

Case No. S227228

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

MICHAEL WILLIAMS, an individual,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent.

SUPREME COURT
FILED

FEB 13 2016

Frank A. McGuire Clerk
Deputy

Court of Appeal of the State of California
2nd Civil No. B259967

Superior Court of the State of California
County of Los Angeles

The Honorable William F. Highberger, Judge Presiding
Civil Case No. BC503806

**REAL PARTY IN INTEREST MARSHALLS OF CA, LLC'S
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ANSWER
BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF AMY TODD-GHER;
PROPOSED ORDER**

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MARSHALLS OF CA, LLC

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TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE, CHIEF JUSTICE; THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT; APPELLANT MICHAEL WILLIAMS AND HIS ATTORNEYS OF RECORD:

Pursuant to California Evidence Code sections 450, *et seq.*, and California Rules of Court, Rules 8.252 and 8.520, Real Party in Interest Marshalls of CA, LLC (“Marshalls”) respectfully moves this Court to take judicial notice of the following documents:

Exhibit A: Legislative History of Senate Bill 796 (Dunn – 2003).

Exhibit B: Legislative History of Senate Bill 1809 (Dunn – 2004).

Exhibit C: Second Amended Class Action Complaint, *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed July 7, 2006.

Exhibit D: Ruling on Submitted Matter; Plaintiffs’ Motion to Compel Defendant Belaire To Provide The Names, Addresses, and Telephone Numbers of Putative Class Members, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed September 13, 2006.

This request is made on the following grounds:

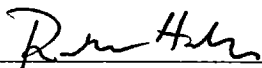
(1) The Evidence Code authorizes this Court to take judicial notice of these materials offered by Marshalls; and

(2) The materials offered by Marshalls are directly relevant to the issues raised in Marshalls' Answer Brief on The Merits.

The documents are described, and indicated, under penalty of perjury to be true and correct copies of the originals in the declaration of Marshalls' counsel, Amy Todd-Gher, included herein. The documents were not presented to the trial court, nor do they relate to proceedings occurring after the order that is the subject of the appeal. This request is based upon the instant motion; the memorandum of points and authorities; and the declaration of Marshalls' counsel, Amy Todd-Gher, included herein.

Dated: February 16, 2016

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By: 

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF REAL PARTY IN INTEREST MARSHALLS' REQUEST FOR
JUDICIAL NOTICE**

Evidence Code section 459 provides reviewing courts the power to take judicial notice of documents, just as a trial court may under Evidence Code sections 450, *et seq.* (Cal. Evid. Code, § 459.) California Rules of Court, Rules 8.252 and 8.520 provide that a reviewing court may take judicial notice of documents relevant to the issues under review. (Cal. Rules of Court, Rules 8.252(a)(2)(A), 8.520(g).)

The Court has granted review of the following general issues: “(1) Is the plaintiff in a representative action under the Labor Code Private Attorneys General Act of 2004 (Lab. Code § 2698, *et seq.* (“PAGA”)) entitled to discovery of the names and contact information of other “aggrieved employees” at the beginning of the proceeding or is the plaintiff first required to show good cause in order to have access to such information? and (2) In ruling on such a request for employee contact information, should the trial court first determine whether the employees have a protectable privacy interest and, if so, balance that privacy interest against competing or countervailing interests, or is a protective privacy interest assumed? (*See Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1; *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal. 4th 360.)” Resolution of these issues depends, in part, on an evaluation of a plaintiff’s scope of authority under PAGA, as determined by the language of PAGA and its legislative history. Because Appellant Michael Williams relies on the *Belaire-West Landscape, Inc.* class action case to seek to establish his own broad authority to discovery private non-party employee information, the limited scope of the putative class at issue

in the *Belaire-West* case is also instructive, and may be useful to this Court in its analysis.

Legislative history is relevant to statutory interpretation. (*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 379; Cal. Code Civ. Proc. §1859; Cal. Gov. Code §9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992 (“statute must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers...”)); *Hale v. Southern Cal. IPA Med. Grp. Inc.* (2001) 86 Cal.App.4th 919, 927 (California Law Revision Commission reports, and Legislative Committee reports).) This Court may take judicial notice of official acts of the executive and legislative branches. (Cal. Evid. Code §452(c).) And, Evidence Code section 451 requires this Court take judicial notice of any relevant, public statutory laws or constitutional provisions of California and the United States. (Cal. Evid. Code, § 451(a).)

Additionally, Evidence Code section 452(d)(1) permits this Court to take judicial notice of the records of “any court of this state.” (Cal. Evid. Code § 452(d)(1); *see also Duggal v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 86 (holding that courts may take judicial notice of the records of a California court).) Evidence Code section 452(d)(2) also permits this Court to take judicial notice of “any court of record of the United States or of any state of the United States.” Finally, this Court may properly take notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Cal. Evid. Code §452(h).)

In conclusion, the legal authority for this Court to grant judicial notice of each of the above-listed documents is as follows:

Exhibit A: Analysis of Senate Bill 796, Assembly Committee on Labor and Employment, July 9, 2003; and Analysis of Senate Bill 796, Senate Judiciary Committee, April 29, 2003.

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*DiCampli-Mintz, supra*, 55 Cal.4th at p.992 [California Law Revision Committee reports]; *Hale, supra*, 86 Cal.App.4th at p.927 [Law Revision Commission reports and Legislative Committee reports]; *Martin, supra*, 32 Cal.4th at p.450 [Legislative Committee reports].) Exhibit A is a true and correct copy of an analysis of Senate Bill 796 by the Assembly Committee on Labor and Employment (July 9, 2003), and an analysis of Senate Bill 796 by the Senate Judiciary Committee (April 29, 2003) bill. The Court should take judicial notice of the analyses marked as Exhibit A in this matter.

Exhibit B: Analysis of Senate Bill 1809, Assembly Committed on Labor and Employment, May 26, 2004; and Analysis of Senate Bill 1809, Senate Rules Committee, July 27, 2014.

Legislative history is relevant to statutory interpretation. (*S.B. Beach, supra*, 39 Cal.4th at p. 379; Code Civ. Proc., § 1859; Gov. Code, § 9080.) In an effort to discern legislative intent, this Court may take judicial notice of the various legislative materials underlying the enactment of a statute. (*DiCampli-Mintz, supra*, 55 Cal.4th at p.992 [California Law Revision Committee reports]; *Hale, supra*, 86 Cal.App.4th at p.927 [Law Revision Commission reports and Legislative Committee reports]; *Martin, supra*, 32 Cal.4th at p.450 [Legislative Committee reports].) Exhibit B is a true and correct copy of an analysis of Senate Bill 1809, Assembly Committed on Labor and Employment (May 26, 2004), and an analysis of Senate Bill 1809, Senate Rules Committee (July 27, 2014). The Court should take judicial notice of the analyses marked as Exhibit B in this matter.

Exhibit C: Second Amended Class Action Complaint in *Rodriguez et al. v. v. Belaire-West Landscape, Inc.* (Super. Ct. Los Angeles County, July 7, 2006, Case No. No. BC321310).

This Court may properly take judicial notice of the records of any court of this state. (Evid. Code, § 452(d); *Flores v. Arroyo* (1961) 56 Cal.2d 492, 496-97.) Appellant relies on the *Belaire-West Landscape* appeal, *Belaire –West Landscape, Inc. v. Superior Court*, (2007) 149 Cal. App. 4th 554, for the proposition that non-party employees' names and

contact information should be generally discoverable. (Appellant's Opening Brief ("App. Op. Br.") at 14-15.) However, the trial court's decision in *Belaire-West* was limited to a putative class of "Landscapers, or persons with equivalent position, however titled, who worked and/or are working for Defendants..." (See Exhibit C, ¶ 31.) Whereas Exhibit C is a true and correct copy of a record from the Superior Court of the State of California for the County of Los Angeles, the Court should take judicial notice of the document in this matter.

Exhibit D: Ruling on Submitted Matter; Plaintiffs' Motion to Compel Defendant Belaire To Provide The Names, Addresses, and Telephone Numbers of Putative Class Members in *Rodriguez et al. v. v. Belaire-West Landscape, Inc.* (Super. Ct. Los Angeles County, July 7, 2006, Case No. No. BC321310).

This Court may properly take judicial notice of the records of any court of this state. (Evid. Code, § 452(d); *Flores v. Arroyo* (1961) 56 Cal.2d 492, 496-97.) Appellant relies on the *Belaire-West Landscape* appeal, *Belaire –West Landscape, Inc. v. Superior Court*, (2007) 149 Cal. App. 4th 554, for the proposition that non-party employees' names and contact information should be generally discoverable. (Appellant's Opening Brief ("App. Op. Br.") at 14-15.) However, the trial court's decision in *Belaire-West* was limited to a putative class of "Landscapers, or persons with equivalent position, however titled, who worked and/or are working for Defendants..." (See Exhibit C, ¶ 31.) The trial court ordered that the proposed notice be sent to the putative class members, specifically, "all


current and former landscaping employees of Belaire-West Landscape, Inc...” (See Exhibit D, at 3:6-15.) Whereas Exhibit D is a true and correct copy of a record from the Superior Court of the State of California for the County of Los Angeles, the Court should take judicial notice of the document in this matter.

CONCLUSION

For the reasons set forth herein, this Court should grant judicial notice of each of the exhibits listed above.

Dated: February 16, 2016

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Attorneys for Real Party In Interest
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**DECLARATION OF AMY TODD-GHER IN SUPPORT OF
MARSHALLS' MOTION FOR JUDICIAL NOTICE**

I, AMY TODD-GHER, declare:

1. I am an attorney admitted to practice in the State of California, and am one of the attorneys of record representing the Real Party in Interest, Marshalls of CA, LLC, in this matter.

2. I have personal knowledge of the facts stated herein, and if called as a witness, I would testify competently thereto.

3. I make this declaration in support of Real Party in Interest, Marshalls of CA, LLC's Motion for Judicial Notice in Support of Answer Brief on the Merits.

4. Attached as Exhibit A is a true and correct copy of the Legislative History and Analysis of Senate Bill 796 of 2003. We obtained these documents from Filomena Ms. Yeroshek of Legislative Intent Service, Inc. A true and correct copy of Ms. Yeroshek's declaration regarding these documents, authenticating these documents by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 1 (referenced in Ms. Yeroshek's declaration under Items 6 and 9, Ex. 1).

5. Attached as Exhibit B is a true and correct copy of the Legislative History and Analysis of Senate Bill 1809 of 2004. We obtained these documents from Filomena M. Yeroshek of Legislative Intent Service, Inc. A true and correct copy of Ms. Yeroshek's declaration regarding these documents, authenticating these documents by source and defining the scope of the project, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 2 (referenced in Ms. Yeroshek's declaration under Items 8 and 14, Ex. 2).

6. Attached as Exhibit C is a true and correct copy of the Second Amended Class Action Complaint, *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed July 7, 2006. We obtained this document from Roberto Recenios of Nationwide Legal. A true and correct copy of Mr. Recenios' declaration regarding this document, authenticating the document by source, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 3.

7. Attached as Exhibit D is a true and correct copy of the Ruling on Submitted Matter; Plaintiffs' Motion to Compel Defendant Belaire To Provide The Names, Addresses, and Telephone Numbers of Putative Class Members, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed September 13, 2006. We obtained this document from Mario Rios of Nationwide Legal. A true and correct copy of Mr. Rios' declaration regarding this document, authenticating the document by source, thereby meeting the requirements of Evidence Code Section 453(b), is attached hereto as Exhibit 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of February, 2016, at San Diego, California.



AMY TODD-GHER

**[PROPOSED ORDER] IN SUPPORT OF REAL PARTY IN
INTEREST'S MOTION FOR JUDICIAL NOTICE**

Good cause appearing, therefore,

IT IS HEREBY ORDERED that the Supreme Court will take judicial notice of the following documents:

Exhibit A: Legislative History of Senate Bill 796 (Dunn – 2003).

Exhibit B: Legislative History of Senate Bill 1809 (Dunn – 2004).

