

1 DIVISION OF LABOR STANDARDS ENFORCEMENT

Department of Industrial Relations

2 State of California

By: Johanna Y. Hsu, SBN 164247

3 605 W. Santa Ana Blvd.

Bldg. 28, Room 625

4 Santa Ana, California 92701

(714) 558-4914

5
6 Attorneys for the State Labor Commissioner

7
8 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

9 DIVISION OF LABOR STANDARDS ENFORCEMENT

10 STATE LABOR COMMISSIONER

11
12 In re the DEBARMENT
proceeding against:

Case No. SAC 5492

13
14 SOUTHLAND CONSTRUCTION; REZA
MOHAMMEDI, an Individual,

Assigned for All Purposes to the
Honorable Edna Garcia Earley, Hearing
Officer

15
16 Respondents.

**Decision and ORDER OF DEBARMENT
of Respondents from Public Works
Projects**

17 [Labor Code section 1777.1]

18
19
20
21 The attached *Proposed Statement of Decision* of Hearing Officer Edna Garcia Earley,
22 DEBARRING Respondents SOUTHLAND CONSTRUCTION and REZA MOHAMMEDI,
23 an Individual, from bidding, being awarded or performing any work on public works projects

24
25
26 ///

27 ///

28 ///

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, Tina Provencio declare and state as follows:

4 I am employed in the County of Los Angeles, State of California; I am over the age of 18
5 years old and not a party to the within action; my business address is: 300 Oceangate, Suite 850,
Long Beach, CA 90802.

6 On August 25, 2014, I served the foregoing document(s) described as: **Decision and**
7 **ORDER OF DEBARMENT of Respondents from Public Works Projects**, on the interested
parties to this action by placing a true copy thereof enclosed in sealed envelopes addressed as
follows:

8 Reza Mohamedi
9 Southland Construction
P.O. Box 60592
10 Irvine, CA 92620

Reza Mohamedi
Southland Construction
3943 Irvine Boulevard #405
Irvine, CA 92602

11 David Cross, Esq.
12 State of California
Dept. of Industrial Relations/DLSE
2031 Howe Avenue, Suite 100
13 Sacramento, CA 95825

14 (BY MAIL) I am readily familiar with the business practice for collection and processing
15 of correspondence for mailing with the United States Postal Service. This
16 correspondence shall be deposited with the United States Postal Service this same day in
17 the ordinary course of business at our office address in Los Angeles, California. Service
made pursuant to this paragraph, upon motion of a party served, shall be presumed
invalid if the postal cancellation date of postage meter date on the envelope is more than
one day after the date of deposit for mailing contained in this affidavit.

18 (BY FACSIMILE) I caused the above-referenced document to be transmitted to the
19 interested parties via facsimile transmission to the fax number(s) as stated on the attached
service list.

20 (STATE) I declare under penalty of perjury, under the laws of the State of
21 California that the above is true and correct.

22 Executed this 25th day of August, 2014, at Long Beach, California.

23
24 
25 Tina Provencio
26 Declarant

27 Proof of Service

1 **STATE OF CALIFORNIA**
2 Department of Industrial Relations
3 Division of Labor Standards Enforcement
4 EDNA GARCIA EARLEY, State Bar No. 195661
5 300 Oceangate, Suite 850
6 Long Beach, California 90802
7 Tel.: (562) 590-5461
8 Fax: (562) 499-6438
9 earley@dir.ca.gov

10 Attorney for the Labor Commissioner

11 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**
12 **DEPARTMENT OF INDUSTRIAL RELATIONS**
13 **FOR THE STATE OF CALIFORNIA**

14 In the matter of the) Case No.: SAC 5492
15 Debarment Proceeding Against:)
16) **PROPOSED STATEMENT OF**
17) **DECISION RE DEBARMENT OF**
18) **RESPONDENTS FROM PUBLIC**
19) **WORKS PROJECTS**
20) [Labor Code §1777.1]
21)
22)
23)
24)
25)
26)
27)
28)

21 Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the
22 Division of Labor Standards Enforcement, State Labor Commissioner (hereinafter,
23 "DLSE"), by the filing of a *Statement of Alleged Violations* against the following named
24 Respondents: SOUTHLAND CONSTRUCTION; REZA MOHAMMEDI, AN
25 INDIVIDUAL, (hereinafter, collectively referred to as "Respondents").

