

HEARING OFFICER ADMINISTRATIVE HEARING

OFFICE OF THE CONTROLLER

CITY AND COUNTY OF SAN FRANCISCO

IN THE MATTER OF:

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF LABOR STANDARDS
ENFORCEMENT (OLSE),

and

CHINATOWN RESTAURANT.

CASE NOS: MWO-C-015; MWO-C-060; &
MWO-C-070

**STATEMENT OF FINDINGS
OF HEARING OFFICER**

HEARINGS: JUNE 13 & 14, 2006 and
SEPTEMBER 13 & 14, 2006

RECORD CLOSED: NOVEMBER 27, 2006

INTRODUCTION

Between August 12, 2004 and August 12, 2005, the San Francisco Office of Labor Standards Enforcement (OLSE) received five complaints from former employees of the Chinatown Restaurant alleging violations under the San Francisco Minimum Wage Ordinance (MWO). Yi Hui Wong (Claimant #1) filed the first wage claim report on August 12, 2004, which was designated by the OLSE as Case No. MWO-C-015. On June 17, 2005, Zu Tong Jin (Claimant #2) and Pei Yuan Chen (Claimant #3) filed separate wage claim reports, which were designated as Case No. MWO-C-060. On June 23, 2005, Qian Feng Yuan (Claimant #4) filed a wage claim report, which the OLSE grouped together with Claimants #2 and #3 in Case No. MWO-C-060. On August 12, 2005, Jin He (Claimant #5) filed a wage claim report, which the OLSE designated as Case. No. MWO-C-070. The OLSE investigated the claims and determined that the restaurant was not in compliance with the MWO for each of the five claimants.

By letter dated December 20, 2005, Donna Levitt, Manager of the Office of Labor Standards Enforcement, requested that the Office of the Controller for the City and County of San Francisco appoint an impartial hearing officer to conduct a hearing under San Francisco Administrative Code Section 12R.7(b) in regard to possible violations of the San Francisco Minimum Wage Ordinance by employer Chinatown Restaurant. (Hearing Officer's Exhibit 1) The

1 December 20, 2005 letter states in pertinent part:

2 "The Office of Labor Standards Enforcement (OLSE) has conducted
3 investigations stemming from five (5) separate individual employees'
4 claims. Each claimant alleged that Chinatown Restaurant paid him or her
5 less than the minimum wage rate required under the MWO for work
6 performed handing out leaflets and recruiting dining customers. The first
7 claim received by OLSE was on August 12, 2004. Subsequent claims
8 were received in June 2005 and August 2005. Chinatown Restaurant has
9 thus far resolved the claims of four (4) employees by payment of the back
10 wages claimed.

11 In the course of investigating the five claims, OLSE found evidence of
12 possible violations of certain provisions of the MWO and reasonably
13 believes that from February 23, 2004, the effective date of the Minimum
14 Wage Ordinance, to the present time, Chinatown Restaurant continued
15 these possible violations. The OLSE has not conducted a comprehensive
16 audit of Chinatown Restaurant, although it attempted to do so for the
17 period February 23, 2004 to the present to determine whether it has
18 complied with the MWO."

19 By letter dated January 24, 2006, San Francisco Deputy Controller Monique Zmuda
20 informed the Chinatown Restaurant and Deputy City Attorney Jill Figg, counsel for the OLSE, that
21 the Controller's Office appointed the undersigned hearing officer to conduct a hearing regarding
22 possible violations of the MWO. (Hearing Officer's Exhibit 2) The letter states in pertinent part:

23 "City and County of San Francisco Office of Labor Standards
24 Enforcement (OLSE) Manager Donna Levitt has requested that the
25 Deputy Controller appoint an impartial hearing officer to conduct a
26 hearing required under San Francisco Administrative Code Section
27 12R.7(b) in regard to possible violations of the San Francisco Minimum
28 Wage Ordinance (Administrative Code Chapter 12R) by employer
Chinatown Restaurant. (Copy of OLSE Manager Levitt's December 20,
2005 letter enclosed.)