Exhibit C: Second Amended Class Action Complaint, *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed July 7, 2006.

Exhibit D: Ruling on Submitted Matter; Plaintiffs' Motion to Compel Defendant Belaire To Provide The Names, Addresses, and Telephone Numbers of Putative Class Members, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed September 13, 2006.

DATED: _____

The Honorable Chief Justice or
Associate Justice of the California
Supreme Court

Firmwide:138627797.1 053070.1106

EXHIBIT A

SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2003-2004 Regular Session

SB 796	S
Senator Dunn	B
As Amended April 22, 2003	
Hearing Date: April 29, 2003	7
Labor Code	9
CJW	6

SUBJECT

Employment

DESCRIPTION

This bill would allow employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. The bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

This analysis reflects author's amendments to be offered in Committee.

BACKGROUND

California's Labor Code is enforced by the state Labor and Workforce Development Agency (LWDA) and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Committee on Labor and Employment held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size

(more)

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California's "underground economy" - businesses operating outside the state's tax and licensing requirements - ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Ch. 662, Stats. of 2002), requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified below.

CHANGES TO EXISTING LAW

Existing law authorizes the LWDA (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. [Labor Code Secs. 201 et seq.]

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. [Labor Code Sec. 215 et seq.]

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint. [Labor Code Sec. 98.7.]

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity. [Bus. & Profs. Code Sec. 17200 et seq.]

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and

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\$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

COMMENT

1. Stated need for legislation

The California Labor Federation, co-sponsor, states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators:

In the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. . . . The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled



with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing: For example, "company store" arrangements in which workers are required to cash their checks with their employer, for a fee, allegedly are widespread in the agricultural industry. The CRLA Foundation notes that the bill's proposed penalty structure is "nominal" and is based on existing provisions of the Labor Code.

Protection & Advocacy, Inc., which supports the rights of people with disabilities, asserts that SB 796 will assist disabled employees "by providing some mechanism by which to get an employer to comply with the Labor Code."

2. SB 796 would attach civil penalties to existing provisions

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions.

Accordingly, this bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for continuing violations) to any Labor Code provision that does not already contain a financial penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of existing civil penalties attached to other Labor Code provisions, but should be significant enough to deter violations.

3. The bill would allow "aggrieved employees" to bring private actions to recover the civil penalties

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries.

Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to



labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range. [See, e.g., Unruh Civil Rights Act, Civ. Code Sec. 51 et seq., allowing statutory damages in a minimum amount of \$4,000 per violation to prevailing private litigants in actions alleging denial of equal access or other forms of discrimination.]

In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff, as would occur with a damage award. Recovery of civil penalties by private litigants does have some precedent in existing law: The Unruh Civil Rights Act allows either the victim of a hate crime or a public prosecutor to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civ. Code Secs. 51.7, 52.)

4. Opponents' concerns

The employer groups opposing the bill argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing any and all types of Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both attorneys' fees and a portion of the penalties. A representative letter states:

There is a major concern that this type of statute could be abused in a manner similar to the legal community's abuse of Business and Professions Code Section 17200 when it sued thousands of small businesses for minor violations and demanded settlements in order to avoid costly litigation.

The California Chamber of Commerce argues that, since the bill would award attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already-overburdened courts because there would be no disincentive to pursue meritless claims.

The California Employment Law Council states that the the Labor Code contains "innumerable penalty provisions, many of which would be



applicable to minor and inadvertent actions." Under current law, however, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796:

If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a "private attorney general" could sue for penalties that could reach staggering amounts if . . . the inadvertent deletion of information on a paycheck went on for some time.

5. Sponsors say bill has been drafted to avoid abuse of private actions

The sponsors are mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse. First, unlike the UCL, this bill would not open private actions up to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed. (Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors.)

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself or others" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL. This would dispense with the issue of res judicata ("finality of the judgment") that is the subject of some criticism of private UCL actions. An action on behalf of other aggrieved employees would be final as to those plaintiffs, and an employer would not have to be concerned with future suits on the same issues by someone else "on behalf of the general public."

Third, the proposed civil penalties are relatively low, most of the penalty recovery would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. This distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts and under the same code provisions.

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6. Author's amendments

In order to address concerns that the bill might invite frivolous suits or impose excessive penalties, and pursuant to discussions between the sponsors and Committee staff, the author has agreed to accept the following amendments to clarify the bill's intended scope of its private right of action and the assessment and distribution of its civil penalties:

- (a) To clarify who would qualify as an "aggrieved employee" entitled to bring a private action under this section, the author will define the term as follows (at page 2, line 38):

"For purposes of this part, an aggrieved employee means any person employed by the alleged violator within the period covered by the applicable statute of limitations against whom one or more of the violations alleged in the action was committed."

The bill would further be amended to reflect that any civil penalty recoverable by the LWDA under existing law may be recovered through a civil action "brought by an aggrieved employee on behalf of himself or herself or other current or former employees" (at page 2, lines 31-36).

- (b) To clarify that civil penalties would be assessed only with respect to the number of employees aggrieved by the violation, as opposed to the total number of an alleged violator's employees, the author will amend the bill to reflect that penalties will be determined "for each aggrieved employee" instead of "per employee" (at page 3, lines 7 and 8).
- (c) To allay opponents' concerns that res judicata issues may arise if all known potential plaintiffs are not included in the private action, the author will amend the bill as follows (at page 3, lines 11-13):

"An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or ~~others~~ other current or former employees for whom evidence of a violation was developed during the trial or at settlement of the action."

- (d) To conform its attorney's fees provision with similar provisions in existing law, the author will amend the bill to delete the phrase "in whole or in part" from the provision allowing attorney's fees to be awarded to a prevailing plaintiff (at page 3, lines 13-14).



Support: American Federation of State, County and Municipal Employees (AFSCME); California Conference Board of the Amalgamated Transit Union; California Council of Machinists; California Independent Public Employees Legislative Council; California State Pipe Trades Council; California State Association of Electrical Workers; California Teamsters; Engineers and Scientists of California, Local 20; Hotel Employees, Restaurant Employees International Union; Professional and Technical Engineers, Local 21; Protection & Advocacy, Inc.; Region 8 States Council of the United Food & Commercial Workers; Western States Council of Sheet Metal Workers

Opposition: Associated General Contractors of California; California Apartment Association; California Chamber of Commerce; California Employment Law Council; California Landscape Contractors Association; California Manufacturers and Technology Association; Civil Justice Association of California (CJAC); Construction Employers' Association; Motion Picture Association of America; Orange County Business Council

HISTORY

Source: California Labor Federation AFL-CIO; CRLA Foundation

Related Pending Legislation: None Known

Prior Legislation: AB 2985 (Committee on Labor and Private Employment) (Ch. 662, Stats. of 2002) (requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003)

Prior Vote: Senate Labor & Industrial Relations Committee 5-3

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Date of Hearing: July 9, 2003

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Paul Koretz, Chair

SB 796 (Dunn) - As Amended: July 2, 2003

SENATE VOTE: 21-14

SUBJECT: Employment.

SUMMARY: Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 3) Defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."
- 4) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund, 25% to the Labor and Workforce Development Agency (LWDA) for employer and employee education, and 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between General Fund and the LWDA.
- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action.

EXISTING LAW

- 1) Authorizes the LWDA (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.
- 2) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the law, and to sue the employer directly for damages, reinstatement, and other appropriate relief.

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- 3) Authorizes the Attorney General and other public prosecutors to seek appropriate injunctive relief and file criminal charges against employers for criminal violations of the Labor Code, where specified.
- 4) Further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and other appropriate remedies.

FISCAL EFFECT: This measure was approved by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS: Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

The Labor Code is enforced by the LWDA and its various subordinate entities, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

The State of Labor Law Enforcement in California

At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so adequately due to budgetary and staff constraints. The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that [s]taffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future."

In 2001, the Assembly Committee on Labor and Employment conducted hearings regarding the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR). The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the Division of Labor Standards Enforcement (DLSE) within DIR for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size of California's "underground economy" – businesses operating outside the state's tax and licensing requirements – ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but that DIR was issuing fewer than 100 wage citations per year for all industries throughout the state.

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Moreover, evidence demonstrates that the resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California. California's enforcement agencies are responsible for protecting the legal rights of over 17 million California workers and regulating almost 800,000 private establishments, in addition to all the public sector workplaces in the state (U.S. Census Bureau 1999). However, according to a recent study, the resources available to the labor enforcement divisions remain below the levels of the mid-1980s. (Bar-Cohen, Limor and Deana Milam Carillo. "Labor Law Enforcement in California, 1970-2000." The State of California Labor. (2002), p. 135). According to the same study, between 1980 and 2000 California's workforce grew 48 percent, while DLSE's budgetary resources increased only 27 percent and Cal/OSHA's actually decreased 14 percent. Similarly, DLSE and Cal/OSHA staffing levels have decreased 7.6 percent and 10.8 percent, respectively, over the last two decades.

As a result of the legislative hearings discussed above, the Legislature enacted AB 2985 (Assembly Committee on Labor and Employment), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

Arguments in Support:

The co-sponsors of the measure, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance (CRLA) Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. The CRLA Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs, for example, when the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. The CRLA Foundation notes that the bill's proposed penalty structure is "nominal" and is based on existing provisions of the Labor Code.

Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact the LWDA and its enforcement activities.

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Arguments in Opposition:

Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken the danger of the bill to recent alleged abuse of Business and Professions Code Section § 17200. Representative of this sentiment is the California Landscape Contractors Association, who notes:

[This bill] will create an entirely new litigation arena that will encourage employees, particularly employees who were terminated or subject to a disciplinary action, to file retaliatory claims against their employer. As we have seen with similar causes of action under Section 17200..., innocent businesses will be pressured to settle these claims because of the high cost of defense and the relatively small amounts involved.

Opponents also contend that California already has a formal administrative procedure to handle these type of claims under the Labor Code that is both economical and efficient.

Relationship Between SB 796 and the "Unfair Competition Law" (UCL):

As discussed above, some opponents have expressed concern about the relationship between this bill and the "Unfair Competition Law" (UCL), Section 17200, *et seq.*, of the Business and Professions Code. As reported in press accounts and further illuminated by a joint legislative hearing conducted earlier this year by the Senate and Assembly Committees on Judiciary, there have been allegations of abuse of the UCL by certain law firms and individual attorneys. In light of the recent attention focused on the UCL, a brief discussion of that law's relationship to this bill, and the arguments thereto on both sides, is warranted here.

California law has contained a statute prohibiting "unfair" practices in competition since the first Civil Code was enacted in 1872. Numerous amendments to the UCL and case law interpreting its provisions have provided broad and expansive protections to California consumers to prevent businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

Although the UCL permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsor claim is not a sufficient deterrent to labor law violations. Second, since the UCL does not award attorney's fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, sponsors assert that since most employees fear they will be fired or subject to



hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Opponents, on the other hand, argue that this measure, if enacted, will result in abuse similar to that alleged involving the UCL. For example, the Civil Justice Association of California (CJAC) argues that this bill will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. CJAC argues that similar private attorney general actions have resulted in an excessive amount of meritless, fee-motivated lawsuits. Allowing such "bounty hunter" provisions will increase costs to businesses of all sizes, and add thousands of new cases to California's already over-burdened civil court system.

Similarly, the California Motor Car Dealers Association, writing in opposition to the bill, states, "a private enforcement statute in the hands of unscrupulous lawyers is a recipe for disaster."

The sponsors are mindful of the recent, well-publicized allegations of private plaintiffs abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse, pointing to amendments taken in the Senate to clarify the bill's intended scope. First, unlike the UCL, this bill would not open up private actions to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could only be brought by an "aggrieved employee" – an employee of the alleged violator against whom the alleged violation was committed.

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself and other current or former employees" – that is, fellow employees also harmed by the alleged violation – instead of "on behalf of the general public," as private suits are brought under the UCL.

Third, the proposed civil penalties are relatively low. Most of the penalty recover would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. The sponsors contend that this distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts or theories under the same code provisions.

