

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

In the Matter of:

Precedent DLSE  
Decision No. DLSE-PD-003

Garcia Pallets, Inc. and Golden State  
Employment Corp. Appeal from Civil  
Citations Issued by Division of Labor  
Standards Enforcement, Department  
of Industrial Relations, State Of  
California

DECISION

Attached is a decision in the above-captioned case issued by the  
Division of Labor Standards Enforcement, designated as DLSE  
Precedent Decision No. DLSE-PD-003 pursuant to California  
Government Code section 11425.60.

This decision applies to Tier 2 hearings held under the  
informal procedures of the Administrative Procedures Act for  
BOFE, Retaliation Complaint Investigation (RCI), Licensing  
and Registration (L&R), Judgement Enforcement Unit (JEU)  
and Public Works.

Adopted as Precent: October 9, 2024

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**DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT**

Before the Labor Commissioner of the State of California

In the Matter of the Civil Penalty Citation/Assessment  
Against:

GARCIAS PALLETS INC., a California  
corporation, and GOLDEN STATE  
EMPLOYMENT CORP., a Nevada corporation.

State Case Number 35-CM-132639-  
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FINDINGS AND ORDER ON  
CITATION Nos.: WC 008752  
SO 100139  
SO 100140

9 Pursuant to Labor Code section 3725, the above entitled matter was heard in the Fresno  
10 Office of the Labor Commissioner on February 19 and February 20, 2019, and remotely in the Los  
11 Angeles Office of the Labor Commissioner via a Zoom video hearing on October 20 and October  
12 21, 2020.

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14 **APPEARANCES FOR APPELLANT GARCIAS PALLETS INC.:**

15 David H. Parker, Attorney for Garcias Pallets Inc.  
16 Connie Parker, Attorney for Garcias Pallets Inc.  
17 Antonio Garcia, Co-Shareholder of Garcias Pallets Inc.  
18 Guadalupe Garcia, President of Garcias Pallets Inc.  
19 Karen Garcia, Front-Office Administrator of Garcias Pallets Inc.  
20 Feliciano "Chano" Sahagun, Sales Representative of Garcias Pallets Inc.  
21 Doriann Vasquez, Bookkeeper of Garcias Pallets Inc.

22 **APPEARANCES FOR THE DIVISION OF LABOR STANDARDS ENFORCEMENT:**

23 Scott Jones, Staff Counsel  
24 Juan Dominguez, Deputy Labor Commissioner II

25 **Interpreter for the Hearing:**

26 Jackie Reyes

27 **OBSERVERS:**

28 Lucy Hunt, Senior Deputy Labor Commissioner  
Lupe C. Ramirez, Deputy Labor Commissioner  
Kim Urie, Staff Counsel  
Kamran Khodadadi, Law Clerk for the San Diego Office of the Labor Commissioner  
Catherine Ligioso, Law Clerk for the San Diego Office of the Labor Commissioner

1 **I. BACKGROUND**

2 GARCIAS PALLETS INC., a California corporation (“Garcias Pallets”) brings a timely  
3 appeal to Citation Numbers WC 008752 and SO 100139, issued on July 24, 2018, by Juan  
4 Dominguez, Deputy Labor Commissioner II for the Bureau of Field Enforcement, Division of  
5 Labor Standards Enforcement (“DLSE” or “Division”).

6 Citation Number WC 008752 was issued for failure to provide workers’ compensation  
7 insurance to employees during the period of April 10, 2016 to December 23, 2017.

8 Citation Number SO 100139 was issued for failure to cover employees with workers’  
9 compensation insurance during the period of December 24, 2017 to July 24, 2018.

10 Due consideration having been given to the testimony, documentary evidence, and  
11 arguments presented, the Labor Commissioner hereby adopts the following Notice of Findings.

12 **II. STATEMENT OF FACTS**

13 **A. Golden State Employment Corp.’s Failure to Appear**

14 On July 24, 2018, Dominguez issued Citation Number SO 100140 to Golden State  
15 Employment Corp., a Nevada corporation (or “GSE”). On August 19, 2018, the Division received  
16 from counsel for GSE notice of its intent to appeal Citation Number SO 100140. Garcias Pallets  
17 was separately cited and served, and sent to the Division a notice of its intent to appeal its own  
18 citations. The Division served GSE with the Notice of Hearing set for February 19 and 20, 2019,  
19 but neither GSE nor its counsel appeared.

20 Based on its failure to appear, GSE’s appeal of Citation Number SO 100140 is dismissed

21 **B. The Hearing on Garcias Pallets**

22 **1. The Division’s Testimony**

23 Dominguez testified on behalf of the Division.

24 Dominguez began an investigation on Garcias Pallets after an employee lodged a complaint  
25 against the company alleging multiple wage and hour violations. He testified it is a matter of  
26 routine to check on a business’s workers’ compensation insurance as part of an investigation into  
27 other matters. Several weeks before his inspection, Dominguez checked the Workers’  
28 Compensation Insurance Rating Bureau of California website (“WCIRB”), which operates under

1 statutory and regulatory authority to provide the names of companies licensed to transact workers'  
2 compensation insurance in California. (Exhibit 11.) Dominguez did not see Garcias Pallets as a  
3 listed company on the WCIRB website when he conducted his search in 2017. (Exhibit 13.)<sup>1</sup> He  
4 testified to being familiar with the limitations of the WCIRB website but believed it to be a reliable  
5 and credible source. (Exhibit 12.)

### 6 The Inspection

7 On November 28, 2017, Dominguez and Deputy Labor Commissioner, Lupe C. Ramirez  
8 conducted an inspection of Garcias Pallets located at 4125 S. Golden State Blvd., Fresno, CA  
9 93275. Dominguez asked to speak to the owner or the person in charge and was directed to Doriann  
10 Vasquez ("Vasquez"). His interview with Vasquez and tour of Garcias Pallets confirmed Garcias  
11 Pallets repaired and manufactured pallets, and had a workforce of about 50 people predominantly  
12 engaged in repairing or manufacturing pallets on Garcias Pallets's premises. Dominguez testified  
13 his investigation showed there were more than 50 employees.

