the Court of Appeal, Second Appellate District, Division Four,
Case No. B278642

Superior Court of California, County of Los Angeles,
Case No. BC539194
Hon. Kenneth R. Freeman

MOTION FOR JUDICIAL NOTICE

Cynthia L. Rice (SBN 87630)
CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.
1430 Franklin Street, Suite 103
Oakland, CA 94612
Telephone: (510) 267-0762
Facsimile: (510) 267-0763
crice@crla.org
Attorney for *Amicus Curiae*
California Rural Legal Assistance, Inc.

Javier J. Castro (SBN 306294)
CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.
145 East Weber Avenue
Stockton, CA 95202
Telephone: (209) 946-0605
Facsimile: (209) 946-5730
jcastro@cral.org
Attorney for *Amicus Curiae*
California Rural Legal Assistance, Inc.

Amagda Perez (SBN164486)
California Rural Legal Assistance
Foundation
2210 K Street, Suite 201
Sacramento, CA 95816
(916) 446-7904
Email: aperez@crlaf.org
Attorney for *Amicus Curiae*
California Rural Legal Assistance
Foundation

Saveena Takhar (SBN 300630)
Staff Counsel
Consumer Attorneys of California
770 L Street, Suite 1200
Sacramento, CA 95814
Attorney for *Amicus Curiae* Consumer
Attorneys of California

Laboni Hoq (SBN 224140)
ASIAN AMERICANS ADVANCING
JUSTICE - LA
1145 Wilshire Blvd., 2nd Floor
Los Angeles, CA 90017
Telephone: (213) 977-7500
Fax: (213) 977-7595
Email: lhoq@advancingjustice-la.org
Attorney for *Amicus Curiae* ASIAN
AMERICANS ADVANCING
JUSTICE - LA

Aaron Kaufmann (SBN 148580)
Leonard Carder LLP
1330 Broadway, #1450
Oakland, CA 94612
Attorney for *Amicus Curiae* California
Employment Lawyers Association (CELA)

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS

OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 22 of the Rules of Court and Evidence Code sections 452 and 459, *Amici Curiae* California Rural Legal Assistance, Inc., California Rural Legal Assistance Foundation, California Employment Lawyers Association, Asian Americans Advancing Justice – Los Angeles, and Consumer Attorneys of California respectfully request that the Court take judicial notice of the following exhibits in support of their *Amicus Curiae* brief:

1. Exhibit 1 is a true and correct copy of the “2015–2016 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement” provided to *Amici Curiae* by the Office of the Labor Commissioner and constitutes an official record of that executive agency’s official act. This document may be judicially noticed as provided in Evidence Code section 452, subdivision (c).

2. Exhibit 2 is a true and correct copy of the “Judgment Denying Petition for Writ of Mandate” entered in *Vanderham v. Labor Commissioner of the State of California, Department of Industrial Relations*, Tulare County Superior Court, Case No. VCU 256537, which was provided to *Amicus*

Curiae by the Office of the Labor Commissioner in response to a Public Records Act (“PRA”) request served on that agency. It is a record on file with the Superior Court of California and may be judicially noticed as provided in Evidence Code section 452, subdivision (d).

3. Exhibit 3 is a true and correct redacted copy of the “Settlement Agreement and General Release” entered into between Villa Marina, Inc., et al. and the Division of Labor Standards Enforcement which was provided to *Amici Curiae* by the Office of the Labor Commissioner in response to a PRA request served on that agency. It constitutes an official record of that executive agency’s official act and may be judicially noticed as provided in Evidence Code section 452, subdivision (c). Exhibit 3 contains the names of employees who were entitled to receive payments under the terms of the settlement agreement. Those names have been redacted in the interest of preserving the privacy rights of those individuals. Otherwise, the document is a complete copy of the document provided in response to the PRA request.

4. Exhibit 4 is a true and correct redacted copy of the “Settlement Agreement and General Release” entered into between Jansen Construction Company, et al. and the Division of Labor Standards Enforcement, which was provided to *Amicus Curiae* by the Office of the Labor Commissioner in

response to a public record act request served on that agency. It constitutes an official record of that executive agency's official act and may be judicially noticed as provided in Evidence Code section 452, subdivision (c). Exhibit 4 contains the names of employees who were entitled to receive payments under the terms of the settlement agreement. Those names have been redacted in the interest of preserving the privacy rights of those individuals. In all other respects, the document is a complete copy of the document provided in response to the PRA request.

These documents are relevant to the issues raised in this appeal.

Exhibit 1 provides information about the number of businesses in the state, as compared to the total number of inspections conducted by the State of California. It also provides information about the number of inspections conducted in low-wage worker industries, such as agriculture.

Dated: January 16, 2019 **California Rural Legal Assistance, Inc.**
California Rural Legal Assistance Foundation
California Employment Lawyers Association
Asian Americans Advancing Justice – LA
Consumer Attorneys of California

By: /s/Cynthia L. Rice
Cynthia L. Rice
Javier J. Castro
Attorneys for *Amicus Curiae* California
Rural Legal Assistance, Inc.

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR JUDICIAL NOTICE**

Amici Curiae submit the documents appended hereto as Exhibits 1 through 4 and respectfully request that this court take judicial notice of these in Exhibits offered in support of *Amici Curiae's* brief in support of Appellants.

Evidence Code section 459 provides that “the reviewing court may take judicial notice of any matter specified in Section 452.” These matters include “official acts” of any executive department of the State of California and records of any court in this state, (Evid. Code § 452, subds. (c), (d).)

As demonstrated in the notice and accompanying declarations, Exhibit 1 is an official publication produced by the California Labor Commissioner, a copy of which was provided to *Amici Curiae*, and provided to the state legislature as required by statute. It is germane to this Court’s review of this matter because it provides an overview of the state’s labor law enforcement efforts and, in *Amici's* opinion demonstrates the need for the augmented enforcement provided for by PAGA.

Exhibit 2 is a judgment entered in a writ of mandate unsuccessfully challenging a citation issued by the State of California against an employer for labor law violations. It is on file with and constitutes a record of the Tulare County Superior Court and may be judicially noticed pursuant to Evidence Code § 452, subdivision (d).

Exhibit 3 and Exhibit 4 are settlement agreements entered into between the State of California and two separate employers after issuance of a citation for labor law violations. These records were maintained by the Office of the Labor Commissioner and were provided to *Amici Curiae* in response to a public record request.

Exhibits 2, 3 and 4 are germane to the issues presented on appeal as they each demonstrate the range of penalties and underpaid wages that were paid to employees in connection with enforcement actions conducted by the State of California. The small amount of these payments is indicative of the range of recoveries that an individual PAGA complainant, or other

aggrieved employee, might receive in an action.

Based on the foregoing, *Amici Curiae* respectfully request that the court take judicial notice of Exhibits 1 through 4, pursuant to Evidence Code sections 452 and 459.

**California Rural Legal Assistance,
Inc.**

By: /s/ Cynthia L. Rice
Cynthia L. Rice
Javier J. Castro
Attorneys for *Amicus Curiae* California
Rural Legal Assistance, Inc.

**DECLARATION OF CYNTHIA L. RICE IN SUPPORT OF
MOTION FOR JUDICIAL NOTICE**

I, Cynthia L. Rice declare and depose as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am currently employed by both California Rural Legal Assistance, Inc. and the California Rural Legal Assistance Foundation and have personal knowledge of the exchange of information between those entities and the California Labor Commissioner's Office.

2. As part of our regular communications with the Office of the Labor Commissioner and its offices we receive mailings of official reports, notices and documents issued by the Office of the Labor Commissioner, the Bureau of Field Enforcement and the Department of Industrial Relations. One of the documents provided to us by the Office of the Labor Commissioner was the "2015–2016 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement". A true and correct copy of the document received by us is attached hereto as Exhibit 1.

3. On or about August 8, 2017 our office sent a Public

Record Act Request to the Department of Industrial Relations, Division of Labor Standards Enforcement requesting “[a]ll records or information documenting citations issued by the LWDA/DLSE/BOFE for failure to pay minimum wages due; failure to pay overtime wages due; and/or failure to provide meal and/or rest periods from January 1, 2015, to the present.”

4. In response to the Public Record Act Request I received copies of a variety of settlements and judgments from David Balter, Assistant Chief Counsel for the Division of Labor Standards Enforcement. Included in that production were documents regarding eight matters that had gone to judgment or were settled. Exhibits 2, 3 and 4 were included in that production. I selected these as examples for the court because the total amount awarded or agreed to and the amounts to be paid to affected workers can be easily determined from the documents.

5. Exhibits 2, 3, and 4 are true and correct copies of the documents produced, except that I have redacted the names of the employees who received disbursements under the settlement

agreements or judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based upon my personal knowledge, or when so stated, on my information and belief, in which case I believe it to be true. Executed this 16th day of January, 2019 in Oakland, California, County of Alameda.

/s/ Cynthia L. Rice
Cynthia L. Rice
Attorney for *Amicus Curiae* California
Rural Legal Assistance, Inc.

EXHIBIT 1

DEPARTMENT OF INDUSTRIAL RELATIONS

Headquarters Office

P.O. Box 420603

San Francisco, CA 94142

Tel: (415) 703-4810

Fax: (415) 703-4807

**Julie A. Su***California Labor Commissioner**Division of Labor Standards Enforcement***2015–2016 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 (the Bureau or BOFE). This report should include: (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 Bureau's efforts.

The Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement or DLSE) consists of several units working together to provide a wide array of essential services for California workers and employers, including adjudication of wage claims, inspections of workplaces, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of businesses, investigations of retaliation complaints, criminal prosecution for wage theft and education of the public on labor laws. The mission of the California Labor Commissioner is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, the Division puts earned wages into workers' pockets and helps level the playing field for law-abiding employers.

One of the Division's key enforcement arms is the Bureau of Field Enforcement. The Bureau investigates complaints and takes enforcement actions to ensure that employees are neither required nor permitted to work under unlawful conditions. Actions taken by Bureau investigators include the enforcement of minimum wage and overtime requirements and child labor laws and of employers' requirement to carry workers' compensation insurance; audits of payroll records, collection of unpaid wages, such as prevailing wages on public works jobs; issuing citations for violations of any applicable Labor Code sections; confiscating illegally manufactured garments; and seeking injunctive relief to prevent further violations of the law.

California has over 711,000 businesses, which report employing 13.4 million California workers. This does not include nearly 3 million small businesses in California that report no payroll employees.

Numerous studies put the incidence of wage theft at staggering levels. The US Department of Labor reported in 2014 that the minimum wage law is violated in California 372,000 times per week and that over 1 in 10 workers in California is paid less than the minimum wage. An often-cited 2010 study by the UCLA Labor Center found that frontline workers in Los Angeles County lose \$26.2 million per week in stolen wages.

BOFE focuses on major underground economy industries in California where labor law violations are the most rampant, including agriculture, garment work, construction, car washing, and restaurants. In the past few years, the Division has increased its focus in industries where wage theft has been particularly challenging to combat, such as janitorial work and warehousing.

Strategic Enforcement Plan

In the past five years, the Bureau has reinforced the Labor Commissioner’s core mission of collecting wages for California’s wage earners and penalizing employers that participate in the underground economy. It is unacceptable for businesses that violate labor laws to gain a competitive advantage over law-abiding employers.

One of the key components of this administration’s enforcement plan is strategic targeting of law-breaking employers. In lieu of broad “sweeps” and random inspections, the Labor Commissioner has adopted an approach that utilizes active collaboration with key partners on the ground and improved data to target businesses that are intentionally cheating. We have also devoted considerable resources to ensuring that we are using every tool at our disposal to prosecute these violators to the full extent of the law. This includes working in collaboration with sister State agencies, local law enforcement, and other government agencies as well as other stakeholders, from community-based organizations to industry associations. Those partnerships have resulted in better leads to uncover wage theft and strengthened the Division’s ability to interview workers in a safe environment so that we can understand the nature of violations in the workplace. Deputy Labor Commissioners in BOFE interview workers off-site and outside regular business hours to maximize our ability to gain worker trust and participation. The Bureau does not solely rely on complaint-based investigations but also engages in proactive, strategic enforcement based on leads obtained by organizations, associations, and industry representatives.