Related Legislation:

AB 276 (Koretz) of 2003 increases various civil penalties under the Labor Code, many of which have not been increased for decades. AB 276 is currently pending before the Senate Committee on Labor and Industrial Relations.

REGISTERED SUPPORT / OPPOSITION:

Support



California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Pipe Trades Council
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California Teamsters Public Affairs Council
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California (PORAC)
Professional and Technical Engineers, Local 21
Region 8 States Council of United Food & Commercial Workers
Sierra Club California
Western States Council of Sheet Metal Workers

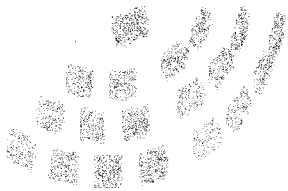
Opposition

Alliance of American Insurers
Associated Builders and Contractors of California
Association of California Water Agencies
California Apartment Association
California Chamber of Commerce
California Landscaper Contractors Association
California Manufacturers & Technology Association
California Motor Car Dealers Association
California Restaurant Association
Civil Justice Association of California
Motion Picture Association of America, California Group
Wine Institute

Analysis Prepared by: Ben Ebbink / L. & E. / (916) 319-2091



EXHIBIT 1



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF FILOMENA M. YEROSHEK

I, Filomena M. Yeroshek, declare:

I am an attorney licensed to practice before the courts of the State of California, State Bar No. 125625, and am employed by Legislative Intent Service, Inc. a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 796 of 2003. Senate Bill 796 was approved by the Legislature and was enacted as Chapter 906 of the Statutes of 2003.

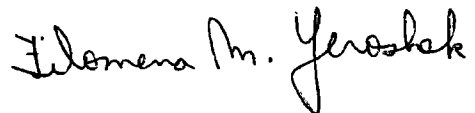
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 796 of 2003. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

SENATE BILL 796 OF 2003:

1. All versions of Senate Bill 796 (Dunn-2003);
2. Procedural history of Senate Bill 796 from the 2003-04 Senate Weekly History;
3. Analysis of Senate Bill 796 prepared for the Senate Committee on Labor and Industrial Relations;
4. Material from the legislative bill file of the Senate Committee on Labor and Industrial Relations on Senate Bill 796;
5. Analysis of Senate Bill 796 prepared for the Senate Committee on Judiciary;
6. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 796;

7. Third Reading analysis of Senate Bill 796 prepared by the Office of Senate Floor Analyses;
8. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 796;
9. Analysis of Senate Bill 796 prepared for the Assembly Committee on Labor and Employment;
10. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Senate Bill 796;
11. Analysis of Senate Bill 796 prepared for the Assembly Committee on Judiciary;
12. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 796;
13. Analysis of Senate Bill 796 prepared for the Assembly Committee on Appropriations;
14. Material from the legislative bill file of the Assembly Committee on Appropriations on Senate Bill 796;
15. Two Third Reading analyses of Senate Bill 796 prepared by the Assembly Committee on Labor and Employment;
16. Unfinished Business analysis of Senate Bill 796 prepared by the Office of Senate Floor Analyses;
17. Material from the legislative bill file of Senator Joe Dunn on Senate Bill 796;
18. Post-enrollment documents regarding Senate Bill 796;
19. Press Release #L03:194 issued by the Office of the Governor on October 12, 2003 to announce that Senate Bill 796 had been signed;
20. "Senate OKs Consumer Privacy Bill" from the Los Angeles Times, May 30, 2003, obtained from <http://www.latimes.com>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of January, 2008 at Woodland, California.



FILOMENA M. YEROSHEK

EXHIBIT B

Date of Hearing: June 16, 2004

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Paul Koretz, Chair

SB 1809 (Dunn) – As Amended: May 26, 2004

SENATE VOTE: 21-13

SUBJECT: Employment.

SUMMARY: Amends the "Labor Code Private Attorneys General Act of 2004," enacted pursuant to SB 796 (Dunn), Chapter # 906, Statutes of 2003. Specifically, this bill:

- 1) Provides that a civil penalty for any violation of a posting or notice requirement of the Labor Code may only be recovered the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees.
- 2) States that trial courts have the discretion to award less than the maximum civil penalty available under current law when to do otherwise would be unfair, arbitrary and capricious, or confiscatory, would be wholly disproportionate to any discernible and legitimate legislative goal, and would demonstrably overbalance and outweigh the goals of punishment, regulation, and deterrence.
- 3) Requires an individual, prior to bringing a civil action, to report the alleged violation in writing to the LWDA and requires that, within 15 calendar days of the report, no state enforcement action has commenced. An individual would be required to file with any civil action a certification stating that he or she has complied with these requirements.
- 4) Specifies that these amendments to the provisions of existing law shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

EXISTING LAW establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, existing law:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for subsequent violations. The penalty is \$500 per violation where the violator does not employ any employees at the time of the violation.
- 2) Authorizes an "aggrieved employee" to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed.
- 3) Defines an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

LIS-7



- 4) Provides that no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.
- 5) Specifies that where the LWDA or any of its subdivisions has discretion to assess a civil penalty, a court may exercise the same discretion with respect to civil penalties established by SB 796.
- 6) Provides that the civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund, 25% to the LWDA for employer and employee education, and 25% to the aggrieved employees. Civil penalties recovered against person that do not employ any employees are to be divided evenly between the General Fund and the LWDA.
- 7) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in a civil action.
- 8) Specifies that these provisions of law are not intended to affect the exclusive remedy provided by the workers' compensation provisions of existing law.

FISCAL EFFECT: Unknown

COMMENTS: SB 796 (Dunn) was passed by the Legislature last year and signed by the Governor in October. The legislation went into effect on January 1, 2004. The co-sponsors of SB 796, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation (CRLAF), argued that the bill would address inadequacies in labor law enforcement in two major ways. First, the bill assigned civil fine amounts to the large number of Labor Code provisions, which previously carried criminal fines, but not civil penalties. Second, it authorized the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

Arguments in Support

Proponents of this measure, including its sponsor, CRLAF, argue that last year's SB 796 was a result of an acknowledgment on the part of the Governor and the Legislature that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf. According to supporters, today the budget picture is even worse and SB 796 is still good policy.

Proponents of this measure state that this bill addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that significant inadvertent violations could lead to astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under statute when to do otherwise would be unfair, arbitrary and oppressive, or confiscatory. In addition, this bill eliminates the ability of aggrieved employees to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of the LWDA and its subordinate agencies and employees to assess and collect civil



penalties for these violations. Finally, this bill establishes a mechanism to notify the LWDA of the alleged violation, and gives the LWDA time to issue a citation with respect to that alleged violation. CRLAF also points out that the original provisions of SB 796, which remain unchanged by this bill, specify that no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

CRLAF states that, although it supports state labor posting laws and also believes that existing case law precludes large mandatory civil penalty awards, it agrees that the carefully crafted amendments to SB 796 made by this bill are improvements which deserve to be signed into law.

Arguments in Opposition

Opponents, including the California Chamber of Commerce and the Civil Justice Association of California, generally argue that this bill is an inadequate attempt to address the lawsuit abuses already associated with SB 796 and that, in reality, this bill does nothing to lessen the opportunities made possible by SB 796 for "bounty hunting" private attorneys to sue employers. Instead, opponents of this measure continue to advocate for the repeal of SB 796 in its entirety.

Specifically, opponents argue that the amendment regarding posting and notice is a superficial improvement because the provision does no more than to direct the payment of the fine solely to the LWDA and the state general fund, instead of the plaintiff. Further, the opponents argue that earlier amendments only provide for very limited instances where a court would be permitted to adjust the enormous civil fines imposed by SB 796, due to the many findings a court would have to make in order to justify such a reduction. Finally, opponents argue that the notice provisions are far too abbreviated and that subsequent provisions of the bill take away any relief that that review might have provided. Opponents argue that 15 calendar days is an insufficient amount of time for the LWDA to commence the required state enforcement action, and therefore this provision does nothing to ensure that fee-seeking attorneys are prevented from abusing the provisions of SB 796.

Committee Staff Comment: The author indicates that he is currently drafting additional amendments to significantly limit the applicability of SB 796. The author states that he will be prepared to present and discuss those amendments by the time this bill is heard in the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
United Nurses Associations of California/Union of Health Care Professionals

Opposition

American Electronics Association
Associated General Contractors



Association of California Insurance Companies
Automotive Repair Coalition
Blue Cross of California
California Apartment Association
California Association of Health Facilities
California Association of Sheet Metal & Air Conditioning Contractors, National Association
California Automotive Wholesalers Coalition
California Bankers Association
California Business Properties Association
California Business Roundtable
California Farm Bureau Federation
California Grocers Association
California Healthcare Association
California Landscape Contractors Association
California League of Food Processors
California Manufacturers & Technology Association
California Restaurant Association
California Service Station & Automotive Repair Association
Civil Justice Association of California
Consulting Engineers & Land Surveyors of California
Lumber Association of California & Nevada
Miller Brewing Company
National Federation of Independent Business
Orange County Citizens Against Lawsuit Abuse

Analysis Prepared by: Ben Ebbink / L. & E. / (916) 319-2091

SENATE RULES COMMITTEE

SB 1809

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1809
Author: Dunn (D)
Amended: 7/27/04
Vote: 27 - Urgency

SENATE LABOR & INDUST. RELATIONS COMMITTEE: 7-1, 4/28/04
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock, Romero
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 21-13, 5/26/04
AYES: Alarcon, Bowen, Burton, Cedillo, Chesbro, Dunn, Escutia,
Figueroa, Florez, Karnette, Kuehl, Murray, Ortiz, Perata, Romero, Scott,
Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham,
Hollingsworth, Johnson, Margett, McPherson, Morrow, Oller,
Poochigian
NO VOTE RECORDED: Alpert, Ducheny, Machado, McClintock, Sher,
Vacancy

ASSEMBLY FLOOR: 79-0, 7/28/04 - See last page for vote

SUBJECT: Labor Code Private Attorneys General Act of 2004

SOURCE: California Rural Legal Assistance Foundation

DIGEST: This bill significantly amends "The Labor Code Private Attorneys General Act of 2004" [SB 796 (Dunn), Chapter 906, Statutes of 2003], by enacting specified procedural and administrative requirements that

LIS - 6

CONTINUED

SFA-1

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must be met prior to bringing a private action to recover civil penalties for Labor Code violations.

Assembly Amendments delete the prior version, however, the subject remains the same. As it left the Senate, the bill amended the Act to (1) clarify that a court has discretion to award less than the maximum civil penalty, and (2) eliminate the ability of employees to recover civil penalties for violation of “posting” or “notice” provisions.

ANALYSIS: Existing law allows employees to bring civil actions against their employers to recover penalties for violations of the Labor Code if the LWDA, or its subordinate agencies or employees do not do so. LWDA enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act. Any penalties recovered by an aggrieved employee must be distributed as follows: 50 percent to the General Fund, 25 percent to LWDA for employer education and 25 percent to the aggrieved employees.

This bill significantly amends “The Labor Code Private Attorneys General Act of 2004” by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations. Specifically, this bill:

Serious Labor Code Violations. Establishes a new procedure that an aggrieved employee must follow prior to bringing a civil action to recover penalties for enumerated, serious Labor Code violations (including, but not limited to, violations of wage and hour, overtime, child labor, agricultural, entertainment and garment industry labor laws, and public works laws).

1. The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.
2. If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
3. If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

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LEGISLATIVE INTENT SERVICE



CONTINUED

SFA-2

Notice and Cure Procedures for Other Labor Code Violations. Establishes Notice and Cure provisions for those Labor Code violations not enumerated in paragraph (1) above, nor subject to the Cal-OSHA provisions specified in the health and safety violations section below.

1. The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
2. The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
3. If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
4. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
5. For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.
6. If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.
7. No employer may avail himself or herself of the Notice and Cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

Health and Safety (Cal-OSHA) Violations. Establishes a new procedure that an aggrieved employee must follow prior to initiating a civil action to recover penalties for violations of Labor Code provisions pertaining to occupational safety and health (Cal-OSHA), other than sections that are



specifically enumerated in the serious Labor Code violations section above.

