

1 **STATE OF CALIFORNIA**  
2 Department of Industrial Relations  
3 Division of Labor Standards Enforcement  
4 EDNA GARCIA EARLEY, State Bar No. 195661  
5 320 W. 4<sup>th</sup> Street, Suite 430  
6 Los Angeles, California 90013  
7 Tel.:(213) 897-1511  
8 Fax: (213)897-2877

9 Attorney for the Labor Commissioner

10 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

11 **DEPARTMENT OF INDUSTRIAL RELATIONS**

12 **FOR THE STATE OF CALIFORNIA**

13 In the matter of the ) Case No.: SAC 5175  
14 Debarment Proceeding Against: )  
15 ) **PROPOSED STATEMENT OF**  
16 ) **DECISION RE DEBARMENT OF**  
17 ) **RESPONDENTS FROM PUBLIC**  
18 ) **WORKS PROJECTS**  
19 ) **[Labor Code §1777.1]**  
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Respondents. ) Hearing Date: February 27, 2012  
Time: 10:00 a.m.  
Hearing Officer: Edna Garcia Earley

Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the Division of Labor Standards Enforcement, State Labor Commissioner ("DLSE") on January 12, 2012 by the filing of a *Statement of Alleged Violations* against the following named respondents: Wallcrete Industries, Inc.; Garit David Wallace and Amber Anderson, Individuals.

1 The hearing on the alleged violations was held on February 27, 2012 in Los  
2 Angeles, California. Edna Garcia Earley served as the Hearing Officer. David D. Cross,  
3 appeared on behalf of Complainant the Labor Commissioner, Chief of the Division of  
4 Labor Standards Enforcement, Department of Industrial Relations, State of California.  
5 Respondents Wallcrete Industries, Inc.; Garit David Wallace and Amber Anderson,  
6 Individuals, were duly served with the Notice of Hearing, Statement of Alleged  
7 Violations and Notice of Hearing but failed to appear. Branden Lopez of Center for  
8 Contract Compliance and Steve Arredondo, Staff Attorney for the Division of Labor  
9 Standards Enforcement observed the hearing. The hearing was tape recorded. The  
10 witnesses took the oath and evidence was received. At the conclusion of the hearing, the  
11 matter was taken under submission.  
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#### 15 FINDINGS OF FACT

- 16  
17 1. Respondent Wallcrete Industries, Inc. ("Wallcrete") has been, at all times  
18 relevant herein, a contractor licensed by the Contractor's Licensed Board under license  
19 number 834220.  
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- 21 2. Respondent Garit David Wallace is and at all relevant times mentioned was  
22 the Responsible Managing Officer, Chief Executive Officer and President of Wallcrete.  
23
- 24 3. Respondent Amber Anderson is and at all relevant times mentioned was the  
25 Controller of Wallcrete.
- 26 4. During the period of November 21, 2009 to September 18, 2010, Wallcrete  
27 served as the Sub-Contractor on the project known as Construction of Fire Station #32  
28 and Corporate Yard in the City of La Quinta, County of Riverside, State of California.

1 David/Reed Construction, Inc. served as the General Contractor and City of La Quinta  
2 served as the Awarding Body for this project.<sup>1</sup>  
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4 5. Worker Alex Hernandez testified that he performed work as a cement  
5 mason on the Fire Station #32 project. He was one of eight other cement masons on the  
6 job. He was paid \$26.80 or \$26.50 per hour and worked overtime but was not paid the  
7 overtime rate for such hours, Mr. Hernandez also testified that Wallcrete did not pay for  
8 fringe benefits, retirement, or vacation. On certain occasions, Mr. Hernandez operated a  
9 backhoe and skip loader on the job.  
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11 6. Mr. Hernandez testified that both the foreman on the Fire Station #3  
12 project and the workers kept track of hours worked on the project. Workers were required  
13 to submit their hours to a mailbox located in the office, but before placing their hours into  
14 the mailbox, the foreman often told Mr. Hernandez and other workers to indicate less  
15 hours on the time cards than actually worked on the job.  
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18 7. Mr. Hernandez testified that he also worked on the San Clemente School  
19 job site two days per week. Mr. Hernandez and other workers were not paid the  
20 prevailing wage rates on this job either. Mr. Hernandez testified that he heard other  
21 workers were paid checks by Respondent Garit David Wallace covering the prevailing  
22 wage rate but asked those workers to deposit the checks and then pay half of the check  
23 back to him.  
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28 <sup>1</sup> More accurately, Wallcrete served as a sub-contractor of Jeff McGowan Concrete who served as a sub-contractor of prime contractor Davis/Reed Construction, Inc.

1           8.     Wallcrete submitted Certified Payroll Records indicating that  
2 Mr. Hernandez worked as a Laborer Group 2 on the Fire Station #32 job.

