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YOLO SUPERIOR COURT
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By [Signature]
Deputy

Yolo County District Attorney

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF YOLO

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 vs.

14 EARL THOMPSON,
15 VALERY THOMPSON,

16 Defendants.

Case No.: 13-3824

PRELIMINARY HEARING BRIEF

Date: November 25, 2014

Time: 8:30 A.M.

Dept. 3

17 I.

18 FACTS

19 Defendant Earl Thompson's contractor's license was revoked in 1995. (RT 250:14-16.)
20 For this reason, Defendant Earl Thompson was unable to receive another contractor's license.
21 (RT 251:2-6.) However, Earl Thompson wanted to run Russell/Thompson and obtain profitable
22 prevailing wage jobs. (RT 315:1-6, 315:9-11, 316:13-14.) For Russell/Thompson to obtain
23 prevailing wage projects, they needed to have a contractor's license. (RT 315:17-23.) Therefore
24 Defendant Earl Thompson, Defendant Valery Thompson and James Russell conspired to
25 fraudulently obtain a contractor's license for Russell/Thompson. (RT 314-318.) Despite the fact
26 that Earl Thompson would be running the corporation, RT 316:13-23, his name did not appear
27 anywhere on the Applications for Contractor's Licenses. (People's Exhibits 44-46.) For this
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1 reason, the Contractor's State License Board had no idea the corporation would be run by Earl
2 Thompson, an individual to whom they would not grant a contractor's license based on his prior
3 actions. (RT 251:2-6.)

4 In the applications for the contractor's license, Valery Thompson and James Russell
5 made misrepresentations which further concealed their connection to Earl Thompson. Valery
6 Thompson signed, under penalty of perjury, that she was not married to anyone who had their
7 contractor's license revoked in the past. (People's Exhibits 44-46.) Similarly, James Russell
8 signed under penalty of perjury, that he would be in charge of the operations of the company.
9 (People's Exhibits 44-46.) Instead, he was simply an employee. (RT 318:13-16.) Both were
10 fraudulent misrepresentations designed to hide Earl Thompson's true involvement in the
11 corporation and allowed Russell/Thompson to obtain a contractor's license.

12 Despite the fact that the only way in which Earl Thompson could legally use
13 Russell/Thompson's contractor's license was as an employee, RT 253:14-18, Earl Thompson's
14 duties were far more extensive. Earl Thompson was the manager in charge of the job site. (RT
15 259:17-20). He gave directions to the foreman and employees on what to do. (RT 259: 17-20.)
16 Earl Thompson also hired employees (RT 260:11-13 and 260:22-26), did payroll (People's
17 Exhibit 22-39), signed paychecks (People's Exhibit 22-39), was the designated payroll officer for
18 Russell/Thompson (People's Exhibit 11 and 15), signed the payroll reports for State Fund
19 (People's Exhibit 41 and 42), was issued a company credit card (People's Exhibit 18), and was
20 authorized to pull building permits for Russell/Thompson (People's Exhibit 20). Additionally,
21 Earl Thompson signed the approximately \$1.5 million contract to work at UC Davis on behalf of
22 Russell/Thompson. (People's Exhibit 14).

23 Despite their legal obligation to pay their workers prevailing wages, Earl Thompson
24 misrepresented the amount the workers were paid on the certified payroll reports which were
25 signed under penalty of perjury. (People's Exhibit 22-39.) However, checks written by Earl
26 Thompson demonstrate he knew that his statements on the Certified Payroll Reports were
27 fraudulent. (*Ibid.*) Additionally, Valery Thompson was aware that the workers were being paid
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1 less than prevailing wage. (People's Exhibit 21, RT 279:25-280:16.) Overall, the defendants
2 stole \$633,199.55 of wages which were due to their workers. (RT 30:6-9.)