1. The aggrieved employee must give written notice to the Division of Occupational Safety and Health (DOSH) within the State Department of Industrial Relations (DIR) and the employer of the alleged violation.
2. DOSH must inspect or investigate the alleged violation pursuant to existing provisions of law.
3. If DOSH issues a citation, no civil action pursuant to SB 796 may commence.
4. If, by the end of the period for inspection or investigation, DOSH fails to issue a citation and the employee disputes that decision, the employee may challenge the decision in the superior court. If the court finds that DOSH should have issued a citation and orders DOSH to issue a citation, then no civil action pursuant to SB 796 may commence.
5. If DOSH fails to inspect or investigate the alleged violation within the period specified in existing law, the Notice and Cure provisions outlined above apply to the determination of the alleged violation.
6. Requires superior court review of any proposed settlement of alleged safety in employment violations to ensure that they are at least as effective as the protections or remedies provided in federal and state law.

Judicial Discretion Over Award Amounts. Authorizes a court to award a lesser amount than the maximum civil penalty amount allowed if to do otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.”

Exemption for Minor Violations. Provides that no action under SB 796 may be brought for any violation of a posting, notice, agency reporting, or filing requirement except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

Prohibition on Retaliation. Prohibits an employer from retaliating against any employee that brings a civil action under SB 796 in the form of discharge or any manner of discrimination.



Funding. Appropriates \$150,000 from the General Fund in the current year for implementation.

Urgency. Is an urgency measure and applies retroactively to January 1, 2004 (the date SB 796 was enacted).

Comments

The California Rural Legal Assistance Foundation, the bill's sponsor, argue that last year's enactment of SB 796, (Dunn), Chapter 906, Statutes of 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf.

SB 1809 is a result of an agreement reached between the Labor Agency, business and labor representatives. SB 1809 improves SB 796 by allowing the Labor Agency to act first on more "serious" violations such as wage and hour violations and give employers an opportunity to cure less serious violations. The bill protects businesses from shakedown lawsuits, yet ensures that labor laws protecting California's working men and women are enforced – either through the Labor Agency or through the courts.

Background. SB 796 established an alternative "private attorneys general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. SB 796 established a civil penalty where one was not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, \$200 for each aggrieved employee per pay period for subsequent violations, and \$500 per violation where the violator did not employ any employees at the time of the violation.

SB 796 authorizes an aggrieved employee to recover civil penalties plus reasonable attorney's fees and costs in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

CONTINUED SFA-5

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The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable only as misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely resulted in criminal investigations and prosecutions.

Rationale. Business groups and others opposed to SB 796 argue that it tips the balance of labor law protection in disproportionate favor of employees, by encouraging private attorneys to act as bounty hunters pursuing frivolous violations on behalf of employees, in the same manner in which Section 17200 of the Business and Professions Code has been abused.

This bill significantly amends the provisions of SB 796 by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties. Moreover, this bill provides that no action shall be brought for a posting, notice, agency reporting, or filing requirement, except as specified.

This bill also expands judicial review of SB 796 claims by requiring courts to review and approve any penalties sought as part of a proposed settlement agreement, and those portions of settlements concerning violations of health and safety laws. In addition, courts are authorized to award a lesser amount if to do so otherwise results in an award that is unjust, arbitrary and oppressive, or confiscatory.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

Appropriates \$150,000 from the General Fund to the Labor Agency to implement this act. The Labor Agency indicates that its costs likely will exceed this amount, and it will redirect resources as necessary to accomplish the purposes of this act.

Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs one or more employees, as follows:

1. Increases the amount distributed to the Labor Agency for enforcement and education from 25 percent to 75 percent, and adds a continuous appropriation for these purposes.

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CONTINUED

JFA-6

2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.
3. Retains the current distribution of 25 percent of these civil penalties to the aggrieved employees.

Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs does not employ one or more employees, as follows:

1. Increases the amount distributed to the Labor Agency for enforcement and education from 50 percent to 100 percent, and adds a continuous appropriation for these purposes.
2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.

(The Labor Agency reports that most civil actions brought to date under SB 796 have been settled out of court, where these civil penalty distributions formulas do not apply. To date, the Labor Agency has only received distribution of civil penalty revenues, totaling less than \$100.)

SUPPORT: (Verified 7/28/04)

American Federation of Television and Radio Artists
California Chamber of Commerce
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Labor Federation
California Manufacturers and Technology Association
California Restaurant Association
California Rural Legal Assistance Foundation
California Teamsters Public Affairs Council
Engineers and Scientists of California
Hotel Employees, Restaurant Employees International Union
Jockeys' Guild
Professional and Technical Engineers, Local 21
Region 8 States Council of the United Food & Commercial Workers

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CONTINUED

SFA-7

ASSEMBLY FLOOR:

AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Maze

NC:mel 7/29/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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SFA-8

EXHIBIT 2



LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF FILOMENA M. YEROSHEK

I, Filomena M. Yeroshek, declare:

I am an attorney licensed to practice before the courts of the State of California, State Bar No. 125625, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1809 of 2004. Senate Bill 1809 was approved by the Legislature and was enacted as Chapter 221 of the Statutes of 2004.

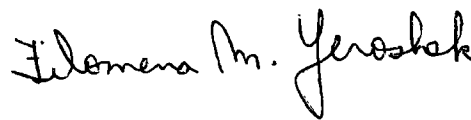
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 1809 of 2004. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

SENATE BILL 1809 OF 2004:

1. All versions of Senate Bill 1809 (Dunn-2004);
2. Procedural history of Senate Bill 1809 from the 2003-04 Senate Weekly History;
3. Analysis of Senate Bill 1809 prepared for the Senate Committee on Labor and Industrial Relations;
4. Material from the legislative bill file of the Senate Committee on Labor and Industrial Relations on Senate Bill 1809;
5. Five Third Reading analyses of Senate Bill 1809 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1809;

7. Analysis of Senate Bill 1809 prepared for the Assembly Committee on Labor and Employment;
8. Material from the legislative bill file of the Assembly Committee on Labor and Employment on Senate Bill 1809;
9. Analysis of Senate Bill 1809 prepared for the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 1809;
11. Analysis of Senate Bill 1809 prepared for the Assembly Committee on Appropriations;
12. Material from the legislative bill file of the Assembly Committee on Appropriations on Senate Bill 1809;
13. Third Reading analysis of Senate Bill 1809 prepared by the Assembly Committee on Labor and Employment;
14. Two Unfinished Business analyses of Senate Bill 1809 prepared by the Office of Senate Floor Analyses;
15. Material from the legislative bill file of Senator Dunn on Senate Bill 1809;
16. Post-enrollment documents regarding Senate Bill 1809 - (Governor Schwarzenegger's legislative files are currently not available to the public.);
17. Excerpts regarding Senate Bill 1809 from the Senate Daily Journal, July 27th, 29, and August 19, 2004;
18. All versions of Assembly Bill 2181 (Campbell-2004);
19. All versions of Assembly Bill 3002 (Houston-2004);
20. All versions of Senate Bill 1861 (Ashburn-2004);
21. All versions of Assembly Bill 2650 (Bates-2004).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of January, 2008 at Woodland, California.



FILOMENA M. YEROSHEK

EXHIBIT C

NO SUMMONS ISSUED

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4 Oxnard, California 93030
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FILED
LOS ANGELES SUPERIOR COURT

JUL 07 2006

JOHN A. CLARKE, CLERK
E. Brown
BY E. BROWN, DEPUTY

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 SEBASTIAN RODRIGUEZ, and
12 JOSE LUIS MOSQUEDA on behalf
13 of themselves and all others similarly
14 situated,

14 Plaintiffs,

15 vs.

16 BELAIRE-WEST LANDSCAPE,
17 INC., a California Corporation; and
18 DOES 1-50, inclusive,

18 Defendants

CASE No.: BC321310

*Assigned for all purposes to Honorable
Paul Gutman, Dept. 34*

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY WAGES DUE AND OWING (CAL. LABOR CODE §510);
- (2) VIOLATION OF MEAL & REST PERIOD REQUIREMENTS, CAL. LABOR CODE §§ 512 AND 226.7;
- (3) VIOLATION OF CAL. BUSINESS AND PROFESSIONS CODE §§ 17200 *et seq.*;
- (4) FAILURE TO PAY PREVAILING WAGES FOR PUBLIC WORKS;
- (5) VIOLATION OF LABOR CODE § 203;
- (6) BREACH OF WRITTEN CONTRACT;
- (7) ACCOUNTING; AND
- (8) RECOVERY OF UNPAID MINIMUM WAGES

Complaint Filed: September 10, 2004

DEMAND FOR JURY TRIAL

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WNNF

1 Plaintiffs, SEBASTIAN RODRIGUEZ, and JOSE LUIS MOSQUEDA herein
2 referred to as "Plaintiffs," individually and on behalf of all others similarly situated
3 pursuant to leave of court, hereby submit their Second Amended Complaint,
4 **bolding the portions of text that have been added, and they allege as follows:**

5 **GENERAL ALLEGATIONS**

6 9. This is a class action brought against Defendants, and each of them, on
7 behalf of a collective class of all persons employed by Defendants, and each of them, in
8 the position of "Landscaper" in the State of California (or persons with the equivalent
9 position however titled) who were not paid wages pursuant of California law prior and
10 subsequent to the date this action was filed.

11 10. This action alleges that Defendants, and each of them: (1) improperly and
12 in violation of California state law failed to pay wages due and owing to their
13 "Landscapers" in violation of, *inter alia*, California Labor Code sections 512, 226.7 and
14 subsections 3, 11, and 12 of the applicable California Industrial Welfare Commission
15 Orders; (2) violated California Business and Professions Code 17200, et. seq.; (3) failed
16 to pay compensation to former employees in violation of California Labor Code 203; (4)
17 failed to pay prevailing wages in breach or written contract and statutory law. Plaintiffs
18 also assert that Defendants, and each of them, had the clear ability to pay such wages as
19 are/were due and owing to the Plaintiffs and members of the Plaintiff Class, but
20 deliberately chose not to pay such wages in conscious disregard of the Plaintiffs' and the
21 Class' rights, thus entitling Plaintiffs and the putative Plaintiff Class to an award of
22 exemplary and punitive damages, to the extent the same exceed any statutory penalties
23 imposed upon Defendants at time of trial, pursuant to Marshall v. Brown (1983) 141
24 Cal.App.3d 408.

25 11. This action seeks relief for the unremedied violations of California law
26 including, *inter alia*:

27 (a) damages and/or restitution, as appropriate, to Plaintiffs and to the Class
28 Members, for non-payment of the wages due them pursuant to both
contract and California law, including interest thereon;

1 (b) damages and/or penalties for Plaintiffs and Class Members whose records of
2 hours worked have not been properly maintained and/or furnished in conformity
with California law;

3 (c) implementation of other equitable and injunctive relief, including inter
4 alia, an injunction prohibiting Defendants, and each of them, from
continuing to:

5 (1) fail to pay wages to "Landscapers" as required under California Labor
6 Code sections 512, and subsections 3, 11 and 12 of the applicable
Industrial Welfare Commission Orders;

7 (2) fail to pay compensation all compensation due to their "Landscaper"
8 employees at the time of the termination of their employment in violation
of California Labor Code sections 203; and

9 (3) convert the wages of their "Landscaper" employees for their own use
and benefit;

10 (d) attorney fees and costs as provided by statute and/or applicable case law
11 including, but not limited to California Labor Code sections 218.5 and 1194; and,
12 California Code of Civil Procedure 1021.5

13 (e) such other relief as the court deems just and proper.

14 12. This class-action lawsuit for damages and equitable relief is founded upon
15 California state law including, but not limited to, violations of the California Labor
16 Code, Industrial Welfare Commission Wage Orders which are set forth in the California
17 Code of Regulations, and the California Business and Professions Code.