In addition, legislative changes have given the Bureau more power to issue civil citations for certain violations that were once enforceable only through the Berman wage claim process or through private lawsuits. For example, the Bureau is now able to issue citations for liquidated damages when minimum wage violations occur and for waiting-time penalties under Labor Code section 203. These changes do not expand liability for employers breaking the law but streamline the Division’s ability to crack down on perpetrators of underground economy violations, protecting honest employers and resulting in a smarter use of government resources. Other changes expand liability, including the creation of a “client employer” definition that addresses violations created by entities that subcontract for labor by making those entities responsible for wage theft under certain circumstances.

As a key component of our renewed effort to fight wage theft, BOFE investigators not only focus on civil penalties but conduct detailed audits for unpaid wages, in particular, minimum and overtime wages owed to workers. BOFE’s efforts help ensure that workers are paid their lawful wages and legitimate employers are not forced out of business by those operating illegally in the underground economy. We have hired more auditors for this purpose and have also held statewide training for deputies on wage

auditing. The Labor Commissioner’s office partners with other units within the Department of Industrial Relations, community groups, and other departments in order to better enforce the laws. Our enforcement efforts generate substantial revenue for the State in the form of penalties paid by employers that are caught breaking the law. As a direct result of an enforcement plan that prizes quality over quantity and in-depth investigations over quick in-and-out inspections, the Division has performed fewer inspections overall compared to the years before this administration but has found more wages owed to workers in California than at any time in BOFE’s history. However, notably, the ratio of citations to inspections has increased dramatically. In other words, better targeting leads fewer law-abiding employers to be inspected, more unpaid wages to be found due, and more citations to be issued per employer, so that scofflaw employers who purposefully exploit workers and break the law are held accountable.

The Division has continued to offer training, particularly on conducting wage audits to determine the extent of wage theft and to put wages back into workers’ pockets, as well as additional field enforcement training to give staff a better understanding of various schemes used by unscrupulous employers to avoid compliance with the law. This commitment to staff training has enabled the Bureau to conduct deeper, more substantive investigations.

This report focuses primarily on the activities of field enforcement pursuant to Labor Code section 90.5(d).

Enforcement Results

In fiscal year 2015–2016, the Bureau conducted 2,424 inspections, which led to the issuance of citations for 2,072 violations.¹ This administration’s ongoing commitment to identifying and combating wage theft has resulted in more in-depth investigation to uncover underground labor violations. The largest single source of violations and citations continues to be the failure to carry workers’ compensation insurance: citations for this violation numbered 859, and a total of \$19,278,262.45 was assessed in penalties. The second-highest number of citations was for the failure to issue an itemized wage statement (449 violations), which also had the second-highest penalty assessment in its citation category, \$4,229,225. The following tables illustrate the Bureau’s performance, including its special programs, such as 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 those of the Public Works Unit and the Labor Enforcement Task Force.

BUREAU (including Public Works)				
FY 2015–2016, Results by Industry				
			Total Inspections	2,424
			Total Citations Issued	2,072
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Agriculture	112	63	\$729,906.20	\$266,640.09
Auto repair	146	158	\$2,249,886.42	\$504,293.34
Car wash	141	246	\$2,178,321.93	\$562,264.28
Construction	436	279	\$2,229,096.15	\$619,205.75
Garment	99	137	\$765,300.00	\$133,644.55
Restaurant	470	469	\$5,200,947.90	\$1,344,852.50
Retail	118	92	\$1,191,811.36	\$329,402.68
Other ^a	902	628	\$12,071,527.61	\$2,650,314.47
<i>Subtotals</i>	<i>2,424</i>	<i>2,072</i>	<i>\$26,616,797.57</i>	<i>\$6,410,617.66</i>
<i>LESS citations dismissed/modified ^b</i>			<i><\$8,354,480.28></i>	
<i>Subtotals</i>	<i>2,424</i>	<i>2,072</i>	<i>\$18,262,317.29</i>	<i>\$6,410,617.66</i>
<i>PLUS Public Works ^c</i>	<i>1,565</i>	<i>636</i>	<i>\$25,078,769.39 ^d</i>	<i>\$5,344,425.93</i>
TOTALS	3,989	2,708	\$43,341,086.68	\$11,755,043.59

^a The “other” category includes janitorial, racetracks, pallet, and various other industries that do not fall into any of the other industries specified.

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

^c The Public Works Unit does not conduct inspections but, rather, measures performance based on cases opened for audit purposes. Thus the data in this table should be understood as 2,006 audits conducted, with 479 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.

^d Includes Labor Code section 1777.7 penalty assessments.

BUREAU (including Public Works)			
FY 2015-2016, Results by Citation Category			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	859	\$19,278,262.45	\$3,563,390.49
Child Labor	59	\$84,000.00	\$68,150.00
Itemized Statement	449	\$4,229,225.00	\$2,013,974.91
Minimum Wage	180	\$520,178.11	\$71,437.68
Overtime	192	\$678,107.01	\$127,479.79
Garment	37	\$87,500.00	\$13,982.89
Unlicensed Construction Contractor	39	\$283,200.00	\$46,566.26
Nonregistration ^a	141	\$1,058,400.00	\$402,738.56
Rest and Meal Period	103	\$297,375.00	\$80,252.50
Misclassification	2	\$17,000.00	\$0.00
Unlicensed Farm Labor Contractor	5	\$42,600.00	\$12,600.00
Other	6	\$40,950.00	\$10,044.58
<i>Subtotals</i>	<i>2,072</i>	<i>\$26,616,797.57</i>	<i>\$6,410,617.66</i>
Public Works	636	\$25,078,769.39 ^b	\$5,344,425.93
<i>LESS citations dismissed/modified</i>		<i><\$8,354,480.28></i>	
TOTALS	2,708	\$43,341,086.68	\$11,755,043.59

^a "Nonregistration" includes penalties for nonregistration of car washes and garment manufacturers.

^b Includes Labor Code section 1777.7 penalty assessments.

BUREAU (including Public Works)		
Total Wages Found Due	\$37,837,869.35	
Total Wages Collected ^a	\$11,907,258.49	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$499,990.15	\$378,627.52
Auto Repair	\$449,010.12	\$24,466.31
Car Wash	\$941,662.97	\$132,758.76
Construction	\$281,094.35	\$48,666.16
Garment	\$229,661.67	\$3,746.49
Restaurant	\$1,372,303.86	\$275,409.44
Retail	\$225,726.05	\$179,851.14
Other	\$6,379,156.37	\$1,628,645.16
<i>Subtotals</i>	<i>\$10,378,605.54</i>	<i>\$2,672,170.98</i>
Public Works	\$27,459,263.81	\$9,235,087.51
TOTALS	\$37,837,869.35	\$11,907,258.49

^a Wages collected in fiscal year 2015–2016 may include collection of wages found due in earlier reporting periods. This statistic is also inclusive of wages collected as the result of Bureau-assisted employer self-audits as well as actions taken by the Division’s Legal Unit, including such as litigation, settlements, and Legal Unit–assisted employer self-audits, all of which were initiated by the Bureau.

Audits

DLSE has provided additional training to staff to uncover issues involving nonpayment of wages, which has resulted in more audits of employers’ payroll records. The Division also initiated a program for employers to conduct self-initiated audits to augment the investigations conducted in response to specific complaints. If employers are unable or unwilling to complete the self-audit, the Division has stressed conducting a thorough investigation and conducting the audits to discover unpaid wages. 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 (shown in the statistics above), includes:

- \$220,457 for multiple wage theft violations for illegally misclassifying drivers as independent contractors in San Francisco
- \$443,460 for multiple wage theft violations by the operator of five adult-care facilities in San Jose
- \$60,000 in unpaid wages for 21 construction workers in Berkeley
- \$459,573 assessed for a janitorial employer after an investigation uncovered wage theft violations affecting 12 workers in North Highlands

- \$2.2 million in citations issued for owners of three residential care facilities in San Diego County
- \$180,668 in wages and penalties for multiple wage theft violations by a grocery chain in Los Angeles

Strategic Enforcement Outcomes

The Division's Strategic Enforcement Plan has proven effective in proactively targeting the worst violators and deterring bad actors throughout California.

The Division has entered into strategic partnerships with key stakeholders, including community organizations, associations, and industry representatives. Through these partnerships, the Bureau has been able to take on cases of far greater magnitude and impact in low-wage industries in California.

Examples of active investigations include:

- The Bureau is conducting an investigation of a chain of restaurants with a District Attorney's Office and other State agencies having determined that over \$2 million in unpaid wages is owed to at least 55 workers.
- The Bureau is conducting an investigation of a farm labor contractor with over 700 workers who may be owed unpaid minimum wages and penalties.
- With the assistance of a community organization, the Bureau is conducting an investigation of a janitorial contractor, involving over 100 workers who may be owed significant unpaid minimum wages, overtime, and penalties.
- The Bureau is conducting complex investigations involving client-employer liability, holding every member of the chain responsible for labor violations committed by a contractor, discouraging bad actors, and leveling the playing field for law-abiding, compliant employers.

This new approach has been successful in producing high-quality, in-depth investigations that have uncovered both more violations per investigation and assessed more wages owed to workers than at any other time in the history of the Division. Although the ratio of citations to inspections was just 45% in 2010, the shift to strategic enforcement has resulted in steady improvement in that metric over the past six years. In fiscal year 2013-2014, it was 70%, in 2014-2015, 83%, and in 2015-2016, 85% (see the following graph).



* Prior to fiscal year 2012-2013, the Division of Labor Standards Enforcement collected and reported report data in calendar year.

In addition, the assessed wages per inspection have similarly increased steadily and dramatically. In 2010, it was \$2,484.10. For 2014-2015, it was \$16,712.26, and in 2015-2016, \$15,609.68 (see the following graph).



* Prior to fiscal year 2012-2013, the Division of Labor Standards Enforcement collected and reported report data in calendar year.

The Bureau's overall efficiency has improved significantly due to the focus on targeted, strategic investigations of likely bad actors, rather than "sweeps" or random inspections. This is illustrated by the Division's dramatic improvement in the ratio of citations to inspections and in the tremendous strides made to combat wage theft in California.

Enforcement Program Targets Unlawfully Uninsured Employers

As previously mentioned, the lack of workers’ compensation insurance remains the violation most often identified in the Bureau’s investigations. In 2008, as a result of the passage of Senate Bill 869 (Chapter 662), the Bureau began a new data-sharing partnership with the Employment Development Department (EDD), the Division of Workers’ Compensation, and the Workers’ Compensation Insurance Rating Bureau to proactively identify employers that are potentially uninsured unlawfully, beyond its normal complaint-driven investigations. In fiscal year 2015-2016, the Bureau issued citations for 81 violations and assessed \$1,957,662 in penalties arising from these efforts. The process and the results of the Senate Bill 869 enforcement activities will be detailed in a separate report.

Car Washing and Polishing Businesses

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 California Code of Regulations, Title 8, division 1, chapter 6, subchapter 11, sections 13680–13693). Staff are being trained so that they can better identify wage-audit issues and acquire effective tools for uncovering wage theft, building on their previous training in the car washing industry, to enable them to go beyond looking only at registration when suspicion arises that other labor laws are being violated; 141 inspections were conducted, and 246 citations were issued, which led to assessments of \$2,178,322 for violations of various labor laws, including nonregistration and penalties. In addition, the Division assessed \$941,663 in wages and collected \$132,758 on behalf of workers as wages due. The results of inspections of car washing and polishing establishments, including re-inspections in the statistics above, are shown in the table below.

FY 2015–2016, Results by Citation Category for Car Washing and Polishing Businesses ^a			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers’ Compensation	42	\$812,271.93	\$72,990.18
Child Labor	6	\$8,500.00	\$9,500.00
Itemized Statement	23	\$162,000.00	\$77,368.50
Minimum Wage	25	\$85,650.00	\$1,880.54
Overtime	19	\$47,950.00	\$8,411.50
Nonregistration	105	\$958,600.00	\$379,938.56
Rest and Meal Period	22	\$87,200.00	\$12,175.00
Other	4	\$16,150.00	\$0.00
TOTALS	246	\$2,178,321.93	\$562,264.28

^a The statistics reported here are included in the overall results of the Bureau summarized earlier in this report.

