


<p>Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Civil Wage and Penalty Assessment Review Office 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 Phone: (916) 263-2892 Fax: (916) 263-2906</p>	
Date: January 3, 2014	In Reply Refer to: DLSE Case No.: 40-29296/552

Notice of Transmittal

To: Department of Industrial Relations
Office of the Director-Legal Unit
Attention: Lead Hearing Officer
P. O. Box 420603
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated **December 20, 2013**, postmarked **December 20, 2013**, and received by this office on **December 23, 2013**.

Also enclosed please find the following:

Copy of Civil Wage and Penalty Assessment

Copy of Audit Summary

STATE LABOR COMMISSIONER


By: Pauline Edwards
Pauline Edwards
Office Technician

enc.

cc (without enclosures): See Proof of Service

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

130682

<p>Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Civil Wage and Penalty Assessment Review Office 2031 Howe Avenue, Suite 100 Sacramento, CA 95825-0196 Phone: (916) 263-2892 Fax: (916) 263-2906</p>	
<p>Date: January 3, 2014</p>	<p>In Reply Refer to: DLSE Case No.: 40-29296/552</p>

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: **Mr. Scott Osborne**
Jackson Lewis Attorneys at Law
1001 SW 5th Avenue, #1205
Portland, OR 97204

Please be advised that this office has received your **Request for Review of December 20, 2013**, and pertaining to the Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement in **DLSE Case No.: 40-29296/552**.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the DLSE at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

“(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.”

In accordance with the above Rule, please be advised that the DLSE's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

**State of California
Division of Labor Standards Enforcement
Ms. Ying Wu
2031 Howe Avenue Suite 100
Sacramento, CA 95825**

cc:
Mr. David D. Cross
Division of Labor Standards Enforcement
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

Request to Review Evidence

To: **State of California**
Division of Labor Standards Enforcement
Ms. Ying Wu
2031 Howe Avenue Suite 100
Sacramento, CA 95825

From: _____

Regarding Civil Wage and Penalty Assessment Dated 10/18/2013

DLSE Case No.: 40-29296/552

The undersigned hereby requests an opportunity to review evidence to be utilized by the DLSE at the hearing on the Request for Review.

Signature: _____

Print Name: _____

Date: _____

Phone No.: _____

Fax No.: _____

PROOF OF SERVICE
(Code Civ. Proc. §§ 1013a, 2015.5)

Case Name: Redflex Traffic Systems, Inc. vs Division of Labor Standards Enforcement

Case No.: 12-0408-PWH (DLSE Case No.: 40-29296/552)

I am employed in the City and County of Sacramento, California. I am over the age of eighteen years and not a party to the within action; my business address is 2031 Howe Ave., Ste. 100, Sacramento, California.

On January 3, 2014, I served the within:

- 1) Notice of Transmittal
- 2) Notice of Right to Review Evidence

on the parties listed below by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of the Department of Industrial Relations, Division of Labor Standards Enforcement, for the collection and processing of correspondence for mailing with the United States Postal Service. I caused each such envelope, with first-class postage thereon fully prepared, to be deposited in a recognized place of deposit of the U.S. Mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown herein.

(B) By Personal Service: I caused each such envelope to be personally delivered to the office of the addressee by a member of the staff of the Department of Industrial Relations, Division of Labor Standards Enforcement, on the date last written below.


(C) By Messenger Service: I am readily familiar with the practice of the Department of Industrial Relations, Division of Labor Standards Enforcement, for messenger delivery, and I caused each such envelope to be delivered to a courier employed by United Parcel Service, with whom we have a direct billing account, who personally delivered each such envelope to the office of the address at the place and on the date last written below.

(D) By Facsimile Transmission: I caused such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action, pursuant to oral and/or written agreement between such parties regarding service by facsimile by transmitting a true copy to the following fax numbers:

<u>TYPE OF SERVICE</u>	<u>ADDRESSEE & FAX NUMBER (IF APPLICABLE)</u>
A	Redflex Traffic Systems Inc 23751 N. 23rd Avenue Suite 150 Phoenix, AZ 85085
A	Mr. Scott Osborne Jackson Lewis Attorneys at Law 1001 SW 5th Avenue, #1205 Portland, OR 97204
A	Ms. Ying Wu Division of Labor Standards Enforcement 2031 Howe Avenue Suite 100 Sacramento, CA 95825
A	Mr. David D. Cross Division of Labor Standards Enforcement 2031 Howe Avenue, Suite 100 Sacramento, CA 95825
A	Redflex Traffic Systems Inc C/O National Registered Agents Inc 2875 Michelle Drive, Suite 100 Irvine, CA 92606
A	Public Works City of Modesto 1010 10th Street Ste 6600 Modesto, CA 95353

Executed on January 3, 2014, at Sacramento, California.