18 13. Venue is proper in Los Angeles County because Defendants operate and
19 conduct business in Los Angeles County where Defendants have failed to pay Plaintiffs
20 and Class Members wages in violation of California law. Plaintiffs and the Class
21 Members have suffered damages and will continue to suffer the same harm as the
22 Representative Plaintiffs, SEBASTIAN RODRIGUEZ, and JOSE LUIS MOSQUEDA
23 as a result of Defendants, and each of their wrongful conduct unless the relief requested
24 herein is granted.

25 14. Defendant BELAIRE-WEST LANDSCAPE, INC. ("Defendant") is, and at
26 all relevant times mentioned herein was, a corporation organized and existing under the
27 laws of the State of California and doing business within the State of California,
28 authorized to do and doing business in the County of Los Angeles.

1 15. Plaintiffs and the putative Plaintiff Class members were and are employed
2 as "Landscapers" (or the equivalent), by Defendants, and each of them, and work in Los
3 Angeles County, Ventura County, and various other counties in the State of California.

4 16. Plaintiff, SEBASTIAN RODRIGUEZ, is a resident of Kern County,
5 California and was employed by Defendants as a "Landscaper," from August 11, 2003 to
6 on or about, November 22, 2003. He brings this action in his individual capacity on
7 behalf of himself, and on behalf of all other "Landscapers" similarly situated pursuant to
8 California Code of Civil Procedure section 382, and, pursuant to California Business and
9 Professions Code 17200 et. seq., and on behalf of the general public.

10 17. Plaintiff, JOSE LUIS MOSQUEDA is a resident of Kern County,
11 California and was employed by Defendants as a "Landscaper" from September, 2003 to
12 on or about November 22, 2003. He brings this action in his individual capacity on
13 behalf of himself, and on behalf of all other "Landscapers", similarly situated pursuant to
14 California Code of Civil Procedure section 382, and pursuant to California Business and
15 Professions Code 17200 et. seq., and on behalf of the general public.

16 18. The true names and capacities of the Defendants sued herein as DOES 1
17 through 50, inclusive, whether individual, corporate, associate or otherwise, are unknown
18 to Plaintiffs, who therefore sue such Defendants by their fictitious names pursuant to
19 California Code of Civil Procedure section 474. Plaintiffs are informed and believe that
20 each of the Doe Defendants are liable to Plaintiffs under the same theories and causes of
21 action as set forth in this complaint. Plaintiffs are informed and believe and thereon
22 allege that the DOE Defendants are California residents. Plaintiffs will amend this
23 complaint to show such true names and capacities when the same have been ascertained.

24 19. Plaintiffs are informed and believe and thereon allege that each of the
25 Defendants herein was at all times relevant hereto, the agent, employee, servant,
26 representative or alter ego of the remaining Defendants, and was acting, at least in part,
27 within the course and scope of such relationship.

28 20. At all times mentioned, Defendants, and each of them, were members of,

1 and engaged in, a joint venture, partnership and common enterprise, and acting within
2 the course and scope of, and in pursuit of, said joint venture, partnership and common
3 enterprise.

4 21. At all times herein mentioned, Defendants, and each of them, ratified each
5 and every act or omission complained of herein. At all times mentioned, the Defendants,
6 and each of them, aided and abetted the acts and omissions of each and all of the other
7 Defendants and proximately caused the damages as alleged herein.

8 22. Defendants, and each of them, through their agents and employees (not
9 including the Plaintiffs or members of the putative Plaintiff Class), established and
10 carried out a policy which violated, *inter alia*, California Labor Code sections 203, 512,
11 226.7, 1198; Subsections 11, and 12 of the applicable Industrial Welfare Commission
12 Orders; the *Federal Davis Bacon Act*; and the *Wage Hour and Safety Act of 1962* in that
13 Plaintiffs, members of the putative Plaintiff Class were not paid overtime according to
14 California law for time that they were required, permitted, or suffered to work including
15 hours devoted to work during their statutory lunch and break periods.

16 23. Defendants, and each of them, through their agents and employees (not
17 including the Plaintiffs or members of putative Plaintiff Class), consistently required
18 their employees on public works projects to work in excess of eight (8) hours in a day
19 and forty (40) hours in a work week, while limiting the pay therefor to a maximum of
20 eight (8) hours in a day, forty (40) hours in a work week, and by making adherence to
21 this practice a requirement for continued employment with Defendant.

22 24. It is the public policy of the United States of America, as expressed in the
23 *Federal Davis Bacon Act* and *Wage Hours and Safety Act of 1962*, that public works
24 laborers be paid the prevailing wage, and overtime pay for hours worked in excess of
25 eight (8) hours in a day, and forty (40) in a work week.

26 25. It is the public policy of the State of California, as expressed in Labor Code
27 sections 510 *et seq.* and the *State Prevailing Wage Laws for Public Works*, that
28 employees including those working on state public works projects be paid at the

1 prevailing rate for eight (8) hours of work per day, and forty (40) hours per week, and
2 compensated at a rate no less than one and one-half times the basic rate pay, for hours in
3 excess of eight (8) hours per day, and forty (40) hours per week.

4 26. As a result of the actions of Defendants, and each of them, Plaintiffs and
5 members of the putative Plaintiff Class suffered damages, including lost pay and wages.

6 27. These violations of law were committed knowingly and willfully by
7 Defendants, and each of them, with full actual and/or constructive knowledge of the law
8 cited herein.

9 28. Because the Defendants, and each of them, had the clear ability to comply
10 with the law by paying the wages due, including overtime premium pay, to the Plaintiffs
11 and members putative Plaintiff Class, the actions of the Defendants, and each of them,
12 were malicious and oppressive warranting an award of punitive and/or exemplary
13 damages to deter other employers from engaging in similar such conduct.

14 29. The duties and responsibilities of the "Landscapers" were/are virtually
15 identical from region to region, area to area, and employee to employee within the State
16 of California. Further, any variation in job activities between the different individuals
17 are legally insignificant *vis-a-vis* the issues presented by this action since the central facts
18 are that Plaintiffs and members of the Putative Class were obligated to and/or did
19 perform work for the Defendants, and each of them, without the appropriate
20 compensation (A) for hours worked (both regular and overtime), and (B) hours worked
21 through required meal and rest periods (or premium compensation in lieu of foregone
22 meal and rest periods as required by California law).

23 30. The Plaintiffs and numerous members of the putative Plaintiff Class are
24 now former employees of the Defendants, and each of them. They comprise the Section
25 203 Subclass. At the time the employment of members of the Section 203 Subclass was
26 terminated, Defendants, and each of them, failed to pay said Section 203 Subclass
27 members all wages due and owing them, including, but not limited to, basic prevailing
28 wage for public works, overtime, double time, and premium pay for foregone meal

1 and/or rest periods. Plaintiffs, members of the Section 203 Subclass did not secret or
2 absent themselves from Defendants nor did they refuse to accept the earned but unpaid
3 wages from Defendants. Accordingly, Defendants are liable to the Section 203 Subclass
4 for waiting time penalties for all unpaid wages pursuant to California Labor Code § 203.

5 II

6 CLASS ACTION ALLEGATIONS

7 31. This complaint is brought by Representative Plaintiffs, SEBASTIAN
8 RODRIGUEZ, and JOSE LUIS MOSQUEDA, pursuant to California Code of Civil
9 Procedure section 382 on behalf of the Class. All claims alleged arise under California
10 law for which Representative Plaintiffs seek relief authorized under California law. The
11 class is comprised of, and defined as follows:

12 All current and former California-based, non-exempt "Landscapers" or
13 persons with equivalent position, however titled, who worked and/or are
14 working for Defendants, and each of them, within four years prior to the
15 filing of this Complaint in this action up to and including the time this
16 action is certified as a class.

17 32. The members of the Class, and subclass(es) as defined hereinbelow, are so
18 numerous that joinder of all members would be impractical, if not impossible. The
19 identity of the members of the Class and subclass(es) is readily ascertainable by review of
20 Defendants' records including but not limited to records required by subsection 7 of the
21 applicable Industrial Welfare Commission Orders. Further, the subject matter of this
22 action both as to factual matters and as to matters of law, is such that there are questions
23 of law and fact common to the Class that predominate over questions affecting only
24 individual members.

25 33. The California Labor Code and Wage Order provisions upon which
26 Representative Plaintiffs base their claims are broadly remedial in nature. These laws
27 and labor standards serve an important public interest in establishing minimum working
28 conditions and standards in California. These laws and labor standards protect the

1 average working employee from exploitation by employers who may seek to take
2 advantage of superior economic and bargaining power in setting onerous terms and
3 conditions of employment. The nature of this action and the format of laws available to
4 Representative Plaintiff and the Class make the class action format a particularly efficient
5 and appropriate procedure to redress the wrongs alleged herein. Further, this case
6 involves a large corporate employer and a large number of individual employees with
7 many relatively small claims. If each employee were required to file an individual
8 lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
9 since they would be able to exploit and overwhelm the limited resources of each
10 individual Plaintiff and Class member with their vastly superior financial and legal
11 resources. Requiring each member of the Class to pursue an individual remedy would
12 also discourage the assertion of lawful claims by employees, who would be disinclined to
13 file an action against their former and/or current employer for real and justifiable fear of
14 retaliation and permanent damage to their careers at their current or subsequent
15 employment.

16 34. The prosecution of separate actions by the individual Class Members, even
17 if possible, would create a substantial risk of (1) inconsistent or varying adjudications
18 with respect to individual Class Members against the Defendants and which would
19 establish potentially incompatible standards of conduct for the Defendants, and/or (2)
20 adjudications with respect to individual Class Members which would, as a practical
21 matter, be dispositive of the interests of the other Class Members not parties to the
22 adjudications or which would substantially impair or impede the ability of the Class
23 Members to protect their interests. Further, the claims of the individual members of the
24 Class are not sufficiently large to warrant vigorous individual prosecution considering all
25 of the concomitant costs and expenses.

26 35. Such a pattern, practice and uniform administration of corporate policy
27 regarding employee compensation as described herein is unlawful and creates an
28 entitlement to recovery by the Plaintiffs and the Class, in a civil action, for the unpaid

1 balance of the full amount of the pay, including interest thereon, waiting time penalties,
2 reasonable attorney's fees and costs of suit according to the mandates of California Labor
3 Code 1194.

4 36. Plaintiffs, by proving the existence of the common business pattern and/or
5 practices complained of herein, will be able to establish not only their own right to
6 recover damages, but also the right of each of the members of the putative Plaintiff Class
7 to recovery damages as well.

8 37. Members of the putative Plaintiff Class share a common right to the
9 establishment of a specific fund to compensate them fully for the unlawful employment
10 practices complained of herein. The Plaintiff Class also share a common right to
11 restitution and disgorgement of those funds improperly withheld by Defendants.
12 Accordingly, this action is brought for the benefit of the entire Class, and Plaintiffs seek
13 the the creation of a common fund for the aforesaid purposes.

14 38. There is a well-defined community of interest in the questions of law and
15 fact involved affecting the parties to be represented. The questions of law and fact
16 common to the Class predominate over questions that may affect individual Class
17 Members, and they include the following:

- 18 (a) whether Defendants were required by law to pay overtime to
19 "Landscapers" who are not exempt under California Labor Code section
20 515 or subsection 3 of the applicable Industrial Welfare Commission
21 Orders for time worked in excess of 8 hours per day, 40 hours per week
22 and for the time "Landscapers" worked for Defendants and were not paid;
- 23 (b) whether "Landscapers" received pay due and owing pursuant to Labor
24 Code section 226.7, and subsections 11 and 12 of the applicable Industrial
25 Welfare Commission Orders;
- 26 (c) whether Defendants implemented and engaged in a systematic business
27 practice of failing to pay "Landscapers" wages according to California law for all
28 hours worked;
- (d) whether, upon recognizing their legal obligation to pay wages pursuant to
California law to members of the Class, Defendants paid all wages and overtime
actually due;
- (e) whether Defendants failed to keep, maintain or furnish accurate records
of the actual hours worked by "Landscapers" as required by subsection 7 of
the applicable Industrial Welfare Commission Orders;

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1 (f) whether Defendants failed to pay prevailing wages for work on public
2 works;

3 (g) whether Defendants failed to maintain any other records and/or other
4 evidence relevant to the claims asserted in this litigation;

5 (h) whether Defendants willfully failed to pay all wages due and owing to all
6 "Landscapers" whose employment with Defendants was terminated;

7 (i) whether the systematic acts and practices of Defendants, and each of them, as
8 alleged herein violated, inter alia, California Labor Code sections 201, 202, 203,
9 226.7, 510, 512, 1174, 1194, 1198, Industrial Welfare Commission Orders and the
10 California Business and Professions Code section 17200, et seq.; and,

11 (j) whether Plaintiffs and members of the Plaintiff Class are entitled to seek
12 recovery of compensation pursuant to Cal. Labor Code § 558, and, if so, for what
13 time period(s).