3 During this time period, the defendants had worker's compensation insurance through
4 State Compensation Insurance Fund. (RT 142:17-19.) Their policy required them to report the
5 payroll for all of their employees for all jobs. (RT 139:10-16.) However, the defendants
6 intentionally failed to report the majority of the payroll for the UC Davis project, resulting in the
7 defendants underpaying their insurance premium by \$359,011.43. (People's Exhibit 42, RT
8 149:13-15, 155:22-156:1.) Not only did the defendants fail to report payroll as required, they
9 misclassified workers, RT 28:1-3, failed to pay fringe benefits to the workers, RT 30:25-27,
10 failed to pay overtime to the workers, RT 31:10-24, and failed to pay the training fund, which
11 caused a loss of \$13,570.69 in training funds. (RT 30:22-24.) All of these actions significantly
12 reduced their cost of doing business, allowing them to substantially underbid profitable jobs,
13 including the UC Davis project.

14 In Shasta County arrest warrants were issued on March 24, 2011 for Earl Thompson
15 (People's Exhibit 7) and on March 24, 2011 for Valery Thompson (People's Exhibit 9) for, *inter*
16 *alia*, the UC Davis conduct. People's Exhibit 8 shows that the case against Earl Thompson was
17 still pending on March 27, 2014, months after the arrest warrant in Yolo County was issued.
18 People's Exhibit 9 shows that the case against Valery Thompson was dismissed on September
19 22, 2011.

20 Additionally, Valery Thompson submitted a change of address request to Redding
21 Electric, stating that her new address was in Louisville Colorado. (People's Exhibit 6.) This was
22 done on September 15, 2010. Earl Thompson filed a claim with the Labor Commissioner of the
23 State of California on April 25, 2011, stating that he did not receive prevailing wages from
24 Russell Thompson. (RT 31:25- 33:7; People's Exhibit 13.) In that claim, Earl Thompson listed
25 his current address was on S. Wolff St., Denver Colorado.

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II.

POINTS AND AUTHORITIES

1. Count 1: Penal Code 182(a)(4): Conspiracy to Defraud.

California Penal Code 182(a)(4) states “(a) If two or more persons conspire: ... (4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.” In this case the defendants conspired to allow Earl Thompson to contract without a license by running Russell/Thompson and thereby fraudulently obtain the contract to work at UC Davis. After having his contractor’s license revoked, Earl Thompson attempted to have it reinstated. (RT 250:28-251:6.) Since Earl Thompson could not obtain a contractor’s license he devised a plan, along with his wife Valery Thompson and employee James Russell, whereby Valery Thompson and James Russell would create a corporation and fraudulently represent that they were the owners and operators of the business. (RT 315:14-23, 316:10-23.) However, from the beginning the defendants’ intentions were to have Earl Thompson run the corporation and thereby contract without a license. (RT 316:10-23.)

Although Earl Thompson is not mentioned anywhere on the Contractor’s State License Applications (People’s Exhibits 44 through 46) Valery Thompson designated “EJ” Thompson as the “Designated Payroll Officer” for Russell/Thompson on the Tercero project (People’s Exhibit 11), Earl Thompson signed the approximately \$1.5 million contract with 84 Lumber (People’s Exhibit 14), Earl Thompson had a company credit card authorized by Valery Thompson (People’s Exhibit 18), Valery Thompson placed Earl Thompson’s name as an authorized person to sign permits for Russell/Thompson, Inc. (People’s Exhibit 20), Earl Thompson signed the certified payroll reports as “manager” (People’s Exhibits 22 through 39), signed the employee’s checks (People’s Exhibits 22 through 39), and Earl Thompson signed as “manager” on the 6224L forms, which Valery Thompson knew about because she filled out the check for the payroll which Earl Thompson calculated (People’s Exhibit 41). All of these constitute overt acts done in furtherance of the conspiracy.

1 Additionally, when the Department of Industrial Relations did their investigation in this
2 case, the main contact was Earl Thompson, not Valery Thompson. (RT 25:27-26:1.) Earl
3 Thompson's signature appeared on correspondence regarding the day-to-day activity of the
4 business and he appeared to the Shasta Investigator to be the one with care and control over the
5 business. (RT 116:15-28.) James Russell was an employee of the business and did not exercise
6 any care or control over the business. (RT 117:2-9.) Employees also testified, via Prop. 115, that
7 Earl Thompson was the one in charge of the company. (RT 119:11-15.) An employee from the
8 Carpenter's Regional Council stated, via prop 115, that Earl Thompson was, from every
9 appearance, the person running the job for Russell/Thompson. (RT 120:11-16.) Additionally,
10 several employees also testified, via Prop. 115, that Earl Thompson was in charge of the job site
11 at UC Davis, gave directions to the foreman and employees, was present 80% of the time and
12 even hired several of the employees. (RT 259:17-260:26.) All of this demonstrates that Earl
13 Thompson was the *de facto* owner and operator of Russell/Thompson and that Valery Thompson
14 was well aware of his role in the corporation.

