

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

**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 San Rafael
1400 Fifth Avenue Room 202
San Rafael, CA 94901-1943
Eric Davis

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
John Jacobs

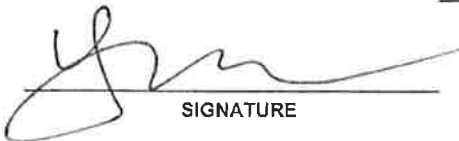
Scott Osborne
Jackson Lewis
1001 SW 5th Avenue, Suite 1205
Portland, OR 97204

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.
40-29303/552

PW 34 (Revised - 4/2002)

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 40-29303/552

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of San Rafael	Work Performed in County of Marin
PROJECT NAME Red Light Traffic Program (San Rafael)	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 MAR-2008-2 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.

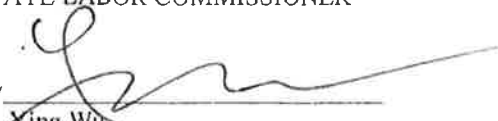
The Division has determined that the total amount of wages due is: \$21,459.99

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$3,400.00

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

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

STATE LABOR COMMISSIONER

By 
Ying Wu
 Deputy Labor Commissioner

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)

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability of liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is \$21,459.99

(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>\$21,459.99</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$3,400.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$24,859.99</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>\$21,459.99</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$3,400.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$24,859.99</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
			Rate	Rate	Amount	Amount	Hours	Hours	Amount	Amount	
1	Comm and System Installer 1st increase	12/1/2008	28.949	13.010	0.950	56.433	70.908				
2	Comm and System Tech 1st increase	12/1/2008	32.965	13.010	0.950	62.390	76.780				

Training Fund owed \$ 773.76
 Total Wages \$ 20,686.23
 1775 Penalty \$ 2,500.00
 1813 Penalty \$ 900.00

CODE NO.	CLASSIFICATION	Regular hours	Days Worked	Amount Earned	Amount Paid	Overtime Hours	Days Worked	Amount Earned	Amount Paid	Double time hours	Amount Earned	Amount Paid	Amount owed in total
1	Henderson- Comm and System Installer	16	2	\$ 671.34	\$ 358.08			\$ -	\$ -		\$ -	\$ -	\$ 313.26
Period: Sept 2009													
2	Dr. [redacted] Comm and System Installer	32	4	\$ 1,471.19	\$ 852.48	1.48	4	\$ 92.32	\$ 57.71		\$ -	\$ -	\$ 653.33
Period: Sept 2009													
1	Dr. [redacted] Comm and System Installer	48	6	\$ 2,014.03	\$ 1,031.52	22	6	\$ 1,241.54	\$ 670.78		\$ -	\$ -	\$ 1,553.26
Period: Sept 2009													
1	Dr. [redacted] Comm and System Installer	568	71	\$ 23,832.68	\$ 12,206.32	73	19	\$ 4,119.64	\$ 2,225.77	6	\$ 425.45	\$ 236.94	\$ 13,708.74
Period: Sept 2009 to 2013													
1	Dr. [redacted] Comm and System Installer	32	4	\$ 1,342.69	\$ 535.04	16	4	\$ 902.93	\$ 387.52		\$ -	\$ -	\$ 1,323.06
Period: 2009 to 2012													
2	Dr. [redacted] Comm and System Tech	100	13	\$ 4,597.48	\$ 1,822.00	10	3	\$ 623.80	\$ 264.70		\$ -	\$ -	\$ 3,134.58
Period: 2009 to 2012													

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
PUBLIC WORKS INVESTIGATIONS
2031 HOWE AVENUE, SUITE 100
SACRAMENTO, CA 95825



CERTIFIED MAIL™



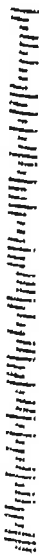
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City of San Rafael
1400 Fifth Avenue Room 202
San Rafael, CA 94901-1943
Eric Davis



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MAILED FROM ZIP CODE 95825

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Laraine Gittens

From: Virginia O'Malley <vomalley@redflex.com>
Sent: Friday, November 22, 2013 3:43 PM
To: Eric Davis
Cc: Lisa Goldfien
Subject: RE: Redflex - Prevailing Wage Issues

That sounds right but I will confirm with our finance department and get back with you.