Units within the Labor Commissioner’s Bureau of Field Enforcement

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, on July 1, 2012, the Bureau began enforcing Labor Code section 1777.5, which was previously 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 Labor Code section 1777.5.

Public Works	FY 2015-2016
Cases Opened	1,565
Cases Closed	1,398
Civil Wage and Penalty Assessments (CWPA) Issued	636
Settlements	205
Wages Found Due	\$27,459,263.81
Wages Recovered (wages recovered and penalties collected may include monies found due in earlier reporting periods)	\$9,235,087.51
Penalties Assessed	\$25,078,769 ^a
Penalties Collected	\$5,344,425.93 ^b

^a Includes Labor Code 1777.7 penalties assessed.
^b Includes Labor Code 1777.7 penalties collected.

In fiscal year 2015–2016, the Labor Commissioner signed orders of debarment for 12 construction companies and individuals. The maximum statutory debarment period is three years, rendering individuals and legal entities ineligible to bid on or be awarded public works contracts or to perform work on a public works project as a subcontractor or an employee. The debarment orders can be accessed at <http://www.dir.ca.gov/dlse/debar.html>.

Criminal Investigation Unit

The Criminal Investigation Unit (CIU), made up of sworn peace officers, handles cases involving wage theft (which can be a felony or misdemeanor), extortion, felony arrest, misdemeanor arrest, misdemeanor citations, payment of wages with checks for which funds are insufficient, and kickbacks on public works projects. The CIU had 36 assigned cases and 28 closed cases in fiscal year 2015–2016. During the same fiscal year, the CIU filed 8 cases in court through county District Attorney’s Offices, including 7 felony charges of wage theft and 6 misdemeanor charges for lacking workers’ compensation. The CIU also submitted 10 cases to the county District Attorney’s Offices and the Los Angeles City Attorney’s Office,

including 9 felony charges of wage theft; 6 misdemeanor charges for lacking workers' compensation; and 1 felony charge for forgery. Two cases were rejected by the county District Attorney's Office, and 1 case was rejected by the Los Angeles City Attorney's Office. The CIU issued 3 arrest warrants for 2 felony charges of wage theft and 2 misdemeanor charges for lacking workers' compensation. The CIU also executed two search warrants for felony charges of wage theft, license fraud, and identity theft.

The following are highlights of some successful criminal prosecution cases, in which the CIU participated in fiscal year 2015–2016:

- **Couleurs LLC, dba Antique Thai Cuisine:** The CIU investigated the case and submitted it to the San Diego County District Attorney's Office for criminal prosecution. The San Diego County District Attorney's Office filed charges against the owner for violations of Penal Code 487 Felony Grand Theft. On December 2, 2016, Zihan Zhang was sentenced to two years in local custody after being convicted by a jury of 9 counts, including 2 counts of Grand Theft of Labor and 1 count of Grand Theft of Gratuities under a False Pretenses theory. The court further ordered Zhang to pay six of her former employees approximately \$20,000 in restitution for unpaid wages and tips that Zhang unlawfully withheld from them.
- **Joseph Briseno, dba Taqueria Johny:** The CIU investigated the case and submitted it to the Fresno County District Attorney's Office for criminal prosecution. The Fresno County District Attorney's Office filed charges against the owner for violations of Labor Code sections 3700.5 and 3710.2 and Penal Codes 487(a) and 667.5(b). On May 23, 2016, the employer was convicted on PC 487(a) felony charges and sentenced to pay \$1,000 in restitution and a \$350 fine and spend 10 days in jail and 24 months on probation.
- **Steven Gary Zabarsky, dba 5th Wheel Truck Stop:** The CIU investigated the case and submitted it to the Fresno County District Attorney's Office for criminal prosecution. The Fresno County District Attorney's Office filed charges against the owner for violations of Labor Code section 3700.5. On January 26, 2016, the employer was convicted on Labor Code section 3700.5 misdemeanor charges and was sentenced to pay \$500 in restitution and spend 12 months on probation.
- **Marie Lazara Zapata, dba Security Pros:** The CIU investigated the case and submitted it to the Fresno County District Attorney's Office for criminal prosecution. The Fresno County District Attorney's Office filed charges against the owner for violations of Labor Code 3700.5. On May 16, 2016, the employer was convicted on Labor Code section 3700.5 misdemeanor charges and was sentenced to pay \$500 in restitution and spend six months on probation.

Judgment Enforcement Unit

The Division's Judgment Enforcement Unit (previously called the Collections Unit) has continued to increase monies recovered for Bureau citations and unpaid wages unlawfully withheld from workers. The Judgment Enforcement Unit files judgments for our wage claim offices and BOFE and processed 1,213 judgments for fiscal year 2015–2016, with total recovery by the unit of \$3,732,722.

Legal Unit

The Labor Commissioner’s Legal Unit continued and enhanced its support for the Bureau’s enforcement efforts in FY 2015–2016. The unit continued its traditional work of representing the Division in Superior Court in defense of penalty citation awards in writ of administrative mandamus challenges, prosecution of public works CWPA in administrative hearings, enforcement of investigative subpoenas and conducting investigative depositions, obtaining tolling agreements, negotiating settlement agreements, and advising the Bureau in application of the law to its field investigation planning. The unit also assumed responsibility for prosecution of some select citation appeals before hearing officers in cases with complex legal or factual components and cases with large wage restitution amounts associated with the expanded authority provided by the Legislature for the Bureau to assess minimum wages and liquidated damages through citations.²

- The Legal Unit, working in conjunction with a San Francisco–based community partner, the Asian Law Caucus (ALC), successfully defended a group of citations issued against a Fresno residential care facility and one individual for failure to pay overtime wages and properly issue itemized wage statements to eleven workers; the citations were ultimately affirmed for \$571,169.67 in wages and \$102,500 in penalties.
- The Legal Unit successfully prosecuted citations for minimum wage, overtime, and meal and rest period violations before an administrative hearing officer in a Los Angeles County case investigated and prepared jointly by the unit and the Bureau against a subcontractor at Los Angeles International Airport who employed workers as cabin cleaners. An award of wages and damages was assessed at \$941,506.53 and civil penalties of \$21,700.
- The Legal Unit obtained a settlement of a lawsuit filed in Humboldt County Superior Court in the amount of \$236,686 with a general contractor for wages owed to construction workers that went unpaid by an unlicensed subcontractor in Eureka, California. This sum is in addition to \$138,204 (total recovery of \$374,891 for 40 workers) previously recovered from the property owner on a mechanic’s lien claim.
- The Legal Unit obtained a judgment against a restaurant to recover unpaid wages, liquidated damages, interest, civil penalties, statutory penalties, and attorneys’ fees and costs in the amount of \$240,632. The unit obtained a judgment in the amount of \$40,000 against an individual restaurant owner who caused the minimum wage violations.
- The Legal Unit successfully defended a citation award for \$24,000 in penalties issued against a massage parlor for failing to provide itemized wage statements in a writ of mandamus proceeding in San Diego Superior Court.
- The Legal Unit successfully defended a writ of administrative mandamus for \$62,592 in Tulare County Superior Court filed by the employer, a local dairy. The employer’s writ challenged a citation appeal award that affirmed that the dairy had failed to pay meal period premiums for its failure to provide meal periods to 25 of its workers. Following an entry of judgment, the dairy paid the amounts found due by the Labor Commissioner in full.
- The Legal Unit successfully defended a citation award for \$65,750 in penalties issued against a nail salon for failing to provide workers’ compensation insurance coverage and failing to provide itemized wage statements in a writ of mandamus proceeding in San Diego Superior Court.

² The resulting penalties and/or wages collected are included in the Bureau statistics above, depending on the process used to achieve the end results.

- The Legal Unit successfully defended a citation award for \$17,000 in penalties and \$23,000 in wages for security guards in a writ of mandamus proceeding in San Diego Superior Court.
- The Legal Unit successfully defended a citation award against a residential care home and individual owner of the business for \$263,347 in wages and penalties in a writ of mandamus proceeding in San Diego Superior Court.
- The Legal Unit successfully defended a citation award against a motel for \$152,747 in penalties and \$360,554 in wages and liquidated damages in a writ of mandamus proceeding in Orange County Superior Court.
- The Legal Unit settled writ of administrative mandamus for \$139,000 in San Diego Superior Court. The writ challenged a \$330,500 citation award against a “house flipper” for failing to issue itemized wage statements and contracting with unlicensed contractors.
- The Legal Unit successfully defended against a complaint for injunctive relief against the Labor Commissioner and an application for attorneys’ fees against the state in excess of \$500,000 in San Diego Superior Court and the Fourth District Court of Appeals.
- The Legal Unit successfully defended against an appeal filed in the Second District Court of Appeals asserting that the Division’s subpoena for time and payroll records violated the Fourth Amendment protections against unreasonable searches and seizures and violated the Fifth Amendment protection against self-incrimination.
- The Legal Unit filed motions to amend judgments in two cases to add the successor car wash to judgments obtained against the predecessor car wash for wages due to employees, resulting in full payment of wages due to employees from the successor car wash entities.
- The Legal Unit settled a lawsuit against a fire suppression company for \$225,000 for unpaid travel time for 22 workers in Riverside, California.

Other Partnerships

Labor Enforcement Task Force (LETF)

The LETF is a coalition of California State government enforcement agencies that work together and in partnership with local agencies to combat the underground economy. LETF partners include: the Employment Development Department (EDD), the Division of Occupational Safety and Health (DOSH), the Contractors State License Board (CSLB), the Board of Equalization (BOE), and the Bureau of Automotive Repair (BAR). 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 insurance coverage, child labor, illegal operation without the required licenses, and a focus on the garment, agriculture, construction, car wash, automotive repair, restaurant, and any other industry in which labor law violations are prevalent. Although this report contains statistics only for DLSE, a separate legislative report is produced biennially by LETF that includes DLSE statistics.

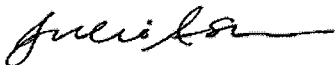
Transfers to the General Fund

In fiscal year 2015–2016, the Division deposited \$7,715,765.39 in fines and penalties collected into the General Fund.

Penalties collected, FY 2015–2016	Amount deposited into the General Fund
Public Works Prevailing Wage penalties ¹	\$5,344,425.93
Public Works Itemized Statement penalties	\$35,423.68
Itemized Statement penalties	\$1,978,551.23
Minimum Wage penalties	\$71,437.68
Overtime penalties	\$127,479.79
Child Labor penalties	\$68,150.00
Willful Misclassification penalties	\$0.00
Various penalties	\$90,297.08
TOTAL	\$7,715,765.39

¹ Includes Public Works Prevailing Wage Penalties (\$3,072,309.58) and Apprenticeship Penalties-LC 1777.7 (\$2,272,116.35)

Respectfully submitted,



Julie A. Su
Labor Commissioner

EXHIBIT 2

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Patrick C. McManaman SBN 254821 Department of Industrial Relations, State of California 770 E. Shaw Avenue, Suite 222 Fresno, California 93710 TELEPHONE NO.: 559-244-5348 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): State Labor Commissioner; Plaintiff/Respondent</p>	<p>FOR COURT USE ONLY</p> <p>FILED TULARE COUNTY SUPERIOR COURT VISALIA DIVISION</p> <p>AUG 24 2015</p> <p>LARAYNE CLEEK, CLERK BY: <u>Linnetta Ybarra</u></p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE STREET ADDRESS: 221 S. Mooney Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Visalia, California 93291-4593 BRANCH NAME:</p>	<p>CASE NUMBER: VCU256537</p>
<p>PLAINTIFF/PETITIONER: Ronald Vanderham, dba Vanderham Dairy DEFENDANT/RESPONDENT: Labor Commissioner of the State of California</p>	
<p style="text-align: center;">NOTICE OF ENTRY OF JUDGMENT OR ORDER</p> <p>(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)</p>	

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): August 17, 2015
2. A copy of the judgment, decree, or order is attached to this notice.