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4           9.     Deputy Labor Commissioner Reynaldo Tuyor testified that he received a  
5 complaint of misclassification, non-payment of prevailing wage rates, non-payment of  
6 overtime hours worked, non-payment of fringe benefits and falsification of certified  
7 payroll records against Wallcrete on this job. As part of his investigation and based on a  
8 General Prevailing Wage Determination made by the Director of Industrial Relations as  
9 well as the Scope of Work Provisions for Cement Masons in Riverside County, Deputy  
10 Tuyor determined the correct classification for the work being performed on the job was  
11 that of a cement mason and not as a Laborer Group 2 as was reflected on the certified  
12 payroll records. The prevailing wage rate in effect at the time for cement masons working  
13 on the Fire Station #32 project was \$46.84 for straight time and included fringe benefits,  
14 health and welfare, vacation and training. The overtime rate was determined to be \$61.59.

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18           10.    Deputy Tuyor prepared an audit for this job showing the total amount due  
19 each worker who was misclassified as a Laborer Group 2. In preparing his audit, Deputy  
20 Tuyor compared certified payroll records received from the Center for Contract  
21 Compliance (who received the records from the Awarding Body) with certified payroll  
22 records received directly from Wallcrete in response to an *Order to Appear* issued by  
23 Deputy Tuyor. Overtime hours on the certified payroll records submitted by Wallcrete to  
24 Deputy Tuyor were higher than those submitted to the Awarding Body. Hours were  
25 reduced, check numbers were changed, some employees were not listed and fringe  
26 benefit payments were not indicated on Wallcrete's copy of the certified payroll records  
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1 that were given to the Awarding Body. Respondent Amber Anderson as Controller  
2 certified under penalty of perjury that the certified payroll records she submitted to the  
3 Awarding Body were true and correct. Likewise, both Respondents Garit David Wallace  
4 and Amber Anderson then certified under penalty of perjury as true and correct, the copy  
5 of payroll records they submitted to the Deputy Tuyor in response to the *Order to Appear*  
6 which differed dramatically than those submitted to the Awarding Body for the same  
7 time period.  
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10 11. Based on the audit, worker affidavits and statements, Deputy Tuyor  
11 completed a *Labor Code Section 1775 Penalty Review* which he submitted to his Senior  
12 Deputy on May 4, 2011, summarizing the issues and violations determined through his  
13 investigation of the Fire Station #32 project. The penalty review includes a section where  
14 Deputy Tuyor summarizes a letter received from Subcontractor Jeff McGowan Concrete  
15 in response to Deputy Tuyor's investigation which included the following points:  
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- 18 • Wallcrete's estimate to Jeff McGowan Concrete, for the project,  
19 included prevailing wage rates;
- 20 • Wallcrete knew that this was a public works project;
- 21 • Wallcrete previously performed prevailing wage projects for Jeff  
22 McGowan Concrete.  
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25 12. On May 5, 2011, Deputy Tuyor issued a Civil Wage and Penalty  
26 Assessment ("CWPA") to Respondents for a total of \$67,090.85 in underpaid wages.  
27 Judgment was entered on the CWPA on September 16, 2011 against Respondent  
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1 Wallcrete Industries, Inc. in the amount of \$99,240.85 which includes wages, penalties,  
2 liquidated damages less payment of \$67,090.85 received from the Awarding Body.  
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4 CONCLUSIONS OF LAW

5 1. Labor Code §1777.1 provides:

6 (a) Whenever a contractor or subcontractor performing a  
7 public works project pursuant to this chapter is found  
8 by the Labor Commissioner to be in violation of this  
9 chapter **with intent to defraud**, except Section 1777.5,  
10 the contractor or subcontractor or a firm, corporation,  
11 partnership, or association in which the contractor, or  
12 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:

- 13 (1) Bid or be awarded a contract for a public  
14 works project.  
15 (2) Perform work as a subcontractor on a  
16 public works project.

17 (b) Whenever a contractor or subcontractor performing a  
18 public works project pursuant to this chapter is found by  
19 the Labor Commissioner to be **in willful violation** of this  
20 chapter, except Section 1777.5, the contractor or subcon-  
21 tractor or a firm corporation, partnership, or association  
22 in which the contractor or subcontractor has any interest  
23 is ineligible for a period up to three years for each second  
and subsequent violation occurring within three years of  
a separate and previous willful violation of this chapter to  
do either of the following:

- 24 (1) Bid on or be awarded a contract for a public  
25 works project.  
26 (2) Perform work as a subcontractor on a public  
27 works project.  
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1 misclassifying cement masons as laborers, failing to pay proper prevailing wage rates  
2 including the proper prevailing wage rate for overtime, failing to maintain accurate  
3 certified payroll records and failing to comply with all other obligations required on a  
4 public works project.  
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6 Respondents Garit David Wallace and Amber Anderson, individually are in  
7 willful violation of falsifying certified payroll records submitted to the Awarding Body  
8 and to the DLSE.  
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### 10 Intent to Defraud