14 39. The Representative Plaintiffs' claims are typical of the claims of the entire
15 Class, because the Representative Plaintiffs and other members of the Class-Action Class
16 in the position of "Landscaper" routinely were requested, required and permitted to work
17 in excess of eight (8) hours in one day and forty (40) hours in one work week, without
18 the appropriate compensation, as required by California Labor Code section 510 and
19 subsections 3 and 4 of the applicable Industrial Welfare Commission Orders. Moreover,
20 their claims are typical because of the uniform duties, responsibilities, and pay scheme
21 imposed upon Plaintiffs and all members of the putative Plaintiff Class by the
22 Defendants, and each of them.

23 40. A further illustration of how the representative Plaintiffs' claims are typical
24 arises from the fact that Plaintiffs and other members of the Plaintiff Class in the position
25 of "Landscaper" routinely worked without timely being afforded breaks and/or meal
26 periods as required by California Labor Code section 512 and subsections 11 and 12 of
27 the applicable Industrial Welfare Commission Orders. They also were not compensated
28 for the Defendants' failure to provide the same pursuant to California Labor Code
section 226.7, and subsection 4 of the applicable Industrial Welfare Commission Orders.
Again, this was and is due to the Defendants' choice to uniformly allocate the same
duties and responsibilities to all members of the putative Plaintiff Class and to fail and/or

1 refuse pay them in an uniform manner that violates California law.

2 41. Plaintiffs' claims are also typical, because like all other members of the
3 putative Plaintiff Class herein, because Plaintiffs held the position of "Landscaper" and
4 routinely worked on public works without being paid the required prevailing wages as
5 required by *State Prevailing Wage Laws for Public Works* for all hours worked on such
6 public works.

7 42. The Representative Plaintiffs will fairly and adequately represent and
8 protect the interests of the Class in that they have no disabling conflicts of interest that
9 would be antagonistic to the other members of the Class. The Representative Plaintiffs
10 have retained counsel who are competent in the prosecution of class action litigation, and
11 in overtime wage class action litigation.

12 43. The Representative Plaintiffs and members of the Class have all similarly
13 suffered irreparable harm and damages as a result of Defendants, and each of their,
14 unlawful and wrongful conduct. Defendants' systematic failure to retain accurate
15 records of hours worked by "Landscapers" and as required by law makes Class treatment
16 especially appropriate. This action will provide substantial benefits to both the Class and
17 the public since, absent this action, Defendants' unlawful conduct will continue
18 unremedied and uncorrected.

19 **FIRST CAUSE OF ACTION**

20 **(Failure to Pay Wages Due And Owing. California Labor Code section 510 and**
21 **subsection 3 of the applicable Industrial Welfare Commission Orders)**

22 44. Plaintiffs incorporate by reference the allegations contained in Paragraphs
23 1 through 43 of this Complaint as if fully set forth herein.

24 A 45. California Labor Code 510 and subsection 3 of the applicable Industrial
25 Welfare Commission Orders provide in relevant part as follows:

26 **Eight hours of labor constitutes a day's work. Any work in excess of eight**
27 **hours in one workday and any work in excess of 40 hours in any one**
28 **workweek and the first eight hours worked on the seventh day of work in**
any one workweek shall be compensated at the rate of not less than one and
one-half times the regular rate of pay for an employee. Any work in excess
of 12 hours in one day shall be compensated at the rate of not less than

1 twice the regular rate of pay for an employee. In addition, any work in
2 excess of eight hours on any seventh day of a workweek shall be
3 compensated at the rate of not less than twice the regular rate of pay of an
4 employee. Nothing in this section requires an employer to combine more
5 than one rate of overtime compensation in order to calculate the amount to
6 be paid to an employee for any hour of overtime work.

7 46. During all relevant periods, Defendants, and each of them, suffered or
8 permitted Plaintiffs, members of the Representative Class and Class-Action Class
9 Members to work in excess of eight (8) hours per day and to work in excess of forty (40)
10 hours per week.

11 47. During all relevant periods, Plaintiffs' and other Landscapers' duties were
12 generally restricted to manual labor; thus, their job positions were not exempt from
13 overtime compensation.

14 48. During all relevant periods, Defendants, and each of them, suffered or
15 permitted Plaintiffs, the members of the putative Plaintiff Class to work a substantial
16 number of hours on a nearly daily basis "off the clock."

17 49. Despite actual and/or constructive knowledge of California law,
18 Defendants and each of them, have willfully refused, and continue to refuse, to pay
19 Plaintiffs and putative Plaintiff Class members the pay they are owed.

20 50. In failing to compensate Plaintiffs and the putative Plaintiff Class for the
21 wages due and owing pursuant to, *inter alia*, California Labor Code sections 510 and
22 558, Defendants, and each of them, acted maliciously, oppressively, despicably, with the
23 wrongful intention of causing injury and hardship to Plaintiffs and the Class Members by
24 reaping economic gain at Plaintiffs' and the putative Plaintiff Class' expense, in willful
25 and conscious disregard of their statutory and regulatory right to overtime compensation.

26 **SECOND CAUSE OF ACTION**

27 **(Violation of Meal & Rest Period Requirements, California Labor Code
28 §§ 512 and 226.7 and Subsections 11 And 12 of the applicable
Industrial Welfare Commission Wage Orders.)**

51. Plaintiffs incorporate by reference the allegations contained in Paragraphs
through 43 of this Complaint as if fully set forth herein.

1 52. California Labor Code section 512 and subsection 11 of the applicable
2 Industrial Welfare Commission Orders provide in relevant part:

- 3 (a) An employer may not employ an employee for a work period of
4 more than five (5) hours per day without providing the employee
5 with a meal period of not less than 30 minutes, ...
6 (b) An employer may not employ an employee for a work period of
7 more than ten (10) hours per day without providing the employee
8 with a second meal period of not less than 30 minutes, ...
9 (c) Unless the employee is relieved of all duty during the 30 minute
10 meal period, the meal period shall be considered an "on duty" meal
11 period and counted as time worked...
12 (d) if an employer fails to provide an employee a meal period in
13 accordance with the applicable provision of this order, the employer
14 shall pay the employee one (1) hour of pay at the employee's regular
15 rate of compensation for each workday that the meal period is not
16 provided.

17 53. Subsection 12 of the applicable Industrial Welfare Commission Orders
18 provides:

- 19 (a) Every employer shall authorize and permit all employees to take rest
20 periods, which insofar as practicable shall be in the middle of each
21 work period. The authorized rest period time shall be based on the
22 total hours worked daily at the rate of ten (10) minutes net rest time
23 per four (4) hours or major fraction thereof.
24 (b) If an employer fails to provide an employee a rest period in
25 accordance with the applicable provisions of this order, the
26 employer shall pay the employee one (1) hour of pay at the
27 employee's regular rate of compensation for each workday that the
28 rest period is not provided.

54. From a period of four (4) years prior to the filing of the initial complaint
herein, Defendants, and each of them, have engaged in a systematic business policy
and/or practice not to furnish Plaintiffs and members of the putative Plaintiff Class meal
periods and rest periods as required by California law. (See National Steel and
Shipbuilding Company v. Superior Court, 2006 WL 147520 (Cal.App. 4th Dist.)

55. Moreover, Defendants, and each of them, have systematically failed and/or
willfully refused to compensate the Plaintiffs and members of the putative Plaintiff Class
with the pay due and owing as required by California Labor Code sections 226.7 and 512

1 and subsections 11 and 12 of the applicable Industrial Welfare Commission Orders (i.e.,
2 one hour per day per lunch period and one hour per day for rest periods).

3 56. In failing to compensate Plaintiffs and the Class Members the pay due and
4 owing pursuant to Ca. Labor Code section 512 and subsections 11 and 12 of the
5 applicable Industrial Welfare Commission Orders as alleged herein, Defendants, and
6 each of them, acted maliciously, oppressively, despicably, with the wrongful intention of
7 causing injury and hardship to Plaintiffs and the Class Members by reaping economic
8 gain at Plaintiffs' and the Plaintiff Class' expense, in willful and conscious disregard of
9 their statutory and regulatory right to pay due and owing.

10 57. Furthermore, Plaintiffs and Class Members are entitled to the relief
11 requested below.

12 **THIRD CAUSE OF ACTION**

13 **(Violation of Business and Professions Code 17200 et seq.)**

14 58. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 50, 68 through 74, and 78 through 87 of this Complaint as if fully set forth
16 herein.

17 59. Defendants, and each of them, have engaged and continue to engage in
18 unfair business practices in California by practicing, employing and utilizing the
19 employment policy of failing to pay Plaintiffs, members of the Representative Class and
20 Class-Action Class Members employment compensation as required by the California
21 law cited herein.

22 60. Defendants, and each of their, utilization of such unfair business practices
23 constitutes unfair competition and provides an unfair advantage over Defendants'
24 competitors.

25 61. Plaintiffs seek on their own behalf, and on behalf of the Representative
26 Class, and on behalf of the general public, full restitution and disgorgement of all
27 employment compensation wrongfully withheld, as necessary and according to proof, to
28 restore any and all monies withheld, acquired and/or converted by the Defendants by

1 means of the unfair and unlawful practices complained of herein. The restitution and
2 disgorgement requested includes all wages earned and unpaid, including interest thereon.
3 The acts complained of herein occurred, at least in part, within the last four (4) years
4 preceding the filing of the Complaint in this action and continue to the present.

5 62. Plaintiffs are informed and believe and on that basis allege that at all times
6 herein mentioned Defendants, and each of them, have engaged in unlawful, deceptive
7 and unfair business practices, as proscribed by California Business and Professions Code
8 17200 et seq., by depriving Plaintiffs and the members of the Representative Class of the
9 minimum working condition standards due to them under the California Labor Code and
10 applicable Industrial Welfare Commission wage orders as identified herein.

11 63. Business and Professions Code 17200, et seq., prohibits acts of unfair
12 competition which shall mean and include any unlawful, unfair or fraudulent business act
13 or practice. Under California law, wages unlawfully withheld from an employee
14 constitutes an unfair business act entitling the Plaintiffs and the members of the Plaintiff
15 Class to a restitution remedy authorized by section 17203. Plaintiffs, the Plaintiff Class,
16 and the general public are therefore entitled to the relief requested below.

17 64. Defendants, and each of them, are "persons" as defined under Business and
18 Professions Code § 17021.

19 65. Each of the directors, officers, and/or agents of Defendants are equally
20 responsible for the acts of the other directors, officers, employees and/or agents as set
21 forth in Business & Professions Code § 17095.

22 66. Defendants provide services to the public in California as defined in
23 Business & Professions Code §§17022 and 17024.

24 67. Plaintiffs are informed and believe, and based thereon allege, that
25 Defendants, and each of them, have intentionally and improperly suffered Plaintiffs and
26 members of the putative Plaintiff Class to work without proper compensation therefor,
27 including compensation for regular hours worked (i.e. work "off the clock"), overtime
28 work (i.e. work in excess of eight (8) hours per day and/or forty (40) hours per week),

1 and work through mandatory rest and meal periods.

2 68. Plaintiffs are informed and believe, and based thereon allege, that
3 Defendants have under-reported to federal and state authorities wages earned by the
4 Class Members and, therefore, have underpaid state and federal taxes, employer
5 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
6 Compensation premiums. The aforesaid conduct subjects Defendants to sanctions, and
7 fines and is actionable under Business & Professions Code §§17000 et seq., and 17200 et
8 seq.