I hereby appoint City and County of San Francisco Administrative Law
Judge Peter Kearns as the Hearing Officer in this matter. The Hearing
Officer's role is to conduct a hearing that affords employer Chinatown
Restaurant due process regarding the possible violations referenced in
OLSE's December 20th letter. (Administrative Code Section 12R.7(b).)

The Hearing Officer will promptly set a hearing date and notify the parties.
At the conclusion of the hearing, the hearing officer will provide written
Findings of Fact to OLSE and to Chinatown Restaurant. OLSE will then
make a final determination and notify Chinatown Restaurant."

By letter dated January 24, 2006, the undersigned hearing officer provided written notice
to the OLSE and Chinatown Restaurant that a hearing would be conducted on March 10, 2006.

1 Pursuant to the notice of hearing, the hearing officer requested the OLSE to submit a pre-hearing
2 statement on or before February 10, 2006, and Chinatown Restaurant was requested to submit a
3 pre-hearing statement on or before February 24, 2006. (Hearing Officer's Exhibit 3) The OLSE
4 was specifically requested to submit a "detailed statement of issues presented to the Hearing
5 Officer for Findings," and Chinatown Restaurant was specifically requested to submit a "response
6 to OLSE's statement of issues presented to the Hearing Officer for decision."

7 By letter dated January 26, 2006, Deputy City Attorney Jill Figg, on behalf of the OLSE,
8 requested a continuance of the March 10, 2006 hearing until March 17, 2006. The request was
9 not opposed by Chinatown Restaurant. By letter dated February 1, 2006, the undersigned
10 hearing officer provided written notice to the OLSE and Chinatown Restaurant that the hearing
11 would be conducted on March 17, 2006 instead of March 10, 2006. The OLSE was requested to
12 submit its pre-hearing statement on or before February 17, 2006, and Chinatown Restaurant was
13 requested to submit its pre-hearing statement on or before March 3, 2006. (Hearing Officer's
14 Exhibit 4)

15 On February 17, 2006, the OLSE submitted its pre-hearing statement, which includes
16 OLSE Exhibits 1-24. (Hearing Officer's Exhibit 7) The pre-hearing statement lists the following
17 issues to be presented to the hearing officer:

18 "The OLSE requests that the hearing officer make written findings on the
19 following issues:

- 20 (1) Did Chinatown Restaurant violate the MWO by failing to pay
21 minimum wage to **Yi Hui Wong**? If so, how much does it owe
22 Claimant Wong in administrative penalties?
- 23 (2) Did Chinatown Restaurant violate the MWO by failing to pay
24 minimum wage to **Zu Tong Jin**? If so, how much does it owe
25 Claimant Jin in administrative penalties?
- 26 (3) Did Chinatown Restaurant violate the MWO by failing to pay
27 minimum wage to **Pei Yuan Chen**? If so, how much does it owe
28 Claimant Chen in administrative penalties?
- 29 (4) Did Chinatown Restaurant violate the MWO by failing to pay
30 minimum wage to **Qian Feng Yuan**? If so, how much does it owe
31 Claimant Yuan in administrative penalties?

1 (5) Did Chinatown Restaurant violate the MWO by failing to pay
2 minimum wage to **Jin He**? If so, how much does it owe Claimant
He in back wages? How much does it owe Claimant He in
administrative penalties?

3 (6) Did Chinatown Restaurant violate the MWO by failing to pay
4 minimum wage to any Claimant? If so, how much does it owe the
City in administrative penalties?

5 (7) Did Chinatown Restaurant fail to give the OLSE reasonable
6 access to its records documenting wages paid to employees for
February 23, 2004 through the present?"

7 On March 1, 2006, attorney Erik Babcock requested a continuance of the March 17, 2006
8 hearing on behalf of Chinatown Restaurant. Mr. Babcock further requested that the restaurant's
9 pre-hearing statement be due two-weeks prior to the rescheduled hearing date instead of on
10 March 3, 2006.