1 Respondents were duly served with the Notice of Hearing and Statement of
2 Alleged Violations on September 10, 2013. Respondent MOHAMMEDI responded to the
3 Notice of Hearing by submitting a letter dated October 13, 2013 to the Assigned Hearing
4 Officer, Edna Garcia Earley, informing her Respondent SOUTHLAND
5 CONSTRUCTION went out of business two years prior and had quit public works and
6 construction for good.
7

8
9 The hearing on the alleged violations was held on November 20, 2013 in Los
10 Angeles, California before Edna Garcia Earley, Hearing Officer for the Labor
11 Commissioner. David Cross appeared on behalf of Complainant, the Labor
12 Commissioner, Chief of the Division of Labor Standards Enforcement, Department of
13 Industrial Relations, State of California. There were no appearances by Respondents.
14 Present as a witness for Complainant was Deputy Labor Commissioner Elsa Jenabi.
15
16

17 The hearing was tape recorded. The witness took the oath and evidence was
18 received. At the conclusion of the hearing, the matter was taken under submission.
19

20 FINDINGS OF FACT

21 1. Respondent SOUTHLAND CONSTRUCTION was at all relevant
22 times mentioned, a contractor licensed by the Contractors State License Board under
23 license number 663784.
24

25 2. Respondent REZA MOHAMMEDI was at all relevant times mentioned,
26 listed as Sole Owner of SOUTHLAND CONSTRUCTION with the Contractors' State
27 License Board.
28

1 Tracks at Brea Improvements, Orange County, CA Project

2 3. During the period of July 11, 2010 to August 8, 2011, Respondents served as
3 the Prime Contractor on the Tracks at Brea Improvements project, ("Brea Project") in
4 Orange County, California. The City of Brea served as the Awarding Body for this
5 project.
6

7
8 4. Deputy Labor Commissioner Elsa Jenabi, ("Deputy Jenabi") testified she
9 investigated and subsequently issued a Civil Wage and Penalty Assessment ("CWPA") to
10 Respondents for \$25,903.47 in unpaid wages, \$278.64 in training fund contributions,
11 \$11,700.00 in Labor Code §1775 penalties and \$575.00 in Labor Code §1813 penalties
12 for a total amount of \$38,457.28 due and owing. The case was eventually settled and
13 Respondents paid the assessed penalties.
14

15
16 5. Deputy Jenabi testified about the various Labor Code violations committed by
17 Respondents on this project. In particular, Deputy Jenabi's investigation, including her
18 interviews of 5 workers on the project, revealed the certified payroll records did not
19 accurately reflect the hours worked. Hours and rate of pay appeared to be adjusted to
20 match the gross amount of the checks issued to the workers. And, the certified payroll
21 records did not include any of the overtime worked by the workers despite all five
22 workers telling Deputy Jenabi they regularly worked overtime. One such worker, Felix
23 Salazar, provided Deputy Jenabi with his affidavit which states he was paid \$130 per day
24 regardless of the hours worked. Mr. Salazar regularly worked 10.5 hours per day, often
25 worked on Saturdays and sometimes worked on Sundays. On the occasion he was paid
26
27
28

1 more than \$130, he was told to cash the check and pay the amount over \$130 to another
2 worker or use the overage to purchase materials for the project.
3

4 6. In addition to underpayment on the job, Deputy Jenabi testified her review
5 of the Inspector Logs for this project revealed Respondents were regularly misclassifying
6 workers at lower paying classifications. Based on the various descriptions of work
7 performed on the project, as noted on the Inspector Logs, Deputy Jenabi concluded
8 workers were misclassified as Laborers when they were actually performing work as
9 Operating Engineers or Teamsters, both higher paying classifications.
10

11 7. Additionally, Statements of Compliance on certified payroll records were
12 signed under penalty of perjury by Respondent MOHAMMEDI despite the certified
13 payroll records containing inaccurate hours worked and wrong classifications for the
14 work actually performed.
15
16

17 **Hiltscher Trails Improvements Project, Orange County, CA**

18 8. Respondents also served as the Prime Contractor on the Hiltscher Trails
19 Improvements project in Orange County, California ("Hiltscher project") from July 17,
20 2011 through December 18, 2011.
21

22 9. Deputy Jenabi issued a CWPA against Respondents for work performed on
23 this project in the amount of \$78,178.24 in unpaid wages and \$15,400 in penalties under
24 Labor Code §1775 and §1813. DLSE amended the amount on the CWPA to reflect
25 \$67,076.48 in unpaid wages, \$847.12 in training fund contributions and \$12,200 in Labor
26 Code §1775 penalties for a total of \$80,123.60 due and owing based on information
27
28

1 provided by Respondents. Judgment was subsequently entered on the amended
2 assessment on August 22, 2013.
3

