JUN 23 2014
BY:

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
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Attorneys for the State Labor Commissioner

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

STATE LABOR COMMISSIONER

In re the DEBARMENT proceeding against: NATIONAL DRYWALL CORPORATION, a Dissolved California Corporation; MIGUEL CONTRERAS, an Individual and Responsible Managing Officer/CEO/President; DORA MARIA CONTRERAS, an Individual and Agent/Officer of the Corporation, Respondents.	Case No. SAC 5506 Assigned for All Purposes to the Honorable Edna Garcia Earley, Hearing Officer **Decision and ORDER OF DEBARMENT of Respondents from Public Works Projects** [*Labor Code section 1777.1*]

The attached *Proposed Statement of Decision* of Hearing Officer Edna Garcia Earley, DEBARRING Respondents NATIONAL DRYWALL CORPORATION, a Dissolved California Corporation; MIGUEL CONTRERAS, an Individual and Responsible Managing Officer/CEO/President; DORA MARIA CONTRERAS, an Individual and Agent/Officer of the Corporation, from bidding, being awarded or performing any work on public works projects in the State of California for THREE YEARS, is hereby adopted in full by the

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Division of Labor Standards Enforcement as the FINAL *Decision* in the above-captioned matter.

This *Decision* shall become effective 45 days from the execution of the *Order* below.

IT IS SO ORDERED.

Dated: June 18, 2014

DIVISION OF LABOR STANDARDS ENFORCEMENT

Department of Industrial Relations
State of California

By: _____
JULIE A. SU
State Labor Commissioner

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO

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

On June 19, 2014, I served the following document(s) as described below:

DECISION AND ORDER OF DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECT

[ ] the original(s)

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

See attached "Service List"

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

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

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

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

[XX] BY CERTIFIED MAIL.

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

Executed on June 19, 2014, at Fresno, California.

Christina Othon

In re National Drywall Corporation, et al.
SAC Case No. 5506

SERVICE LIST

National Drywall Corporation 603 S. Milliken Avenue, Ste. F Ontario, California 91761	Miguel Contreras 603 S. Milliken Avenue, Ste. F Ontario, California 91761
Dora Maria Contreras 603 S. Milliken Avenue, Ste. F Ontario, California 91761	David Cross Staff Counsel, Legal Unit DLSE 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 **US MAIL ONLY**

STATE OF CALIFORNIA
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Attorney for the Labor Commissioner

JUN 23 2014

BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT

DEPARTMENT OF INDUSTRIAL RELATIONS

FOR THE STATE OF CALIFORNIA

In the matter of the Debarment Proceeding Against: NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT; DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION, Respondents.	Case No.: SAC 5506 **PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS** **[Labor Code §1777.1]**

Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the Division of Labor Standards Enforcement, State Labor Commissioner (hereinafter, "DLSE"), by the filing of a *Statement of Alleged Violations* against the following named Respondents: NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT;

DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION, (hereinafter, also referred to as "Respondents").

Respondents were duly served with the Notice of Hearing and Statement of Alleged Violations on November 26, 2013 and served with an Amended Notice of Hearing on January 17, 2014.

The hearing on the alleged violations was held on February 20, 2014 in Long Beach, California. Edna Garcia Earley served as the Hearing Officer. David Cross appeared on behalf of Complainant, the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. There was no appearance by Respondents. Present as witnesses for Complainant were Deputy Labor Commissioner Alice Okubo, Deputy Labor Commissioner Monica Curi and Christa Schott, President of Alliant Consulting Labor Compliance Program (LCP).

The hearing was tape recorded. The witnesses took the oath and evidence was received. At the conclusion of the hearing, the matter was taken under submission.

FINDINGS OF FACT

1. Respondent NATIONAL DRYWALL CORPORATION was at all relevant times mentioned, a contractor licensed by the Contractors State License Board under license number 834335, and a corporation duly organized and existing under and by virtue of the State of California.

2. Respondent MIGUEL CONTRERAS was at all relevant times mentioned, listed as RMO/CEO/President of NATIONAL DRYWALL CORPORATION with the Contractors State License Board.

3. Respondent DORA MARIA CONTRERAS was at all relevant times mentioned, listed as an officer of NATIONAL DRYWALL CORPORATION with the State Contractors State License Board, and the agent for service of process with the California Secretary of State.

Million Air Airport US Customs and Immigration Building Project

4. Respondents served as the subcontractor on the Million Air Airport US Customs and Immigration Building Project in the County of San Bernardino, ("San Bernardino Airport project"), from July 18, 2011 to July 22, 2012. The Awarding Body for this project was San Bernardino International Airport Authority. V2 Construction, a Joint Venture of T. Viole Construction, Inc. and Vanir Construction Management Inc. served as Prime Contractor on the project.

