

1 JEFF REISIG #182205
2 Yolo County District Attorney
3 Jennifer McHugh/ 279331
4 Deputy District Attorney
5 301 Second Street
6 Woodland, California 95695
7 Tel: (530) 666-8180

RECEIVED

NOV 04 2014

FILED
YOLO SUPERIOR COURT
NOV 04 2014
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19 Defendant Earl Thompson's contractor's license was revoked in 1995.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
28

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
28

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.

26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

27 ///

28 ///

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
28

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.

11
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
28

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
28

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.

18
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;

1 *People v. Scott* (1964) 224 Cal.App.2d 146; *In re Hardy* (2007) 41 Cal.4th 977.) The false
2 statement on the 6224L forms was committed in furtherance of the conspiracy because it allowed
3 Russell/Thompson to save money and thereby continue contracting without a license on the
4 profitable UC Davis job.

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

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

13
14 **6. Count 6: Penal Code 118a: Perjury.**

15 Penal Code 118a states “[a]ny person who, ...swears, affirms, declares, deposes or
16 certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or
17 person, ...to any particular fact, and in such affidavit willfully and contrary to such oath states as
18 true any material matter which he knows to be false is guilty of perjury...”

19 In this case, Defendants Valery Thompson and James Russell signed, under penalty of
20 perjury, an Application for Original Contractor’s License on March 27, 2008. (People’s Exhibit
21 45.) The Application stated “I certify under penalty of perjury under the laws of the State of
22 California that all statements, answers, and representations made in this application, including all
23 supplemental statements attached hereto, are true and accurate, and that I reviewed the entire
24 contents of this application. (*The definition of “perjury” is telling a lie while under oath.*)”
25 (People’s Exhibit 45, italics in original.) In the application, the defendants checked the ‘no’ box
26 for question number 12 regarding whether anyone on the application, or immediate family
27 member, ever received a citation from the Contractor’s State License Board or had their
28 contractor’s license revoked. Valery Thompson and Earl Thompson were married on

1 approximately June 21, 2004. (People's Exhibit 3.) Therefore Earl Thompson was an immediate
2 family member of Valery Thompson. Additionally, Earl Thompson had two contractor's licenses
3 revoked in approximately 1995. (RT 250: 14-16.) Additionally, he had an unlicensed contractor
4 violation filed against him. (RT 249:23-24.) Earl Thompson later reapplied for a license and was
5 denied. (RT 251: 2-6.) The information is material because the Contractor's State License Board
6 uses this information to investigate whether to grant a Contractor's License to the applicant. (RT
7 256: 1-6.)

8 As stated above, Valery knew that Earl Thompson had his contractor's license revoked
9 and could not obtain another license based on the fact that they gave Mr. Russell 20% of the
10 corporation and thereby made him a partner even though Earl would be running all of the daily
11 operations and acting as the owner of the company. (See RT 318:1-12.) The only way that Earl
12 Thompson was able to run a company with a contractor's license was to make it appear that a
13 licensed contractor, James Russell, was the one running the company. As president of the
14 corporation, it is unreasonable to imply that Valery Thompson did not know that Earl
15 Thompson's license was revoked and that he could not receive one, since that is the only reason
16 they would put James Russell, an employee, on the contractor's license. Additionally, John
17 Middleton testified that Lita Evans stated that she asked whether Earl Thompson was a licensed
18 contractor during an unrelated project which Ms. Evans was asking for. (RT 226:16-26.) Valery
19 Thompson produced Russell/Thompson's contractor's license card and stated that it proves that
20 Earl Thompson was a licensed contractor. (Ibid.) Indeed, Valery Thompson was informed in
21 2008 that Earl Thompson was not a licensed contractor and had his license revoked. (RT 227:24-
22 228:9.) As explained below, for Earl Thompson to be able to legally use Russell/Thompson's
23 contractor's license it would require Earl Thompson to be an employee, which he was not.
24 Therefore, when Valery signed the Application for a Contractor's License she knew that Earl
25 Thompson had his contractor's license revoked.

26 Finally, this application was signed by the defendants and delivered to the Contractor's
27 State License Board. (RT 257: 21-22.) Therefore the defendants committed perjury by checking
28 the 'no' box for question 12.

1 Additionally, the defendants checked the 'yes' box for the question regarding whether the
2 qualifying individual will supervise construction, manage construction activities by making
3 technical and administrative decisions, check jobs for proper workmanship or direct supervision
4 on construction job sites. However, Earl Thompson was the one who ran the company, a fact
5 which James Russell knew at the time of signing the application. (RT 316:10-23 and 317:9-22.)
6 James Russell knew his role would be that of an employee. (RT 318: 13-16.) Therefore from the
7 beginning, James Russell knew that he would not have any supervisory or managerial duties in
8 the newly formed corporation. Instead, the corporation would be supervised and managed by
9 Earl Thompson.

10 As stated above, this application was signed by the defendants and delivered to the
11 Contractor's State License Board. (RT 257: 21-22.) Finally, this information is also material
12 because, under Business and Professions Code 7068.1, a qualifying individual "shall be
13 responsible for exercising that direct supervision and control of his or her employer's or
14 principal's construction operations to secure compliance with this chapter and the rules and
15 regulations of the board..." Therefore the Contractor's State License Board uses the answer to
16 this question to determine whether the corporation is complying with state law.

17 Although Valery Thompson and James Russell were the coconspirators who actually
18 committed the perjury, Earl Thompson, as a coconspirator, is liable for all actions done by his
19 coconspirators if those actions are in furtherance of the conspiracy or a reasonable and natural
20 consequence of the object of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86; *People v.*
21 *Scott* (1964) 224 Cal.App.2d 146; *In re Hardy* (2007) 41 Cal.4th 977.) For the perjury counts
22 related to the contractor's state license application, the perjury was a necessary part of
23 completing the objective of the conspiracy, i.e. allowing Earl Thompson to contract without a
24 license and obtain the UC Davis contract. Since Russell/Thompson would have to be a licensed
25 contractor to obtain the contract, or any construction contract, RT 315:17-23, this perjury was in
26 furtherance of the conspiracy, fell within the scope of the conspiracy and was a reasonably
27 foreseeable consequence of the conspiracy. Therefore both defendants should be held to answer
28 for this count and counts 7 and 8.

1
2 **7. Count 7: Penal Code 118a: Perjury.**

3 Count 7 references the perjury committed in People's Exhibit 44. In People's Exhibit 44,
4 just as in People's Exhibit 45, Valery Thompson signed, under penalty of perjury, that all
5 answers on the application were correct. People's Exhibit 44 contained the same question
6 number 12, asking whether any immediate family member has had a citation from the
7 Contractor's State License Board or had a license revoked. This application was signed on
8 December 24, 2008 and delivered to the Contractor's State License Board. (RT 254:1-2.) For all
9 the reasons stated above, this constitutes perjury and the defendant coconspirators should be held
10 to answer for this charge.