14 As part of his practice, Dominguez requested review of the Garcias Pallets's payroll records,  
15 time records, and a copy of its workers' compensation insurance policy. Vasquez provided  
16 Dominguez with a copy of the workers' compensation insurance policy (Exhibit 17) and informed  
17 Dominguez that a company named Preferred Services Group, LLC ("PSG") handled Garcias  
18 Pallets's payroll and workers' compensation insurance policy.<sup>2</sup> The policy Vasquez provided was  
19 effective from March 4, 2017 to March 4, 2018.

20 On that same day, Dominguez issued to Garcias Pallets an *Order to Appear before the*  
21 *Labor Commissioner* instructing Garcias Pallets to bring copies of, *inter alia*, payroll records, time  
22 records, and a "current worker's compensation certificate." (Exhibit 9.) The Certificate of Liability  
23 Insurance (Exhibit 17) provided by Vasquez identified the "Insured" as "Preferred Services Group,  
24 LLC DBA American Resource Group" and the "Producer" as "CompOne USA." It also included a  
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26 <sup>1</sup> Exhibit 13 includes results for a WCIRB search Dominguez conducted on February 12, 2019 showing that  
27 Garcias Pallets did not have workers' compensation insurance coverage until July 28, 2018. Dominguez  
28 testified he ran a WCIRB search for Garcias Pallets a couple of weeks before his inspection on November 28,  
2017 going back three years, or to 2014, and saw that Garcias Pallets did not appear to have coverage.  
Dominguez did not keep a copy of the WCIRB search results he performed in November 2017.

<sup>2</sup> The Division also issued Citation Number WC 008753 for PSG. PSG filed an untimely appeal of its citation  
so it is not considered here.

1 contact, Marcus Asay ("Asay"), and two "Insurers," National Union Fire Insurance Company and  
2 American Labor Alliance. Dominguez recognized National Union Fire Insurance Company, but had  
3 some "red flags" relating to Asay and American Labor Alliance. He did not know what exactly  
4 those red flags were at that time and needed to follow-up as part of his investigation.

#### 5 Dominguez's Ongoing Investigation

6 Dominguez testified it is part of his practice to check certificates of insurance even when  
7 they appear to be legitimate and, to practice due diligence, not just rely on WCIRB searches or a  
8 certificate provided to him at the time of inspection. While Dominguez believed the WCIRB to be  
9 reliable and credible, he was aware of its limitations and testified he could not solely rely on that  
10 source. He was also aware of situations involving companies who may appear to not have workers'  
11 compensation insurance because they are in transition, and other reasons his preliminary research  
12 regarding Garcias Pallets's workers' compensation coverage may have been incorrect.

13 Dominguez testified he did not inform Garcias Pallets of the "red flags" he had at the  
14 inspection or cite them on that day because he was under the impression the workers' compensation  
15 policy was valid but needed to be certain. He testified his investigation was ongoing, he needed to  
16 conduct research, gather the facts, review the evidence, and determine whether the policy was valid.  
17 In his eight years as an investigator, Dominguez testified this was the first time he encountered this  
18 type of situation. Dominguez did not want to conclude any wrongdoing without assembling all  
19 necessary facts to avoid causing harm to the parties should he provide incorrect information.

20 As part of his investigation, Dominguez contacted American International Group, Inc.  
21 ("AIG"), the parent corporation to National Union Fire Insurance Company, regarding whether they  
22 had underwritten the insurance policy Vasquez provided to him. (Exhibit 21.) On December 28,  
23 2017, AIG confirmed with Dominguez that National Union Fire Insurance Company issued no  
24 workers' compensation policy and no coverage was provided to PSG. (Exhibit 22.)

25 To further determine the validity of the information he was gathering, Dominguez contacted  
26 Vasquez via email on April 19, 2018 requesting a copy of the new certificate of insurance because  
27 the one she initially provided had expired. (Exhibit 24.) In response, Dominguez received a  
28 forwarded email from GSE which included an attachment of the requested certificate. (Exhibit 26.)

1 The Certificate of Liability Insurance, dated April 26, 2018, identified the covered company as  
2 "Golden State Employment" with the same address for PSG located on the certificate Vasquez  
3 provided to Dominguez at the inspection. It also identified the "Issuer" as "CompassPilot," a  
4 member of Omega Community Labor Association. (Exhibits 26 and 28.)

5 **The Relationship between PSG and GSE**

6 Dominguez issued *Orders to Appear before the Labor Commissioner* to GSE and PSG on  
7 May 24, 2018 and June 12, 2018, respectively. (Exhibits 6 and 16.) As part of the *Order to Appear*  
8 for PSG, Dominguez received a contract between Garcias Pallets and American Resource Group,  
9 the dba for PSG. (Exhibits 15 and 17). The contract dated April 6, 2016 between PSG, or its dba,  
10 American Resource Group, identifies its business address as 401 W. Fallbrook Ave., Suite 205,  
11 Fresno, CA 93619. The contract identifies PSG as the "Employer Services Firm" and Garcias  
12 Pallets as the "Client." According to the contract, PSG provided "its" employees to Garcias Pallets  
13 and, as the Employer Services Firm, would pay the employees, handle workers' compensation, and  
14 run background checks for employees so they could be assigned to Garcia Pallets's facilities.