15 From the beginning the conspiracy's purpose was to allow Earl Thompson to contract
16 without a license and fraudulently obtain the UC Davis contract by being the *de facto* owner and
17 operator of Russell/Thompson. Since Earl Thompson, Valery Thompson and James Russell
18 conspired to allow Earl Thompson to be the *de facto* operator of Russell/Thompson and contract
19 without a license, all defendants should be held to answer for conspiracy.

20 Furthermore, coconspirators are liable for all actions done by other coconspirators if
21 those actions are in furtherance of the conspiracy or a reasonable and natural consequence of the
22 object of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86; *People v. Scott* (1964) 224
23 Cal.App.2d 146; *In re Hardy* (2007) 41 Cal.4th 977.) For all of the following crimes, even when
24 only one of the three coconspirators actually completed the crime, all crimes are in furtherance of
25 the conspiracy in this case. Therefore all defendants are liable as coconspirators for all of the
26 following crimes.

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1 **2. Count 2: Labor Code 1778: Theft of Wages.**

2 California Labor Code 1778 states “[e]very person, who individually or as a
3 representative of an awarding or public body or officer, or as a contractor or subcontractor doing
4 public work, or agent or officer thereof, who takes, receives, or conspires with another to take or
5 receive, for his own use or the use of any other person any portion of the wages of any workman
6 or working subcontractor, in connection with services rendered upon any public work is guilty of
7 a felony.”

8 In this case, Russell/Thompson’s work at Tercero Hall was a public works project, RT
9 15:28-16:1, and they were a subcontractor for the project, RT 16:7-16. Earl Thompson was the
10 designated payroll officer for Russell/Thompson. (People’s Exhibit 11.) He also completed all of
11 the certified payroll reports and signed all of the payroll checks for the work done on the Tercero
12 project. (See People’s Exhibit 22-39.) The contract for the work, which was signed by Earl
13 Thompson, contained the entire Labor Code section requiring that workers be paid prevailing
14 wages. (People’s Exhibit 14.) However, instead of paying correct prevailing wages, the
15 defendants misclassified workers, RT 28:1-3, failed to pay fringe benefits to the workers, RT
16 30:25-27, and failed to pay overtime to the workers, RT 31:10-24. Additionally, Valery
17 Thompson was aware that the workers were being paid less than prevailing wage. (People’s
18 Exhibit 21, RT 279:25-280:16.) Overall, the defendants stole \$633,199.55 of wages which were
19 due to their workers. (RT 30:6-9.)

20 Although Earl Thompson was the coconspirator who actually stole the employees’
21 wages, Valery Thompson, as a coconspirator, is liable for all actions done by her coconspirator
22 Earl Thompson if those actions are in furtherance of the conspiracy or a reasonable and natural
23 consequence of the object of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86; *People v.*
24 *Scott* (1964) 224 Cal.App.2d 146; *In re Hardy* (2007) 41 Cal.4th 977.) The theft of wages was
25 committed in furtherance of the conspiracy because it allowed the defendants to continue the
26 objective of the conspiracy: to allow Earl Thompson to contract without a license on the UC
27 Davis project. When the economy took a downturn, Russell/Thompson Corporation struggled to
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1 keep up with bills. (RT 337:6-8.) Saving \$633,199.55 obviously assisted Russell/Thompson in
2 remaining profitable so that they could continue the conspiracy.

3 Additionally, the offense fell within the scope of the unlawful project because it was done
4 during the unlawful project and done for the purpose of allowing Russell/Thompson to save
5 money and continue contracting without a license on the UC Davis project.