11
12 **8. Count 8: Penal Code 118a: Perjury.**

13 Count 8 references the perjury committed in People's Exhibit 46. In People's Exhibit 46,
14 just as in People's Exhibits 44 and 45, Valery Thompson signed, under penalty of perjury, that
15 all answers on the application were correct. People's Exhibit 46 contained the same question
16 number 12, asking whether any immediate family member has had a citation from the
17 Contractor's State License Board or had a license revoked. This application was signed on
18 March 25, 2009 and delivered to the Contractor's State License Board. (RT 254:1-2.) For all the
19 reasons stated above, this constitutes perjury and the defendant coconspirators should be held to
20 answer for this charge.

21
22 **9. Count 9: Penal Code 118a: Perjury.**

23 Counts 9 through 26 reference the Affidavits for Paid Prevailing Wages. Count 9 is
24 located in People's Exhibit 22. On September 9, 2009, Earl Thompson signed under penalty of
25 perjury, that all employees of Russell/Thompson were paid the correct prevailing wages. Page 3
26 of People's Exhibit 22 shows that Earl Thompson reported that he paid Luis Guerra \$1,121.32
27 for the pay period ending September 18, 2009. The next page, however, shows that for the week
28 ending September 18, 2009, Luis Guerra was actually paid \$930.39. The final page is the check

1 which confirms that Luis Guerra was paid \$930.39. It is also important to note that although the
2 Prevailing Wage rate was \$55.94 per hour and it was later increased to \$59.44 per hour and then
3 \$60.34 per hour for carpenters (RT 29:15-23), Earl Thompson only purported to pay Luis Guerra
4 \$40.61 per hour as recorded on the Certified Payroll Report (page 3 of People's Exhibit 22), and
5 actually paid \$33.84 per hour, as recorded on his paystub. Luis Guerra did carpentry work while
6 at Russell/Thompson. (RT 22:24- 23:1.) Additionally, the contract was for carpentry work. (RT
7 28:21-25.)

8 People's Exhibit 22 was delivered to Brown Construction. (RT 280:28-281:2.) Finally,
9 this information is material because it resulted in an underpayment of Mr. Guerra's wages by a
10 considerable amount. For example, over the entire project, Mr. Guerra was underpaid by
11 \$34,554.96. (People's Exhibit 12.) Therefore, both because the actual amount of wages and the
12 rate of pay were falsified on the Certified Payroll Reports, the defendants should be held to
13 answer for this count.

14 Although Earl Thompson was the coconspirators who actually committed the perjury,
15 Valery Thompson, as a coconspirator, is liable for all actions done by her coconspirator if those
16 actions are in furtherance of the conspiracy or a reasonable and natural consequence of the object
17 of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86; *People v. Scott* (1964) 224 Cal.App.2d
18 146; *In re Hardy* (2007) 41 Cal.4th 977.) For the perjury counts related to the certified payroll
19 reports, Earl Thompson's perjury was in furtherance of the conspiracy because it allowed
20 Russell/Thompson to continue contracting without a license by saving the corporation money
21 during the decline of the economy. Additionally, it fell within the scope of the conspiracy
22 because it was done while Russell/Thompson was contracting without a license on the UC Davis
23 project. Finally, the offense could reasonably have been foreseen as a necessary or natural
24 consequence of the unlawful agreement because it is reasonably foreseeable that during a
25 conspiracy where the objective of the conspiracy is to fraudulently obtain a \$1.5 million contract
26 from UC Davis, that the conspirators would steal from other individuals or entities during the
27 conspiracy.

1 Therefore both defendants should be held to answer for this count and the remaining
2 perjury counts.
3

4 **10. Count 10: Penal Code 118a: Perjury.**

5 Count 10 is located in People's Exhibit 23. On September 25, 2009, Earl Thompson
6 signed under penalty of perjury, that all employees of Russell/Thompson were paid the correct
7 prevailing wages. Page 3 of People's Exhibit 23 shows that Earl Thompson reported that he paid
8 Luis Guerra at a rate of \$40.61 during the second pay period. (RT 284:14-19.) Page 2 of People's
9 Exhibit 23 shows that the second pay period covered the dates of September 21, 2009 through
10 September 25, 2009. Page 4, however, shows that for the week ending September 25, 2009, Luis
11 Guerra was actually paid at a rate of \$33.84 and received \$1,121.32. The final page is the check
12 which confirms that Luis Guerra was paid \$1,121.32. Therefore, although the Prevailing Wage
13 rate was \$55.94 per hour and it was later increased to \$59.44 per hour and then \$60.34 per hour
14 for carpenters (RT 29:15-23), Earl Thompson only purported to pay Luis Guerra \$40.61 per hour
15 as recorded on the Certified Payroll Report (page 3 of People's Exhibit 23), and actually paid
16 \$33.84 per hour, as recorded on his paystub. Luis Guerra did carpentry work while at
17 Russell/Thompson. (RT 22:24- 23:1.) Additionally, the contract was for carpentry work. (RT
18 28:21-25.)

19 People's Exhibit 23 was delivered to Brown Construction. (RT 283:21-24.) Finally, this
20 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
21 considerable amount, as stated above. Therefore, because the rate of pay was falsified on the
22 Certified Payroll Reports, the defendants should be held to answer for this count.
23

24 **11. Count 11: Penal Code 118a: Perjury.**

25 Count 11 is located in People's Exhibit 24. On October 2, 2009, Earl Thompson signed
26 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
27 prevailing wages. Page 3 of People's Exhibit 24 shows that Earl Thompson reported that Luis
28 Guerra was classified as a laborer. However, Luis Guerra did carpentry work while at

1 Russell/Thompson. (RT 22:24- 23:1.) Additionally, the entire contract was for carpentry work,
2 RT 28:21-25, and the Department of Industrial Relations, experts on prevailing wage
3 requirements, determined that Luis Guerra is correctly classified as a carpenter. (People's Exhibit
4 12.) When workers are misclassified, as in this case, as laborers rather than carpenters, it results
5 in an underpayment of their wages. (RT 28:5-10.)

6 People's Exhibit 23 was delivered to Brown Construction. (RT 286:5-7.) Finally, this
7 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
8 considerable amount, as stated above. Therefore, because the classification was falsified on the
9 Certified Payroll Reports, the defendants should be held to answer for this count.

10
11 **12. Count 12: Penal Code 118a: Perjury.**

12 Count 12 is located in People's Exhibit 25. On October 9, 2009, Earl Thompson signed
13 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
14 prevailing wages. Page 3 of People's Exhibit 25 shows that Earl Thompson reported that he paid
15 Luis Guerra at a rate of \$40.61 per hour for the pay period ending October 9, 2009. The next
16 page, however, shows that for the week ending October 9, 2009, Luis Guerra was actually paid at
17 a rate of \$33.84 and received \$1,121.32. The final page is the check which confirms that Luis
18 Guerra was paid \$1,121.32. As stated above, the Prevailing Wage rate was \$55.94 per hour and it
19 was later increased to \$59.44 per hour and then \$60.34 per hour for carpenters (RT 29:15-23).
20 Luis Guerra did carpentry work while at Russell/Thompson. (RT 22:24- 23:1.) Additionally, the
21 contract was for carpentry work. (RT 28:21-25.)

