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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

SEP 21 2010

JAKE CHATTERS
EXECUTIVE OFFICER & CLERK
By L. TOMS, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

THOMAS HAROLD BERNHARDT
DOB: 03/23/1969

RACHEL LOUISE BERNHARDT
DOB: 06/21/1970

T.B. CONCRETE, INC.

Defendants.

COURT NO. 62-101630
AMENDED FELONY
COMPLAINT

The undersigned is informed and believes that:

COUNT 1

On or between January 1, 2005 and December 31, 2005, in the County of Placer, the crime of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE SECTION 2117.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT, in that said defendants did then and there, within the time required by the Unemployment Insurance Code of California, willfully fail to file a return and

1 report and to supply any information, with the intent to evade any tax imposed by such code, and
2 willfully and with like intent, did make, render, sign and verify a false and fraudulent return,
3 report, and statement, and did supply false and fraudulent information.

4
5 **COUNT 2**

6 On or between January 1, 2005 and December 31, 2005, in the County of Placer, the crime
7 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
8 SECTION 2118.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
9 RACHEL LOUISE BERNHARDT, in that said defendants although required by the
10 Unemployment Insurance Code of California to collect, account for, and pay over any tax and
11 amount required to be withheld, did willfully fail to collect and truthfully account for and pay
12 over such tax and amount.

13 **COUNT 3**

14 On or between January 1, 2006 and December 31, 2006, in the County of Placer, the crime
15 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
16 SECTION 2117.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
17 RACHEL LOUISE BERNHARDT, in that said defendants did then and there, within the time
18 required by the Unemployment Insurance Code of California, willfully fail to file a return and
19 report and to supply any information, with the intent to evade any tax imposed by such code, and
20 willfully and with like intent, did make, render, sign and verify a false and fraudulent return,
21 report, and statement, and did supply false and fraudulent information.

22
23 **COUNT 4**

24 On or between January 1, 2006 and December 31, 2006, in the County of Placer, the crime
25 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
26 SECTION 2118.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
27 RACHEL LOUISE BERNHARDT, in that said defendants although required by the
28 Unemployment Insurance Code of California to collect, account for, and pay over any tax and

1 amount required to be withheld, did willfully fail to collect and truthfully account for and pay
2 over such tax and amount.

3
4 COUNT 5

5 On or between January 1, 2007 and December 31, 2007, in the County of Placer, the crime
6 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
7 SECTION 2117.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
8 RACHEL LOUISE BERNHARDT, in that said defendants did then and there, within the time
9 required by the Unemployment Insurance Code of California, willfully fail to file a return and
10 report and to supply any information, with the intent to evade any tax imposed by such code, and
11 willfully and with like intent, did make, render, sign and verify a false and fraudulent return,
12 report, and statement, and did supply false and fraudulent information.

13
14 COUNT 6

15 On or between January 1, 2007 and December 31, 2007, in the County of Placer, the crime
16 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
17 SECTION 2118.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
18 RACHEL LOUISE BERNHARDT, in that said defendants although required by the
19 Unemployment Insurance Code of California to collect, account for, and pay over any tax and
20 amount required to be withheld, did willfully fail to collect and truthfully account for and pay
21 over such tax and amount.

22
23 COUNT 7

24 On or between January 1, 2008 and December 31, 2008, in the County of Placer, the crime
25 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
26 SECTION 2117.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
27 RACHEL LOUISE BERNHARDT, in that said defendants did then and there, within the time
28 required by the Unemployment Insurance Code of California, willfully fail to file a return and

1 report and to supply any information, with the intent to evade any tax imposed by such code, and
2 willfully and with like intent, did make, render, sign and verify a false and fraudulent return,
3 report, and statement, and did supply false and fraudulent information.

4
5 **COUNT 8**

6 On or between January 1, 2008 and December 31, 2008, in the County of Placer, the crime
7 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
8 SECTION 2118.5, a Felony, was committed by THOMAS HAROLD BERNHARDT and
9 RACHEL LOUISE BERNHARDT, in that said defendants although required by the
10 Unemployment Insurance Code of California to collect, account for, and pay over any tax and
11 amount required to be withheld, did willfully fail to collect and truthfully account for and pay
12 over such tax and amount.