Thanks.
Gini

Virginia O'Malley
Vice President and General Counsel
Redflex Traffic Systems Inc.
23751 N. 23rd Avenue
Phoenix, Arizona 85085
Phone: 623-207-2403 Direct
Fax: 623-207-2057

From: Eric Davis [mailto:Eric.Davis@cityofsanrafael.org]
Sent: Friday, November 22, 2013 4:42 PM
To: Virginia O'Malley
Cc: Lisa Goldfien
Subject: Redflex - Prevailing Wage Issues

Virginia:

The City is obligated by DLSE order to withhold \$24,859.99 in payments that are owed by the City to Redflex. I understand that the City already has withheld two month's payments of \$11,800 each due to Redflex, for a total of \$23,600. Therefore, I believe that the City is obligated to withhold only \$1,259.99 from the next monthly payment to Redflex in December, which means the City can pay out \$10,540.01 to Redflex as a December payment, and can pay the full \$11,800 monthly payments in subsequent months.

Do you agree with the foregoing?

Thanks

Eric Davis
Deputy City Attorney II
City of San Rafael
15-485-3080

From: Virginia O'Malley [mailto:vomalley@redflex.com]
Sent: Tuesday, November 19, 2013 3:46 PM
To: Eric Davis
Cc: Lisa Goldfien
Subject: RE: Redflex - Prevailing Wage Issues

No there has been nothing further. I will keep you posted.

Virginia O'Malley
Vice President and General Counsel
Redflex Traffic Systems Inc.
23751 N. 23rd Avenue
Phoenix, Arizona 85085
Phone: 623-207-2403 Direct
Fax: 623-207-2057

From: Eric Davis [<mailto:Eric.Davis@cityofsanrafael.org>]
Sent: Tuesday, November 19, 2013 4:00 PM
To: Virginia O'Malley
Cc: Lisa Goldfien
Subject: Redflex - Prevailing Wage Issues

Virginia:

Any further developments regarding DLSE allowing the City's release of payments to Redflex?

Thanks

Eric Davis
Deputy City Attorney II
City of San Rafael
415-485-3080

From: Eric Davis
Sent: Friday, October 25, 2013 7:35 AM
To: 'Virginia O'Malley'
Cc: Diana Bishop; Dave Starnes; Mark Moses; Van Bach; Lisa Goldfien; Laraine Gittens
Subject: Redflex - Prevailing Wage Issues

Virginia:

Thank you for your email.

The City will hold the current monthly payment of \$11,800 due to Redflex (and any future monthly payments up to the total DLSE Civil Wage and Penalty Assessment amount of \$24,859.99), as you have indicated in your email that the City should, until there is evidence from the DLSE that the City may release these withheld payments to Redflex.

I will be out of the office next week, but I will be returning to the office on November 4.

In my absence, if necessary, you can contact Lisa Goldfien, Assistant City Attorney, at 415-485-3080, concerning this matter.

Thank you for your cooperation and assistance.

Eric T. Davis
Deputy City Attorney II
City of San Rafael

From: Virginia O'Malley [mailto:vomalley@redflex.com]
Sent: Thursday, October 24, 2013 5:31 PM
To: Eric Davis
Subject: Redflex - Prevailing Wage Issues

Hello Eric ~

I left a message at your office today shortly after you left. I am sorry for the day lag in getting back with you. We are seeking but have not yet received clarification on whether the DLSE will agree that the awarding body (San Rafael) can release the funds to the contractor after the contractor has been deposited with the DLSE. I was hoping to have additional guidance before we spoke again. For now, San Rafael should hold the funds. Redflex's deposits are due 60 days from October 18, 2013, the date of service of the assessment. I am happy to discuss in the morning if you have a few convenient minutes.

Thanks.
Gini

Virginia O'Malley
Vice President and General Counsel
Redflex Traffic Systems Inc.
23751 N. 23rd Avenue
Phoenix, Arizona 85085
Phone: 623-207-2403 Direct
Fax: 623-207-2057

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