22 People's Exhibit 25 was delivered to Brown Construction. (RT 287:4-9.) Finally, this
23 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
24 considerable amount. Therefore, because the rate of pay was falsified on the Certified Payroll
25 Reports, the defendants should be held to answer for this count.

26 ///

27 ///

28 ///

1 **13. Count 13: Penal Code 118a: Perjury.**

2 Count 13 is located in People's Exhibit 26. On October 16, 2009, Earl Thompson signed
3 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
4 prevailing wages. Page 3 of People's Exhibit 26 shows that Earl Thompson reported that he paid
5 Cuauhtenmoc Jaurequi at a rate of \$50.34 per hour for the pay period ending October 16, 2009.
6 The next page, however, shows that for the week ending October 16, 2009, Cuauhtenmoc
7 Jaurequi was actually paid at a rate of \$44.79 and received \$793.50. The final page is the check
8 which confirms that Cuauhtenmoc Jaurequi was paid \$793.50. As stated above, the Prevailing
9 Wage rate was \$55.94 per hour and it was later increased to \$59.44 per hour and then \$60.34 per
10 hour. (RT 29:15-23).

11 People's Exhibit 26 was delivered to Brown Construction. (RT 288:15-21.) Finally, this
12 information is material because it resulted in an underpayment of Mr. Cuauhtenmoc Jaurequi's
13 wages by a considerable amount. Therefore, because the rate of pay was falsified on the Certified
14 Payroll Reports, the defendants should be held to answer for this count.

15
16 **14. Count 14: Penal Code 118a: Perjury.**

17 Count 14 is located in People's Exhibit 27. On October 24, 2009, Earl Thompson signed
18 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
19 prevailing wages. Page 3 of People's Exhibit 27 shows that Earl Thompson reported that he paid
20 Javier Jaurequi at a rate of \$50.34 per hour for the pay period ending October 23, 2009. The next
21 page, however, shows that for the week ending October 23, 2009, Javier Jaurequi was actually
22 paid at a rate of \$44.79 and received \$1,393.09. The final page is the check which confirms that
23 Javier Jaurequi was paid \$1,393.09. As stated above, the Prevailing Wage rate was \$55.94 per
24 hour and it was later increased to \$59.44 per hour and then \$60.34 per hour (RT 29:15-23).

25 People's Exhibit 27 was delivered to Brown Construction. (RT 290:3-9.) Finally, this
26 information is material because it resulted in an underpayment of Mr. Javier Jaurequi's wages by
27 a considerable amount. Therefore, because the rate of pay was falsified on the Certified Payroll
28 Reports, the defendants should be held to answer for this count.

1
2 **15. Count 15: Penal Code 118a: Perjury.**

3 Count 15 is located in People's Exhibit 28. On November 2, 2009, Earl Thompson signed
4 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
5 prevailing wages. Page 3 of People's Exhibit 28 shows that Earl Thompson reported that he paid
6 Luis Guerra \$969.50 for the pay period ending October 31, 2009. Page 4, however, shows that
7 for the week ending October 30, 2009, Luis Guerra was actually paid \$494.06. The final page is
8 the check which confirms that Luis Guerra was paid \$494.06.

9 People's Exhibit 28 was delivered to Brown Construction. (RT 291:16-27.) Finally, this
10 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
11 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
12 Payroll Reports, the defendants should be held to answer for this count.

13
14 **16. Count 16: Penal Code 118a: Perjury.**

15 Count 16 is located in People's Exhibit 29. On November 10, 2009, Earl Thompson
16 signed under penalty of perjury, that all employees of Russell/Thompson were paid the correct
17 prevailing wages. Page 2 of People's Exhibit 29 shows that Earl Thompson reported that he paid
18 Luis Guerra \$1,635.30 for the pay period ending November 7, 2009. Page 3, however, shows
19 that for the week ending November 6, 2009, Luis Guerra was actually paid \$1,118.53. The final
20 page is the check which confirms that Luis Guerra was paid \$1,118.53. Like the other perjury
21 counts, in this count Luis Guerra was also paid at the incorrect hourly rate.

22 People's Exhibit 29 was delivered to Brown Construction. (RT 293:5-11.) Finally, this
23 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
24 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
25 Payroll Reports, the defendants should be held to answer for this count.

26 ///

27 ///

28 ///

1 **17. Count 17: Penal Code 118a: Perjury.**

2 Count 17 is located in People's Exhibit 30. On November 24, 2009, Earl Thompson
3 signed under penalty of perjury, that all employees of Russell/Thompson were paid the correct
4 prevailing wages. Page 2 of People's Exhibit 30 shows that Earl Thompson reported that he paid
5 Luis Guerra \$1,927.83 for the pay period ending November 21, 2009. Page 3, however, shows
6 that for the week ending November 20, 2009, Luis Guerra was actually paid \$1,373.26. The final
7 page is the check which confirms that Luis Guerra was paid \$1,373.26. Like the other perjury
8 counts, in this count Luis Guerra was also paid at the incorrect hourly rate.

9 People's Exhibit 30 was delivered to Brown Construction. (RT 294:6-11.) Finally, this
10 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
11 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
12 Payroll Reports, the defendants should be held to answer for this count.

13
14 **18. Count 18: Penal Code 118a: Perjury.**

15 Count 18 is located in People's Exhibit 31. On November 16, Earl Thompson signed
16 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
17 prevailing wages. Page 3 of People's Exhibit 31 shows that Earl Thompson reported that he paid
18 Adrian Jaurequi \$2,285.66 for the pay period ending November 14, 2009. Page 4, however,
19 shows that on November 17, 2009, Adrian Jaurequi was actually paid \$1,777.82.

20 People's Exhibit 31 was delivered to Brown Construction. (RT 295:9-15.) Finally, this
21 information is material because it resulted in an underpayment of Mr. Adrian Jaurequi's wages
22 by a considerable amount, as stated above. Therefore, because the pay was falsified on the
23 Certified Payroll Reports, the defendants should be held to answer for this count.

24
25 **19. Count 19: Penal Code 118a: Perjury.**

26 Count 19 is located in People's Exhibit 32. On November 28, 2009, Earl Thompson
27 signed under penalty of perjury, that all employees of Russell/Thompson were paid the correct
28 prevailing wages. Page 3 of People's Exhibit 32 shows that Earl Thompson reported that he paid

1 Javier Jaurequi \$1,213.24 for the pay period ending November 28, 2009. Page 4, however, shows
2 that for the week ending November 29, 2009, Javier Jaurequi was actually paid \$1,018.81. The
3 final page is the check which confirms that Javier Jaurequi was paid \$1,018.81. Like the other
4 perjury counts, in this count Javier Jaurequi was also paid at the incorrect hourly rate.