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



Pauline Edwards, Office Technician



Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

Jackson Lewis P.C.	ALBANY, NY	GRAND RAPIDS, MI	MORRISTOWN, NJ	RALEIGH-DURHAM, NC
1001 SW 5th Avenue	ALBUQUERQUE, NM	GREENVILLE, SC	NEW ORLEANS, LA	RAPID CITY, SD
Suite 1205	ATLANTA, GA	HARTFORD, CT	NEW YORK, NY	RICHMOND, VA
Portland, Oregon 97204	AUSTIN, TX	HOUSTON, TX	NORFOLK, VA	SACRAMENTO, CA
Tel 503 229-0404	BALTIMORE, MD	INDIANAPOLIS, IN	OMAHA, NE	SAINT LOUIS, MO
Fax 503 229-0405	BIRMINGHAM, AL	JACKSONVILLE, FL	ORANGE COUNTY, CA	SAN DIEGO, CA
www.jacksonlewis.com	BOSTON, MA	LAS VEGAS, NV	ORLANDO, FL	SAN FRANCISCO, CA
	CHICAGO, IL	LONG ISLAND, NY	PHILADELPHIA, PA	SAN JUAN, PR
	CINCINNATI, OH	LOS ANGELES, CA	PHOENIX, AZ	SEATTLE, WA
	CLEVELAND, OH	MEMPHIS, TN	PITTSBURGH, PA	STAMFORD, CT
	DALLAS, TX	MIAMI, FL	PORTLAND, OR	TAMPA, FL
	DENVER, CO	MILWAUKEE, WI	PORTSMOUTH, NH	WASHINGTON, DC REGION
	DETROIT, MI	MINNEAPOLIS, MN	PROVIDENCE, RI	WHITE PLAINS, NY

December 20, 2013

130682
120408

Via FedEx

Labor Commissioner, State of California
 Civil Wage and Penalty Assessment Review Office
 2031 Howe Avenue, Ste. 100
 Sacramento, CA 95825

Re: Redflex Traffic Systems, Inc / City of Modesto – Public Works
Photo Red Light Enforcement Program (Modesto)
 Case No.: 40-29296/552

To Whom It May Concern:

Please be advised that Jackson Lewis P.C. represents Redflex Traffic Systems, Inc. (“Redflex”) regarding this matter. Pursuant to Labor Code section 1742, this constitutes Redflex’s request for review of the Civil Wage and Penalty Assessment regarding the City of Modesto – Public Works Photo Red Light Enforcement Program (Copy Attached).

This request for review is premised on the following asserted errors contained in the Assessment:

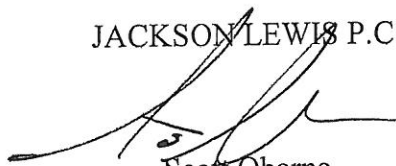
1. The work at issue does not constitute construction, alteration, demolition, installation or repair, as contemplated under California Labor Code section 1720. More specifically, the contract at issue is a service contract and any construction activity was both de minimus and paid for with private funds.
2. The workers at issue did not perform covered work in the execution of the contract, as contemplated by California Labor Code section 1720. Rather, the work at issue was technical in nature.

3. The wage determinations and worker classifications used as part of the audit process do not accurately reflect the duties of the workers in question.
4. The Assessment is time barred, in whole or in part, by Labor Code section 1741.

It is my understanding that a hearing will be scheduled within 90 days of this request for review. Please contact me to arrange a mutually convenient date and time for the hearing.

Sincerely,

JACKSON LEWIS P.C.



Scott Osborne

Direct Dial: 503-345-4151
obornes@jacksonlewis.com

SO/jbm
encl

RECEIVED
10/21/13

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
2031 Howe Avenue Suite 100
Sacramento, CA 95825
916-263-3305
FAX: 916-263-2906



DATE:
October 18, 2013

In Reply Refer to Case No:
40-29296/552

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of Modesto - Public Works	Work Performed in County of Stanislaus
PROJECT NAME Photo Red Light Enforcement Program (Modesto)	Project No. 0
Prime Contractor Redflex Traffic Systems, Inc., a Delaware Corporation	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Violation of Labor Code Section 1771 and 1774 for failing to pay the prevailing wage pursuant to wage determination STA-2004-1 to all workers employed on this project. Penalties assessed pursuant to Labor Code Section 1775 at \$25 per violation; Penalties assessed pursuant to Labor Code Section 1813 at \$25 per violation; Violation of Labor Code Section 1777.5 for failure to pay training fund contributions in accordance with the applicable wage determination.

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.