5. On October 16, 2012, Deputy Labor Commissioner Alice Okubu, ("Deputy Okubu") issued a Civil Wage and Penalty Assessment ("CWPA") against Respondents for their work as subcontractors on this project. The CWPA assessed $239,173.16 in total wages and $40,950.00 in penalties under Labor Code §§1775 and 1813. These amounts were revised on March 18, 2013 for a total assessment of $125,276.16 in total wages and $26,300.00 in total penalties.

6. Deputy Okubu testified Respondents engaged in misclassification of workers and shaving of hours on this project.

Specifically, Deputy Okubu credibly testified workers were misclassified as "drywall installers" and "stock scrappers." However, the description of the work done, as given by the workers, along with Deputy Okubu's review of the scope of work for the

project revealed the work being done should have been classified as "carpenter" work at a higher prevailing wage rate.

As part of her investigation, Deputy Okubu also reviewed daily reports from the prime contractors and compared them to the certified payroll records submitted by Respondents for this project. The records did not match. For example, for February 21, 2012, the daily reports for the prime contractor show 11 workers reported on the site yet Respondent DORA CONTRERAS submitted a *Statement of Non-Performance Payroll Form* under penalty of perjury stating that no persons employed by National Drywall Corporation performed work on this project for the payroll period commencing on February 20, 2012 and ending February 26, 2012. Deputy Okubu testified of other similar examples of under-reporting workers and hours for this project.

Joe Baca Middle School aka Colton Middle School #5

7. Respondents also served as the subcontractor on the Joe Baca Middle School aka Colton Middle School #5 job in San Bernardino County, California ("Colton Middle School project") from July, 2011 through April, 2012.

8. Christa Schott, President of Alliant Consulting Labor Compliance Monitoring testified telephonically about the investigation her company conducted of Respondents on this project. According to Ms. Schott, her company's investigation was commenced as a result of workers complaining about underpayment of prevailing wages and misclassification of work performed. Ms. Schott's investigation and audit found $1,557,750.34 in unpaid wages plus penalties were owed to workers on this project. Consequently, Ms. Schott submitted a *Request for Approval of Forfeiture* to the Division

of Labor Standards Enforcement. The request included Ms. Schott's investigative report, audit report, recommendations and other pertinent information.

9. In discussing her investigative report, Ms. Schott testified workers were reported as drywall installers for one hour per week and as stockers/ scrappers for the remaining hours. Ms. Schott explained this was proof of misclassification of workers by Respondents for the purpose of paying the lower stocker/scrapper prevailing wage rate. Additionally, this practice showed falsification of hours on the certified payroll records because, according to Ms. Schott, it is not possible to install drywall on a school project for one hour a week and have 31 hours of stocking and scrapping. Ms. Schott explained those numbers are usually reversed since stockers/scrappers, as defined in the scope of work for the project, can only stock the drywall and pick up the scrap. They cannot perform lathing and installation of the actual drywall itself. Their main function is to *assist* the worker who is performing the drywall and installation.

Ms. Schott also testified her investigation of Respondents on this project revealed there were different workers under the same name and social security numbers. Workers were told at the beginning of the week what name and social security they would be working under that week. Consequently, the actual names on payroll did not match the actual workers' names.

10. An investigative report completed by the late DLSE Lead Special Investigator, Lee Pearson, corroborated Ms. Schott's testimony regarding underpayment of prevailing wages, misclassification and falsification of payroll records on this project. The report

included summaries of statements given by workers such as Ruben Diaz, who worked on this project as a framer but was only paid $22.00 per hour instead of $47.00 per hour.

LEGAL ANALYSIS

1. DLSE seeks to debar Respondents NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT; DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION, for a period of three (3) years based on its position Respondents "willfully" violated the public works laws with "intent to defraud" on both projects.

Labor Code §1777.1 provides:

> (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter **with intent to defraud**, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:
>
> (1) Bid on or be awarded a contract for a public works project.
>
> (2) Perform work as a subcontractor on a public works project.
>
> (b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate **willful violations** of this chapter, except Section 1777.5, within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any

interest is ineligible for a period up to three years to do either of the following:

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

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

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

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

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

Intent to Defraud – Labor Code §1777.1(a)

California Code of Regulations, Title 8, Section 16800 defines **"Intent to Defraud"** as "the intent to deceive another person or entity, as defined in this article, and

to induce such other person or entity, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property of any kind." An intent to deceive or defraud can be inferred from the facts. *People v. Kiperman* (1977) 69 Cal.App.Supp.25. An unlawful intent can be inferred from the doing of an unlawful act. *People v. McLaughlin, supra.*

The uncontested evidence established Respondents intended to defraud the DLSE on both projects. On the San Bernardino Airport project, Respondents misclassified workers as drywall installers and stock scrappers when they should have been classified and paid as carpenters, a much higher prevailing wage rate. Additionally, the daily reports submitted to the prime contractor by Respondents for this project differed from the certified payroll records submitted under penalty of perjury. Actual workers and hours worked on the project were often reported on the daily reports submitted to the prime contractor but not on the certified payroll records signed under penalty of perjury by Respondents.