5 People's Exhibit 32 was delivered to Brown Construction. (RT 296:6-12.) Finally, this
6 information is material because it resulted in an underpayment of Mr. Javier Jaurequi's wages by
7 a considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
8 Payroll Reports, the defendants should be held to answer for this count.

9
10 **20. Count 20: Penal Code 118a: Perjury.**

11 Count 20 is located in People's Exhibit 33. On December 8, 2009, Earl Thompson signed
12 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
13 prevailing wages. Page 3 of People's Exhibit 33 shows that Earl Thompson reported that he paid
14 Luis Guerra \$2,104.46 for the pay period ending December 5, 2009. Page 4, however, shows that
15 for the week ending December 6, 2009, Luis Guerra was actually paid \$1,258.86. The final page
16 is the check which confirms that Luis Guerra was paid \$1,258.86. Like the other perjury counts,
17 in this count Luis Guerra was also paid at the incorrect hourly rate.

18 People's Exhibit 33 was delivered to Brown Construction. (RT 297:9-15.) Finally, this
19 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
20 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
21 Payroll Reports, the defendants should be held to answer for this count.

22
23 **21. Count 21: Penal Code 118a: Perjury.**

24 Count 21 is located in People's Exhibit 34. On December 14, 2009, Earl Thompson
25 signed under penalty of perjury, that all employees of Russell/Thompson were paid the correct
26 prevailing wages. Page 3 of People's Exhibit 34 shows that Earl Thompson reported that he paid
27 Luis Guerra \$1,587.00 for the pay period ending December 12, 2009. Page 4, however, shows
28 that for the week ending December 13, 2009, Luis Guerra was actually paid \$1,441.71. The final

1 page is the check which confirms that Luis Guerra was paid \$1,441.71. Like the other perjury
2 counts, in this count Luis Guerra was also paid at the incorrect hourly rate.

3 People's Exhibit 34 was delivered to Brown Construction. (RT 298:11-16.) Finally, this
4 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
5 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
6 Payroll Reports, the defendants should be held to answer for this count.

7

8 **22. Count 22: Penal Code 118a: Perjury.**

9 Count 22 is located in People's Exhibit 35. On December 28, 2009, Earl Thompson
10 signed under penalty of perjury, that all employees of Russell/Thompson were paid the correct
11 prevailing wages. Page 3 of People's Exhibit 35 shows that Earl Thompson reported that he paid
12 Javier Jaurequi \$1,213.24 for the pay period ending December 27, 2009. Page 4, however, shows
13 that for the week ending December 27, 2009, Javier Jaurequi was actually paid \$1,018.81. The
14 final page is the check which confirms that Javier Jaurequi was paid \$1018.81. Like the other
15 perjury counts, in this count Javier Jaurequi was also paid at the incorrect hourly rate.

16 People's Exhibit 35 was delivered to Brown Construction. (RT 299:14-20.) Finally, this
17 information is material because it resulted in an underpayment of Mr. Javier Jaurequi's wages by
18 a considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
19 Payroll Reports, the defendants should be held to answer for this count.

20

21 **23. Count 23: Penal Code 118a: Perjury.**

22 Count 23 is located in People's Exhibit 36. On January 2, 2010, Earl Thompson signed
23 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
24 prevailing wages. Page 3 of People's Exhibit 36 shows that Earl Thompson reported that he paid
25 Adrian Jaurequi \$1,576.54 for the pay period ending January 2, 2010. Page 4, however, shows
26 that for the week ending January 3, 2010, Adrian Jaurequi was actually paid \$1,307.10. Like the
27 other perjury counts, in this count Adrian Jaurequi was also paid at the incorrect hourly rate.

28

1 People's Exhibit 36 was delivered to Brown Construction. (RT 300:12-16.) Finally, this
2 information is material because it resulted in an underpayment of Mr. Adrian Jaurequi's wages
3 by a considerable amount, as stated above. Therefore, because the pay was falsified on the
4 Certified Payroll Reports, the defendants should be held to answer for this count.
5

6 **24. Count 24: Penal Code 118a: Perjury.**

7 Count 24 is located in People's Exhibit 37. On February 2, 2010, Earl Thompson signed
8 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
9 prevailing wages. Page 3 of People's Exhibit 37 shows that Earl Thompson reported that he paid
10 Luis Guerra \$1,949.90 for the pay period ending January 17, 2010. Page 4, however, shows that
11 for the week ending January 17, 2010, Luis Guerra was actually paid \$1,390.68. The final page
12 is the check which confirms that Luis Guerra was paid \$1,390.68. Like the other perjury counts,
13 in this count Luis Guerra was also paid at the incorrect hourly rate.

14 People's Exhibit 37 was delivered to Brown Construction. (RT 301:21-26.) Finally, this
15 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
16 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
17 Payroll Reports, the defendants should be held to answer for this count.
18

19 **25. Count 25: Penal Code 118a: Perjury.**

20 Count 25 is located in People's Exhibit 38. On February 17, 2010, Earl Thompson signed
21 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
22 prevailing wages. Page 3 of People's Exhibit 38 shows that Earl Thompson reported that he paid
23 Luis Guerra \$838.52 for the pay period ending January 23, 2010. Page 4, however, shows that
24 for the week ending January 24, 2010, Luis Guerra was actually paid \$815.80. The final page is
25 the check which confirms that Luis Guerra was paid \$815.80. Like the other counts, the certified
26 payroll reports show that Luis Guerra was paid at a rate of \$40.61 per hour, while he was
27 actually paid at a rate of \$33.84 per hour and was owed a rate of \$60.34 per hour for carpenters
28 (RT 29:15-23).

1 People's Exhibit 38 was delivered to Brown Construction. (RT 302:24-303:1) Finally,
2 this information is material because it resulted in an underpayment of Mr. Guerra's wages by a
3 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
4 Payroll Reports, the defendants should be held to answer for this count.

5
6 **26. Count 26: Penal Code 118a: Perjury.**

7 Count 26 is located in People's Exhibit 39. On February 27, 2010, Earl Thompson signed
8 under penalty of perjury, that all employees of Russell/Thompson were paid the correct
9 prevailing wages. Page 3 of People's Exhibit 39 shows that Earl Thompson reported that he paid
10 Luis Guerra \$2,022.22 for the pay period ending February 6, 2010. Page 4, however, shows that
11 for the week ending February 7, 2010, Luis Guerra was actually paid \$1,413.50. Like the other
12 perjury counts, in this count Luis Guerra was also paid at the incorrect hourly rate.

13 People's Exhibit 39 was delivered to Brown Construction. (RT 304:3-9.) Finally, this
14 information is material because it resulted in an underpayment of Mr. Guerra's wages by a
15 considerable amount, as stated above. Therefore, because the pay was falsified on the Certified
16 Payroll Reports, the defendants should be held to answer for this count.