Date: August 21, 2015

Patrick C. McManaman

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)


 (SIGNATURE)

PLAINTIFF/PETITIONER: Ronald Vanderham, an individual dba Vanderham Dairy	CASE NUMBER: VCU266637
DEFENDANT/RESPONDENT: Labor Commissioner of the State of California	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify): 770 E. Shaw, Ste. 222, Fresno, California 93710

2. I served a copy of the Notice of Entry of Judgment or Order by enclosing it in a sealed envelope with postage fully prepaid and (check one):

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The Notice of Entry of Judgment or Order was mailed:

- a. on (date): August 21, 2015
- b. from (city and state): Fresno, California

4. The envelope was addressed and mailed as follows:

- | | |
|---|---|
| <p>a. Name of person served:
Nick A. Pritchett, Esq. Williams, Brodersen & Pritchett
Street address: 2222 West Main Street
City: Visalia
State and zip code: California 93291</p> | <p>c. Name of person served:

Street address:
City:
State and zip code:</p> |
| <p>b. Name of person served:

Street address:
City:
State and zip code:</p> | <p>d. Name of person served:

Street address:
City:
State and zip code:</p> |

Names and addresses of additional persons served are attached. (You may use form POS-030(F).)

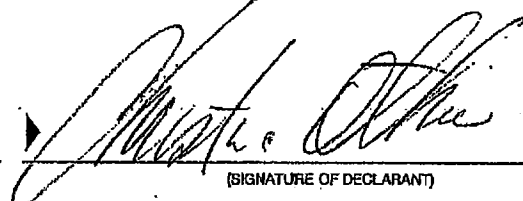
5. Number of pages attached _____

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

Date: August 21, 2015

Christina Othon

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

1 STATE OF CALIFORNIA
2 Division of Labor Standards Enforcement
3 Department of Industrial Relations
4 By: PATRICK C. MCMANAMAN, SBN 254821
770 E. Shaw Avenue, Suite 222
Fresno, CA 93710
Tel. (559) 244-5348

5 Attorneys for Respondent
6 LABOR COMMISSIONER

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION
AUG 17 2015
LARAYNE CLEEK, CLERK
BY Sharon K. Baker

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF TULARE, VISALIA DIVISION

9
10 RONALD VANDERHAM, an
individual dba VANDERHAM DAIRY

11 Petitioner,

12 vs.

13 LABOR COMMISSIONER OF THE
14 STATE OF CALIFORNIA,
DEPARTMENT OF INDUSTRIAL
15 RELATIONS,

16 Respondent.

CASE NO. VCU256537

MM Reed
~~By~~ JUDGMENT DENYING
PETITION FOR WRIT OF MANDATE

*Assigned to the Hon. Melinda Reed,
Judge, Dept. 1.*

17
18
19 This Petition for Writ of Mandate came on regularly for hearing on August 11, 2015
20 at 10:00 a.m. in Department 1 of the above-entitled court. The Honorable Melinda Reed,
21 Judge, presided, sitting without a jury. Nick A. Pritchett, Esq. of the law firm Williams,
22 Brodersen & Pritchett, LLP, appeared on behalf of Petitioner, RONALD VANDERHAM, an
23 in individual, dba VANDERHAM DAIRY. Patrick C. McManaman, Esq. appeared on behalf
24 of Respondent LABOR COMMISSIONER OF THE STATE OF CALIFORNIA,
25 DEPARTMENT OF INDUSTRIAL RELATIONS. The record of administrative proceedings
26 having been received into evidence, along with the transcript of the administrative hearing
27
28

1 and this evidence having been examined by the Court, and additional arguments having been
2 presented, the Court found as follows:

3
4 The Petition for Writ of Mandate is DENIED. The Court's tentative decision issued
5 on August 11, 2015 is adopted by the Court as its Final Order.

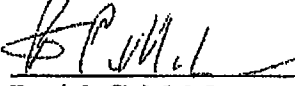
6 The Petition for Writ of Mandate having been denied, Judgment is entered in favor of
7 Respondent LABOR COMMISSIONER OF THE STATE OF CALIFORNIA,
8 DEPARTMENT OF INDUSTRIAL RELATIONS.

9
10 Dated: AUG 17 2015

MELINDA M. REED.

Hon. Melinda Reed
Judge of the Superior Court

11
12
13
14
15
16 Submitted on August 14, 2015 by:

17 

18 Patrick C. McManaman, Attorney for
19 Respondent STATE OF CALIFORNIA,
20 DEPARTMENT OF INDUSTRIAL RELATIONS,
DIVISION OF LABOR STANDARDS ENFORCEMENT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

Vanderham, Ronald Plaintiff/Petitioner, vs. Department of Industrial Relations Defendant/Respondent.	Jud. Officer: Melinda Reed Clerk: Kimberly Brase Bailiff: Eric Lemoine CSR: Sheryl Ribeiro Interpreter: Language:
Minutes: Writ of Mandate Hearing Date: August 11, 2015	Case No. VCU256537 Department 1 Related Cases:

Appearances: No Appearances
 Party: _____
 Party: _____
 Party: _____
 Other: _____

Attorney: Nick Pritchett for Petitioner
 Attorney: Patrick McManaman for Defendant
 Attorney: _____

Motion: Petition for Writ of Mandate

Oral argument requested by Petitioner.

Arguments heard from Counsel and Court.

Final comments heard from Petitioner's Counsel.

Order: The Court adopted the Tentative Ruling as the Order of the Court as follows:

To Deny the Petition for Writ of Mandate.

Petitioner Ronald Vanderham, an individual dba Vanderham Dairy (Vanderham), seeks a peremptory writ of mandate directing respondent California Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) to vacate an administrative decision affirming a citation issued to Vanderham in the modified amounts of \$62,342.95 for unpaid meal premiums for twenty-five employees and \$250.00 as a penalty for five of the employees.

The citation was issued by Deputy Labor Commissioner Javier Cadena on March 4, 2014, after he determined Vanderham failed to provide timely meal breaks to employees of his dairy business in violation of Industrial Welfare Commission wage order No. 14-2001, section 11 and Labor Code sections 512(a) and 558(a).

Vanderham contends in his moving and reply papers filed in support of the writ that the administrative proceedings violated standards of due process because the citation failed to provide him sufficient and accurate notice of the nature of the violations he allegedly committed. As a result, Vanderham asserts he was unable to adequately cross-examine the witnesses and present a defense. He further contends that the findings and order of the hearing officer are not supported by sufficient evidence.

STANDARD OF REVIEW

In regard to Vanderham's due process challenge, the court independently reviews the proceedings to decide whether his rights were comprised. (*Manufactured Home Communities, Inc. v. County of San Luis Obispo* (2008) 167 Cal. App. 4th 705, 711 citing *Sinalko v. Superior Court* (2004) 122 Cal. App. 4th 1133, 1140.) However, as to the sufficiency of the evidence, the court's review is conducted under the substantial evidence test. (Code of Civil Procedure section 1094.5(c); *Bixby v. Pierno* (1971) 4 Cal. 3d 130, 143.) Substantial evidence is evidence "of ponderable legal significance," "reasonable in nature, credible and of solid value." (*Mohilof v. Janovici* (1996) 51 Cal. App. 4th 267, 305 n. 28; *Pennel v. Pond Union High Sch. Dist.* (1973) 29 Cal. App. 3d 832, 837 n. 2.) Further, under Code of Civil Procedure section 1094.5(c) and *Smith v. County of Los Angeles* (1998) 211 Cal. App. 3d 188, 198, abuse of discretion is established only if the hearing officer's findings are "not supported by substantial evidence in light of the whole record."

Additionally, Vanderham "has the burden of proving that the agency's decision was invalid and should be set aside, because it is presumed that the agency regularly performed its official duty. When the standard of review is the substantial evidence test, as it is here, it is presumed that the findings and actions of the administrative agency were supported by substantial evidence." (*Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.)

SUFFICIENCY OF THE CITATION

As to the sufficiency of the citation, pursuant to Labor Code section 1197.1(b) the citation "shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated." The plain language of the statute does not include a requirement to name or list the number of employees affected by any alleged violation.

Moreover, pleading rules applicable in civil actions do not apply to administrative proceedings. On writ review, the essential question is whether Vanderham received fair notice of the charges apart from any technical pleading requirements. Fair notice is described as that which permits a reasonable opportunity to prepare a defense and to avoid being disadvantaged by surprise at the hearing. (*Cooper v. Board of Med. Exam'rs* (1975) 49 Cal. App. 3d 931.) No particular form of notice or procedure is required. (*Dusenbery v. U.S.* (2002) 534 U.S. 161, 122 S.Ct. 694; *Drummev v. State Bd. Of Funeral Directors & Embalmers* (1939) 13 Cal.2d 75, 80.)

Here, the citation clearly identifies Labor Code section 512 and Industrial Welfare Commission wage order No. 14-2001, section 11 as the statutes allegedly violated and describes the nature of the violations as a "failure to provide or schedule timely meal periods for the 5 employees." The citation states that the dates or periods of the violations are from March 4, 2013 to March 4, 2014 for meal period penalties and from March 4, 2011 to March 4, 2014 for meal period premium wages. The citation includes notice that the penalty was imposed pursuant to Labor Code section 558(a) and was calculated at the rate of \$50.00 per violation and the meal period premium was assessed at \$63,319.20 for a total assessment in the amount of \$65,169.20.

Vanderham contends the citation did not provide him with fair notice that the charges included meal period violations for twenty-five employees because the description in the citation refers to only five employees. The court disagrees based upon the totality of the evidence showing Vanderham had adequate notice of the full extent of the charges at issue and a reasonable opportunity to prevent a defense.

The evidence includes (1) Vanderham's compliance with Deputy Cadena's initial request to provide copies of payroll records for February and March 2013 for all employees; (2) Vanderham's compliance with a subsequent request for three years of payroll records for all employees; (3) Deputy Cadena's written request for a self-audit informing Vanderham that unpaid meal premiums were due to "current and former employees who performed services for Vanderham Dairy for the period March 28, 2010 to March 28, 2013" (emphasis added); (4) Vanderham's response to the request for a self-audit indicating that based upon a review of his records he was in compliance with the law requiring meal breaks; and (5) Vanderham's payroll records reflecting that twenty-five employees did not take timely meal breaks during the three-year period listed in the citation and five of those employees fell within the one-year penalty period.

Moreover, there is no evidence suggesting that Vanderham's defense included an argument that the meal premium assessment was excessive based on just five employees. Instead, he relied on a defense under *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004 that he was not required to ensure that his employees take a timely meal period. And the record shows Vanderham made the election not to present testimony from his employees in support of his defense by acknowledging to the hearing officer that he chose not to bring in at least one of the employees found to have been underpaid.

In sum, the evidence shows Vanderham was given reasonable notice before the hearing that the assessment for unpaid meal premiums potentially included the twenty-five employees found by the hearing officer to have been underpaid and that the penalty assessment was for five of the employees. As such, Vanderham's argument that he was unable to present a defense or examine employees at the hearing based on lack of notice of the charges is unpersuasive. Moreover, the hearing officer appropriately exercised discretion and denied Vanderham's untimely request for a continuance after the hearing had commenced in order to call employee witnesses.

SUFFICIENCY OF THE EVIDENCE

Turning to the sufficiency of the evidence, substantial evidence supports the hearing officer's decision. DLSE presented credible documentary evidence that Vanderham's employees did not receive timely meal periods and were not provided premium meal pay for the missed breaks. Indeed, Vanderham does not appear to dispute the accuracy of his payroll records or the sufficiency of Deputy Cadena's audit for the relevant time periods.

Furthermore, Deputy Cadena testified that the employees he interviewed indicated they did not take timely meal periods because they were pressured by their supervisors not to do so. Deputy Cadena provided a credible explanation for not calling the employees as witnesses based upon their fear of retaliation. Moreover, Vanderham failed to object to the hearsay testimony and elicited details of the employee's statements during his own examination of Deputy Cadena. Accordingly, Vanderham's argument that Deputy Cadena's testimony is not credible because it contains hearsay does not bear scrutiny.