Likewise, on the Colton Middle School project, Respondents again misclassified workers as scrappers and stockers when they should have been classified as drywall installers in order to avoid paying a higher prevailing wage rate. Respondents' "intent to deceive and defraud" the DLSE, the awarding body, the Labor Compliance Program and workers by knowingly submitting false certified payroll records, under penalty of perjury, on both projects, is a basis for debarment under Labor Code §1777.1(a).

"Willful" Violation of the Public Works Laws – Labor Code §1777.1(b) and (d)

Under Labor Code §1777.1(d), "a **willful** violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions." Moreover, a person's knowledge of the law is imputed to him and an unlawful intent may be inferred from the doing of an unlawful act. *People v. McLaughlin* (1952) 111 Cal.App.2d 781. 245 P.2d 1076.

The uncontested evidence presented by the Division established Respondents "willfully" violated the public works laws by failing to pay proper prevailing wages, failing to pay overtime in some cases, shaving hours and submitting false certified payroll records to the DLSE or Labor Compliance Program.

Respondents deliberately misclassified workers and submitted information to the prime contractor on the San Bernardino Project that differed from information being submitted on the certified payroll records for the same time period. As a result, workers were intentionally underpaid $125,276.16 in wages on this project.

Likewise, on the Colton Middle School project, Respondents deliberately submitted certified payroll records under penalty of perjury with wrong classifications, pay and significantly, wrong names and social security numbers of workers. Worker statements given to DLSE Lead Investigator Lee Pearson show Respondents knew of their responsibilities under the public works laws but deliberately and intentionally violated such laws for the benefit of their company. Violations of the public works laws on this project were so widespread they resulted in $1,557,750.34 in wages and penalties

being owed to workers. Accordingly, debarment is also proper under these facts and under Labor Code §1777.1(b).

CONCLUSION

Based on the evidence presented at the hearing, we find Respondents violated the public works laws with an "intent to defraud" and "willfully" by not paying prevailing wages and overtime, under-reporting hours and workers, misclassifying workers and submitting false certified payroll records on a continuous basis on the San Bernardino Airport and the Colton Middle School projects. "Although debarment can have a severe economic impact on contractors, it 'is not intended as punishment. It is instead, a necessary means to enable the contracting governmental agency to deal with irresponsible bidders and contractors, and to administer its duties with efficiency.'" *Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 542. Accordingly, we debar all three Respondents for a period of three (3) years, as requested by the Division.

ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered that Respondents NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT; DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION, shall be ineligible to, and shall not bid on or be awarded a contract for a public works project, and shall not perform work as a subcontractor on a public work as

defined by Labor Code §§1720, 1720.2 and 1720.3, for a period of three (3) years, effective 45 days after this decision is issued by the Labor Commissioner.

A three year period is appropriate under these circumstances where Respondents NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT; DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION "willfully" violated the public works laws by misclassifying workers, under-reporting hours, and submitting false certified payroll records with an "intent to defraud."

This debarment shall also apply to any other contractor or subcontractor in which Respondents NATIONAL DRYWALL CORPORATION; MIGUEL CONTRERAS, AN INDIVIDUAL AND RESPONSIBLE MANAGING OFFICER/CEO/PRESIDENT; DORA MARIA CONTRERAS, AN INDIVIDUAL AND AGENT/OFFICER OF THE CORPORATION have any interest or for which respondents act as a responsible managing employee, responsible managing officer, general partner, manager, supervisor, owner, partner, officer, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where respondents receive payments, whether in cash or in another form of compensation, from the entity bidding or performing works on the public works project, or enters into any contract or agreement with the entity bidding or performing work on the public works project for services performed or to be assigned or sublet, or for vehicles, tools, equipment or supplies that have been or will be

sold, rented or leased during the period of debarment.

Dated: June 18, 2014

EDNA GARCIA EARLEY
Hearing Officer

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO

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

On June 19, 2014, I served the following document(s) as described below:

PROPOSED STATEMENT OF DECISION RE DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS

[ ] the original(s)

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

See attached "Service List"

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

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

Executed on June 19, 2014, at Fresno, California.

Christina Othon

In re National Drywall Corporation, et al.
SAC Case No. 5506

SERVICE LIST

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In re National Drywall Corporation, et al.
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