4 10. Labor Code violations on this project included underpayment of prevailing
5 wages and under-reporting of hours worked on certified payroll records. Deputy Jenabi
6 testified the amount of unpaid wages was calculated by relying on Inspector Daily
7 Reports. Notably, hours listed as worked on the Inspector Daily Reports differed vastly
8 from information contained in the certified payroll records.
9

10 11. As in the Brea project, Respondent MOHAMMEDI signed Statements of
11 Compliance under penalty of perjury each time he submitted certified payroll records for
12 this project.
13

14 12. Evidence was also submitted showing Respondent MOHAMMEDI pled
15 guilty to numerous counts of violating Labor Code §1778 (wage theft)¹, in connection
16 with the CWPA issued against Respondents on this project.
17

18 13. Lastly, evidence produced showed Respondents have worked on public works
19 projects for a number of years and have had various CWPAs issued against them by
20 DLSE.
21

22
23
24
25
26 ¹ Labor Code § 1778 provides: "Every person, who individually or as a representative of
27 an awarding or public body or officer, or as a contractor or subcontractor doing public
28 work, or agent or officer thereof, who takes, receives, or conspires with another to take or
receive, for his own use or the use of any other person any portion of the wages of any
workman or working subcontractor, in connection with services rendered upon any public
work is guilty of a felony."

1
2 (c) Whenever a contractor or subcontractor performing
3 a public works project has failed to provide a timely
4 response to a request by the Division of Labor Standards
5 Enforcement, the Division of Apprenticeship Standards,
6 or the awarding body to produce certified payroll records
7 pursuant to Section 1776, the Labor Commissioner shall
8 notify the contractor or subcontractor that, in addition to
9 any other penalties provided by law, the contractor or
10 subcontractor will be subject to debarment under this
11 section if the certified payroll records are not produced
12 within 30 days after receipt of the written notice. If the
13 commissioner finds that the contractor or subcontractor
14 has failed to comply with Section 1776 by that deadline,
15 unless the commissioner finds that the failure to comply
16 was due to circumstances outside the contractor's or
17 subcontractor's control, the contractor or subcontractor
18 or a firm, corporation, partnership, or association in
19 which the contractor or subcontractor has any interest is
20 ineligible for a period of not less than one year and not
21 more than three years to do either of the following:

- 22 (1) Bid on or be awarded a contract for public works
23 project.
24 (2) Perform work as a subcontractor on a public works
25 project.
26

27 **Intent to Defraud – Labor Code §1777.1(a)**

28 *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*

1 (1977) 69 Cal.App.Supp.25. An unlawful intent can be inferred from the doing of an
2 unlawful act. *People v. McLaughlin, supra.*
3

4 The uncontested evidence established Respondents intended to defraud workers
5 and the DLSE on both projects. On the Brea project, Respondents intentionally
6 misclassified workers and failed to pay for all hours worked, including overtime hours.
7 Respondents also paid wages to workers and then made them pay a portion of their pay to
8 other workers on the job or made them purchase building materials for the project. In an
9 attempt to cover up these Labor Code violations, Respondents falsified certified payroll
10 records by making it seem like they were properly paying their workers. Respondents
11 intentionally adjusted hours and rates of pay reported on certified payroll records to
12 match the gross amount of the checks issued to the workers knowing this information was
13 false.
14
15
16

17 Likewise, on the Hiltcher project, Respondents continued to violate prevailing
18 wage laws by failing to pay for all hours worked. Deputy Jenabi testified she relied on
19 Inspector Daily Reports to calculate the amount of underpayment as the certified payroll
20 records submitted by Respondents appeared to be falsified.
21

22 Respondents' "intent to deceive and defraud" the DLSE, the awarding body and
23 workers by knowingly underpaying workers and then submitting false certified payroll
24 records, under penalty of perjury, on both projects, is a basis for debarment under Labor
25 Code §1777.1(a).
26
27
28

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

2 Under Labor Code §1777.1(d), “a willful violation occurs when the contractor or
3 subcontractor knew or reasonably should have known of his or her obligations under the
4 public works law and deliberately fails or refuses to comply with its provisions.”