6 Finally, the offense could reasonably have been foreseen as a necessary or natural
7 consequence of the unlawful agreement because it is reasonably foreseeable that during a
8 conspiracy where the objective of the conspiracy is to fraudulently obtain a \$1.5 million contract
9 from UC Davis, that the conspirators would steal from other individuals or entities during the
10 conspiracy. Therefore both defendants should be held to answer for this count.

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12 **3. Count 3: Penal Code 487(a): Grand Theft.**

13 California Penal Code 487(a) states "Grand Theft is committed in any of the following
14 cases: (a) When the money, labor, or real or personal property taken is of a value exceeding nine
15 hundred fifty dollars (\$950), except as provided in subdivision (b)." CalCrim 1804 states that the
16 elements of Grand Theft by False Pretenses are (1) the defendant knowingly and intentionally
17 deceived a property owner or the owner's agent by false or fraudulent representation or pretense,
18 (2) the defendant did so intending to persuade the owner or owner's agent to let the defendant or
19 another person take possession and ownership of the property, (3) the owner or owner's agent let
20 the defendant or another person take possession and ownership of the property because the
21 owner or owner's agent relied on the representation or pretense, and (4) the amount of the loss
22 was \$950 or more. The People must also prove that the false pretense was accompanied by either
23 a false writing or false token or the note or memorandum of the pretense was signed or
24 handwritten by the defendant or the testimony of two witnesses or the testimony of a single
25 witness along with other evidence supports the conclusion that the defendant made the pretense.
26 (CalCrim 1804.) Someone makes a false pretense if, intending to deceive, he or she gives
27 information he knows is false, makes a misrepresentation recklessly without information that
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1 justifies a reasonable belief in its truth or does not give information when he has an obligation to
2 do so. (*Ibid.*)

3 In this case, Earl Thompson submitted the 6224L form to State Fund Insurance
4 Company. (People's Exhibit 42 and RT 149:5- 152:13). On the 6224L he stated that between
5 August 1, 2009 until November 1, 2009 Russell/Thompson paid wages of \$28,462. (People's
6 Exhibit 42.) However, between September 21, 2009 and November 1, 2009 Russell/Thompson
7 actually paid \$38,453.23 in wages. (RT 239:10- 240:28). Obviously, this does not include any
8 payroll which was paid between August 1, 2009 through September 21, 2009. Therefore he
9 underreported Russell/Thompson's payroll by at least \$10,000, which is a false representation
10 made in writing.

11 Additionally, the defendant continued his false pretense over the remainder of the project.
12 Although Russell/Thompson paid over \$533,000 in wages over the entire UC Davis construction
13 project, RT 241:7-14, they reported only \$28,462 for the entire period, RT 149:13-150:1, a
14 fraction of the total payroll. This caused a loss of \$359,011.43 in premiums. (RT 155:22-156:1.)
15 CalCrim 1804 defines a false pretense as including when someone does not give information
16 when they have an obligation to do so. In this case, Russell/Thompson was required to submit
17 6224Ls on a consistent basis. (RT 139:10-16, 140:9-11 and 143:3-6). State Fund specifically
18 relies on these forms to determine the amount of premium that the insured owes. (RT 141:18-
19 142:7.) When the defendants failed to submit any further payroll information in the form of
20 6224L records, even though they were required to do so, Russell/Thompson misrepresented their
21 payroll as being \$0, when it was actually approximately \$500,000. This continuing false pretense
22 is evidenced by the certified payroll reports, paystubs, and paychecks which are contained in
23 People's Exhibits 22 through 39, and is summarized in People's Exhibit 12 which calculated the
24 total wages actually paid to workers and what prevailing wages they were due for their work on
25 Tercero. It is also contained in the testimony of Mr. Embry that State Fund never received any
26 further 6224L forms from Russell/Thompson, RT 149:13-15 and RT 149:27-150:1, despite the
27 fact that Russell/Thompson was required to report all payroll to State Fund, RT 143:3-6, and
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1 continued to have payroll through February of 2010. Therefore the defendants continued their
2 false pretense regarding their total wages paid during the entire construction project at UC Davis.