17
18 **27. Count 27: Business and Professions Code 7028(a): Contracting Without a**
19 **License.**

20 California Business and Professions Code 7028(a) states "[i]t is a misdemeanor for a
21 person to engage in the business or act in the capacity of a contractor within this state without
22 having a license therefore, unless the person is particularly exempted from the provisions of this
23 chapter." For the purposes of BP 7028(a), a contractor is defined as:

24
25 synonymous with "builder" and, within the meaning of this chapter, a contractor is any
26 person who undertakes to or offers to undertake to, or purports to have the capacity to
27 undertake to, or submits a bid to, or does himself or herself or by or through others,
28 construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any
building, highway, road, parking facility, railroad, excavation or other structure, project,
development or improvement, or to do any part thereof, including the erection of
scaffolding or other structures or works in connection therewith, or the cleaning of

1 grounds or structures in connection therewith, or the preparation and removal of roadway
2 construction zones, lane closures, flagging, or traffic diversions, or the installation, repair,
3 maintenance, or calibration of monitoring equipment for underground storage tanks, and
4 whether or not the performance of work herein described involves the addition to, or
5 fabrication into, any structure, project, development or improvement herein described of
6 any material or article of merchandise. "Contractor" includes subcontractor and specialty
7 contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or
8 any public conveyance.

9 Additionally, a person is exempted from the provisions of Business and Professions code
10 7028(a) if, *inter alia*, he is an employee. (Business and Professions Code 7053.) Someone is an
11 employee if he "engages in the activities herein regulated as an employee who receives wages as
12 his or her sole compensation, does not customarily engage in an independently established
13 business, and does not have the right to control or discretion as to the manner of performance so
14 as to determine the final results of the work performed". (*Ibid.*)

15 In this case, the defendants conspired to allow Earl Thompson to engage in contracting
16 work without a license. Mr. Thompson engaged in contracting work by signing the contract for
17 the work (People's Exhibit 14), being the manager in charge of the job site (RT 259:17-20), and
18 giving directions to the foreman and employees on what to do (RT 259: 17-20). By doing these
19 actions, Earl Thompson offered to undertake construction of UC Davis Tercero dorms and
20 purported to have the capacity to do so and did, through the workers who he directed, built
21 Tercero student housing. Therefore Earl Thompson was acting in the capacity of a contractor.

22 Secondly, Earl Thompson did not have a valid contracting license. Manya Edwards, who
23 worked at the Contractor's State License Board at the time, testified that during the end of 2009
24 and the beginning of 2010, Earl Thompson did not have a contracting license. (RT 251:7-9.) The
25 construction at UC Davis occurred during that time frame. (People's Exhibit 47). While
26 Russell/Thompson had a contracting license during that timeframe, Earl Thompson was not on
27 the license and could only act under the license if he was an employee. (RT 252:22- 253:18,
28 People's Exhibits 44-46.) For the reasons stated below, Earl Thompson was not working as an
employee of Russell/Thompson.

1 Finally, Earl Thompson did not fall under any of the exceptions to Business and
2 Professions Code 7028, including being an employee. In this case Earl Thompson was the
3 manager in charge of the job site. (RT 259:17-20). He gave directions to the foreman and
4 employees on what to do. (RT 259: 17-20.) Earl Thompson also hired employees (RT 260:11-13
5 and 260:22-26), did payroll (People's Exhibit 22-39), signed paychecks (People's Exhibit 22-
6 39), signed the approximately \$1.5 million contract to work at UC Davis on behalf of
7 Russell/Thompson (People's Exhibit 14), was the designated payroll officer for
8 Russell/Thompson (People's Exhibit 11 and 15), signed the payroll reports for State Fund
9 (People's Exhibit 41 and 42), was issued a company credit card (People's Exhibit 18), and was
10 authorized to pull building permits for Russell/Thompson (People's Exhibit 20). From the
11 evidence and testimony at the preliminary hearing, it is clear that Earl Thompson was the *de*
12 *facto* owner and operator of Russell/Thompson. For all of these reasons Earl Thompson was not
13 an employee under Business and Professions Code 7053 because he had the "right to control and
14 discretion as to the manner of performance so as to determine the final results of the work
15 performed" and regularly exercised that right.

16 Therefore, since Earl Thompson was acting in the capacity of a contractor, without a
17 contractor's license and was not an employee of Russell/Thompson, he was contracting without a
18 license. Since Valery Thompson conspired to allow him to act as a manager and owner of
19 Russell/Thompson, knowing that he did not have a license, as described above under the
20 conspiracy charge, both defendants should be held to answer for this misdemeanor.

21 Although Earl Thompson was the coconspirator who actually contracted without a
22 license, Valery Thompson, as a coconspirator, is liable for all actions done by her coconspirator
23 Earl Thompson if those actions are in furtherance of the conspiracy or a reasonable and natural
24 consequence of the object of the conspiracy. (*People v. Hardy* (1992) 2 Cal.4th 86; *People v.*
25 *Scott* (1964) 224 Cal.App.2d 146; *In re Hardy* (2007) 41 Cal.4th 977.) The *Pinkerton* analysis in
26 this case is simple, since this was the target offense of the conspiracy. This offense was
27 committed in furtherance of the conspiracy because it was the objective of the conspiracy.

28

1 Additionally, it fell within the scope of the unlawful project and could have reasonably been
2 foreseen since it was the objective of the conspiracy.

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

4
5 **28. Case Enhancement a: Penal Code 12022.6(a)(2): Loss exceeding \$200,000.**

6 California Penal Code 12022.6(a) states “[w]hen any person takes, damages, or destroys
7 any property in the commission or attempted commission of a felony, with the intent to cause
8 that taking, damage or destruction, the court shall impose an additional term as follows: ... (2)
9 [i]f the loss exceeds two hundred thousand dollars (\$200,000), the court, in addition and
10 consecutive to the punishment prescribed for the felony or attempted felony of which the
11 defendant has been convicted, shall impose an additional term of two years.” The amount of loss
12 is based on what the victim lost, not what the defendant gained. (*People v. Denman* (2013) 218
13 Cal.App.4th 800.)

14 In this case, the defendants stole \$633,199.55 of wages which were due to their workers
15 (RT 30:6-9.) Ms. Bergin, a Deputy Labor Commissioner with the Department of Industrial
16 Relations, audited the certified payroll reports submitted by Russell/Thompson, worker
17 interviews, and financial documents of Russell/Thompson (RT 26:5-10, 27:16-24.) From those
18 documents, she was able to determine the amount of prevailing wages which was stolen from the
19 workers was \$633,199.55. (People’s Exhibit 12.) These losses, by themselves, are sufficient
20 evidence for the court to hold the defendants to answer on this enhancement.