11 On March 13, 2006, the undersigned hearing officer informed the parties that the March
12 17, 2006 hearing was administratively postponed until further notice. The hearing was
13 subsequently rescheduled for June 13 and 14, 2006.

14 On April 20, 2006 the undersigned hearing officer sent a facsimile message to Chinatown
15 Restaurant owners, Jimmy Quan and Anna Wong, and their attorney, Erik Babcock, requesting
16 that a pre-hearing statement be submitted on or before 12:00 PM on May 5, 2006. (Hearing
17 Officer's Exhibit 6)

18 On May 5, 2006, Chinatown Restaurant owner, Jimmy Quan, submitted a pre-hearing
19 statement on behalf of the restaurant. (Hearing Officer's Exhibit 8) The statement does not
20 include a list of issues to be presented to the hearing officer. The OLSE objected to the
21 admittance of the pre-hearing statement into the record because it contained private and
22 confidential information regarding witnesses. On June 13, 2006, the hearing officer sealed as
23 confidential Hearing Officer's Exhibit 8, which was replaced in its entirety by Hearing Officer's
24 Exhibit 8-A, which is a copy of the original exhibit with redactions of all private and confidential
25 information.

26 Counsel Erik Babcock also submitted a pre-hearing statement on behalf of Chinatown
27 Restaurant. (Hearing Officer's Exhibit 9) The pre-hearing statement is dated May 5, 2006, and
28

1 states that the restaurant accepts the statement of issues presented in the OLSE's pre-hearing
2 statement. In addition, the restaurant seeks a determination of whether the amount of requested
3 penalties are constitutional "given the amount of underlying wages alleged to be unpaid and the
4 other pertinent facts."

5 Public hearings were conducted on the following dates in Room 408 of City Hall: June 13,
6 2006; June 14, 2006; September 13, 2006; and September 14, 2006. Deputy City Attorney Jill
7 Figg represented the Office of Labor Standards Enforcement at each of the hearings. Chinatown
8 Restaurant owners Jimmy Quan and Anna Wong appeared at the hearings on June 13, 2006 and
9 June 14, 2006, and were represented by attorneys Erik Babcock and John Chiu. Attorney John
10 Chiu appeared at the hearings on September 13 and 14, 2006 on behalf of Jimmy Quan and
11 Anna Wong, who did not personally appear on those dates.

12 At the hearings, the parties had full opportunity to present relevant evidence and
13 argument. Hearing Officer's Exhibits 1 through 14 were entered into the record, as were OLSE
14 Exhibits 1 through 38, and Chinatown Restaurant Exhibits A through F. The OLSE called nine
15 witnesses, each of whom testified under oath. Chinatown Restaurant did not call any witnesses.
16 Table 1 ("Witness List – OLSE and Chinatown Restaurant"), attached and incorporated, sets forth
17 the name and identity of each of the witnesses who testified under oath, and the date the witness
18 appeared. The following individuals were sworn under oath as witness interpreters: Teresa Wong
19 (June 13, 2006), David Yeh (June 14, 2006), and Van Truong (September 14, 2006).

20 The record was originally held open through November 10, 2006 for the submission of
21 post-hearing legal briefs and proposed findings of fact, and through November 17, 2006 for
22 optional responses. Because November 10, 2006 was a legal holiday, the open record was
23 extended through November 13, 2006 for initial submissions, and through November 27, 2006 for
24 optional responses. All post-hearing submissions were timely submitted, and the record closed on
25 November 27, 2006.