3 Additionally, the evidence shows that Earl Thompson was the designated payroll officer
4 for the entire UC Davis project (People's Exhibit 11), signed the Certified Payroll Reports for the
5 time between August 1, 2009 through November 1, 2009 (People's Exhibit 22-39), and signed
6 the payroll checks for the workers (People's Exhibit 22-39). Therefore the evidence is clear that
7 Earl Thompson knew the actual wages paid to the workers and knowingly stated the false
8 amount of payroll on the 6224L form. Therefore the defendant knowingly and intentionally
9 deceived a property owner, State Fund, by fraudulent representation on the 6224L.

10 Furthermore, the evidence is clear that the defendants intended to persuade State Fund to
11 continue providing insurance coverage. While the defendants specifically filed 6224L forms for
12 the last year without missing any, People's Exhibit 41, once on the UC Davis project which
13 began on September 14, 2009, RT 148:27-149:1, the defendants only filed one 6224L form and
14 then never filed another one, RT 149:13-15 and RT 149:27-150:1. This evidence shows the
15 defendant was well aware of his obligation to report payroll to State Fund yet purposefully
16 omitted to tell State Fund about approximately \$500,000 of payroll, lowering his cost of
17 premium by \$359,011.43.

18 Finally, State Fund allowed the defendants to take possession of the insurance coverage
19 because State Fund relied on the defendants' misrepresentations on the 6224L forms about their
20 total wages. (RT 141:18-142:7.)

21 Although Earl Thompson was the coconspirator who actually misrepresented the wages
22 paid and thereby stole insurance coverage, Valery Thompson, as a coconspirator, is liable for all
23 actions done by her coconspirator Earl Thompson if those actions are in furtherance of the
24 conspiracy or a reasonable and natural consequence of the object of the conspiracy. (*People v.*
25 *Hardy* (1992) 2 Cal.4th 86; *People v. Scott* (1964) 224 Cal.App.2d 146; *In re Hardy* (2007) 41
26 Cal.4th 977.) The grand theft was committed in furtherance of the conspiracy because it
27 allowed Russell/Thompson to continue contracting without a license by saving the corporation
28 money during the decline of the economy.

1 Additionally, the offense fell within the scope of the unlawful project because it was done
2 during the unlawful project and done for the purpose of allowing Russell/Thompson to save
3 money and continue contracting without a license on the UC Davis project.

4 Finally, the offense could reasonably have been foreseen as a necessary or natural
5 consequence of the unlawful agreement because it is reasonably foreseeable that during a
6 conspiracy where the objective of the conspiracy is to fraudulently obtain a \$1.5 million contract
7 from UC Davis, that the conspirators would steal from other individuals or entities during the
8 conspiracy. Therefore both defendants should be held to answer for this count.

9
10 **4. Count 4: Penal Code 487(a): Grand Theft.**

11 Additionally, the defendants obtained the UC Davis contract by false pretenses. In the
12 contract the defendants agreed to pay training funds as required by law and agreed to pay the
13 correct prevailing wages. (People's Exhibit 14.) Training funds are required to be paid to the
14 state or to a registered training fund to train apprentices. (RT 15:11-13 and 30:19-21.) This
15 requirement is codified in Labor Code 1777.5 and in California Code of Regulations 230.2. In
16 this case the defendants did not pay any of the required fees to the training programs. (RT 30:10-
17 12.) Additionally, as described below, the defendants did not pay the correct prevailing wages to
18 their workers.

19 Based on these false representations, the defendants were able to obtain the highly
20 profitable contract for the UC Davis construction project. (See RT 22:1-5 and People's Exhibit
21 11, the back of page 2.) Without these false representations, the defendants would not have been
22 able to obtain the contract in this case. (*Ibid.*)

23 There were at least two losses based on the defendants' false representations in the
24 contract. First, the defendants were required, by the contract and by the Labor Code, to pay
25 \$13,570.69 to the state or to a registered training fund. (RT 30:22-24.) Secondly, the defendants
26 were able to obtain the entire contract based on their false representations. The defendants'
27 portion of the contract was for a total of \$1,536,380. (People's Exhibit 14.) Both of these losses
28 are over \$950.