As to the defense, Vanderham did not present any employee witnesses or independent evidence that the employees were not pressured. Instead, he relied exclusively on his witness from human resources and accounting who testified that the employees intentionally chose not to take timely meal periods. In finding Vanderham's defense not credible or persuasive it is apparent that the hearing officer considered the conflicting testimony, the relationship of the witnesses to the parties, and the documentary evidence. As such, Vanderham has failed to establish an abuse of discretion by the hearing officer in determining the weight to be given the evidence presented.

Moreover, Vanderham's argument that the hearing officer failed to make the proper credibility findings under Government Code section 11425.50(b) is unavailing. The statute requires the hearing officer to identify specific evidence of demeanor, manner, or attitude of a witness when the hearing officer's decision is based substantially on the credibility of a witness. Here, the hearing officer's written findings and order relies extensively on the documentary evidence and as indicated above, the weight of the evidence. There is nothing in the evidence to suggest that the demeanor of the witnesses from either side impacted the hearing officer's decision.

In regard to the amounts of the unpaid meal premiums and penalty assessment, the evidence supports the hearing officer's calculations based upon the statute of limitations and the manner in which the amounts are to be calculated. The statute of limitations for Labor Code sections 558(a) and 226.7(c) are different. The limitations period for the penalty under Labor Code section 558(a) is one year pursuant to Code of Civil Procedure section 340; and three years for meal premium pay under Labor Code section 267(c) pursuant to Code of Civil Procedure section 338. (*Murphy v. Kenneth Cole Productions* (2007) 40 Cal. 4th 1094, 1114.)

The sections also differ in the manner in which the amount is calculated. The penalty is limited to one \$50.00 penalty for all of an employee's underpaid meal time during a single pay period. The hearing officer's decision refers to a "pay day" but is clearly meant to refer to a pay period. Labor Code section 226.7(c) is not so limited and provides for recovery of premium pay for all underpaid meal time during the three-year statute of limitations.

CONCLUSION

As to Vanderham's due process challenge, the court has independently reviewed the evidence. Based upon the totality of the circumstances, Vanderham was provided reasonable and fair notice of the meal break violations apart from any technical deficiencies in DLSE's citation. Hence, the administrative proceedings adequately complied with standards of fairness and due process.

Furthermore, a review of the record establishes that the hearing officer's written findings and orders are reasonable and supported by substantial evidence of solid value. Thus, the court finds Vanderham has not met his burden to prove the hearing officer's discretion was abused by affirming the citation in the modified amounts of \$62,342.95 for unpaid meal premium pay and \$250.00 for a penalty assessment. Accordingly, the petition for writ of mandate is denied.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

Clerk is directed to provide notice to both sides by mail.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE
Visalia Division
221 S Mooney Blvd, Rm 201
Visalia, CA 93291
559-730-5000

Vanderham, Ronald
Plaintiff/Petitioner,

vs.

Department of Industrial Relations
Defendant/Respondent.

)
)
) Case No. VCU256537
)
)
)
)
)
)

CLERK'S CERTIFICATE OF SERVICE BY MAIL

I certify that I am not a party to this cause.

I certify that I placed the Minute Order dated August 11, 2015 for collection and mailing on the date shown, so as to cause it to be mailed in a sealed envelope with postage fully prepaid on that date following standard court practices to the persons and addresses shown. The mailing and this certification occurred at Visalia, California on August 11, 2015.

LARAYNE CLEEK,
CLERK OF THE SUPERIOR COURT
COUNTY OF TULARE

By Kimberly Brase
Deputy Clerk

Names and Mailing Address of Person(s) Served:

Nick Pritchett
Williams, Brodersent & Pritchett LLP
2222 W. Main Street
Visalia, CA 93291

Patrick McManaman
State of California
Division of Labor Standards Enforcement
770 E Shaw Avenue, Suite 222
Fresno, CA 93710

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF FRESNO

} ss.

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

On August 13, 2015, I served the following document(s) as described below:

[Proposed] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE

the original(s)

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

Nick A. Pritchett, Esq.
Williams, Brodersen & Pritchett, LLP
2222 West Main Street
Visalia, California 93291

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

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

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

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

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

Executed on August 13, 2015, at Fresno, California.


Christina Othon

EXHIBIT 3

CITATION AND WAGE SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“the Agreement”) is made and entered into as of March ____, 2016, by and between the DIVISION OF LABOR STANDARDS ENFORCEMENT, a division of the Department of Industrial Relations of the State of California (“DLSE”) and Villa Marina, Inc., Villa Marina Club Services, Inc. and Jeffery A. Patchin (collectively, “Villa Marina”); all of which parties shall sometimes be referred to as “the Parties.” This Agreement is based on the following facts:

WHEREAS, an investigation was initiated by DLSE regarding the payroll practices of Villa Marina with respect to its operations at 4300 Lincoln Blvd and 4065 S. Glencoe Avenue, Marina Del Rey, California; and, as part of that investigation, State Case number 35-122978-297, DLSE conducted a review of Villa Marina’s time and payroll records for the time period beginning January 1, 2012 and ending January 4, 2015 (“the Settlement Period”); and

WHEREAS, DLSE is asserting that Villa Marina is liable for statutory penalties for failing to comply with the provisions of Labor Code section 226, which require an employer, at the time of each payment of wages, to furnish each employee with an accurate itemized statement in writing showing the gross wages earned; total hours worked, unless the employee is compensated solely based on a salary and is exempt from payment of overtime; the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; all deductions; net wages earned; the inclusive dates of the period for which the employee is paid; the name of the employee and employee identification number; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and

WHEREAS, on January 20, 2015, DLSE issued Citation PA-027807 to Villa Marina, assessing penalties against Villa Marina in the amount of \$195,750.00, based on what DLSE contends were violations of Labor Code section 226; and

WHEREAS, on October 19, 2015, DLSE amended Citation PA-027807, thereby reducing the penalties from \$195,750.00 to \$174,500.00, based on DLSE’s admission that the Citation as originally issued was incorrect and overstated; and

WHEREAS, DLSE is asserting that Villa Marina is liable for statutory penalties for failing to comply with the provisions of Labor Code section 1197, which require an employer to pay each employee the minimum wage fixed by law for all hours worked; and

WHEREAS, DLSE is asserting that Villa Marina is liable for statutory penalties for failing to comply with the provisions of Labor Code section 510, which require an employer to pay the minimum wage fixed by law for all hours worked, pay one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek, and twice the regular rate of pay for any work in excess of 12 hours in one day and in excess of eight hours on any seventh day of a workweek; and

WHEREAS, DLSE is asserting that Villa Marina is liable for statutory penalties for failing to comply with the provisions of Labor Code section 226.7, which require an employer

provide employees with a meal or rest period in accordance to state law or order of the Industrial Welfare Commission; and

WHEREAS, on January 20, 2015, DLSE issued Citation WA-100079 to Villa Marina, assessing penalties against Villa Marina in the aggregate amount of \$193,500.00, based on what DLSE contends were violations of Labor Code sections 1197, 510, and 226.7, and IWC Wage Order 9, sections 3, 4, 7, 11, 12, and 20; and

WHEREAS, Citation WA-100079 assesses penalties in the amount of \$51,600.00 for what DLSE contends are violations of Labor Code section 1197; in the amount of \$34,100.00 for what DLSE contends are violations of Labor Code section 510; in the amount of \$53,900.00 for what DLSE contends are violations of Labor Code section 226.7 and IWC Wage Order 9, section 11; and \$53,900.00 for what DLSE contends are violations of Labor Code section 226.7 and IWCD Wage Order 9, section 12; and

WHEREAS, on October 19, 2015, DLSE amended Citation WA-100079, thereby reducing the penalties from \$193,500.00 to \$179,150.00, based on DLSE's admission that the Citation as originally issued was incorrect and overstated; and

WHEREAS, DLSE is responsible for the enforcement of the State's labor laws and has the authority to resolve disputes regarding the application of the California labor laws; and

WHEREAS, Villa Marina denies that it has committed any of the violations cited in Citations PA-027807 and WA-100079 and denies, further, that it is liable for any of the penalties assessed in those citations, as amended; and

WHEREAS, Villa Marina timely appealed from Citations PA-027807 and WA-100079 and an evidentiary hearing on that appeal has commenced but has not been completed, with the hearing scheduled to resume on April 4, 2016; and

WHEREAS, as part of that appeal Villa Marina has challenged both the validity of Citations PA-027807 and WA-100079 and the jurisdiction of DLSE to issue those citations; and

WHEREAS, as part of State Case number 35-122978-297, DLSE has conducted a wage audit of Villa Marina covering the period beginning December 12, 2012 and ending December 21, 2014 and has prepared a report of the results of that audit; and

WHEREAS, based on that wage audit, DLSE contends that Villa Marina is liable to the employees who were employed by Villa Marina during any part of the period covered by the audit, in the amounts reflected in the summary attached to this Agreement as Exhibit 1; and

WHEREAS, DLSE contends that it is empowered to issue additional citations to Villa Marina based on the results of its wage audit, which citations, if issued, would charge Villa Marina with liability to pay its present and former employees amounts totaling \$218,982.15 for what DLSE contends were non-payments or underpayments of wages to those employees during the period covered by the wage audit; and

WHEREAS, Villa Marina denies that it has underpaid any of its present or former employees or that it is liable to pay those employees any of the amounts that DLSE contends are due them;

WHEREAS, both DLSE and Villa Marina wish to fully and finally resolve any controversies regarding Villa Marina's compliance with California Labor Code sections 226, 1197, 510, 226.7, and IWC Wage Order 9, sections 11 and 12 during the Settlement Period; and all disputes relating to Citations PA-027807 and WA-100079 and/or the wage audit conducted by DLSE as part of State Case number 35-122978-297; and all disputes relating to matters that DLSE investigated as part of State Case number 35-122978-297 occurring in or arising during the Settlement Period;

NOW THEREFORE, in consideration of the covenants and mutual promises herein contained, the Parties agree as follows:

1. No later than seven days after the execution of this Agreement, Villa Marina shall pay to DLSE the sum of \$100,000.00, in full settlement of all of the following: (a) all penalties assessed in Citation No. PA-027807; (b) all penalties assessed in Citation No. WA-100079; (c) all sums that DLSE contends are due Villa Marina's employees by virtue of the wage audit conducted by DLSE as part of State Case number 35-122978-297, as reflected in Exhibit 1 hereto; and (d) all claims for unpaid wages or statutory or civil penalties relating to matters that DLSE investigated as part of State Case number 35-122978-297 occurring in or arising during the Settlement Period.

2. The settlement payment described in paragraph 1, above, shall be made by cashier's check, payable to the Division of Labor Standards Enforcement and be mailed to the Division of Labor Standards Enforcement, Legal Unit, Attn: Deborah Graves, 7575 Metropolitan Drive, Suite 210, San Diego, CA 92108 and shall reference State Case No. 35-122978-297 to ensure proper credit. Immediately upon receipt of the settlement payment, DLSE shall send e-mail notification of such receipt to the attorney for Villa Marina, Richard Fond.

3. Upon completion of the notification required by the terms of paragraph 2, above:

a. Villa Marina shall take whatever steps are necessary to dismiss or withdraw its pending appeal of Citations No. PA-027807 and WA-100079; and

b. DLSE shall close State Case No. 35-122978-297 and deem completed its investigation into Villa Marina's payroll practices for the period beginning January 1, 2012 and ending January 4, 2015; and DLSE shall so notify the Hearing Officer assigned to hear Villa Marina's pending appeal.

4. DLSE represents and warrants other than State Case No. 35-122978-297 there are no DLSE enforcement actions or enforcement investigations currently pending against Villa Marina that are being handled by DLSE. DLSE makes no representation concerning the pendency of any individual wage claims or civil actions that may have been brought against Villa Marina by any of Villa Marina's current or former employees. DLSE states that after inquiry of the appropriate parties, it is unaware of any pending investigation into the payroll

practices of Villa Marina during the Settlement Period being conducted by divisions of the Department of Industrial Relations or the Labor and Workforce Development Agency.