13
14 **COUNT 9**

15 On or between January 1, 2009 and December 31, 2009, in the County of Placer, the crime
16 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
17 SECTION 2117.5, a Felony, was committed by THOMAS HAROLD BERNHARDT, RACHEL
18 LOUISE BERNHARDT, and T.B. CONCRETE, INC., in that said defendants did then and there,
19 within the time required by the Unemployment Insurance Code of California, willfully fail to file
20 a return and report and to supply any information, with the intent to evade any tax imposed by
21 such code, and willfully and with like intent, did make, render, sign and verify a false and
22 fraudulent return, report, and statement, and did supply false and fraudulent information.

23
24 **COUNT 10**

25 On or between January 1, 2009 and December 31, 2009, in the County of Placer, the crime
26 of PAYROLL TAX FRAUD, in violation of UNEMPLOYMENT INSURANCE CODE
27 SECTION 2118.5, a Felony, was committed by THOMAS HAROLD BERNHARDT, RACHEL
28 LOUISE BERNHARDT, and T.B. CONCRETE, INC., in that said defendants although required

1 by the Unemployment Insurance Code of California to collect, account for, and pay over any tax
2 and amount required to be withheld, did willfully fail to collect and truthfully account for and pay
3 over such tax and amount.

4
5 **COUNT 11**

6 On or between January 1, 2005 and December 31, 2005, in the County of Placer, the crime
7 of INSURANCE FRAUD, in violation of INSURANCE CODE SECTION 11880(a), a Felony,
8 was committed by THOMAS HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT,
9 who did knowingly make and cause to be made a false and fraudulent statement of a fact material
10 to the determination of the premium, rate, and cost of workers' compensation insurance issued
11 and administered by the State Compensation Insurance Fund, for the purpose of reducing the
12 premium, rate, and cost of insurance.

13
14 **COUNT 12**

15 On or between January 1, 2006 and December 31, 2006, in the County of Placer, the crime
16 of INSURANCE FRAUD, in violation of INSURANCE CODE SECTION 11880(a), a Felony,
17 was committed by THOMAS HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT,
18 who did knowingly make and cause to be made a false and fraudulent statement of a fact material
19 to the determination of the premium, rate, and cost of workers' compensation insurance issued
20 and administered by the State Compensation Insurance Fund, for the purpose of reducing the
21 premium, rate, and cost of insurance.

22
23 **COUNT 13**

24 On or between January 1, 2007 and December 31, 2007, in the County of Placer, the crime
25 of INSURANCE FRAUD, in violation of INSURANCE CODE SECTION 11880(a), a Felony,
26 was committed by THOMAS HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT,
27 who did knowingly make and cause to be made a false and fraudulent statement of a fact material
28 to the determination of the premium, rate, and cost of workers' compensation insurance issued

1 and administered by the State Compensation Insurance Fund, for the purpose of reducing the
2 premium, rate, and cost of insurance.

3
4 **COUNT 14**

5 On or between January 1, 2008 and December 31, 2008, in the County of Placer, the crime
6 of INSURANCE FRAUD, in violation of INSURANCE CODE SECTION 11880(a), a Felony,
7 was committed by THOMAS HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT,
8 who did knowingly make and cause to be made a false and fraudulent statement of a fact material
9 to the determination of the premium, rate, and cost of workers' compensation insurance issued
10 and administered by the State Compensation Insurance Fund, for the purpose of reducing the
11 premium, rate, and cost of insurance.

12
13 **COUNT 15**

14 On or between January 1, 2009 and December 31, 2009, in the County of Placer, the crime
15 of INSURANCE FRAUD, in violation of INSURANCE CODE SECTION 11880(a), a Felony,
16 was committed by THOMAS HAROLD BERNHARDT, RACHEL LOUISE BERNHARDT, and
17 T.B. CONCRETE, INC., who did knowingly make and cause to be made a false and fraudulent
18 statement of a fact material to the determination of the premium, rate, and cost of workers'
19 compensation insurance issued and administered by the State Compensation Insurance Fund, for
20 the purpose of reducing the premium, rate, and cost of insurance.

