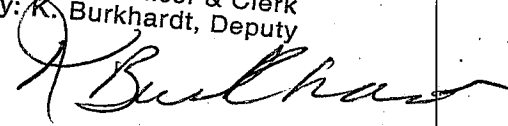


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FILED
Superior Court of California
County of Placer

JUN 22 2011

Jake Chatters
Executive Officer & Clerk
By: K. Burkhardt, Deputy



8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

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10 COUNTY OF PLACER

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12
13 PEOPLE OF THE STATE OF CALIFORNIA,

COURT NO. 62-101630

14 Plaintiff,

**PETITION TO PRESERVE PROPERTY
AND ASSETS PURSUANT TO PENAL
CODE §186.11**

15 v.

16 THOMAS HAROLD BERNHARDT
17 DOB: 03/23/1969

18 RACHEL LOUISE BERNHARDT
19 DOB: 06/21/1970

20 T.B. CONCRETE, INC.,

21 Defendants.

22 The People of the State of California by and through Kamala D. Harris, Attorney General,
23 and Carolyn Y. La, Deputy Attorney General, seek relief pursuant to Penal Code section 186.11
24 to preserve the property and assets of Defendants, based on the following:

25 1. On September 21, 2010, the People filed a fifteen count complaint in Placer County,
26 Court No. 62-101630, alleging that Defendants **THOMAS HAROLD BERNHARDT** and
27 **RACHEL LOUISE BERNHARDT, DBA T.B. CONCRETE, INC.**, violated Unemployment
28 Insurance Code sections 2117.5 and 2118.5 (Payroll Tax Fraud) and Insurance Code section

1 11880 (Workers' Compensation Premium Fraud). (Exhibit 1.) Further, the complaint alleged
2 that Defendants Thomas Harold Bernhardt and Rachel Louise Bernhardt are subject to the
3 aggravated white-collar crime enhancement under Penal Code section 186.11, subdivision (a),
4 subsection (1).

5 2. The pattern of alleged felony conduct by defendants Thomas Harold Bernhardt and
6 Rachel Louise Bernhardt conform to the definition of aggravated white collar crime pursuant to
7 Penal Code section 186.11, subdivision (a), subsection (1).

8 3. In addition to the additional terms of prison set forth in section 186.11, subdivision
9 (a), subsections (2) and (3), Penal Code section 186.11, subdivision (c), allows the court to assess
10 a fine up to \$500,000 or double the value of the taking, if defendants are convicted of taking more
11 than \$500,000. If the taking is more than \$100,000 but less than \$500,000, the court can assess a
12 fine up to \$100,000 or double the value of the taking.

13 4. In this case, Defendants Thomas Harold Bernhardt and Rachel Louise Bernhardt, by
14 fraudulently misrepresenting their company's true payroll, underpaid \$89,302.54¹ in payroll taxes
15 owed to the Employment Development Department and \$267,708.30 in insurance premiums
16 owed to the State Compensation Insurance Fund. The total underpayment amount is
17 \$357,010.80.² Under Penal Code section 186.11, subdivision (c), the Defendants may be liable,
18 for a fine in the amount of \$714,021.60.³

19 5. Penal Code section 186.11, subdivision (d), mandates that if Defendants Thomas
20 Harold Bernhardt and Rachel Louise Bernhardt are convicted of offenses constituting an
21 aggravated white-collar crime in violation of Penal Code section 186.11, subdivision (a), they
22 shall be liable for the costs of restitution to victims of their pattern of fraudulent/unlawful
23 conduct. In this case, Defendants Thomas Harold Bernhardt and Rachel Louise Bernhardt may
24 be liable for victim restitution in the amount of \$357,010.80.⁴

25 ¹ With interest and fraud penalties, the amount owed to EDD is \$233,619.38.

26 ² With interest and fraud penalties owed to EDD, the total restitution amount is
\$501,327.70 (\$233,619.38 [EDD] + \$267,708.30[SCIF].)

27 ³ With interest and fraud penalties owed to EDD, the total fine amount is \$1,002,655.40
(\$501,327.70 x 2.)

28 ⁴ With interest and fraud penalties the total restitution amount is \$501,327.70.

1 6. Penal Code section 186.11, subdivision (e), subsection (1) empowers this court to
2 preserve property and assets “within or outside” California, to pay fines and restitution to alleged
3 victims. Subsection (2) sets forth the procedures by which the People may prevent the dissipation
4 or secreting of identified assets or property and specifically contemplates the People petitioning a
5 court for “any . . . protective relief necessary to preserve the property or assets” of defendants
6 charged with committing an aggravated white-collar crime. The statute explicitly states that this
7 relief may include a temporary restraining order and/ or a preliminary injunction.