26 PRELIMINARY RULINGS

27 Chinatown Restaurant's Motion to Compel Discovery and Motion In Limine

28 On or around June 1, 2006, restaurant owner Jimmy Quan submitted a Motion to Compel

1 Discovery seeking continuance of the June 13, 2006 hearing until such time as the OLSE
2 provided the restaurant with requested information. Mr. Quan also submitted a Motion in Limine
3 seeking: (1) a determination that the OLSE has the burden of proof by a clear and convincing
4 standard; (2) a limitation on penalties requested by the OLSE; and (3) an exclusion of witnesses
5 and "derivative evidence" based on the restaurant's lack of contact information for OLSE's
6 proposed witnesses. (Hearing Officer's Exhibit 10) On June 12, 2006, the OLSE submitted
7 written opposition to the respondent's motions. (Hearing Officer's Exhibit 11)

8 At the hearing on June 13, 2006, the undersigned hearing officer denied the motion to
9 compel discovery and request for a continuance based on the lack of any authority to compel
10 discovery in this administrative proceeding. With regard to the Motion in Limine, the undersigned
11 hearing officer determined that: (1) since the Minimum Wage Ordinance does not provide for a
12 heightened standard of proof (with the exception of burden-shifting onto the responding party
13 under specific circumstances), the standard of proof for the OLSE in this matter is a
14 preponderance of the evidence; (2) because the imposition of penalties is at the heart of this
15 case, no determination shall be made regarding the imposition of penalties prior to the issuance
16 of Findings of Fact; and (3) requests to exclude testimony and/or documents shall be raised by
17 objection during the course of the hearings.

18 **Chinatown Restaurant's Request to Admit Evidence Regarding Claimant's Immigration**
19 **Status**

20 At the June 13, 2006 hearing, attorney Erik Babcock stated on the record that Chinatown
21 Restaurant intended to question Jin He (Claimant #5) about his immigration status, which the
22 restaurant believed to be probative of the claimant's credibility. Counsel for the OLSE objected
23 and argued that such a line of questioning was not only irrelevant, but also impermissible. The
24 parties were requested to submit written argument regarding their positions prior to the
25 commencement of the continued hearing the following morning, on June 14, 2006.

26 Both parties submitted timely written argument prior to the commencement of the June 14,
27 2006 hearing. (Hearing Officer's Exhibits 12 & 13) The brief submitted by Chinatown Restaurant
28 states that: "respondent now seeks to admit evidence of each claimant's immigration status as

1 probative and relevant to one of the main issues of this hearing." Specifically, the restaurant
2 argued that the if the claimants are not properly documented, they are not entitled to any wage
3 remedy pursuant to the United States Supreme Court ruling in Hoffman Plastic Compounds Inc.
4 v. N.L.R.B. (2002) 535 U.S. 137. Both parties were given the opportunity for oral argument at the
5 June 14, 2006 hearing.

6 Having considered the briefing submitted and the oral argument, the undersigned hearing
7 officer determined at the June 14, 2006 hearing that any evidence regarding the claimants'
8 immigration status was inadmissible. The Hearing Officer's determination was based on the
9 following: (1) California Labor Code §1171.5(a) explicitly provides that all rights under state law
10 "except any reinstatement remedy prohibited by federal law, are available to all individuals
11 regardless of immigration status," and the claimants in this case are not seeking any
12 reinstatement remedy; (2) California Labor Code §1171.5(b) provides that in proceedings to
13 enforce labor laws, no inquiry shall be permitted into a person's immigration status "except where
14 the person seeking to make this inquiry has shown by clear and convincing evidence that the
15 inquiry is necessary in order to comply with federal immigration law," and respondents failed to
16 show by clear and convincing evidence that the inquiry is necessary in order to comply with
17 federal immigration law; and (3) although the United States Supreme Court ruled in Hoffman
18 Plastic Compounds Inc. v. N.L.R.B. that undocumented workers are not entitled to any
19 reinstatement remedy for unlawful termination (including an award of post-termination back pay
20 for lost wages), Hoffman does not preclude undocumented workers from seeking wages for work
21 already performed, nor does it preclude an assessment of penalties for an employer's failure to
22 pay for work already performed.