9 69. Plaintiffs are informed and believe, and based thereon allege, that
10 Defendants, and each of their failure to pay all such wages as are/were due and owing
11 was intentional.

12 70. Plaintiffs are informed and believe, and based thereon allege, that
13 Defendants, in order to secure an advantage over Defendant's competitors in violation of
14 Business & Professions Code §17043, instructed and directed their directors, officers,
15 employees, and/or agents to intentionally and unlawfully avoid payment of wages for all
16 hours worked by Plaintiffs and the putative plaintiff Class, which wages are due (a)
17 pursuant to California law as set forth hereinabove and (b) pursuant to the clauses in
18 multiple public works contracts, subject to which much of the labor by Plaintiffs and the
19 putative Plaintiff Class was performed, and of which Plaintiffs and the members of the
20 putative Plaintiff Class were identified/named and intended third party beneficiaries as
21 set forth hereinbelow.

22 71. The victims of these unfair business practices include, but are not limited to
23 the Class Members, competing businesses in the State of California, and the general
24 public.

25 72. Plaintiffs are informed and believe, and based thereon allege, that
26 Defendants, by committing the above-described acts, deceived the public by unlawfully
27 depriving their employees of wages, thus injuring their employees who are members of
28 the community.

1 Superior Court, 79 Cal.App.4th, 1420, 1430), the prevailing wage law serves the
2 important public policy goals of protecting employees on public works projects,
3 competing union contractors and the public. (*Lusardi Construction v. Aubry*, (1992) 1
4 Cal.4th at pp. 976 , at 985, 987.) The duty to pay prevailing wages is mandated by statute
5 and is enforceable independent of an express contractual agreement. (Cal. Labor Code §§
6 1771, 1774-1775; *Lusardi, supra*, 1 Cal.4th at pp. 986-987.) Because the prevailing
7 wage law is a minimum wage law mandated by statute and serves important public policy
8 goals, Labor Code § 1194 provides an employee with a private statutory right to recover
9 unpaid prevailing wages from an employer who fails to pay that minimum wage. *Road*
10 *Sprinkler Fitters Union, supra* 102 Cal.App.4th at 779.

11 78. Plaintiffs are further informed and believe and thereon allege that Defendants
12 agreed to provide services to such state, county and/or local public entities as either prime
13 contractors or subcontractors pursuant to such public works contracts, which services included
14 the labor of Plaintiffs and the putative Plaintiff Class herein.

15 79. Defendants, for whom the presently named defendants were subcontractors on
16 said contracts (i.e. Does 5 to 15), and the sureties for the contractors and subcontractors on said
17 contracts (i.e. Does 16 to 50), each had an independent duty pursuant to *Labor Code* §§1770 *et*
18 *seq.* to pay Plaintiffs and the Plaintiff Class herein prevailing wages and overtime, as applicable,
19 and for all work performed by Plaintiffs on said public works projects, which duty they breached
20 with respect to the Plaintiffs herein.

21 80. Due to the aforesaid breach(es) of the statutory duty by Defendants, and each of
22 them, Plaintiffs are entitled to damages and penalties for nonpayment of all such wages due and
23 owing at the prevailing wage rate, to the extent permitted by common law and statute, and
24 according to proof at time of trial.

25 81. Defendants willfully, fraudulently and maliciously, failed to pay Plaintiffs
26 and Plaintiff Class members the pre-determined prevailing wages, because they not only
27 knew the amounts that were due, but also had the clear ability to pay the same, as the
28 contract pursuant to which they were working paid Defendants sufficient revenues with

1 which to pay said prevailing wages. Accordingly, Defendants are liable for the
2 difference between the actual pay and the appropriate prevailing wages and are also
3 subject to punitive damages for willful failure to pay the same.

4 **FIFTH CAUSE OF ACTION**

5 **(Penalties Pursuant To California Labor Code Sections 201 and 203)**

6 by SEBASTIAN RODRIGUEZ, and JOSE LUIS MOSQUEDA Against all Defendants

7 82. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
8 through 70 of this Complaint as if fully set forth herein.

9 83. Plaintiffs and members of the Section 203 Subclass described hereinabove
10 were discharged by Defendants or voluntarily quit within three (3) years prior to the
11 filing of the initial Complaint herein. The Defendants, in violation of California Labor
12 Code sections 203 *et seq.* had a consistent and uniform policy, practice and procedure of
13 willfully failing to pay the earned and unpaid wages of all such former employees as
14 described herein above according to amendment, or proof.

15 84. Plaintiffs and Class Members did not secret or absent themselves from
16 Defendants nor refuse to accept the earned and unpaid wages from Defendants.
17 Accordingly, Defendants are liable for waiting time penalties for the unpaid wages
18 pursuant to California Labor Code section 203.

19 **SIXTH CAUSE OF ACTION**

20 **(Breach of Written Contract)**

21 85. Plaintiffs re-allege and incorporate each and every one of the allegations
22 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

23 86. Plaintiffs are informed and believe and thereon allege that Defendants, who are
24 the current and/or past employers of Plaintiffs and the Plaintiff Class, agreed to provide
25 services to such state, county and/or local public entities as either prime contractors or
26 subcontractors pursuant to such written public works contracts, which services included
27 the labor of Plaintiffs herein.

28 87. Plaintiffs and the Plaintiff Class have fully performed all obligations to the

1 **Defendants pursuant to the contracts, except as for such obligations the Plaintiffs**
2 **and Plaintiff Class were prevented or legally excused from performing.**

3 88. Plaintiffs do not presently possess copies of said contracts; however, the same are
4 believed to be in the possession of the Defendants herein.

5 89. Plaintiffs are informed and believe and thereon allege that each such contract
6 contains a provision obligating the Defendant employers, the sureties for the contractors
7 and subcontractors on said contracts (i.e. Does 16 to 50), and the prime contractors for
8 whom Defendant employers were subcontractors on said contracts (i.e. Does 5 to 15), to
9 pay Plaintiffs herein prevailing wages and applicable overtime for all hours worked on
10 such contracts as intended, named and/or identified third-party beneficiaries of said
11 public works contracts.

12 90. Plaintiffs are informed and believe and thereon allege that the Defendant
13 employers, the sureties for the contractors and subcontractors on said contracts, and the
14 prime contractors for whom Defendant employers were subcontractors on said contracts,
15 each materially breached its contractual duty to pay said prevailing wages and overtime.

16 91. As a direct consequence of such breach(es), Plaintiffs have suffered foreseeable
17 damages in an amount to be proved at time of trial.

18 **SEVENTH CAUSE OF ACTION**

19 **(For an Accounting)**

20 92. Plaintiffs re-allege and incorporate each and every one of the allegations
21 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

22 93. Plaintiffs and members of the putative Plaintiff Class are owed wages and
23 penalties as describe hereinabove.

24 94. Plaintiff s do not know the precise amount of the compensation due to the
25 Plaintiffs and the Plaintiff Class. However, upon information and belief, Plaintiffs allege
26 that Defendants, and each of them, possess records from which the amount of
27 compensation due and owing to each of the Plaintiffs herein can be determined.

28 95. The amount of statutory interest and penalties owed to each of the Plaintiffs is

1 based on the amount of compensation owed to Plaintiffs by Defendants. This amount
2 can only be determined by an accounting of books and records in the possession of
3 Defendants, and each of them.

4 **NINTH CAUSE OF ACTION**

5 **RECOVERY OF UNPAID MINIMUM WAGES**

6 **(On Behalf of the Minimum Wage Class)**

7 **(Against All Defendants)**

8 96. Plaintiff incorporates by reference and realleges each and every one of the
9 allegations contained in the preceding paragraphs of this Complaint as though fully
10 set forth herein.

11 97. Failure of an employer to pay its employees the minimum wage fixed by the
12 California Labor Commission violates, inter alia Labor Code §1197.

13 98. During the Relevant Time Period, Defendants required the members of the
14 Minimum Wage Class to remain under Defendants' control without paying
15 therefor, which resulted in the members of the Minimum Wage Class earning less
16 than the legal minimum wage in the State of California.

17 99. Defendants' pattern and practice of uniformly administering a corporate
18 policy, whereby Defendants' failed to pay the legal minimum wage to the members
19 of the Minimum Wage Class, violates Labor Code §1194(a).

20 100. Accordingly, the members of the Minimum Wage Class seek to recover,
21 pursuant to Labor Code § 1194(a) the unpaid balance of the minimum wages owed
22 them, calculated as the difference between the straight time compensation paid and
23 the applicable minimum wage, including interest thereon.

24 101. Plaintiff further seeks liquidated damages pursuant to Labor Code
25 §1194.2(a) on the straight-time portion of uncompensated hours of work (not
26 including the overtime portion thereof) in an amount equal to the wages unlawfully
27 unpaid and interest thereon.

28 102. Plaintiff further seeks, as a consequence of Defendants' non-payment of

1 minimum wages, penalties pursuant to the applicable IWC Wage Order at §20(A).

2 **103. Plaintiff also seeks all legal remedies available for Defendants' willful non-**
3 **payment of minimum wages, including but not limited to:**

- 4 a. Interest pursuant to Labor Code §§218.6 and 1194(a), Civil Code §§
5 3287 and §3289;
- 6 b. Reasonable attorneys' fees and costs of suit pursuant to Labor Code
7 §§218.5 and §1194;
- 8 c. Damages and/or penalties pursuant to Labor Code §558(a); and,
- 9 d. Punitive damages, because Defendants knew such wages were due and
10 owing to Plaintiff and the Plaintiff Class, Defendants had the clear
11 ability to pay said wages, and the willful non-payment of said wages
12 was oppressive and malicious. As such, Defendants actions warrant an
13 award of punitive and exemplary damages against Defendants.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs prays for judgment and relief as follows:

- 16 1. An Order certifying that this action as a class action, designated named
17 Plaintiffs as representatives of all others similarly situated, and designating
18 the law firms representing plaintiffs as class counsel.
- 19 2. Compensatory, **liquidated**, and statutory damages, penalties and
20 restitution, as appropriate and available under each cause of action, in an
21 amount to be proved at trial;
- 22 3. Exemplary and punitive damages, as appropriate and available pursuant
23 to California Civil Code section 3294 and Business and Professions Code
24 section 17082;
- 25 4. An Order imposing an asset freeze in constructive trust of Defendants,
26 and each of their, ill-gotten gains, and enjoining Defendants from failing
27 and refusing to disgorge all monies acquired by means of any act or
28 practice declared by this Court to constitute unlawful, unfair or fraudulent

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STATE OF CALIFORNIA

- acts or practices;
5. That Defendants be ordered to show cause why they should not be enjoined and ordered to comply the applicable California Industrial Welfare Commission wage orders related to payment of employment compensation and record keeping for Defendants' employees who are engaged in work without a meal or break period and for more than 10 hours per day;
6. For restitution to Plaintiffs and other similarly affected members of the general public (and disgorgement from Defendants) of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be violative of the California Labor Code, Industrial Welfare Commission Wage Orders, *State Prevailing Wage Laws for Public Works*, California Business and Professions Code 17200 et seq.;
7. For punitive and exemplary damages;
8. For pre-judgment and post-judgment interest as allowed by California Labor Code sections 218.6 and 1194 and California Civil Code sections 3287(b) and 3289;
9. For reasonable attorney's fees, expenses and costs as provided by California Labor Code sections 218.5, 1194(a), subsection 20 of the applicable Industrial Welfare Commission Orders, and California Code of Civil Procedure section 1021.5;
10. Penalties pursuant to California Labor Code section 203.
11. An order requiring Defendants to show cause, if any they have, why they should not be enjoined from failing to pay their "Landscapers" all wages due and owing under California law;
12. For a permanent injunction, enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with or for them from failing to pay their employees all wages due

1 and owing; for costs of suit herein incurred;

2 13. For an accounting, under administration of Plaintiffs and/or a receiver
3 and subject to Court review, to determine the amount to be returned by
4 Defendants, and the amounts to be refunded to members of the Classes
5 who are owed monies by Defendants; and

6 14. Such other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand trial of their and the Class' claims by jury to the
9 extent permitted by law.