15 During his investigation, Dominguez also received a contract dated December 27, 2017  
16 between GSE and Garcias Pallets. (Exhibit 31.) Like the contract with PSG, the business address  
17 for GSE was 401 W. Fallbrook Ave., Suite 205, Fresno, CA 93619. (Exhibit 31.) The contract with  
18 GSE also provided the same terms regarding each party's role, and the services GSE would provide  
19 for Garcias Pallets regarding the employees. Dominguez testified the only difference between the  
20 contracts with PSG and GSE was the logo, but the substance and conditions of each contract were  
21 the same. During his investigation, Dominguez ran WCIRB searches for PSG and GSE and  
22 concluded that neither company provided insurance coverage. (Exhibits 23 and 30.)<sup>3</sup>

23 **The California Department of Insurance Case**

24 Dominguez obtained a press release issued by the Department of Industrial Relations on  
25 November 20, 2017. (Exhibit 19.) The press release concerned the California Department of  
26 Insurance's announcement that American Labor Alliance and CompOne USA were barred from  
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28 <sup>3</sup> Exhibits 23 and 30 include results for WCIRB searches Dominguez conducted on February 12 and February 19, 2019, respectively. However, Dominguez testified he ran WCIRB searches for PSG and GSE during his investigation of Garcias Pallets.

1 selling workers' compensation insurance because they were not properly licensed to sell insurance  
2 in California. (Exhibit 19.) American Labor Alliance and CompOne USA were one of the insurers  
3 and producer listed on the workers' compensation policy Vasquez provided to Dominguez at the  
4 inspection. (Exhibit 17.) Dominguez also obtained an *Order to Cease and Desist and Notice of*  
5 *Right to Hearing* issued by Department of Insurance on October 17, 2016 ordering respondents,  
6 Agricultural Contracting Services Association, Inc. dba American Labor Alliance Workers'  
7 Compensation Fund & Trust dba CompOne USA and Marcus Asay (collectively, "ALA  
8 Respondents"), to cease and desist from acting as an insurance agent or transacting as a producer or  
9 insurer in California without a valid license or permit. (Exhibit 20.)

10 Dominguez also obtained a *Proposed Decision* issued by the Department of Insurance on  
11 November 29, 2018 involving the ALA Respondents, which concluded American Labor Alliance or  
12 CompOne did not possess a license or other authority from the Insurance Commissioner to market  
13 or transact insurance. The *Proposed Decision* concluded American Labor Alliance and Omega  
14 Community Labor Union ("Omega"), the latter of which was listed on the second Certificate of  
15 Liability Insurance provided to Dominguez (Exhibit 26), were a single enterprise and Omega was  
16 an alter ego to American Labor Alliance. It further concluded American Labor Alliance, or its alter  
17 ego Omega, transacted insurance without the authority of the Insurance Commissioner. It also  
18 found that Marcus Asay was American Labor Alliance's chief executive officer and chief financial  
19 officer and Omega's sole incorporator.

20 **Citation Number WC 008752**

21 Dominguez testified he issued Citation Number WC 008752 to Garcias Pallets on July 24,  
22 2018 in the amount of \$1,131,030.95 covering an uninsured period of April 10, 2016 to December  
23 23, 2017.<sup>4</sup> (Appellant's Exhibit B.) Vasquez informed Dominguez that PSG handled payroll matters  
24 for Garcias Pallets and employees working at Garcias Pallets's were PSG employees. Garcias  
25 Pallets provided Dominguez with payroll records pursuant to the *Order to Appear before the Labor*  
26 *Commissioner* he issued on the company on November 28, 2017. (Exhibit 9.). The information  
27 Dominguez received pursuant to the *Order to Appear* for Garcias Pallets included the last three  
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<sup>4</sup> Citation Number WC 008752 was amended during the hearing to \$988,802.96. (Exhibit 2.)

1 pages of payroll journals which collectively identify PSG and its dba, American Resources Group.  
2 (Exhibit 8.) Dominguez considered these payroll journals to be a true and accurate reflection of the  
3 payroll provided to employees who worked at Garcias Pallets in 2016 and 2017.

4 **Citation Number SO 100139**

5 Dominguez testified he issued Citation Number SO 100139 to Garcias Pallets on July 24,  
6 2018 for \$412,377.94 covering an uninsured period of December 24, 2017 to July 24, 2018.<sup>5</sup>  
7 (Exhibit A.)

8 Dominguez calculated the total gross wages for the period of uninsured months covering  
9 December 24, 2017 to May 26, 2018 based on the payroll summaries he received from GSE  
10 pursuant to an *Order to Appear before the Labor Commissioner*. (Exhibits 5, 6 and 7).<sup>6</sup> For the  
11 remaining pay periods of June 2, 2018 to July 21, 2018, Dominguez calculated a weekly payroll  
12 average based on the prior pay periods of December 24, 2017 to May 26, 2018. (Exhibit 4.)  
13 Dominguez considered these payroll summaries to be a true and accurate reflection of the payroll  
14 issued by GSE to employees who worked at Garcias Pallets.

15 On July 24, 2018, the Division served Garcias Pallets with Citation Numbers WC 008752  
16 and SO 100139 in the total amount of \$1,543,408.89. (Exhibit 32.) The total amended amounts for  
17 Citation Numbers WC 008752 and SO 100139 is \$1,349,324.07.

18 **2. Garcias Pallets's Testimony**

19 Garcias Pallets does not dispute it purchased workers' compensation insurance coverage  
20 through GSE and its predecessor, PSG. In turn, GSE and PSG provided Garcias Pallets with  
21 workers' compensation policies produced by the ALA Respondents. Similar to the Division,  
22 Garcias Pallets introduced evidence that the Department of Insurance concluded the ALA  
23 Respondents were not licensed or authorized to sell insurance in California. (Exhibits C to G.) The  
24 Department of Insurance twice issued Orders to Cease and Desist against the ALA Respondents, but  
25 they continued to sell insurance under other business names like Omega. (Exhibits C and F.)  
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28 <sup>5</sup> Citation Number SO 100139 was amended during the hearing to \$360,521.11. (Exhibit 1.)