The Division has determined that the total amount of wages due is: \$14,834.28

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$3,025.00

The Division has determined that the amount of penalties assessed against under Labor Code section 1776 is: Redflex Traffic Systems, Inc.
\$0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By 
Ying Wu
Deputy Labor Commissioner

PW 33 (Revised - 3/2009)

COPY

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
2031 Howe Ave., Suite 100
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written **Request for Review**.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Ying Wu
at the following address: 2031 Howe Avenue Suite 100
Sacramento, CA 95825

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$14,834.28</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$3,025.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$17,859.28</u>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$14,834.28</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$3,025.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$17,859.28</u>

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

CODE	NO. CLASSIFICATION	Effective Date	HOURLY RATE	Contributions	TRAINING	TIME 1/2	HOLIDAY / SUNDAY
1	Comm and System Installer	3/1/2002	21.826	4.800	0.600	37.539	48.451
2	Comm and System Tech	3/1/2002	24.854	4.800	0.600	42.081	54.508

Training Fund owed \$ 260.25
 Total Wages \$ 14,574.03
 1775 Penalty \$ 2,675.00
 1813 Penalty \$ 350.00

Regular hours	Amount Earned	Amount Paid	Overtime Hours	Amount Earned	Amount Paid	Double time hours	Amount Earned	Amount Paid	Amount owed in Total
Henderson-Comm and System Tech Period: 2012 2 System Tech 89.5 16 \$ 2,654.02 \$ 2,002.12 9.5 5 \$ 399.77 \$ 309.61 \$ - \$ - \$ 742.07									
Gray-Comm and System Period: 2011 -2013 2 Tech 186.75 28 \$ 5,537.87 \$ 4,375.55 17 9 \$ 715.37 \$ 559.81 \$ - \$ - \$ 1,317.88									
Shr Comm and System Period: 2011 -2013 1 Installer 131 17 \$ 3,487.97 0 \$ - 0 \$ - \$ - \$ - \$ 3,487.97									
Rios-Comm and System Period: Feb 2005-Jun 2005 1 Installer 131 17 \$ 3,487.97 0 \$ - 0 \$ - \$ - \$ - \$ 3,487.97									
Park-Comm and System Period: Mar 2007 1 Installer 24 3 \$ 639.02 0 \$ - 0 \$ - \$ - \$ - \$ 639.02									
Tomé-Comm and System Period: Jun 2005 to Mar 2007 1 System Installer 104 13 \$ 2,769.07 0 \$ - 0 \$ - \$ - \$ - \$ 2,769.07									
Bog Comm and System Period: Oct 2004 to Jun 2006 1 System Installer 80 10 \$ 2,130.06 0 \$ - 0 \$ - \$ - \$ - \$ 2,130.06									
Olsen-Comm and System Period: Feb 2005-Mar 2005 1 Installer 24 3 \$ 639.02 0 \$ - 0 \$ - \$ - \$ - \$ 639.02									
Olsen-Comm and System Period: Mar 2005 1 Installer 24 3 \$ 639.02 0 \$ - 0 \$ - \$ - \$ - \$ 639.02									

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL

I, Ying Wu, do hereby certify that I am a resident of or employed in the County of
Sacramento, over 18 years of age, and not a party to the within action, and that I am employed at
and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
2031 Howe Avenue Suite 100
Sacramento, CA 95825

On October 18, 2013, I served the within: Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

City of Modesto - Public Works
1010 10th Street Ste 6600
Modesto, CA 95353
0

Redflex Traffic Systems, Inc.
C/o National Registered Agents, Inc.
2875 Michelle Drive, Suite 100
Irvine, CA 92606

Redflex Traffic Systems, Inc.
23751 North 23rd Ave. Suite 150
Phoenix, AZ 85085

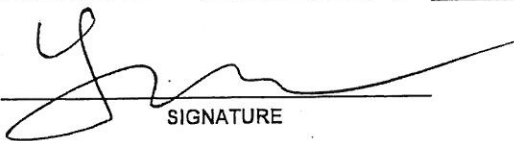
Scott Osborne
Jackson Lewis
1001 SW 5th Avenue, Suite 1205
Portland, OR 97204

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,
and then depositing it in the United States mail in Sacramento by:

- Ordinary first class mail
 Certified mail
 Registered mail

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

Executed on October 18, 2013, at Sacramento, County of Sacramento, California


SIGNATURE

STATE CASE NO.
40-29296/552

From: (503) 229-0404
Scott Obama

Origin ID: MRIA



1001 SW 5th Avenue, Ste. 1205

Portland, OR 97204



J13201306280326

Ship Date: 20DEC13
ActWgt: 2.0 LB
CAD: 104394660/NET3430

Delivery Address Bar Code



RECEIVED

Ref # 184260
Invoice #
PO #
Dept #

DEC 23 2013

SHIP TO: (916) 263-3305

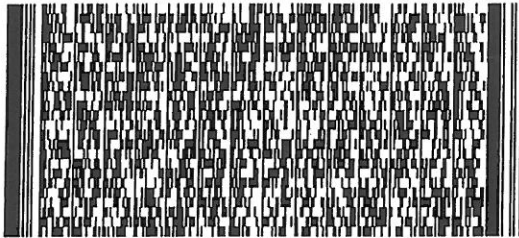
BILL SENDER

Civil Wage & Penalty Assessment Off
Labor Commissioner, State of CA
2031 Howe Avenue, Suite 100

SACRAMENTO, CA 95825

DEPT OF INDUSTRIAL RELATIONS
LABOR STANDARDS EN
SACRAMENTO
MON 23 DEC 10:30A
PRIORITY OVERNIGHT

TRK# 7974-7245-4390
0201



95825
CA-US
SMF

WD MHRA



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