21 However, Mr. Embry from State Fund Insurance also testified that because the
22 defendants underreported their wages from the UC Davis job to State Fund this resulted in the
23 defendants paying a lower premium for the coverage of their workers. (RT 154:6-155:17.) This
24 caused a loss of \$359,011.43 in premiums. (RT 155:22-156:1.) This is a loss because, although
25 the defendants were underreporting wages and the workers on the job, they were still receiving
26 coverage for all of their workers. (RT 141:28-142:7.) Their lie allowed them to save \$359,011.43
27 in premium payments while still receiving the same amount of coverage because although they
28 had approximately \$1.3 million of wages which should have been reported, they only reported

1 \$28,462 (RT 158:5-17 and 149:16-18.) Therefore, since the defendants stole \$633,199.55 from
2 their workers and another \$359,011.43 from State Fund Insurance, the \$200,000 minimum
3 requirement for this enhancement has been greatly exceeded.
4

5 **29. Case Enhancement b: Penal Code 12022.6(a)(3): Loss exceeding \$1,300,000.**

6 Amie Burgin testified that the wages stolen from the workers totaled \$633,199.55 (RT
7 30: 6-9.) Joe Embry testified that State Fund lost \$359,011.43 in premium based on the
8 defendants' false representations. Additionally, as detailed in Count 4, the defendants obtained
9 the entire contract, worth \$1,536,380 by false pretenses and fraud. (People's Exhibit 14.)
10 Therefore the defendants caused a loss in this case of \$2,528,590.98. Therefore the Court should
11 hold the defendants to answer for this enhancement.
12

13 **30. Case Enhancement c: Penal Code 186.11(a)(1)(2): Aggravated White Collar**
14 **Crime Enhancement.**

15 California Penal Code 186.11(a)(1)(2) states "[a]ny person who commits two or more
16 related felonies, a material element of which is fraud or embezzlement, which involve a pattern
17 of related felony conduct, and the pattern of related felony conduct involves the taking of, or
18 results in the loss by another person or entity of, more than one hundred thousand dollars
19 (\$100,000), shall be punished..." as described in paragraph 186.11(a)(1)(2) or 186.11(a)(1)(3).
20 Penal Code 186.11(a)(1)(2) provides that "[i]f the pattern of related felony conduct involves the
21 taking of, or results in the loss by another person or entity of, more than five hundred thousand
22 dollars (\$500,000), the additional term of punishment shall be two, three, or five years in the
23 state prison." This is consecutive to the punishment proscribed for the felony offenses. (Penal
24 Code 186.11(a)(1).)

25 In *People v. Petronella* (2013) 218 Cal.App.4th 945, the Court defined 'related felonies'
26 for purposes of Penal Code 186.11. In *People v. Petronella*, the defense argued that 'related
27 felonies' can only be different felonies and not two felonies of the same code section. The Court
28 held that such an argument "ignores the definitions of the phrases 'a pattern of related felony

1 conduct' and 'two or more related felonies'" in Penal Code 186.11(a)(1). A pattern of felony
2 conduct "means engaging in at least two felonies that have the same or similar purpose, result,
3 principals, victims, or methods of commission, or are otherwise interrelated by distinguishing
4 characteristics, and that are not isolated events." (Penal Code 186.11(a)(1).) The phrase "two or
5 more related felonies means "felonies committed against two or more separate victims, or against
6 the same victim on two or more separate occasions." (Penal Code 186.11(a)(1).) For this reason
7 the Court held that the defendant's multiple convictions for Insurance Code 11880 satisfied the
8 enhancement's statutory requirements. (*People v. Petronella*, 218 Cal.App.4th at 961.)

9 In this case, the defendants stole \$633,199.55 of wages which were due to their workers
10 (RT 30:6-9.) The defendants also caused a loss of \$359,011.43 in premiums due to State Fund.
11 (RT 155:22-156:1.) Therefore, since the defendants stole \$633,199.55 from their workers and
12 another \$359,011.43 from State Fund Insurance, the \$100,000 minimum requirement for this
13 enhancement has been greatly exceeded.

14 15 **31. Statute of Limitations.**

16 The statute of limitations for Penal Code 182(a)(4), conspiracy to defraud, is three years.
17 (Penal Code 801). However, when the conspiracy is a continuing one, that time period does not
18 begin to run until the last overt act was committed. (*People v. Crosby* (1962) 58 Cal.2d 713;
19 *People v. Witt* (1975) 149 Cal.App.4th 402.) It does not begin to run when the conspiracy attains
20 its objective. (*Ibid.*)

21 In this case the last overt act alleged and proved at the preliminary hearing was that Earl
22 Thompson signed an Affidavit for Paid Prevailing Wage Rates (People's Exhibit 39) on
23 February 27, 2010. This is in furtherance of the conspiracy because Earl Thompson was
24 required, under the contract and under the Labor Code, to complete certified payroll reports and
25 submit them to Brown Construction. (People's Exhibit 14.) Submitting the certified payroll
26 reports was therefore a consequence of the conspiracy and necessary for the conspiracy to
27 continue to obtain its purpose. Therefore, unless the time was tolled as described below, the
28 statute of limitations for the conspiracy charge would run on February 27, 2013.

1 The statute of limitations for Labor Code 1778, theft of wages, is four years. (Penal Code
2 801.5, referencing 803(c).) This is because Penal Code 803(c) applies to crimes where “a
3 material element is fraud or breach of a fiduciary duty obligation”. Stealing worker’s wages by
4 failing to pay them at prevailing wage rates, failing to provide benefits and overtime pay and not
5 informing the workers that they are legally entitled to more money is fraudulent. Additionally,
6 since the defendant stole over \$633,000 from the workers, the 1778 violation is a “grand theft of
7 any type”, which falls under 803(c)(1).

8 As stated above, when the offense is one of continuing conduct, only one violation
9 occurs, as opposed to multiple violations. (*People v. Keehley* (1987) 193 Cal.App.3d 1381,
10 1385.) Therefore, “the limitations period does not commence as to continuing offenses until the
11 entire course of conduct is complete.” (*Ibid.*) In this case, the defendants stole employee wages
12 between September 18, 2009 (the date work began, People’s exhibit 47) and February 21, 2010
13 (the date work ended, People’s Exhibit 47). Therefore, unless the time was tolled, as described
14 below, the statute of limitations for the theft of wages charge would run on February 21, 2014.

15 The statute of limitations for Penal Code 487, grand theft, is four years. (Penal Code
16 801.5, referencing 803(c)(1).) In this case, the grand theft is a continuing offense, just like the
17 theft of wages. (See *People v. Keehley* (1987) 193 Cal.App.3d 1381, 1385.) The thefts in this
18 case, from State Fund and from UC Davis, occurred between September 18, 2009 (the date work
19 began, People’s exhibit 47) and February 21, 2010 (the date work ended, People’s Exhibit 47).
20 Therefore, unless the time was tolled, as described below, the statute of limitations for the grand
21 theft charges would run on February 21, 2014.

22 The statute of limitations for Insurance Code 11880, Insurance Fraud, is four years.
23 (Penal Code 801.5, referencing 803(c)(6), see *People v. Petronella* (2013) 218 Cal.App.4th 945.)
24 In this case, the insurance fraud charge is a continuing offense, just like the theft of wages. (See
25 *People v. Keehley* (1987) 193 Cal.App.3d 1381, 1385.) The defendants committed premium
26 fraud between September 18, 2009 (the date work began, People’s exhibit 47) and February 21,
27 2010 (the date work ended, People’s Exhibit 47). Therefore, unless the time was tolled, as
28

1 described below, the statute of limitations for the insurance fraud charge would run on February
2 21, 2014.