<sup>6</sup> For each pay period covering December 24, 2017 to May 26, 2018, 26 employees or more worked for Garcias Pallets in any given period.



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**Testimony of Antonio Garcia**

Antonio Garcia ("A. Garcia") is Co-Shareholder and one of the owners of Garcias Pallets. Garcias Pallets builds and repair pallets, and sells them to clients. Around 2012, a Garcias Pallets employee, Arturo Ayala ("Ayala"), who had been recently promoted to an office position and is fluent in English and Spanish, approached A. Garcia about transitioning the company's workers' compensation insurance to a PEO (professional employer organization) plan. A. Garcia is not fluent in English. However, he understood the PEO would alleviate some of Vasquez's administrative work and the PEO would be responsible for payroll for Garcias Pallets employees and workers' compensation insurance.

A. Garcia testified workers would directly apply for employment at Garcias Pallets. Garcias Pallets would send the completed job application to the PEO, and the applicant would begin working at Garcias Pallets once approved by the PEO. A. Garcia assigned the job duties, set working hours, determined the rates of pay, could provide a notice to a worker if they were not doing their job properly, or give an employee a raise based on job performance. The PEO would process payroll after Garcias Pallets sent it information regarding rates of pay and hours worked.

**Testimony of Guadalupe Garcia**

Guadalupe Garcia ("G. Garcia") is President of Garcias Pallets. He speaks little English and does not read English. G. Garcia was part of the decision to switch to a PEO who he understood would take care of workers' compensation and payroll. On December 3, 2012, he signed a letter to the State Fund Compensation Insurance informing them Garcias Pallets would no longer need insurance from them because they had moved to a PEO insurance company effective January 1, 2013. (Exhibit H.) From January 2013 to January 2018, Garcias Pallets signed contracts with three companies including, North State Marketing, American Resource Group, and GSE (Exhibits I, J, and P.) G. Garcia testified North State Marketing became known by other names like GSE. Each contract with these entities stated the "Employer Services Firm," or the PEOs, would provide workers' compensation insurance coverage for Garcias Pallets. This reflected G. Garcia's understanding of workers' compensation insurance coverage for Garcias Pallets.



1 believed she was working with the same company because she interacted with the same people and  
2 would submit payroll and request insurance certificates from the same contact person, Rosemary.

3 Vasquez testified she met with Dominguez when he visited Garcias Pallets in 2017.

4 Vasquez provided Dominguez with copies of Garcias Pallets's workers' compensation certificate of  
5 insurance.

6 Vasquez's contact, Rosemary, provided her with multiple certificates of liability insurance.  
7 (Exhibits K to O.) None of the certificates looked invalid or suspicious to her. As bookkeeper,  
8 Vasquez maintained records of employee who reported workers' compensation injuries. (Exhibit  
9 Q.) If an employee was injured, Vasquez called Rosemary to report the injury, submit the workers'  
10 compensation forms, and send the injured worker to Concentra (a clinic). Vasquez never received  
11 word from Rosemary or an injured employee that coverage was denied.

#### 12 Testimony of Karen Garcia

13 Karen Garcia ("K. Garcia") is the Front Office Administrator and G. Garcia's daughter.  
14 After graduating from college, she took more control of the office and became more involved in  
15 company decisions. She testified Garcias Pallets did not prepare its own payroll reports during the  
16 time they worked with GSE and its predecessors. Garcias Pallets would submit the work hours to  
17 the payroll companies, GSE and its predecessors would send the payroll reports to Vasquez, and  
18 Vasquez would print the checks in the office and distribute the checks to the employees.<sup>7</sup>

19 K. Garcia testified to the procedures Garcias Pallets followed when an employee was  
20 injured. These procedures included informing the "payroll company" an employee was injured,  
21 having the employee complete the Form DWC-1, and investigating the injury. Every employee has  
22 a file in the Garcias Pallets office which includes employee injury reports and copies of doctor  
23 forms sent to its office. After being issued the Stop Order, K. Garcia prepared "loss run" reports,  
24 which included records of all workers' compensation injuries, in order to obtain proper insurance  
25 coverage. K. Garcia testified Exhibit Q represents the workers' compensation injuries reported over  
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28 <sup>7</sup> During the hearing, Dominguez testified to receiving one pay stub from the worker who initially lodged a  
complaint with the Division. The pay stub identifies Garcias Pallets and falls within the date range of Citation  
Numbers WC 008752 and SO 100139. (Exhibit 34.)

1 the 2016-2018 period, the time reflected in Citation Numbers WC 008752 and SO 100139. K.  
2 Garcia found that eight employees reported workers' compensation injuries during this timeframe  
3 without any issues. Garcias Pallets obtained coverage about four days after being issued the Stop  
4 Order. (Exhibit U). Garcias Pallets safety rates and policies improved when it obtained coverage  
5 after the July 2018 Stop Order. (Exhibits V and W.)

### 6 **III. LEGAL ANALYSIS**

7 In administrative hearings, the Division has the initial burden of proof. "Burden of proof" is  
8 defined in California Evidence Code section 115 as "the obligation of a party to establish by  
9 evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court."  
10 In these administrative hearings, the trier of fact is the Hearing Officer. Evidence Code section 115  
11 further provides: "Except as otherwise provided by law, the burden of proof requires proof by a  
12 preponderance of the evidence." "Preponderance of the evidence" means the "greater weight of the  
13 evidence, not necessarily established by the greater number of witnesses testifying to a fact but by  
14 evidence that has the most convincing force; superior evidentiary weight that, though not sufficient  
15 to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial  
16 mind to one side of the issue rather than the other." (*Black's Law Dictionary* (11th ed. 2019).)

17 The evidence presented supports a finding that Garcias Pallets is liable for Citation Numbers  
18 WC 008752 and SO 100139 (collectively, "Citation" or "Citations").