1 Although Earl Thompson was the coconspirator who fraudulently obtained the UC Davis
2 contract, Valery Thompson, as a coconspirator, is liable for all actions done by her coconspirator
3 Earl Thompson if those actions are in furtherance of the conspiracy or a reasonable and natural
4 consequence of the object of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86; *People v.*
5 *Scott* (1964) 224 Cal.App.2d 146; *In re Hardy* (2007) 41 Cal.4th 977.) The grand theft was
6 committed in furtherance of the conspiracy because the purpose of the conspiracy was to allow
7 Earl Thompson to contract without a license and obtain the UC Davis contract. Therefore
8 obtaining the UC Davis contract was in furtherance of the conspiracy. Additionally, the grand
9 theft saved Russell/Thompson money and allowed them to continue the conspiracy of
10 contracting without a license.

11 Additionally, the offense fell within the scope of the unlawful project because it was done
12 during the unlawful project and done for the purpose of allowing Russell/Thompson to save
13 money and continue contracting without a license on the UC Davis project.

14 Finally, the offense could reasonably have been foreseen as a necessary or natural
15 consequence of the unlawful agreement because obtaining the UC Davis contract was one of the
16 purposes of the conspiracy.

17 Therefore both defendants should be held to answer for this count.

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19 **5. Count 5: Insurance Code 11880: Fraudulent Statement for Purpose of Reducing**
20 **Worker's Compensation Insurance Cost.**

21 California Insurance Code 11880(a) states “[i]t is unlawful to make or cause to be made
22 any knowingly false or fraudulent statement, whether made orally or in writing, of any fact
23 material to the determination of the premium, rate, or cost of any policy of workers’
24 compensation insurance issued or administered by the State Compensation Insurance Fund for
25 the purpose of reducing the premium, rate, or cost of the insurance...”

26 In this case, Earl Thompson submitted the 6224L form to State Fund. (People’s Exhibit
27 42 and RT 149:5- 152:13). On the form he stated that for the period between August 1, 2009
28 until November 1, 2009 Russell/Thompson paid wages in class code 5432-1, Carpentry greater

1 than \$26 per hour, of \$28,462. (People's Exhibit 42.) However, between September 21, 2009 and
2 November 1, 2009 Russell/Thompson actually paid \$38,453.23 in wages. (RT 239:10- 240:28).
3 Obviously, this does not include any payroll which was paid between August 1, 2009 through
4 September 21, 2009. Therefore he underreported Russell/Thompson's payroll by at least
5 \$10,000. While the defense may argue that this was simply an accounting mistake and not a
6 knowingly fraudulent statement, it is important to keep in mind that over the entire UC Davis
7 construction project, although Russell/Thompson paid over \$533,000 in wages, RT 241:7-14,
8 they reported only \$28,462 over the entire period of construction, RT 149:13-150:1, a fraction of
9 the total payroll. This demonstrates that the defendant's intent was to fraudulently misrepresent
10 the amount of wages paid for the purpose of reducing his insurance premium.

11 Additionally, the evidence shows that Earl Thompson was the designated payroll officer
12 for the entire UC Davis project (People's Exhibit 11), signed the Certified Payroll Reports for the
13 time between August 1, 2009 through November 1, 2009 (People's Exhibit 22-39), and signed
14 the payroll checks for the workers (People's Exhibit 22-39). Therefore the evidence is clear that
15 Earl Thompson knew the actual wages paid to the workers and knowingly stated the false
16 amount of payroll on the 6224L form.

17 Finally, the amount of payroll listed on the 6224L is material to the determination of the
18 premium amount that Russell/Thompson owed for their worker's compensation insurance. When
19 Earl Thompson lied about the amount of payroll Russell/Thompson had for the applicable
20 timeframe, he thereby received a lowered premium for the insurance. (RT 141:21-27). Even
21 though Earl Thompson did not report all of the wages and thereby all of the risk that State Fund
22 was covering, State Fund was still liable for any and all worker injuries which could occur. (RT
23 141:28-142:7). Therefore the misrepresentation was material to the determination of the
24 premium because it fraudulently reduced the amount of premium that the defendants owed.

25 Although Earl Thompson was the coconspirator who actually made the false statements
26 to State Fund, Valery Thompson, as a coconspirator, is liable for all actions done by her
27 coconspirator Earl Thompson if those actions are in furtherance of the conspiracy or a reasonable
28 and natural consequence of the object of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86;