3 The statute of limitations for Penal Code 118a, perjury, is four years. (Penal Code 801.5,
4 referencing 803(c)(2).) The earliest perjury charge alleged occurred on March 27, 2008. (Count
5 6). Therefore, unless the time was tolled, as described below, the statute of limitations for the
6 earliest perjury charge would run on March 27, 2012.

7 The statute of limitations for Business and Professions Code 7028, Contracting without a
8 license, is 4 years. (Penal Code 802(d)(4).) Just like the other charges, Business and Professions
9 Code 7028 is a continuing offense and the statute of limitations does not begin to run until the
10 entire course of conduct is complete. In this case, the offense of contracting without a license
11 was completed on February 21, 2010 (the date work ended, People's Exhibit 47). Therefore,
12 unless the time was tolled, as described below, the statute of limitations for the contracting
13 without a license charge would run on February 21, 2014.

14 For the purposes of statute of limitations, prosecution commences, *inter alia*, when an
15 arrest warrant is filed. (California Penal Code 804(d).) In this case, an arrest warrant was signed
16 for Earl Thompson on October 22, 2013. (People's Exhibit 1 and People's Exhibit 4.) An arrest
17 warrant for Valery Thompson was signed on October 22, 2013. (People's Exhibit 5.) Therefore,
18 for both defendants and without taking tolling into account, prosecution commenced on October
19 22, 2013.

20 **a. Penal Code 803(b): Prosecution Pending in Another Jurisdiction.**

21 Penal Code 803(b) states: "No time during which prosecution of the same person for the
22 same conduct is pending in a court of this state is a part of a limitation of time prescribed in this
23 chapter." The tolling "suspends the running of the statute of limitation only for the conduct
24 underlying a charged offense." (*People v. Terry* (2005) 127 Cal.App.4th 750, 768-770.) For the
25 purposes of statute of limitations, prosecution commences, *inter alia*, when an arrest warrant is
26 filed. (California Penal Code 804(d).)

27 In Shasta County, the defendants were charged with Penal Code 487(a) between May 24,
28 2008 and March 2010, Insurance Code 11880(a) between May 24, 2008 and September 1, 2008,

1 Insurance Code 11880(a) between September 1, 2008 through October 1, 2008, Insurance Code
2 11880(a) between October 1, 2008 and February 1, 2009, Insurance Code 11880(a) between
3 February 1, 2009 through May 1, 2009, Insurance Code 11880(a) between May 1, 2009 and
4 August 1, 2009 and Insurance Code 11880(a) from August 1, 2009 through November 1, 2009.
5 (People's Exhibit 7.) [An earlier complaint charged both defendants with Insurance Code
6 11880(a) between May 24, 2008 and March 19, 2010. People's Exhibit 9.] Arrest warrants were
7 issued on March 24, 2011 for Earl Thompson (People's Exhibit 7) and on March 24, 2011 for
8 Valery Thompson (People's Exhibit 9).

9 The arrest warrants show the full name, age, address, birth date, race, hair color, eye
10 color, height, weight and social security number of both defendants. (People's Exhibits 7 and 9.)
11 The Yolo County warrants for both defendants also list such information. (People's Exhibits 4
12 and 5.) Additionally, People's 7 and 9 both contain court papers which are signed by Valery
13 Thompson and Earl Thompson. Finally, Deputy District Attorney Patricia Van Ert stated,
14 through the Prop. 115 testimony of Paul Hillegass, that she filed charges against Valery and Earl
15 Thompson in Shasta County. (RT 319:18-23.) For these reasons, it is clear that the prosecution in
16 both jurisdictions is for the same individuals.

17 Additionally, Deputy District Attorney Patricia Van Ert filed charges in Shasta County
18 which included all of the conduct which occurred at UC Davis between May 2008 and March
19 2010, along with other violations which occurred in other jurisdictions. (RT 319:17-20 and
20 320:1-12.) Her Amended Complaint also included the conduct which occurred at UC Davis. (RT
21 320:13-28.) This demonstrates that the charges are for the same conduct as those alleged in Yolo
22 County. It is also made clear by the fact that, once holding orders are issued in Yolo County for
23 the UC Davis conduct, Shasta County plans to dismiss their felony count which covers the UC
24 Davis conduct. (RT 321:1-9.)

25 People's Exhibit 8 shows that the case against Earl Thompson was still pending on March
26 27, 2014, months after the arrest warrant in Yolo County was issued. Therefore, since
27 prosecution for the conduct which occurred at UC Davis Tercero has been continuously
28

1 prosecuted against Earl Thompson since March 24, 2011, the statute of limitations has been
2 tolled since that date for defendant Earl Thompson.

3 People's Exhibit 9 shows that the case against Valery Thompson was dismissed on
4 September 22, 2011. Therefore the case was pending against her from March 24, 2011, until
5 September 22, 2011. The statute of limitations was therefore tolled during those months.
6

7 **b. Penal Code 803(d): Tolling while Defendant is Out of State.**

8 California Penal Code 803(d) states that "[i]f the defendant is out of the state when or
9 after the offense is committed, the prosecution may be commenced as provided in Section 804
10 within the limitations of time prescribed by this chapter, and no time up to a maximum of three
11 years during which the defendant is not within the state shall be a part of those limitations."

12 In this case, Valery Thompson submitted a change of address request to Redding Electric,
13 stating that her new address was in Louisville Colorado. (People's Exhibit 6.) This was done on
14 September 15, 2010. Therefore she was living out of state from at least that date.

15 Additionally, Earl Thompson filed a claim with the Labor Commissioner of the State of
16 California on April 25, 2011, stating that he did not receive prevailing wages from Russell
17 Thompson. (RT 31:25- 33:7; People's Exhibit 13.) In that claim, Earl Thompson listed his
18 current address was on S. Wolff St., Denver Colorado. Therefore from April 25, 2011, through
19 April 25, 2014, Defendant Earl Thompson's statute of limitations was tolled. Since the arrest
20 warrant was signed on October 22, 2013, it was filed within the statutory period.
21

22 **c. Penal Code 803(c): Tolling until Date of Discovery.**

23 Penal Code 803(c) states that, for offenses listed and for offenses "a material element of
24 which is fraud or breach of fiduciary obligation, the commission of the crimes of theft or
25 embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by
26 a public officer, employee, or appointee" that "[a] limitation of time prescribed in this chapter
27 does not commence to run until the discovery of an offense...". Penal Code 803(c) applies to the
28

1 crimes, *inter alia*, of grand theft of any type (803(c)(1)), perjury (803(c)(2)), and insurance fraud
2 (803(c)(1) or (c)(6)). This tolling provision was discussed in the pivotal case of *People v. Zamora*.