#### 19 **A. Garcias Pallets is Liable for the Citations as a Joint Employer and Client Employer**

20 To "employ" under the Industrial Welfare Commission ("IWC") Wage Orders has three  
21 alternative meanings: "a) to exercise control over the wages, hours or working conditions, or b) to  
22 suffer or permit to work, or c) to engage, thereby creating a common law employment relationship."  
23 (*Martinez v. Combs* (2010) 49 Cal.4th 35, 64; See also IWC Order No. 1-2001, 2(D), 2(G).) An  
24 entity employs a worker if it "directly or indirectly, or through an agent or any other person,  
25 employs or exercises control over wages, hours or working conditions of any person." (IWC Wage  
26 Order No. 1-2001, 2(F).) Control over any one of the enumerated factors gives rise to joint  
27 employer liability, which can include "both temporary employment agencies and employers who  
28 contract with such agencies to obtain employees . . ." (*Martinez*, at 59.)

1           **1. Garcias Pallets is the Employer**

2           The evidence introduced at the hearing established Garcias Pallets was the employer during  
3 all relevant times. Garcias Pallets is in the business of manufacturing and repairing pallets, and selling  
4 pallet to clients. Garcias Pallets hired the employees, assigned the job duties, set the working hours,  
5 and determined the rates of pay. It exercised control over the employees' working conditions through  
6 its ability to issue a notice to workers or, conversely, provide employees with a raise, based on their  
7 job performance. Garcias Pallets also exercised control by supervising the quality of the employees'  
8 work, ensuring employees arrived to work on time, performed their job properly, and treated fellow  
9 employees with respect. It created "guidelines," which were posted on a board and included  
10 information on employee rules, safety rules, and California laws.

11           **2. GSE and PSG are Joint Employers**

12           During the hearing, the Division presented evidence to support its position that GSE, and its  
13 predecessor company, PSG, were joint employers of the employees who worked at Garcias Pallets.  
14 As indicated previously, GSE failed to appear at the hearing and PSG's appeal of its citation was  
15 untimely. Thus, neither party provided evidence to refute the evidence introduced by the Division.  
16 The totality of the evidence presented at the hearing established GSE and PSG jointly employed the  
17 employees during the Citation periods.

18           **3. Garcias Pallets is a Client Employer**

19           The evidence also supports a finding that Garcias was a "client employer" under Labor Code  
20 section 2810.3. Under Labor Code section 2810.3(b), a "client employer" shares legal responsibility  
21 and civil liability with a "labor contractor" for workers supplied by the labor contractor to the client  
22 employer for payment of wages and failure to secure valid workers' compensation coverage as  
23 required by Labor Code section 3700.

24           "Client employer" means any business entity with a workforce of twenty-five workers or more  
25 that obtains or is provided six or more workers by "labor contractors" to perform labor within the  
26 client employer's "usual course of business." (Labor Code § 2810.3(a)(1)(A), (a)(1)(B)(i)-(ii).) A  
27 "labor contractor" means any individual or entity that supplies the client employer with workers to  
28 perform work within the client employer's usual course of business. (Labor Code § 2810.3(a)(3).)

1                   **i. GSE and PSG Qualify as Labor Contractors**

2                   The evidence supports a finding that PSG and GSE were labor contractors of Garcias Pallets  
3 under Labor Code section 2810.3. PSG and GSE supplied Garcias Pallets with at least six employees  
4 who repaired and manufactured pallets within Garcias Pallets’s usual course of business.

5                   **ii. Garcias Pallets’s Workforce and Number of Employees Supplied by PSG  
6 and GSE Meet the Requirements of Client Employer Liability**

7                   The evidence established Garcias Pallets had anywhere from 58 to 159 employees during the  
8 Citation periods. Thus, Garcias Pallets’s total combined workforce consisted of 26 employees or  
9 more, including those employees directly hired by Garcias Pallets or those obtained from GSE and  
10 PSG. The total combined workforce of six or more employees provided by GSE and PSG, and 26  
11 employees or more, either directly hired by Garcias Pallets or obtained from GSE or PSE, creates  
12 liability for Garcias Pallets as a client employer. (Labor Code § 2810.3(a)(1)(A), (a)(1)(B)(i)-(ii).)

13                   **iii. Pallet Employees Performed Services that are Part of the *Regular and  
14 Customary Work of Garcias Pallets***

15                   A client employer is liable if the work performed by the supplied workers is within its usual  
16 course of business, which means the “regular and customary work of a business, performed within or  
17 upon the premises or worksite of the client employer.” (Labor Code § 2810.3 (a)(6).)

18                   Here, Garcias Pallets’s usual course of business is manufacturing, repairing and selling pallets.  
19 It is also undisputed that the work was performed on Garcias Pallets’s premises.

20                   For all the reasons stated above, Garcias Pallets is a client employer under Labor Code section  
21 2810.3 and was required to provide workers’ compensation insurance.

22                   Garcias Pallets argues it secured workers’ compensation, equitable estoppel bars the penalties,  
23 and the penalties are unconstitutional. The Hearing Officer addresses each argument below.

24                   **C. Garcias Pallets Did Not Provide Valid Workers’ Compensation Insurance**

25                   The purpose of the California Workers’ Compensation Act is to furnish, expeditiously and  
26 inexpensively, treatment and compensation for persons suffering workplace injury, irrespective of  
27 the fault of any party, and to secure workplace safety. (*Sea-Land Service, Inc. v. Workers’ Comp.  
28 Appeals Bd.* (1996) 14 Cal.4th 76, 85; *Farmers Bros. Coffee v. Workers’ Comp. Appeals Bd.* (2005)  
133 Cal.App.4th 533, 539.) It is remedial and humanitarian. (*Id.*)

1 The California Constitution authorizes the Legislature to make provision for adequate  
2 workers' compensation insurance coverage, for regulating insurance coverage in all its aspects, and  
3 for securing the payment of compensation. (Cal. Const. Art. XIV, § 4.) The State has broad power  
4 to ensure that the workers entitled to compensation receive it. All employers, except the State, are  
5 required to secure the payment of workers' compensation pursuant to Labor Code section 3700.  
6 "The underpinnings of the workers' compensation system rest upon the employer's obligation to  
7 secure payment of workers' compensation." (*Bradshaw v. Park* (1994) 29 Cal.App.4th 1267, 1274.)