11 *California Code of Regulations*, Title 8, Section 16800 defines "Intent to Defraud"  
12 as "the intent to deceive another person or entity, as defined in this article, and to induce  
13 such other person or entity, in reliance upon such deception, to assume, create, transfer,  
14 alter or terminate a right, obligation or power with reference to property of any kind."  
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17 While debarment is appropriate due to Wallcrete's willful violation of the  
18 Public Works laws, the uncontested evidence established that Wallcrete violated the  
19 provisions of Labor Code §1774, 1815 and 1776, with an intent to defraud its workers,  
20 Subcontractor Jeff McGowan Concrete, Awarding Body and the DLSE on the Fire  
21 Station 32 and Phase I Corporate Yard project. An intent to deceive or defraud can be  
22 inferred from the facts. *People v. Kiperman* (1977) 69 Cal.App.Supp.25. An unlawful  
23 intent can be inferred from the doing of an unlawful act. *People v. McLaughlin, supra*.  
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26 The uncontested evidence presented by DLSE established that Wallcrete  
27 misclassified its workers on this project as Laborers Group 2 who received \$26.88 per  
28 hour when they should have been classified as Cement Masons earning \$46.84 per hour.

1 The certified payroll records signed under penalty of perjury by Respondents Garit David  
2 Wallace and/or Controller Amber Anderson and submitted to the Awarding Body listed  
3 more days and hours worked than was listed on those certified payroll records submitted  
4 to the DLSE. There were also discrepancies in the overtime hours indicated on each set of  
5 payroll records. The records submitted to Subcontractor Jeff McGowan Concrete, who in  
6 turn submitted them to the Awarding Body, showed that Wallcrete paid more to its  
7 workers than the copy submitted to the DLSE showed. Some workers who were listed on  
8 the certified payroll records submitted to the DLSE were not included in the certified  
9 payroll records submitted to Subcontractor Jeff McGowan Concrete for the same time  
10 period. The only logical explanation for the discrepancies in the two sets of certified  
11 payroll records is that Wallcrete, Respondents Garit David Wallace and Amber  
12 Anderson, Individuals, intended to deceive Subcontractor Jeff McGowan Concrete and  
13 the Awarding Body into believing that they were paying more for wages and benefits  
14 than they really were paying under the contract. Accordingly, the uncontested evidence  
15 supports a finding of Respondents Wallcrete, Garit David Wallace and Amber Anderson,  
16 Individuals' intent to defraud under Labor Code §1777.1(a)  
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22 **ORDER OF DEBARMENT**

23 In accordance with the foregoing, it is hereby ordered that Respondents  
24 WALLCRETE INDUSTRIES, INC.; GARIT DAVID WALLACE AND AMBER  
25 ANDERSON, INDIVIDUALS, shall be ineligible to, and shall not, bid on or be awarded  
26 a contract for a public works project, and shall not perform work as a subcontractor on a  
27 public work as defined by Labor Code §§1720, 1720.2 and 1720.3, for a period of three  
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1 (3) years, effective forty-five (45) days from the date this decision is signed by Labor  
2 Commissioner Julie A. Su.. A three year period is appropriate under these circumstances  
3 where Respondents WALLCRETE INDUSTRIES, INC.; GARIT DAVID WALLACE  
4 AND AMBER ANDERSON, INDIVIDUALS deliberately and with complete disregard  
5 of the Public Works laws misclassified their cement mason workers as laborers, failed to  
6 pay their workers proper prevailing wage rates, applicable prevailing wage rates for  
7 overtime, knowingly and intentionally submitted false certified payroll reports under  
8 penalty of perjury, and failed to comply with their obligations in regards to employer  
9 contributions to retirement plans, health plans, and other benefit plans.  
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13 This debarment shall also apply to any other contractor or subcontractor in which  
14 Respondents WALLCRETE INDUSTRIES, INC.; GARIT DAVID WALLACE AND  
15 AMBER ANDERSON, INDIVIDUALS have any interest or for which either or all three  
16 said Respondents act as a responsible managing employee, responsible managing officer,  
17 general partner, manager, supervisor, owner, partner, officer, employee, agent,  
18 consultant, or representative. "Any interest" includes, but is not limited to, all instances  
19 where Respondents receive payments, whether in cash or in another form of  
20 compensation, from the entity bidding or performing works on the public works project,  
21 or enters into any contract or agreement with the entity bidding or performing work on  
22 the public works project for services performed or to be assigned or sublet, or for  
23 vehicles, tools, equipment or supplies that have been or will be sold, rented or leased  
24 during the period of debarment.  
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28 Dated: June 11, 2012

  
EDNA GARCIA EARLEY, Hearing Officer

1 **STATE OF CALIFORNIA**  
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3 Division of Labor Standards Enforcement  
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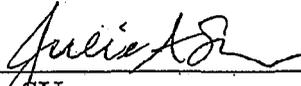
23 The attached Proposed Statement of Decision of Hearing Officer Edna Garcia  
24 Earley, debarring WALLCRETE INDUSTRIES, INC.; GARIT DAVID WALLACE  
25 AND AMBER ANDERSON, INDIVIDUALS, from working on public works projects in  
26 the State of California for three years, is hereby adopted by the Division of Labor  
27 Standards Enforcement as the Decision in the above-captioned matter.

1 This Decision shall become effective 45 days from today's date.

2 IT IS SO ORDERED

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4 Dated: June 13, 2012

DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
State of California

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6  
7 By:   
8 JULIE A. SU  
9 State Labor Commissioner

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