3 In *People v. Zamora* (1976) 17 Cal.3d 538, the California Supreme Court tackled the
4 question of what must be shown for 803(c)'s tolling to apply. The Court concluded that the
5 evidence must show the date on which the offense was discovered, how and by whom it was
6 discovered, the lack of actual and constructive knowledge prior to the date of discovery and the
7 reason that the offense was not discovered earlier. (*Ibid.*)

8 Penal Code 803(c) applies to the crimes, *inter alia*, of grand theft of any type (803(c)(1)),
9 perjury (803(c)(2)), and insurance fraud (803(c)(1) or (c)(6)). It is alleged in the Third Amended
10 Complaint to apply to counts 2 through 26, which includes violations of Labor Code 1778, Penal
11 Code 487, Insurance Code 11880 and Penal Code 118a.

12 In this case, testimony at the Preliminary Hearing showed that the first time that the crime
13 of Labor Code 1778, theft of worker wages, Count 2, was discovered was when worker William
14 Bennie filed a complaint with the Division of Labor Standards Enforcement on December 2,
15 2009. (RT 15:18-20 and 20:28-21:1.) In the complaint, the worker reported that he was not
16 receiving the correct wage rate. (RT 15:18-20.) Ms. Bergin then testified that before receiving
17 the complaint on December 2, 2009, no one at the Department of Industrial Relations (of which
18 the Division of Labor Standards Enforcement is a division) had, to her knowledge, actual or
19 constructive knowledge of anything which would alert a reasonable person to the presence of
20 fraud at the UC Davis construction site. (RT 16:17-23.) Ms. Bergin also testified that the DSLE
21 receives complaints and investigates those complaints. (RT 6:16-20.) It is reasonable to assume
22 that since no one at DSLE had any reason to suspect fraud before December 2, 2009, that no
23 complaints were filed before that date regarding Russell/Thompson's work at UC Davis. This
24 explains why the offense was not discovered on an earlier date. Therefore, as to LC 1778, the
25 date of discovery was December 2, 2009. However, it is important to note that the crime of 1778
26 had not been completed on that date, as the defendants continued stealing wages until February
27 21, 2010. Since it was a continuing course of conduct, the statute of limitations does not begin to
28 run until the course of conduct is complete. (*People v. Keehley* (1987) 193 Cal.App.3d 1381,

1 1385.) Therefore tolling under section 803(c), while applicable, does not impact the date when
2 the statute of limitations began to run on the Labor Code 1778 charge.

3 Similarly, the evidence for Counts 3, 4, and 5, Penal Code 487, 487 and Insurance Code
4 11880 respectively, shows that State Fund was first alerted about suspected fraud when they
5 received a tip fro the Northern California Carpenters Regional Council in October of 2009. (RT
6 142:12-16 and 152:14-19). Before that date State Fund had no actual or constructive knowledge
7 of any facts which would lead them to believe fraud was being committed at UC Davis by the
8 defendants. (RT 152:20-22.) Mr. Embry also testified that the only form which State Fund
9 received to tell them of the amount of wages paid was the 6224L. (RT 149:28-150:1). Therefore
10 there was no way for State Fund to discover the fraud earlier. Therefore the date of discovery
11 was in October 2009. However, since these three counts were continuing crimes, the statute did
12 not begin to run until February 21, 2010. Therefore tolling under section 803(c), while
13 applicable, does not impact the date when the statute of limitations began to run on counts 3, 4
14 and 5.

15 Counts 6, 7 and 8, the perjury charges based on the Contractor's State Licensing Board
16 licenses were not discovered until 2013, when the Yolo County District Attorney's Office
17 approached the contractor's board regarding the defendants' crimes. (RT 251:20- 252:5). Before
18 that date, the CSLB did not have any actual or constructive knowledge of the presence of fraud
19 regarding Russell/Thompson's licenses. (RT 252:19-21). However, the crime was earlier
20 reported to the Shasta District Attorney's office on February 5, 2010 from State Fund. (RT
21 113:25- 114:8.) Before that date, Shasta District Attorney's office did not have any reason to
22 believe that there was any fraud going on in Yolo County at the UC Davis Dorms. (RT 114:15-
23 19.) Therefore the date of discovery was February 5, 2010, the first date that the information was
24 submitted to a law enforcement agency which would lead a reasonable person to investigate
25 whether Russell/Thompson's contractor's license was valid.

26 Finally, the perjury charges, Counts 9 through 26, which are based on the Certified
27 Payroll Reports (People's Exhibits 22 through 39), were not discovered to be fraudulent until the
28 Department of Industrial Relations began its investigation on December 2, 2009, as described

1 above. (RT 15:18-20 and 20:28-21:1.) For the reasons stated above (that the DSLE did not have
2 actual or constructive knowledge of the fraud prior to the date of discovery and the reason
3 therefore), the date of discovery for all of the perjury charges is December 2, 2009.
4

5 **d. Conclusion.**

6 As demonstrated above, all charges were filed within their applicable statutory time
7 limits. To fully illustrate this consider the fact that the statute of limitations for the very earliest
8 crime began to run on March 27, 2008. Even given the shortest statute of limitations, three years,
9 the statute would run on March 27, 2011. However, before that date, on March 24, 2011
10 Defendants Earl Thompson and Valery Thompson both had arrest warrants issued for them in
11 Shasta County. This tolled the statute of limitations.

12 For Earl Thompson, the statute remains tolled even now. For Valery Thompson, the
13 statute was tolled until her case was dismissed on September 22, 2011. However, before her case
14 was dismissed, she moved out of state (on September 15, 2010). The fact that she was out of
15 state tolls the statute for another three years from September 22, 2011. Therefore her statute of
16 limitations would, at the very earliest, run on September 22, 2014. However, that is more than a
17 year **after** the arrest warrant was issued in Yolo County for her. Therefore even giving the
18 defendants every benefit of the doubt, all charges were filed within the applicable statute of
19 limitations timeframes.

20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

CONCLUSION

For the foregoing reasons, the People respectfully request that this court hold the defendants to answer for all charges and all enhancements.

Date: November 4, 2014

JEFF W. REISIG #182205
District Attorney for Yolo County

By:


Jennifer McHugh/ 279331
Deputy District Attorney

SUPERIOR COURT No. 13-3824

PROOF OF SERVICE

I, LORI HENDRIX, declare:

I am a citizen of the United States and a resident of the county of Yolo; I am over the age of eighteen years and not a party to the within entitled action; my business address is 301 Second Street, Woodland, California 95695. On November 4, 2014, I served the within document: PRELIMINARY HEARING BRIEF

- by placing a true copy thereof in the box located at 301 Second Street, Woodland and clearly designated for daily pick-up by the parties set forth below:
- by transmitting via facsimile the document listed above on this date before 5:00 pm to the fax number set forth below:
- by placing a true copy of the above document in a sealed envelope and deposited the same in the United States mail at Woodland, California, addressed as follows:

RODNEY BEEDE
Attorney at Law
177A Lincoln Ave
Woodland, CA 95695

ROBERT J. SPANGLER
Attorney at Law
177A Lincoln Ave
Woodland, CA 95695

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

Executed on November 4, 2014 at Woodland, California.


LORI HENDRIX