8 Labor Code section 3722(b) provides:

9 At any time that the director determines that an employer has been uninsured  
10 for a period in excess of one week during the calendar year preceding the  
11 determination, the director shall issue and serve a penalty assessment order  
12 requiring the uninsured employer to pay to the director, for deposit in the State  
13 Treasury to the credit of the Uninsured Employers Fund, the greater of (1) twice  
14 the amount the employer would have paid in workers' compensation premiums  
15 during the period the employer was uninsured . . . or (2) the sum of one thousand  
16 five hundred dollars (\$1,500) per employee employed during the period the  
17 employer was uninsured. A penalty assessment issued and served by the  
18 director pursuant to this subdivision shall be in lieu of, and not in addition to,  
19 any other penalty issued and served by the director pursuant to subdivision (a).

20 Garcias Pallets contends it provided workers' compensation insurance consistent with  
21 Insurance Code section 11656.6 when it contracted each PEO, *i.e.*, GSE and PSG. It also maintains  
22 Insurance Code section 11658(c) recognizes employers-insured should not be treated as lacking  
23 insurance when there was a withdrawal of a policy form or endorsement by the California Insurance  
24 Commissioner.

25 In support of its position, the Division relies on *Starving Students Inc. v. Department of*  
26 *Industrial Relations* (2005) 125 Cal.App.4th 1357. The Division contends the requirement to  
27 provide workers' compensation insurance under Labor Code section 3700 is so strict that, once the  
28 DLSE serves a stop order and penalty assessment on an employer, relief is only appropriate "if the  
record supports a finding that the 'penalized employer had in fact secured payment of compensation  
as required by workers' compensation provisions at the time the order was served.'" (*Id.* at p.  
1367(citing Labor Code § 3727.1).) The *Starving Students* court held the Division does not have  
discretion to withdraw the penalty assessment when an employer obtains workers' compensation

1 insurance from an insurer unauthorized to write compensation insurance in California. (*Id.* at p.  
2 1361.) The securing of payment consistent with Division requirements “is essential to the  
3 functioning of the expressly declared social public policy of this state in the matter of workers’  
4 compensation.” (*Id.* at p. 1364.) “The conduct or operation of any business . . . without full  
5 compensation security, in continuing violation of social policy, shall be subject to imposition of  
6 business strictures and monetary penalties by the director . . .” (*Id.*)

7         The Division correctly points out that the facts in *Starving Students* are very similar to this  
8 case. In *Starving Students*, a moving company hired an employee leasing company to arrange  
9 insurance and various personnel matters. (*Id.* at 1361-1362.) The employee leasing company  
10 obtained workers’ compensation insurance through a well-known provider. (*Id.* at 1362.) However,  
11 the provider was not authorized to provide workers’ compensation insurance in California resulting  
12 in the Division issuing a stop order and penalty assessment against the moving company. (*Id.*) Thus,  
13 the moving company, or employer, lacked proper workers’ compensation insurance at the time of  
14 the stop order and penalty assessment. The court held the employer was not entitled to relief  
15 because it failed to secure valid insurance at the time of the assessment and the Division had no  
16 statutory authority to relieve the employer of the penalty assessment. (*Id.* at p. 1367.)

17         Like the employee leasing company in *Starving Students*, the record shows that GSE and  
18 PSG provided insurance through the ALA Respondents, and Omega, a single enterprise with an  
19 alter ego of American Labor Alliance, one of the ALA Respondents. These parties were not  
20 authorized to provide workers’ compensation insurance in California. Garcias Pallets’s arguments  
21 about Insurance Code section 11656.6 disregard the similar facts and strict requirements of *Starving*  
22 *Students*. Nor is there anything in the record to demonstrate the California Insurance Commissioner  
23 withdrew a policy or endorsement maintained by these ALA Respondents per Insurance Code  
24 section 11658(c). Assuming the record provided for this situation, which it does not, Insurance  
25 Code section 11658(c) also fails to consider the holding in *Starving Students*.

26         The record reflects compelling facts surrounding Garcias Pallets’s mistaken belief they were  
27 provided valid insurance, ongoing provision of workers’ compensation insurance to eight  
28 employees during the Citation periods with no denial of coverage, and the appearance of certificates



1 of liability insurance as valid. However, like the moving company in *Starving Students*, Garcias  
2 Pallets is not entitled to relief because they did not provide valid workers' compensation insurance  
3 at the time of the penalty assessment and stop order. Nor does the Division have the discretion or  
4 statutory authority to afford relief under these facts.

5 The Hearing Officer finds Garcias Pallets did not provide valid workers' compensation  
6 insurance during the Citation periods of April 10, 2016 to July 24, 2018.

7 **D. There is Insufficient Evident to Support a Finding that Equitable Estoppel Should be**  
8 **Applied to the Division**

9 Garcias Pallets further contends the Division should be equitably estopped from  
10 enforcement of the Citations because Dominguez was apprised of the facts about the ALA  
11 Respondents and the invalid coverage, represented to Garcias Pallets there was only a wage and  
12 hour issue, and intended Garcias Pallets rely on this representation resulting in the company paying  
13 hundreds of thousands of dollars to the PEOs for coverage.