5. Upon its receipt of the settlement payment required by the terms of paragraph 1 of this Agreement, DLSE shall send each present or former Villa Marina employee identified in Exhibit 2 to this Agreement a Payee Data Record, in the form attached to this agreement as Exhibit 3, with instructions that the employee complete and return the form. Upon its receipt of the completed form from an employee identified in Exhibit 2, DLSE shall disburse to that employee the amount allocated to that employee in the "Total" column of Exhibit 2. Together with each disbursement made in accordance with the terms of this paragraph, DLSE shall deliver to the employee receiving the disbursement a Notice in the form attached to this Agreement as Exhibit 4. If all employees identified in Exhibit 2 complete and return the forms represented by Exhibit 3, the total amount that DLSE will disburse to present and former Villa Marina employees will be \$61,810.52.

6. Upon its receipt of the settlement payment required by the terms of paragraph 1 of this Agreement, DLSE shall generally and completely release and forever discharge Villa Marina (*i.e.*, Villa Marina, Inc., Villa Marina Club Service and Jeffrey Patchin), and their owners, officers, attorneys and other representatives, from all claims related to or arising out of the investigation conducted by DLSE as part of State Case number 35-122978-297, including, without limitation, (a) all claims that Villa Marina is liable for statutory or civil penalties, or non-payment or underpayment of wages, for violations of California Labor Code sections 226, 1197, 510, 226.7, and IWC Wage Order 9, sections 11 and 12 between January 1, 2012 and January 4, 2015; all claims relating to Citations PA-027807 and WA-100079 and/or the wage audit conducted by DLSE as part of State Case number 35-122978-297; and any and all other claim relating to matters that DLSE investigated as part of State Case number 35-122978-297. This release does not include claims that may be reserved to DLSE by the terms of Section 1542 of the California Civil Code.

7. Each party to this Agreement agrees that at the request of any other party, it will promptly (a) take any and all steps reasonably necessary to carry out the terms of this Agreement; and (b) execute, and cause its agents, attorneys, accountants or other appropriate representatives to execute, any and all documents reasonably necessary to carry out the terms of this Agreement.

8. DLSE and Villa Marina represent and warrant to one another that the person executing this Agreement on its behalf is authorized to do so and that all acts necessary to confer such authority on each signatory have been duly, properly, and legally taken.

9. The Parties all agree that they are making this Agreement for the purpose of resolving the disputed matters described in this Agreement and that except as expressly provided in this Agreement, neither the making of this Agreement, the acceptance of the benefits of this Agreement, nor the negotiations that led to the execution of this Agreement constitute or shall be deemed a direct or implied admission by any party with respect to the truth or validity of any factual allegation or legal contention made by any other party, or an admission that Villa Marina violated any law, regulation or any other duty or obligation owed to or allegedly owed to any person, entity or the State of California. The Parties all expressly acknowledge that they are

entering into this Agreement solely for the purpose of compromising the claims that comprise the subject matter of this Agreement, buying their peace with one another, and resolving all pending and potential litigation between the Parties over the citations, investigation and State Case file that are the subject of this Agreement.

10. The parties agree that this Agreement operates as a bar to any pending or future proceeding by the DLSE regarding claims for alleged violations of Labor Code sections 226, 1197, 510, 226.7 and IWC Wage Order sections 11 and 12 for any time during the Settlement Period, except any action to enforce this Agreement. This bar to any further proceeding by the DLSE includes all proceedings seeking any wages or penalties that were assessed against Villa Marina in the Citations PA-027807 and WA-100079 and/or the wage audit conducted by DLSE as part of State Case number 35-122978-297, as well as proceedings seeking any wages or penalties that could have been assessed against Villa Marina pursuant to Labor Code sections 558 and 1197.1 for alleged violations of the Labor Code during the Settlement Period, including an assessment for liquidated damages and Labor Code section 203 penalties or any PAGA claim.

11. This Agreement is based solely on the unique facts and circumstances that give rise to the disputes between DLSE and Villa Marina that are described in this Agreement, and this Agreement is not intended to bind DLSE in proceedings that do not involve Villa Marina.

12. Each party acknowledges that in the negotiation and execution of this Agreement, it has been represented by independent attorneys and other advisers, with whom that party has fully discussed the terms and consequences of this Agreement and upon whom it has relied in making its decision to enter into this Agreement. Deborah Graves and the Legal Unit of DLSE represent DLSE; Richard A. Fond and the law firm of Bergman Dacey Goldsmith represent Villa Marina. Each party acknowledges that it executes this Agreement of its own free will and under no threat, menace, coercion or duress -- whether economic or physical -- from any other party. All parties acknowledge that in entering into this Agreement, each of them is relying solely on the recitals, statements and other terms of this Agreement and the advice of its own attorneys and other advisers, and on its own investigation of the facts as that party deemed necessary. All parties acknowledge, further, that none of them is relying on any written or oral statement or representation made by any other party, or the representative of any other party, except as expressly set forth in this Agreement.

13. This Agreement shall be governed by the laws of the State of California.

14. All parties acknowledge that this Agreement has been reviewed and approved in its final form by the attorneys for all of them, and that should any provision of this Agreement be found to be ambiguous in any way, any ambiguity shall not be resolved by application of any rule that requires that the Agreement be construed in favor of or against any party, but rather by construing the terms of the document fairly and reasonably, in accordance with the generally accepted meaning of said terms. This Agreement shall be interpreted consistently with the parties' mutual intent to fully and finally resolve all of the claims and other matters that are the subject of this Agreement. If the general rules of construction under California law would result in the interpretation or enforcement of this Agreement in a manner that is inconsistent with the above-described intent of the parties, the expressed intent of the parties shall prevail to the greatest extent permitted under the law of the State of California. Should any provision of this

Agreement be declared or determined by any court to be illegal or invalid as a result of any action or proceeding the validity of the remaining parts, terms, or provisions shall not be affected thereby and any said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.


15. This Agreement sets forth the entire agreement between the Parties relating to the subject matters herein, and fully supersedes any and all prior negotiations, representations, inducements, agreements or understandings between the Parties hereto, if any, pertaining to the subject matter of this Agreement. Once executed, this Agreement may be amended only by a writing signed by all Parties and their respective attorneys. Should a dispute arise over the meaning of this Agreement or any of its terms, no party may offer evidence of any alleged prior or contemporaneous agreement or understanding, either as evidence of the meaning of this Agreement or to alter any of the terms of this Agreement.

16. This Agreement may be executed in multiple copies and by separate counterparts and each such signed copy shall be deemed an original hereof.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date and year set forth opposite their respective signatures below.


Date: March 14, 2016

DIVISION OF LABOR STANDARDS
ENFORCEMENT

By: 
Diana Chen, Regional Manager
Bureau of Field Enforcement

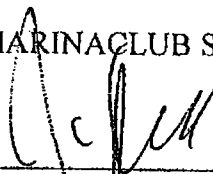
Date: March 18, 2016

VILLA MARINA/INC.

By: 
Print Name: Jeffrey Patchin
Title: CEO

Date: March 18, 2016

VILLA MARINA CLUB SERVICES, INC.

By: 
Print Name: Jeffrey Patchin
Title: CEO

Date: March 18, 2016

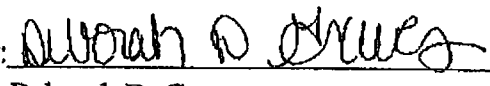


JEFFREY A. PATCHIN

APPROVED AS TO FORM:

Date: March 18, 2016

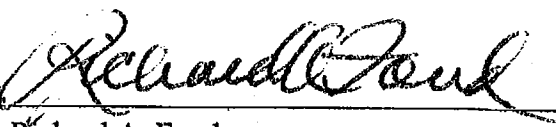
DIVISION OF LABOR STANDARDS
ENFORCEMENT, LEGAL UNIT

By: 

Deborah D. Graves
Attorneys for DLSE

Date: March 18, 2016

BERGMAN DACEY GOLDSMITH

By: 

Richard A. Fond
Attorneys for Villa Marina, Inc. and Villa Marina
Club Services, Inc.

Date: March , 2016

JEFFREY A. PATCHIN

APPROVED AS TO FORM:

Date: March 14, 2016

DIVISION OF LABOR STANDARDS
ENFORCEMENT, LEGAL UNIT

By: Deborah D. Graves
Deborah D. Graves
Attorneys for DLSE

Date: March , 2016

BERGMAN DACEY GOLDSMITH

By: _____
Richard A. Fond
Attorneys for Villa Marina, Inc. and Villa Marina
Club Services, Inc.

**NOTICE OF SETTLEMENT BETWEEN
THE DIVISION OF LABOR STANDARDS ENFORCEMENT
AND VILLA MARINA, INC., VILLA MARINA CLUB SERVICES, INC.
AND JEFFERY A. PATCHIN**

In January 2016, the California Department of Industrial Relations' Division of Labor Standards Enforcement ("DLSE"), for itself and on behalf of certain employees of Villa Marina, Inc., Villa Marina Club Services, Inc. and Jeffery A. Patchin (collectively Villa Marina") reached a settlement with Villa Marina ("the Settlement").

The Settlement resolved disputed claims made by DLSE against Villa Marina regarding the payroll practices of Villa Marina. Those disputed claims arose from an investigation by the DLSE. As a result of that investigation, DLSE asserted that for the period covered by the investigation, Villa Marina failed to comply with various provisions of the California Labor Code, including: section 226, which requires an employer, at the time of each payment of wages, to furnish each employee with an accurate itemized statement; section 1197, which requires an employer to pay the minimum wage fixed by law for all hours work; section 510, which requires an employer to pay the minimum wage fixed by law for all hours work, pay one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and twice the regular rate of pay for any work in excess of 12 hours in one day and in excess of eight hours on any seventh day of a workweek; and section 226.7, which requires an employer provide employees with a meal or rest period in accordance to state law or order of the Industrial Welfare Commission.

Villa Marina contested and continues to dispute the validity of all of the claims made by DLSE, and those claims are the subject of pending litigation between DLSE and Villa Marina.

DLSE and Villa Marina have agreed to settle all of their pending disputes and resolve the pending litigation between them. By the terms of the Settlement, Villa Marina does not admit that it violated any provisions of the Labor Code and neither party admits the validity of the other party's assertions, claims or defenses. As part of the Settlement, DLSE has been authorized to make payments to certain Villa Marina employees, and one of those employees is you. The amount you are receiving was determined by DLSE, based on its review and audit of Villa Marina's time and payroll records.