8 7. Penal Code section 186.11, subdivision (g), subsection (1), allows a court to issue a
9 temporary restraining order *ex parte*. The temporary restraining order issued *ex parte* by the
10 court may be based upon the sworn declaration of a peace officer with personal knowledge of the
11 criminal investigation that establishes probably cause to believe that 1) an aggravated white collar
12 crime has taken place and 2) the amount of restitution and fines established by this section
13 exceeds or equals the worth of the assets subject to the temporary restraining order.

14 8. The People respectfully submit that pursuant to Penal Code section 186.11,
15 subdivision (g), subsection (1), the DECLARATION OF SPECIAL AGENT A.S. POHLE, II
16 attached hereto and incorporated by reference herein as EXHIBIT 2 establishes probable cause
17 for this Court to believe:

18 (a) that Defendants Thomas Harold Bernhardt and Rachel Louise Bernhardt have
19 committed aggravated white-collar crimes;

20 (b) that this Court may preserve as much as \$1,071,032, the anticipated amount of
21 restitution plus the maximum fine in this case;⁵

22 (c) that the amount of said fines and restitution exceeds or equals the worth of the
23 assets subject to the temporary restraining order.

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27 ⁵ With interest and fraud penalties owed to EDD, the anticipated amount of restitution plus
28 the maximum fine in this case is \$1,503,983.10.

1 **PRAYER**

2 WHEREFORE, the People of the State of California, by and through counsel, Kamala D.
3 Harris, Attorney General, and Carolyn Y. La, Deputy Attorney General, pray that this Court issue
4 the following relief:

5 1. TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE:
6 PRELIMINARY INJUNCTION PURSUANT TO PENAL CODE §186.11 (Exhibit 3.)

7 Pending final disposition of the criminal proceeding in the above-captioned case, this order will
8 restrain Defendants Thomas Harold Bernhardt and Rachel Louise Bernhardt and their agents,
9 servants, assigns and all those acting in concert with them, from withdrawing, transferring,
10 encumbering, hypothecating, dissipating, secreting, using or otherwise disposing of, directly or
11 indirectly, any of the assets or property as set forth in Attachment A.

12 2. In conjunction with and to effectuate this TEMPORARY RESTRAINING ORDER
13 AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION PURSUANT TO
14 PENAL CODE § 186.11, issue an order (Exhibit 4) that will compel banking or financial
15 institutions, and escrow companies, presently or previously engaged in business with either
16 defendant, to immediately disclose, to a California peace officer who presents a copy of the order:

- 17 (a) all defendants account numbers, present and/or past,
18 (b) corresponding present and/or past values of defendant assets, and/or
19 (c) information as to the amount and disposition of funds disbursed to a defendant
20 from escrows and/or accounts closing on a date during or after September 3, 2009.⁶

21 3. In conjunction with and to effectuate this TEMPORARY RESTRAINING ORDER
22 AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION PURSUANT TO
23 PENAL CODE §186.11, issue an order requiring the Office of the Attorney General, upon
24 identification of specific defendant assets in the custody and control of a particular banking or
25 financial institution but not delineated in this PETITION, to obtain and provide a copy of a
26 supplemental order to such an institution. This supplemental order shall specifically delineate

27 _____
28 ⁶ This is the date the search warrant was executed at Defendants' business and residence.

1 defendants' assets as subject to protective relief. Pending notification and receipt of such a
2 supplemental order within a reasonable time, this order will direct such a banking or financial
3 institution in the custody and control of defendants' assets to consider all such assets subject to
4 the initial order, notwithstanding the absences of any specification of defendants' assets. Such an
5 institution will be required to hold such assets, making them unavailable for any an all purposes
6 to either of the above-named defendants, and or their respective counsel, agents, servants, assigns
7 and all those acting in concert or participating with either defendant.

8 4. In conjunction with and to effectuate this TEMPORARY RESTRAINING ORDER
9 AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION PURSUANT TO
10 PENAL CODE §186.11, issue an order approving of the People's NOTICE OF PETITION, filed
11 as required by Penal Code section 186.11, subdivision (e), subsection (3), and contemporaneously
12 with this PETITION, finding that said NOTICE OF PETITION informs every person known to
13 the People who may have an interest in the assets or property specified above in Prayer Paragraph
14 1.

15 5. In conjunction with and to effectuate this TEMPORARY RESTRAINING ORDER
16 AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION PURSUANT TO
17 PENAL CODE §186.11, issue an order that copies of all documents entitled NOTICE OF
18 PENDENCY OF ACTION (*LIS PENDENS*), received and reviewed by this Court
19 contemporaneously with this PETITION, will be deemed to have been recorded in a timely
20 fashion within the meaning of Penal Code section 186.11, subdivision (e), subsection (4), if
21 recorded on or before July 29, 2011. (Exhibit 5.)

22 6. Order such other and further relief as may be necessary to preserve the assets or
23 property specified above in any supplemental petition.

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