14 Equitable estoppel applies against a government agency in the same manner as a private  
15 party when the elements required for estoppel against the private party are present. (*Long Beach v.*  
16 *Mansell* (1970) 3 Cal.3d 462, 496.) The principle "generally must be premised on some type of  
17 representation, ordinarily false, about a set of circumstances." (*Alameda Cty. Deputy Sheriff's Ass'n*  
18 *v. Alameda Cty. Employees' Ret. Ass'n* (2020) 9 Cal.5th 1032, 1072.) A valid claim requires: "(a) a  
19 representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the  
20 facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or  
21 virtual, that the ignorant party act on it; and (e) that party was induced to act on it." (*Simmons v.*  
22 *Ghaderi* (2008) 44 Cal.4th 570, 584 - 585.) All elements must be present for estoppel to apply. (*Id.*)  
23 However, equitable estoppel is only available against the government in very limited circumstances.  
24 (See, e.g., *San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 825-826.)  
25 "[N]either the doctrine of estoppel nor any other equitable principle may be invoked against a  
26 governmental body where it would operate to defeat the effective operation of a policy adopted to  
27 protect the public." (*Id.* at p. 826.)

28 Garcias Pallets alleges the citations should be overturned because of the Division's

1 “willful non-disclosure of material information.” However, Dominguez testified his actions were  
2 part of an ongoing investigation involving multiple steps to correctly determine whether Garcias  
3 Pallets’s workers’ compensation was valid. During the inspection, Dominguez had “red flags”  
4 about the policy provided but did not know enough at the time regarding the basis for this  
5 uncertainty. Dominguez testified he needed to conduct research, gather the facts, weigh the  
6 evidence, and determine whether the policy was valid. Dominguez was aware of the limitations  
7 with WCIRB searches and other reasons his preliminary findings may not be correct. Dominguez  
8 did not want to conclude any wrongdoing without assembling all necessary facts to avoid causing  
9 harm to the parties should he provide incorrect information.

10       Garcias Pallets failed to present sufficient evidence to support estoppel in these  
11 circumstances. Dominguez did not knowingly or willfully conceal facts with the intention Garcias  
12 Pallets rely on that “non-disclosure” to incur hundreds of thousands of dollars in payment to the  
13 PEOs. Dominguez’s actions were part of an ongoing investigation to determine the validity of  
14 Garcias Pallets’s workers’ compensation insurance coverage. Nor did Dominguez solely represent  
15 to Garcias Pallets this was a wage and hour issue. Dominguez asked for a copy of the insurance  
16 policy twice, and issued an *Order to Appear* against Garcias Pallets where one of the requested  
17 items was a copy of its current worker’s compensation certificate.

18       In addition, the doctrine of estoppel does not apply against a government agency “where it  
19 would operate to defeat the effective operation of a policy adopted to protect the public.” (See *San*  
20 *Diego County, supra*, 30 Cal.2d at 826.) Here, applying equitable estoppel would operate to defeat  
21 the clearly established policy of providing workers’ compensation in California. (*Starving Students,*  
22 *supra*, 125 Cal.App.4th at 1364.) To this end, the operation of a business without full compensation  
23 security would violate that social policy. (*Id.*) It would also operate to defeat the Division’s ability  
24 to enforce the provisions intended to secure the payment of workers’ compensation and determine  
25 liability against those who do not furnish it to their employees. (See Cal. Const. Art. XIV, § 4;  
26 *Bradshaw, supra*, 29 Cal.App.4th at 1274.)

27       Here, the doctrine of equitable estoppel does not support a finding that the Division’s  
28 Citations should be overturned.

1       **E. The Constitutionality of the Penalties**

2           Finally, Garcias Pallets argues that the penalties assessed are unconstitutional, in part,  
3 because they derive from an unverified calculation which the Division intentionally delayed for the  
4 purpose of accumulating penalties.

5           Garcias Pallets point to *Starving Students*, where the Court found that the \$100,000.00  
6 penalty assessed under Labor Code section 3722(f) was upheld, and attempt to distinguish it by  
7 stating there was no deliberate delay by the deputy labor commission in that case. However, for all  
8 the reasons stated above, there was insufficient evidence in the record to support Garcias Pallets's  
9 allegation that Dominguez's delay was deliberate.

10          Second, Garcias Pallets claims the calculations are unverified. For Citation Number WC  
11 008752, Dominguez testified he based the penalty amount on payroll journals Garcia Pallets  
12 provided him pursuant to an *Order to Appear before the Labor Commissioner*. For Citation Number  
13 SO 100139, Dominguez testified he calculated the penalty based on payroll summaries he received  
14 from GSE, which the evidence showed Garcias Pallets contracted with to provide payroll services.  
15 Vasquez informed Dominguez during the inspection that PSG handled all payroll matters for  
16 Garcias Pallets and other Garcia Pallets witnesses confirmed the same. Vasquez and K. Garcia both  
17 testified the PEOs would process payroll after Garcias Pallets provided them with the employee's  
18 work hours. The payroll records do not come from unverified sources. They came directly from  
19 Garcias Pallets or from the company that processed payroll for Garcias Pallets.

20          Moreover, upon consideration of the legislative intent of the Workers' Compensation Act,  
21 the penalties assessed are not excessive. (See, e.g., *S.G. Borello & Sons, Inc. v. Department of*  
22 *Industrial Relations* (1989) 48 Cal.3d 341, 354; *Taylor v. Department of Industrial Relations* (2016)  
23 4 Cal.App.5th 801, 804.) Labor Code section 3712(a) states: "The securing of the payment of  
24 compensation in a way provided in this division is essential to the functioning of the expressly  
25 declared social public policy of this state in the matter of workers' compensation."