Employee	Contract Wages Due	Minimum Wages Due	Liquidated Damages	Overtime Wages Due	Doubletime Wages Due	Meal period Premium	Rest Period Premium	Total (wages)
A	\$9.36	\$36.00	\$673.58	\$2.08				\$825.58
B	\$694.75	\$680.50	\$117.49	\$117.49				\$1,234.48
C	\$237.99			\$243.59				\$981.58
D	\$144.79	\$64.94		\$281.23				\$703.38
E	\$53.49	\$98.86		\$9.54				\$161.89
F	\$84.35	\$54.68		\$13.36				\$144.49
G								\$0.00
H		\$40.00				\$403.00		\$403.00
I	\$794.47	\$1,854.65		\$412.74				\$3,829.86
J	\$120.12	\$224.67		\$10.77				\$365.56
K		\$70.00						\$280.00
L	\$670.50	\$988.86		\$167.32				\$1,236.18
M	\$867.31	\$926.08		\$203.11				\$2,093.82
N	\$796.11	\$1,233.00		\$169.66				\$2,192.77
O	\$880.00	\$130.00		\$30.50				\$1,040.50
P	\$1,570.78	\$563.74		\$809.84				\$2,491.55
Q	\$203.86	\$426.00		\$42.65				\$572.51
R	\$30.00	\$145.98		\$14.53				\$195.95
S	\$649.56	\$1,049.00		\$0.16				\$1,184.69
T		\$792.85		\$90.57				\$1,444.98
U								\$0.00
V	\$416.21	\$627.98		\$98.22				\$1,101.76
W						\$240.00		\$240.00
X	\$3,125.17	\$419.50		\$233.70				\$3,598.37
Y	\$164.98	\$242.69		\$13.59				\$482.48
Z	\$226.20	\$558.71		\$102.32				\$1,487.71
AA	\$705.10	\$684.91		\$16.03		\$2,779.20		\$3,746.63
AB	\$266.49	\$48.66		\$4.02				\$243.88
AC	\$207.81	\$433.80		\$6.40		\$2,352.17		\$3,000.18
AD	\$296.63	\$464.24		\$9.80				\$713.67
AE	\$192.49	\$662.13		\$13.37		\$2,749.29		\$3,617.28
AF	\$228.88	\$381.41		\$13.24		\$2,192.93		\$3,009.74
AG	\$169.83	\$367.50		\$32.90				\$578.25
AH		\$600.00				\$81.92		\$704.85
AI	\$44.75	\$943.67		\$21.66		\$2,097.15		\$3,061.72
AJ						\$701.00		\$701.00
AK	\$455.67	\$543.24		\$84.39				\$1,090.80
AL		\$49.50				\$135.00		\$184.50
AM	\$4.68	\$22.67		\$0.78				\$28.13
AN	\$45.11	\$84.93		\$9.26				\$139.29
AO	\$209.50	\$672.09		\$12.35		\$2,648.16		\$3,542.10
AP	\$498.91	\$161.93		\$88.37		\$734.46		\$1,465.07
AQ	\$221.10	\$722.39		\$17.86		\$2,782.74		\$3,744.03
AR	\$91.56	\$325.83		\$3.00				\$420.39
AS	\$91.18	\$360.79				\$2,538.77		\$2,990.74
AT	\$884.55	\$1,155.33		\$170.68				\$2,220.91

	\$107.41	\$220.01	\$38.29			\$345.71
		\$96.00				\$96.00
Total	\$14,828.41	\$20,960.38	\$260.37	\$3,386.83	\$80.66	\$22,293.87
					\$0.00	\$61,810.52

EXHIBIT 4

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "Agreement") is entered into by and between Jansen Construction Company and Jansen Construction Company of California (hereinafter "Jansen") and the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California (hereinafter "DLSE").

RECITALS

A. On November 7, 2013, the DLSE filed a Complaint against Defendant Jansen Construction Company of California and third parties in the Superior Court of California for the County of Humboldt, Case No. DR140048. The Complaint alleges that Defendant Jansen Construction Company of California engaged an unlicensed subcontractor, Pacwest Construction, in the construction of the Holiday Inn Express in Eureka, CA and that Jansen Construction Company of California thereby was responsible for violations of California wage and hour laws engaged in by Pacwest Construction pursuant to Labor Code section 2750.5. The Complaint asserted claims pertaining to payment of the minimum wage and overtime pay, reimbursement of expenses, payment of meal and rest period premiums, provision of wage statements, and timely payment of final wages pursuant to Labor Code sections 98.3, 201, 202, 203, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1021, 1193.6, 1197.1, and 2802 and Industrial Welfare Commission Order 16-2001 sections 3, 4, 10, 11, and 18. On April 14, 2015, DLSE filed its Second Amended Complaint which added Jansen Construction Company as a defendant and alleged it was part of an integrated enterprise with Jansen Construction Company of California or in the alternative was its alter ego or a joint employer of workers on the

Holiday Inn Express project.

B. By entering into this Agreement, Defendants Jansen Construction Company of California and Jansen Construction Company (hereinafter "Jansen") do not admit any liability or wrongdoing of any kind and expressly deny the same. Nothing in this Agreement, the settlement proposals exchanged by the parties, or any motions filed or Orders entered pursuant to this Agreement, is to be construed or deemed as an admission by Jansen of any liability, culpability, negligence, or wrongdoing of any kind or an admission that any of the facts that have been alleged or could have been alleged by the DLSE are true. This Agreement, each of its provisions, its execution, and its implementation, including any motions filed or Orders entered, shall not in any respect be offered, construed as, or deemed admissible in any arbitration or legal proceedings for any purpose, except as necessary to approve, interpret, or enforce this Agreement as between the parties hereto or as against any persons who may assert claims in the future that are precluded by this Agreement.

C. To avoid the time, expense and uncertainty of litigation of these matters, the parties now have agreed to settle all of their differences on the terms and in the manner set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the recitals set forth above, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Total Settlement Amount.** Defendants agree to pay the SETTLEMENT

AMOUNT of THREE HUNDRED and EIGHTY-EIGHT THOUSAND FORTY-SEVEN Dollars and SEVENTY-SEVEN Cents (\$388,047.77) to DLSE. Said SETTLEMENT AMOUNT includes the sum of ONE HUNDRED THOUSAND Dollars as civil penalties pursuant to Labor Code sections 226.3, 558, 1197.1, and 1021. DLSE agrees to accept in full satisfaction of the SETTLEMENT AMOUNT the sum of TWO HUNDRED AND THIRTY-SIX THOUSAND SIX HUNDRED and EIGHTY-SIX Dollars and SIXTY Cents (\$236,686.60) if the payments are made in accordance with the schedule set forth in paragraphs 2-3 and defaults, if any, are cured in accordance with paragraph 4 to the extent allowed thereunder.

2. **Schedule of payments.** Defendants shall pay to "Division of Labor Standards Enforcement" the amount of ONE HUNDRED and FORTY-ONE THOUSAND THREE HUNDRED and ONE Dollars and FIFTY-SEVEN Cents (\$141,301.57) by December 1, 2015. Thirty-nine (39) subsequent installments, each in the amount of TWO THOUSAND FOUR HUNDRED and FORTY-FIVE and SEVENTY-SEVEN Cents (\$2,445.77), shall be made to DLSE by the first of each month commencing on January 1, 2016, and continuing on the first of each month until the amount of TWO HUNDRED AND THIRTY-SIX THOUSAND SIX HUNDRED and EIGHTY-SIX Dollars and SIXTY Cents (\$236,686.60) has been paid in full. Jansen may make payments on an accelerated basis without penalty.

3. **Time of Payment.** Payments are deemed made upon receipt by DLSE. The first payment set forth in paragraph 2 shall be received in full by December 1, 2015. All subsequent payments shall be deemed timely if received by DLSE by the tenth day of the month. All payments shall be mailed to:

Division of Labor Standards Enforcement
Legal Section
455 Golden Gate Ave., 9th Floor
San Francisco, CA 94102
Attention: David Balter

4. **Default.** Any payment not received in accordance with the time provisions set forth in paragraph 3 shall constitute a default. Upon a default DLSE may provide notice to Jansen of the default. In order for DLSE to exercise any rights relating to default, DLSE must provide written notice of the default to Jansen. On a first default Jansen will have thirty (30) calendar days from the date of notice to cure the default by paying in full the amount overdue. Upon a second or third default, Jansen shall have fifteen (15) calendar days from the date of notice to cure by paying in full the amount overdue. Late payments made that cure a default shall not serve to extend the time that any subsequent payment is due. All notices to Jansen may be made by facsimile and/or certified mail to:

Law Office of John H. Guin, PLLC
421 W. Riverside, Suite 461
Spokane, WA 99201
Fax (509-747-5251

If a default is not cured in accordance with the provisions of this paragraph or if there are more than three (3) defaults, the court shall enter judgment in accordance with paragraph 6 upon application by DLSE.

5. **Stipulation for entry of judgment.** A condition precedent to this Agreement becoming effective is execution of the STIPULATION FOR ENTRY OF JUDGMENT, the form and content of which is attached hereto as Attachment "A". Defendant shall sign and date Attachment "A" and the original shall be forwarded promptly to the DLSE at the address provided above. DLSE agrees that Attachment "A"

shall not be filed with the court unless there is a default which is not timely cured or if there are more than three (3) defaults by Jansen.

6. **Entry of judgment.** DLSE may request that the court enter judgment in the event that there is a failure to timely cure a default or if there are more than three (3) defaults. Any forbearance by DLSE in requesting the court to enter judgment in one instance shall not require DLSE to exercise such forbearance on a subsequent default. Such forbearance is strictly at the discretion of DLSE. DLSE shall not seek entry of judgment after any default for which it has cashed or deposited any late payment. A judgment entered by the court shall be for the SETTLEMENT AMOUNT of THREE HUNDRED and EIGHTY-EIGHT THOUSAND FORTY-SEVEN Dollars and SEVENTY-SEVEN Cents (\$388,047.77) less a credit for all payments that Jansen has made. DLSE shall provide notice to Jansen of any application for entry of judgment.

7. **Payments to Claimants.** DLSE shall distribute all sums collected on behalf of claimants who worked on the Eureka Holiday Inn Express job to the affected persons upon execution and receipt of a release executed by the claimant in the form of Attachment "B." All original releases completed by claimants will be provided to Jansen. All sums collected on behalf of claimants that are not claimed shall be deposited in the "Unpaid Wage Fund" and shall be available for each claimant to collect the sum allotted to him upon completion of Attachment "B." The claimants that are beneficiaries under this Agreement are listed with the amounts that they are scheduled to receive upon execution of a release (Attachment "B") if all payments required by Jansen are made in Attachment "C". Except as provided in par. 9(c), under no circumstances shall any of the funds paid by Jansen pursuant to this Agreement be refundable and there shall be no

reversion of funds.

8. Dismissal With Prejudice. Upon completion of all payments required under this Agreement the DLSE shall provide Jansen with an executed Request for Dismissal of the entire Action, with prejudice, as to Jansen Construction Company and Jansen Construction Company of California, which Jansen shall be entitled to file with the Humboldt County Superior Court. The Dismissal shall be effective as to Jansen and each of its officers, directors, shareholders, agents, representatives, consultants, attorneys, past and current parent corporations, or past and current affiliated corporations, organizations or entities.

9. General Release of Known and Unknown Claims Against Releasees.

(a) Released Claims by the DLSE. In consideration of this Agreement, the DLSE hereby forever releases, acquits, relieves, discharges and covenants not to sue Jansen, and each of its officers, directors, shareholders, agents, representatives, consultants, attorneys, past and current parent corporations, or past and current affiliated corporations, organizations or entities (hereinafter collectively the "Releasees"), from or for any and all claims, rights, actions, complaints, demands, causes of actions, obligations, promises, contracts, agreements, attorneys' fees, costs and liabilities, interest, statutory penalties, civil penalties, liquidated damages, fees, and expenses and costs arising therefrom, whether or not known, suspected or claimed, matured or unmatured, fixed or contingent, which the DLSE ever had, now has, or may claim to have against the Releasees to the date this Agreement is executed, pertaining to Jansen's involvement in the construction of the Holiday Inn Express in Eureka, California.

(b) Waiver of California Civil Code § 1542. The DLSE's Released Claims

include all such claims as respectively defined above, whether known or unknown. Thus, even if the DLSE discovers facts in addition to or different from those that it now knows or believes to be true with respect to the subject matter of the Released Claims, those claims will remain released and forever barred. Therefore, the DLSE expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(c) Authority of DLSE to Compromise and Release Claims. DLSE represents and warrants to Releasees that it has full authority to compromise and release all claims on its behalf. DLSE agrees to use its best efforts to secure the execution of the claimant release (Attachment "B") from each claimant whose claim DLSE has pursued through this action. In the event Releasees are subject to any claims by any claimant(s) who will not execute a claimant release, any amounts paid out by Releasees directly to any non-releasing claimant(s) will be offset against amounts agreed to be paid by Releasees herein for that claimant as stated in Attachment "C" or will be reimbursed to Releasees by DLSE up to the amounts collected by DLSE from Releasees on behalf of such claimant(s). Jansen will provide notice to DLSE, accompanied by a copy of a fully executed settlement agreement with said claimant and proof that payment of not less than the amount set forth for that claimant in Attachment "C" has been made by Jansen directly to the claimant as a condition precedent to any offset or reimbursement under this Section.

10. Successors and Assigns. This Agreement, and all the terms and

provisions hereof, shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

11. Joint Preparation. The parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the parties, but otherwise according to the application of the rules on interpretation of contracts.