21
22 **AGGRAVATED WHITE COLLAR CRIME CLAUSE AS TO DEFENDANTS**

23 **THOMAS HAROLD BERNHARDT AND RACHEL LOUISE BERNHARDT**

24 It is further alleged as to counts one through fifteen, that said defendants THOMAS
25 HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT committed two or more related
26 felonies, a material element of which is fraud or embezzlement, which involve a pattern of related
27 felony conduct, and the pattern of related felony conduct involves the taking of more than one
28 hundred thousand dollars (\$100,000) within the meaning of Penal Code section 186.11(a)(1).

1 **EXCESSIVE LOSS OVER \$65,000 CLAUSE AS TO DEFENDANTS THOMAS**

2 **HAROLD BERNHARDT AND RACHEL LOUISE BERNHARDT**

3 It is further alleged as to counts one through fifteen, that said defendants, THOMAS
4 HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT, with the intent to do so, took,
5 damaged or destroyed property of a value exceeding sixty-five thousand dollars (\$65,000), within
6 the meaning of Penal Code section 12022.6(a)(1).

7
8 **STATUTE OF LIMITATIONS – LATE DISCOVERY CLAUSE PENAL CODE**

9 **SECTIONS 801.5 & 803; UNEMPLOYMENT INSURANCE CODE SECTION 2125**

10 In July 2008, the California Attorney General’s Office received a letter dated July 9, 2008
11 from the Northern California Carpenters Regional Council. The letter alleged among other things
12 that defendants THOMAS HAROLD BERNHARDT and RACHEL LOUISE BERNHARDT,
13 who operate a concrete business called T.B. Concrete, Inc. (TB) and a related business called
14 Express Concrete Pumping LLC (Express), were paying their employees with paychecks with no
15 tax deductions. In December 2008, Special Agent A.S. “Sky” Pohle, II, a special agent employed
16 by the California Department of Justice, was assigned to investigate this matter. Special Agent
17 Pohle contacted Betty Rodriguez, a criminal investigator with the California Department of
18 Insurance (CDI) and Tony Esteves, a supervising criminal investigator with the Employment
19 Development Department (EDD). During the week of December 16, 2008, Special Agent Pohle,
20 and criminal investigators Rodriguez and Esteves interviewed eight employees of TB. The
21 employees, all concrete workers, showed copies of their paystubs. Most did not contain
22 deductions for social security or state payroll taxes. They also showed copies of IRS Form 1099.
23 Most of their wages were reflected on IRS Form 1099 which is issued for miscellaneous
24 payments, not wages.

25 On September 3, 2009, a search warrant was executed, and business records including
26 company payroll documents were seized from TB, the same address as the Bernhardts’ residence.
27 EDD tax auditor, Michael Schenck, conducted an audit and determined that approximately \$2.1
28 million in wages from the 4th quarter of 2004 to the 3rd quarter of 2009, amounting to

1 approximately 85% of TB's true payroll, was not reported to the EDD. In addition, \$33,000 in
2 wages, approximately 96% of Express' true payroll, was not reported to EDD. Auditor Schenck
3 determined that the Bernhardt's state payroll tax liability (including penalty and interests)
4 amounts to more than \$230,000 as of June 30, 2010.

5 Jacquelyn Gregory, an auditor from the State Compensation Insurance Fund (SCIF), also
6 conducted an audit. Auditor Gregory determined that the Bernhardt's underreported the payroll
7 for TB and Express to SCIF, and misrepresented the hourly wage earned by its employees.
8 Auditor Gregory estimated that the additional premium amount owed to SCIF is approximately
9 \$180,000.

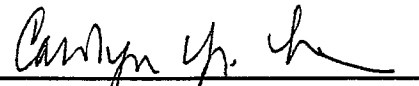
10 The statute of limitations is four years from the date of discovery if fraud is a material
11 element. Since the allegation of payroll tax fraud and insurance fraud was not received until a
12 letter dated July 9, 2008 was sent to the Attorney General's Office, the statute of limitations at the
13 earliest, would start to run from that date. Therefore, the earliest date the statute of limitations
14 would expire is July 9, 2012.

15

16 I declare under penalty of perjury upon information and belief under the laws of the State of
17 California that the foregoing is true and correct.

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19 Dated: September 21, 2010


CAROLYN Y. LA
Deputy Attorney General

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