26          In *Woodline Furniture Mfg. Co. v. Department of Industrial Relations* (1994) 23  
27 Cal.App.4th 1653, 1658-1661, the Court considered whether a penalty assessment for failure to  
28 have workers' compensation insurance coverage was excessive. In deciding it was not, the Court  
weighed the plain language of Labor Code section 3722, the amount in workers' compensation

1 insurance premiums the employer would have paid during an uninsured period, and “the fact that  
2 an injured employee denied immediate access to no-fault compensation because an employer has  
3 violated the law may not be able to survive.” (*Id.*) When an employer has an uninsured period, the  
4 employee, likely unknowingly, risks the consequences of having to seek medical treatment for a  
5 workplace injury without prompt access to the workers’ compensation system. While Garcias  
6 Pallets did not have coverage issues with the injured workers during the Citation periods, this risk  
7 and the potential impacts of uninsured periods on employers and society cannot be ignored.

8         Considering the above, that the penalty assessment is high, cannot render it as  
9 unconstitutional. *Starving Students* recognized that civil penalties may have both a punitive and a  
10 deterrent aspect in seeking compliance with the means to achieve the important public policy  
11 objective. (*Starving Students, supra*, 125 Cal.App.4th at 1367-1368.)

12         Applying the above principles, the Division’s calculations for Citation Numbers WC  
13 008725 and SO 100139 are not unconstitutional.

14 **Citation Number WC 008752**

15         The plain language of Labor Code section 3722(b) requires the Division use two methods  
16 of calculation to determine the penalty amount, and to apply the greater of the two amounts as the  
17 penalty for failure to provide workers’ compensation coverage for employees.

18         Dominguez calculated the penalty amount pursuant to Labor Code section 3722(a) in the  
19 amount of \$238,500.00 (Calculation One”), being \$1,500.00 per employee employed by Garcias  
20 Pallets during the date(s) or period of uninsured months (159 employees). (See Exhibits 2 and 8.)

21         Dominguez calculated the penalty amount pursuant to Labor Code section 3722(b) in the  
22 amount of \$988,802.96 (“Calculation Two”), using the following method: Product of employer’s  
23 payroll for the uninsured time period prior to the date the penalty assessment was issued, which is  
24 \$2,122,805.84, divided by 100 (Workers’ Compensation insurance premium rates are calculated  
25 per \$100 of payroll), equals \$21,228.06, multiplied by the SCIF rate for the employer’s governing  
26 classification: \$23.29 for the industry referenced, equals \$494,401.28 as the premium amount the  
27 employer would have paid, multiplied by 2, equals \$988,802.96. (Exhibit 8.)

28

1 Citation Number SO 100139

2 Dominguez calculated the penalty amount pursuant to Labor Code section 3722(a) in the  
3 amount of \$87,000, being \$1,500.00 per employee employed by Garcias Pallets during the  
4 uninsured time period (58 employees). (See Exhibits 1 and 3.)

5 Dominguez calculated the penalty amount pursuant to Labor Code section 3722(b) in the  
6 amount of \$360,521.11. using the following method: Product of employer's payroll for the  
7 uninsured time period prior to the date the penalty assessment was issued, which is \$773,982.62,  
8 divided by 100 (same basis as above), equals \$7,739.83, multiplied by the SCIF rate for the  
9 employer's governing classification: \$23.29, equals \$180,260.55 as the premium amount the  
10 employer would have paid, multiplied by 2, equals \$360,521.11. (Exhibits 1 and 3.)

11 Dominguez applied the penalty amounts pursuant to Labor Code section 3722(b) using the  
12 method under Calculation Two because it was the greater of the two calculations. Thus, the  
13 penalties assessed under Labor Code section 3722(b) in amended Citation Number WC 008752 for  
14 \$988,802.96 and amended Citation Number SO 100139 for \$360,521.11, are affirmed.

15 **IV. ORDER**

16 Based on the evidence introduced at the hearing, the Hearing Officer finds the following:

- 17 1. Golden State Employment Corp.'s appeal of Citation No. 100140 is dismissed for  
18 failure to appear.
- 19 2. Garcias Pallets Inc., a California corporation, is the employer.
- 20 3. Garcias Pallets Inc., a California corporation, is a client employer under Labor Code  
21 section 2810.3.
- 22 4. The penalty assessed for Amended Citation Number WC 008752 for \$988,802.96 is  
**AFFIRMED.**
- 23 5. The penalty assessed for Amended Citation Number SO 100139 for \$360,521.11 is  
24 **AFFIRMED.**

25 STATE OF CALIFORNIA  
26 DEPARTMENT OF INDUSTRIAL RELATIONS  
27 DIVISION OF LABOR STANDARDS ENFORCEMENT

28 Dated: 04/16/2021

By: 

Patricia Salazar  
Hearing Officer

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
LABOR COMMISSIONER'S OFFICE**

**PROOF OF SERVICE**

STATE OF CALIFORNIA            )  
  )        ss.  
COUNTY OF LOS ANGELES    )

I, Jhonna Lyn Estioko, declare and state as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 W. 4th Street, Room 600, Los Angeles, California 90013.

On April 16, 2021, I served the following document(s) described as:

**NOTICE OF FINDINGS, FINDINGS AND ORDER ON CIVIL PENALTY  
CITATION/ASSESSMENT AND STOP ORDER**

on the interested party(ies) in this action as follows:

DAVID H. PARKER Parker, Kern, Nard & Wenzel 7112 North Fresno Street, Suite 300 Fresno, CA 93720	Scott L. Jones Division of Labor Standards Enforcement Department of Industrial Relations 770 E. Shaw Avenue, Suite 222 Fresno, CA 93710
CONNIE M. PARKER Parker, Kern, Nard & Wenzel 7112 North Fresno Street, Suite 300 Fresno, CA 93720	Patrick C. McManaman Division of Labor Standards Enforcement Department of Industrial Relations 770 E. Shaw Avenue, Suite 222 Fresno, CA 93710

**(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

**(STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on April 16, 2021, at Los Angeles, California.

  
Jhonna Lyn Estioko

STATE OF CALIFORNIA  
Department of Industrial Relations  
DIVISION OF LABOR STANDARDS ENFORCEMENT

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