12. Voluntary Execution on Advice of Counsel. The parties have, in all respects, voluntarily and knowingly executed this Agreement on advice and with approval of their respective legal counsel. The parties hereto specifically represent that they have thoroughly discussed all aspects of this Agreement with their attorneys, that they have carefully read and fully understand all the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

13. Representations and Warranties. The parties to this Agreement represent and warrant as follows:

(a) They have had an opportunity to seek independent tax advice from accountants, attorneys or tax advisors of their own choice with respect to the tax ramifications, if any, which may result from entering into this Agreement;

(b) They have made such investigation of the facts pertaining to this Agreement as they deem necessary; and

(c) The terms of this Agreement are contractual and are the result of good-faith, arms-length negotiations.

14. Severability. Should a court determine that any portion, word, clause, phrase, sentence or paragraph of this Agreement is void or unenforceable, such portion

shall be considered independent and severable from the remainder, the validity of which shall remain unaffected. Should a court declare any portion of the release of claims to be void or unenforceable, the DLSE agrees to execute a valid release of claims of equal scope.

15. Singular/Plural, Etc. Whenever required by the context, as used in this Agreement, the singular number shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa. The captions of the paragraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction and/or interpretation.

16. Entire Integrated Agreement. This Agreement constitutes the entire integrated agreement between the parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the parties regarding the matters released herein. The parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the parties to this Agreement.

17. Judicially Supervised Settlement. Defendant and Labor Commissioner stipulate that this Agreement is a settlement pursuant to Code of Civil Procedure 664.6

and that the court shall retain jurisdiction over them to enforce the settlement until performance in full of its terms.

18. No Waiver. Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

19. Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear its own attorneys' fees and costs, and except in a future proceeding brought to enforce the terms of this Agreement. The prevailing party in any future proceeding brought to enforce the terms of this Agreement shall be entitled to recover from the other party reasonable attorneys' fees incurred as a result of such action. Any such future proceeding shall be brought in California and subject to the laws of the State of California.

20. Counterparts. This Agreement may be executed in one or more facsimile counterparts, and the counterparts signed in the aggregate shall constitute a single, original instrument.

IN WITNESS WHEREOF, the undersigned have executed this Settlement

Agreement and General Release on the dates set forth hereinafter.

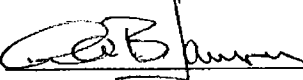
DIVISION OF LABOR STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL
RELATIONS, STATE OF CALIFORNIA

By: _____

Its: _____

Dated: _____


JANSEN CONSTRUCTION COMPANY

By: 

Its: PRESIDENT.

Dated: 11/23/15

JANSEN CONSTRUCTION COMPANY OF CALIFORNIA

By: 

Its: PRESIDENT.

Dated: 11/23/15

1 DAVID BALTER, SBN 136273
2 State of California
3 Department of Industrial Relations
4 DIVISION OF LABOR STANDARDS ENFORCEMENT
5 455 Golden Gate Avenue, 9th Floor
6 San Francisco, CA 94102
7 Telephone No. (415) 703-4863
8 Facsimile No. (415) 703-4807

9 Attorney for Plaintiff
10 JULIE SU, STATE LABOR COMMISSIONER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF HUMBOLDT

13 JULIE SU, STATE LABOR
14 COMMISSIONER, DIVISION OF
15 LABOR STANDARDS
16 ENFORCEMENT, DEPARTMENT OF
17 INDUSTRIAL RELATIONS, STATE OF
18 CALIFORNIA,

19 Plaintiff,

20 v.

21 JANSSEN CONSTRUCTION COMPANY
22 OF CALIFORNIA, a foreign corporation;
23 JANSSEN CONSTRUCTION,
24 COMPANY, a foreign corporation;
25 PACWEST CONTRACTING, LLC, a
26 foreign limited liability company;
27 LANCE H. LUPTON, an individual; and
28 DOES 1 through 30, inclusive,

Defendants.

Case No. DR140048

STIPULATION FOR ENTRY OF
JUDGMENT

[No fee per Labor Code § 101 et seq.]

The undersigned parties to this action hereby stipulate as follow:

1. The signatories to this Stipulation have entered into a written Settlement Agreement and General Release, a copy of which is attached hereto and is incorporated herein by reference.

1 2. Upon application of Plaintiff State Labor Commissioner supported by a
2 declaration of counsel and with notice to all parties, the court shall enter judgment in favor of State
3 Labor Commissioner and against Defendants Jansen Construction Company and Jansen
4 Construction Company of California in the amount of THREE HUNDRED and EIGHTY-EIGHT
5 THOUSAND FORTY-SEVEN Dollars and SEVENTY-SEVEN Cents (\$388,047.77) less a credit
6 for all payments of principal received by State Labor Commissioner.
7

8 Dated: November 23, 2015

JANSEN CONSTRUCTION COMPANY

9
10 

11 BY: ALEX JANSEN.
12 ITS PRESIDENT.

13 Dated: November 23, 2015

JANSEN CONSTRUCTION COMPANY OF CALIFORNIA

14 

15 BY: ALEX JANSEN.
16 ITS PRESIDENT

17 Dated: November __, 2015

DIVISION OF LABOR STANDARDS ENFORCEMENT

18
19
20 BY: DAVID BALTER, Counsel for the Labor Commissioner
21
22
23
24
25
26
27
28

RELEASE IN FULL OF ALL CLAIMS

RELEASOR: _____

[Address] _____

[City] _____

[State /Zip code] _____

RELEASEES: Jansen Construction Company and Jansen Construction Company of California

Settlement amount: _____

In consideration of the payment of settlement amount to RELEASOR, RELEASOR hereby releases and discharges JANSEN CONSTRUCTION COMPANY and JANSEN CONSTRUCTION COMPANY OF CALIFORNIA and each of their affiliates, partners, agents, servants, stockholders, employees, representatives, attorneys, insurers, sureties, assigns, and successors from all debts, liens, claims, rights, demands, actions, causes of action, known or unknown, whether in contract, tort, or otherwise, by any reason of any losses, damages or injuries whatsoever sustained by RELEASOR arising in any way from the construction of the Holiday Inn Express located at 815 West Wabash Avenue, Eureka, CA 95501-2152. This release does not apply to and does not release any claims against Pacwest Contracting, LLC, Company of California, Lance H. Lupton, or Lupton Construction Company.

This is a full and complete release of all claims of RELEASOR against RELEASEES.

RELEASOR waives all rights under California Civil Code §1542, which provides:

“A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time executing a release, which if known by him must have materially affected his settlement with any debtor.”

RELEASOR represents that this claim has not been assigned, sold or otherwise transferred.

Dated at [City] _____, this _____, day of _____ [Month], _____ [Year].

Signature of RELEASOR

Attachment "B"

	A	X	Y	Z	AA	AB	AC	AD
1	Name of Employee	Balance of Wages Due	Total after Wages	Total	Per Diem	Deduction	Expense	1194.2
2		\$0.00	\$482.00	\$482.00		\$130.00		\$352.00
3		\$5,227.88	\$4,691.92	\$9,919.80		\$130.00		\$4,561.92
4		\$1,412.50	\$1,463.76	\$2,876.26	\$320.00	\$130.00		\$1,013.76
5		\$4,017.03	\$1,821.36	\$5,838.39		\$130.00		\$1,691.36
6		\$5,603.75	\$1,784.40	\$7,388.15		\$130.00		\$1,654.40
7		\$9,908.75	\$6,498.72	\$16,407.47		\$130.00	\$258.00	\$6,110.72
8		\$1,441.50	\$1,471.12	\$2,912.62		\$130.00		\$1,341.12
9		\$905.00	\$720.56	\$1,625.56	\$140.00	\$130.00		\$450.56
10		\$4,226.08	\$3,368.40	\$7,594.48		\$130.00		\$3,238.40
11		\$0.00	\$543.92	\$543.92	\$40.00	\$130.00	\$300.00	\$73.92
12		\$713.12	\$1,369.68	\$2,082.80	\$180.00	\$130.00	\$500.00	\$559.68
13		\$2,167.50	\$1,336.92	\$3,504.42		\$130.00	\$165.00	\$1,041.92
14		\$1,293.39	\$1,076.88	\$2,370.27		\$130.00		\$946.88
15		\$9,060.00	\$4,269.52	\$13,329.52		\$130.00		\$4,139.52
16		\$9,720.00	\$3,709.84	\$13,429.84		\$130.00		\$3,579.84
17		\$1,233.50	\$1,150.80	\$2,384.30		\$130.00		\$1,020.80
18		\$9,298.49	\$6,866.96	\$16,165.45	\$1,060.00	\$130.00	\$1,900.00	\$3,776.96
19		\$713.12	\$1,369.68	\$2,082.80	\$180.00	\$130.00	\$500.00	\$559.68
20		\$1,610.25	\$309.52	\$1,919.77		\$130.00		\$179.52
21		\$374.37	\$421.76	\$796.13	\$70.00	\$130.00		\$221.76
22		\$328.12	\$411.60	\$739.72		\$130.00		\$281.60
23		\$6,920.61	\$3,311.45	\$10,232.06	\$680.00	\$130.00	\$51.53	\$2,449.92
24		\$4,213.75	\$1,949.84	\$6,163.59		\$130.00		\$1,819.84
25		\$5,197.75	\$2,763.84	\$7,961.59		\$300.00	\$292.00	\$2,171.84
26		\$4,152.75	\$2,685.52	\$6,838.27		\$130.00		\$2,555.52
27		\$2,675.00	\$974.80	\$3,649.80		\$130.00		\$844.80
28		\$912.50	\$577.04	\$1,489.54		\$130.00		\$447.04

	A	X	Y	Z	AA	AB	AC	AD
29		\$2,427.00	\$960.72	\$3,387.72		\$130.00		\$830.72
30		\$713.12	\$1,369.68	\$2,082.80	\$180.00	\$130.00	\$500.00	\$559.68
31		\$7,037.50	\$3,333.20	\$10,370.70		\$130.00		\$3,203.20
32		\$838.00	\$710.80	\$1,548.80		\$130.00		\$580.80
33		\$374.37	\$421.76	\$796.13	\$70.00	\$130.00		\$221.76
34		\$2,415.87	\$2,252.56	\$4,668.43		\$130.00		\$2,122.56
35		\$10,248.44	\$4,966.96	\$15,215.40	\$1,060.00	\$130.00		\$3,776.96
36		\$1,450.00	\$848.08	\$2,298.08		\$130.00		\$718.08
37		\$135.00	\$200.40	\$335.40		\$130.00		\$70.40
38		\$0.00	\$853.79	\$853.79		\$130.00		\$723.79
39		\$8,523.00	\$4,469.20	\$12,992.20	\$960.00	\$130.00		\$3,379.20
40		\$13,752.57	\$7,747.61	\$21,500.18		\$130.00	\$1,323.85	\$6,293.76
41		\$60.00	\$1,256.40	\$1,316.40		\$130.00		\$1,126.40
42		\$141,301.57	\$86,792.97	\$228,094.53	\$4,940.00	\$5,370.00	\$5,790.38	\$70,692.59

DECLARATION OF SERVICE

I am employed in San Joaquin County; I am over the age of eighteen years of age, and not a party to the within entitled action; my business address is: 145 E. Weber Avenue, Stockton, CA 95202.

On January 16, 2019, I served the within:

Motion for Judicial Notice

on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid, in the United States mail at Stockton. or by electronic service via true filing as indicated in the attached service list

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 16, 2019, at Stockton, California.

A handwritten signature in black ink, appearing to read "J. Custy", is written over a horizontal line.

Service List

Justin Kim v. Reins International California
Supreme Court of the State of California Case No. S24611
Second Appellate District, Division Four, Case No.: B278642
Superior Court of Los Angeles County, Case No.: BC539194

Eric B. Kingsley (185123)
Kingsley & Kingsley
16133 Ventura Boulevard, Suite 1200
Encino, CA
Attorney for Plaintiff and Appellant Justin Kim
(Served via True Filing)

SPENCER C. SKEEN (182216)
Ogletree, Deakins, Nash, Smoak & Stewart
4370 La Jolla Village Drive, Suite 990
San Diego, CA. 92122
Attorney for Defendant and Respondent Reins International California
(Served via True Filing)

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, CA. 94612
(Served via United States Postal Service)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT – DIVISION FOUR
(Served via United States Postal Service)

ELECTRONICALLY FILED
SUPREME COURT OF CALIFORNIA
(Filed via True Filing)