5 Moreover, a person’s knowledge of the law is imputed to him and an unlawful intent may
6 be inferred from the doing of an unlawful act. *People v. McLaughlin* (1952) 111
7 Cal.App.2d 781, 245 P.2d 1076.
8

9 The uncontested evidence presented by the Division established Respondents
10 “willfully” violated the public works laws by failing to pay proper prevailing wages,
11 failing to pay overtime, misclassifying workers and submitting false certified payroll
12 records to the DLSE. Respondents are experienced public works contractors who
13 repeatedly violate the prevailing wage laws of this state with complete disregard for the
14 welfare of workers on their projects.
15

16 Significantly, Respondent MOHAMMEDI pled guilty to numerous counts of
17 violating Labor Code §1778 in connection with this particular public works project.
18 Consequently, he has been sentenced to 2 years in State Prison.
19

20 Accordingly, debarment is also proper under these facts and under Labor Code
21 §1777.1(b).
22

23 CONCLUSION

24 Based on the evidence presented at the hearing, we find Respondents violated the
25 public works laws with an “intent to defraud” and “willfully” by not paying prevailing
26 wages and overtime, under-reporting hours and workers, misclassifying workers and
27
28

1 submitting false certified payroll records on a continuous basis on the Tracks at Brea
2 Improvements project and the Hiltcher Trails Improvements Job, both in Orange
3 County, California. "Although debarment can have a severe economic impact on
4 contractors, it 'is not intended as punishment. It is instead, a necessary means to enable
5 the contracting governmental agency to deal with irresponsible bidders and contractors,
6 and to administer its duties with efficiency.'" *Southern California Underground*
7 *Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 542. Accordingly, we
8 debar Respondents for a period of three (3) years, as requested by the Division.

9
10
11
12 **ORDER OF DEBARMENT**

13 In accordance with the foregoing, it is hereby ordered that Respondents
14 SOUTHLAND CONSTRUCTION; REZA MOHAMMEDI, AN INDIVIDUAL, shall be
15 ineligible to, and shall not bid on or be awarded a contract for a public works project, and
16 shall not perform work as a subcontractor on a public work as defined by Labor Code
17 §§1720, 1720.2 and 1720.3, for a period of three (3) years, effective immediately upon
18 issuance of this decision by the Labor Commissioner.
19

20
21 A three year period is appropriate under these circumstances where Respondents
22 SOUTHLAND CONSTRUCTION; REZA MOHAMMEDI, AN INDIVIDUAL
23 "willfully" violated the public works laws by misclassifying workers, under-reporting
24 hours, and submitting false certified payroll records with an "intent to defraud."
25

26 This debarment shall also apply to any other contractor or subcontractor in which
27 Respondents SOUTHLAND CONSTRUCTION; REZA MOHAMMEDI, AN
28 INDIVIDUAL have any interest or for which respondents act as a responsible managing

1 employee, responsible managing officer, general partner, manager, supervisor, owner,
2 partner, officer, employee, agent, consultant, or representative. "Any interest" includes,
3 but is not limited to, all instances where respondents receive payments, whether in cash
4 or in another form of compensation, from the entity bidding or performing works on the
5 public works project, or enters into any contract or agreement with the entity bidding or
6 performing work on the public works project for services performed or to be assigned or
7 sublet, or for vehicles, tools, equipment or supplies that have been or will be sold, rented
8 or leased during the period of debarment.
9
10

11 Dated: August 13, 2014

12 
13 EDNA GARCIA BARLEY
14 Hearing Officer
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, Tina Provencio declare and state as follows:

4 I am employed in the County of Los Angeles, State of California; I am over the age of 18
5 years old and not a party to the within action; my business address is: 300 Oceangate, Suite 850,
Long Beach, CA 90802.

6 On August 25, 2014, I served the foregoing document(s) described as: **Proposed**
7 **Statement of Decision Re Debarment of Respondents from Public Works Projects**, on the
8 interested parties to this action by placing a true copy thereof enclosed in sealed envelopes
addressed as follows:

9 Reza Mohamedi
Southland Construction
P.O. Box 60592
10 Irvine, CA 92620

Reza Mohamedi
Southland Construction
3943 Irvine Boulevard #405
Irvine, CA 92602

11 David Cross, Esq.
State of California
12 Dept. of Industrial Relations/DLSE
2031 Howe Avenue, Suite 100
13 Sacramento, CA 95825

14 (BY MAIL) I am readily familiar with the business practice for collection and processing
15 of correspondence for mailing with the United States Postal Service. This
16 correspondence shall be deposited with the United States Postal Service this same day in
the ordinary course of business at our office address in Los Angeles, California. Service
17 made pursuant to this paragraph, upon motion of a party served, shall be presumed
invalid if the postal cancellation date of postage meter date on the envelope is more than
one day after the date of deposit for mailing contained in this affidavit.

18 (BY FACSIMILE) I caused the above-referenced document to be transmitted to the
19 interested parties via facsimile transmission to the fax number(s) as stated on the attached
service list.

20 (STATE) I declare under penalty of perjury, under the laws of the State of
21 California that the above is true and correct.

22 Executed this 25th day of August, 2014, at Long Beach, California.

23
24 
25 Tina Provencio
26 Declarant

27 Proof of Service