10 DATED: July 6, 2006

11 **THE CULLEN LAW FIRM, APC**

12 By 

13 PAUL T. CULLEN
14 Attorneys for Plaintiff

15 F:\Work\Clients\Rodriguez, Sebastian 1295-01\Pleadings\Second Amended COMPLAINT Belaire.wpd

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 29229 Canwood Street, #208, Agoura Hills, CA 91301.

On July 6, 2006, I served the foregoing **SECOND AMENDED COMPLAINT** on the following interested parties in this action:

Atkinson, Andelson, Loya, Rudd & Romo
A Professional Corporation
Robert R. Roginson, Esq.
Christopher S. Milligan, Esq.
17871 Park Plaza Drive, #200
Cerritos, CA 90703-8597

NAVA LAW FIRM, APC
César H. Nava, Esq.
300 Esplanade Drive, Suite 900
Oxnard, California 93030

VIA MAIL - CCP §§ 1013(a), 2015.5

By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Los Angeles, California, with postage thereon fully prepaid, that same day in the ordinary course of business.

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

Executed on July 6, 2006 at Agoura Hills, California.

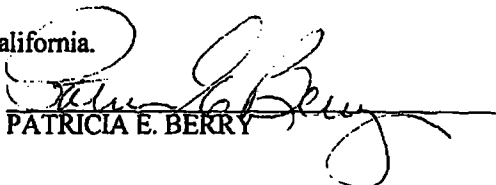

PATRICIA E. BERRY

EXHIBIT 3

DECLARATION OF Roberto Recinos

I, Roberto Recinos, declare:

1. I am a courier for Nationwide Legal, LLC. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

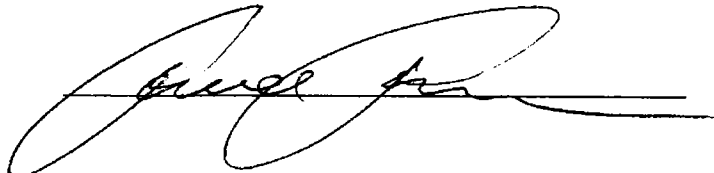
2. I currently work out of Nationwide Legal, LLC's Los Angeles, California office, located at 1609 James M. Wood Blvd., Los Angeles, California 90015.

3. On 2/3, 2016 upon the request of counsel for Real Party in Interest, Marshalls of CA, LLC ("Marshalls"), I went to the Superior Court of the State of California, County of Los Angeles, in Los Angeles, California to locate documents relating to *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310.

4. I pulled the requested documents from the Superior Court's files, made true and exact copies of those documents, and sent copies to Marshalls' counsel. Those documents included a copy of the Second Amended Class Action Complaint filed in *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Case No. BC321310, on July 7, 2006.

5. Attached as Exhibit C to Marshalls' Request for Judicial Notice is a true and correct copy of the Second Amended Class Action Complaint filed in *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, on July 7, 2006.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of February, 2016, at Los Angeles, California.

A handwritten signature in black ink, appearing to be "George J. ...", written over a horizontal line.

Firmwide:138647387.1 053070.1106

EXHIBIT D

FILED
LOS ANGELES SUPERIOR COURT

SEP 13 2006

JOHN A. CLARKE, CLERK

René Villarreal

BY RENE VILLARREAL, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SEBASTIAN RODRIGUEZ, and JOSE LUIS
MOSQUEDA on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

BELAIRE-WEST LANDSCAPE, INC., a
California Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. BC 321310

**RULING ON SUBMITTED MATTER;
PLAINTIFFS' MOTION TO COMPEL
DEFENDANT BELAIRE TO
PROVIDE THE NAMES,
ADDRESSES AND TELEPHONE
NUMBERS OF PUTATIVE CLASS
MEMBERS**

Date: July 31, 2006, August 21,
2006, September 1, 2006

Time: 8:30 a.m.

Place: Department 34
Paul Gutman, Judge

On various dates, culminating on September 1, 2006, the court heard and considered the submissions by Plaintiffs Sebastian Rodriguez and Jose Luis Mosqueda through their counsel Cesar H. Nava, Esq. and Paul T. Cullen, Esq., opposed by Robert R. Roginson, Esq. on behalf of Defendant Belaire-West Landscape, Inc. Essentially, the remaining unresolved issue was the content of a letter proposed to be sent to all former and current employees of Defendant Belaire-West Landscape, Inc. Each side submitted proposed forms of their respective letters.

1 Because a class determination cannot be realistically made until all parties involved
2 in the lawsuit have had an opportunity to investigate their claims and defenses, the class
3 representatives need the ability to contact absent class members. These are the very people
4 they seek to represent. They seek to obtain relevant information on the merits of their claims.
5 This court can only interfere with this right when the record shows that any such contact by
6 the Plaintiffs with absent class members reflects an actual or threatened abuse. This court
7 is also mindful that any order limiting the right of a party to communicate with potential class
8 members must be narrowly drawn so as to eliminate the potential for abuse without
9 unreasonably restricting the right to communicate.

10 The court has not been presented with any evidence of any actual or threatened abuse
11 which would justify denial of precertification notice to absent class members. Each party to
12 this lawsuit having submitted what they consider to be adequate notice and both parties
13 having submitted what may well be characterized as a "joint" submission, the court still is
14 called upon to resolve whether any such proposed communication to absent class members
15 should provide for any class member affirmatively to opt out of providing his/her address and
16 telephone number to Plaintiffs' attorney or whether any such absent employee (current or
17 former) must affirmatively consent to having his/her address and telephone number be
18 provided.

19 The consequence of failing to opt in, that is, failing affirmatively to give permission to
20 have his/her address and telephone number provided would result in the name, address and
21 telephone number not being provided whereas if a current or former employee does not wish
22 his/her name and address to be provided to Plaintiffs' attorney then it must be affirmatively
23 so stated in which event it will not be provided.

24 Having reviewed the prospective notices provided by each party, the court finds that
25 the proposed notice identifies the petitioners' counsel and requests class members'
26 assistance in investigating the case; makes clear that potential class members are under no
27 obligation to contact Plaintiffs' counsel; tells potential class members that Belaire-West
28 Landscape, Inc. or its attorney may want to contact them; provides contact information for

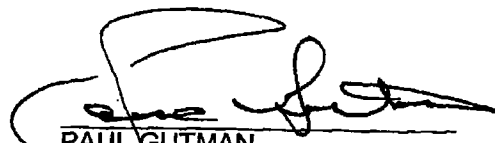
1 defense counsel in case a class member wishes to assist the defense; advises class
2 members that they are under no obligation to talk to defense counsel; advises class members
3 that Belaire-West Landscape, Inc. may not retaliate against them for either refusing to assist
4 Belaire-West or for assisting Plaintiffs and, finally, accurately sets forth the contentions of the
5 parties.

6 Having considered the parties' respective contentions, the contents of the proposed
7 notice and having balanced the potential for abuse against Plaintiffs' rights fully to investigate
8 their claims and the rights of privacy of the potential class members, the court is satisfied that
9 the form of notice to be sent to the putative class members insures and effectively limits the
10 potential for any abuse.

11 Therefore, the court orders that the proposed notice to current and former Belaire-West
12 employees regarding disclosure of contact information submitted by Plaintiffs under cover of
13 their letter to the court dated August 30, 2006, is to be sent to all current and former
14 landscaping employees of Belaire-West Landscape, Inc. by defendant Belaire-West
15 Landscape, Inc. modified only in the following respects:

16 The second to last sentence on the proposed letter which reads "You are also under
17 no obligation to provide information to or discuss this matter with Belaire-West or any of its
18 agents or attorneys" has to be augmented by the addition of the following sentence. "Your
19 employer may not retaliate against you in any way for providing or refusing to provide any
20 information."

21
22 Dated: 9/13/06

23
24
25
26

PAUL GUTMAN
Judge of the Superior Court

27 PG.sac:raj:mt
28 Rodriguez,rui
9/12/06

EXHIBIT 4

DECLARATION OF

Mario Rios

I, Mario Rios, declare:

1. I am a courier for Nationwide Legal, LLC. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

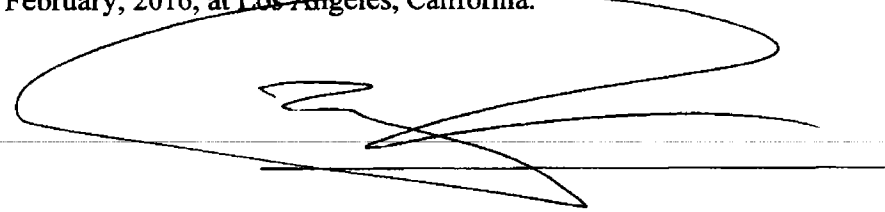
2. I currently work out of Nationwide Legal, LLC's Los Angeles, California office, located at 1609 James M. Wood Blvd., Los Angeles, California 90015.

3. On 2/4, 2016 upon the request of counsel for Real Party in Interest, Marshalls of CA, LLC ("Marshalls"), I went to the Superior Court of the State of California, County of Los Angeles, in Los Angeles, California to locate documents relating to *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310.

4. I pulled the requested documents from the Superior Court's files, made true and exact copies of those documents, and sent copies to Marshalls' counsel. Those documents included a copy of the Ruling on Submitted Matter; Plaintiffs' Motion to Compel Defendant Belaire To Provide The Names, Addresses, and Telephone Numbers of Putative Class Members, filed in *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Case No. BC321310, on September 13, 2006.

5. Attached as Exhibit D to Marshalls' Request for Judicial Notice is a true and correct copy of the Ruling on Submitted Matter; Plaintiffs' Motion to Compel Defendant Belaire To Provide The Names, Addresses, and Telephone Numbers of Putative Class Members, *Sebastian Rodriguez and Jose Luis Mosqueda on behalf of themselves and all other similarly situated v. Belaire-West Landscape, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. BC321310, filed on September 13, 2006.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of February, 2016, at Los Angeles, California.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and lines, positioned below the declaration text.

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PROOF OF SERVICE

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On February 16, 2016, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**REAL PARTY IN INTEREST MARSHALLS OF CA, LLC'S
ANSWER BRIEF ON THE MERITS**

**REAL PARTY IN INTEREST MARSHALLS OF CA, LLC'S
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ANSWER
BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF AMY TODD-GHER;
PROPOSED ORDER**

in a sealed envelope, postage fully paid, addressed as follows:

Jennifer Grock, Esq.
Brian Van Vleck, Esq.
VAN FLECK TURNER & WALLER LLP
6310 San Vicente Blvd., Suite 430
Los Angeles, CA 90048

*Attorneys for Plaintiff
Albert Ebo*

Glenn A. Danas, Esq.
Robert Drexler, Esq.
Liana Carter, Esq.
Stan Karas, Esq.
Ryan Wu, Esq.
CAPSTONE LAW APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067

*Attorneys for Plaintiff and
Appellant Michael Williams*

Clerk
Court of Appeal
Second Appellate District
Division Seven
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Court of Appeal Case No.
B259967

Clerk
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

*Superior Court of Los
Angeles County:
Respondent*
Civil Case No. BC503806

Hon. William F. Highberger
Los Angeles County Superior Court
Central Civil West Courthouse
600 South Commonwealth Avenue
Los Angeles, CA 90005

*Superior Court of Los
Angeles County:
Respondent*
Civil Case No. BC503806

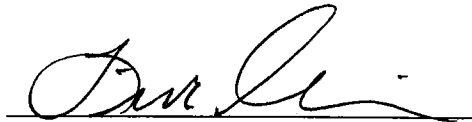
Attorney General
Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

District Attorney's Office
County of Los Angeles
320 West Temple Street, #540
Los Angeles, CA 90012

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 16, 2016, at San Francisco, California.

A handwritten signature in cursive script, appearing to read "Linda K. Camanio", written over a horizontal line.

Linda K. Camanio