23 **OLSE's Request to Admit Evidence Regarding the Identity of Non-Claimant Employees**

24 Section 12R.5(c) of the Minimum Wage Ordinance provides that if an employer does not
25 allow the OLSE reasonable access to payroll records, it is presumed, absent clear and convincing
26 evidence otherwise, that the employer "paid no more than the applicable federal or state
27 minimum wage." Based on that provision, the OLSE argued at the September 13, 2006 hearing
28 that it was entitled to seek testimony from its witnesses regarding the identity of non-claimant

1 employees who were presumably underpaid based on the restaurant's failure to provide the
2 agency with access to requested payroll records. Chinatown Restaurant objected to the
3 admission of any such evidence because it exceeded the scope of the claims at issue.

4 Pursuant to the pre-hearing statements submitted by the parties, the scope of issues to be
5 decided is limited to the five named claimants. Accordingly, based on principles of due process,
6 the OLSE's request to admit evidence regarding non-claimant employees was denied. The OLSE
7 therefore reserved the right to request subsequent hearings regarding other possible violations of
8 the MWO by Chinatown Restaurant.

9 SUMMARY OF EVIDENCE

10 1. Pursuant to Administrative Code Section 12.R.4 (the Minimum Wage Ordinance or
11 MWO), the minimum wage to be paid by employers in San Francisco was established at an
12 hourly rate of \$8.50 effective February 23, 2004. For the period January 1, 2005 through
13 December 31, 2005 the minimum wage was \$8.62. Pursuant to Section 12.R.3(b) of the MWO,
14 an employer is any person, as defined in Section 18 of the California Labor Code, including
15 corporate officers or executives, who directly or indirectly or through an agent or another person,
16 including through the services of a temporary services or staffing agency or similar entity,
17 employs or exercises control over the wages, hours or working conditions of any employee.

18 2. Pursuant to Section 12.R.7(b) of the Minimum Wage Ordinance, the Office of
19 Labor Standards Enforcement is authorized to take appropriate steps to enforce the MWO, and
20 may investigate any possible violations of the MWO by an employer.

21 3. Chinatown Restaurant is located at 744 Washington Street in San Francisco,
22 California, and was owned and managed by Jimmy Quan and Anna Wong during the periods at
23 issue.

24 4. It is undisputed that Jimmy Quan and Anna Wong, in the capacity of owners of the
25 business, had control over the wages, hours, and working conditions of the restaurant staff during
26 the periods at issue. Because the restaurant is a San Francisco employer, it is covered by the
27 MWO.

28 5. At the June 13, 2006 hearing, OLSE Supervising Compliance Officer Richard Waller

1 testified that the OLSE only investigates the wage payment practices of a business following an
2 employee complaint. Mr. Waller testified that after receiving an employee complaint, the OLSE
3 opens a case file, and OLSE staff members then log the case status in the electronic "case
4 activity sheet." The OLSE submitted copies of the case activity sheets for OLSE Case Nos.
5 MWO-C-15, MWO-C-60, and MWO-C-70, and OLSE staff members credibly testified as to the
6 accuracy of the activity sheet entries.

7 6. Under Section 12.R.3(a) of the MWO, an employee is any person who, in a
8 particular week, performs at least two (2) hours of work for an employer within the geographic
9 boundaries of the City, and qualifies as an employee entitled to payment of a minimum wage from
10 any employer under the California minimum wage law, as provided under Section 1197 of the
11 California Labor Code and wage orders published by the California Industrial Welfare
12 Commission, or is a participant in a Welfare-to-Work Program.

13 7. The OLSE submitted that Chinatown Restaurant argued during the investigation
14 stage of the claims that the claimants were independent contractors and not employees.
15 However, the restaurant did not submit argument at hearing denying that the claimants were
16 employees. Jimmy Quan's pre-hearing statement refers to the claimants as "employees," and Mr.
17 Quan specifically references dates of hire for each of the claimants. Instead of arguing that the
18 claimants were not employees, the restaurant instead argued that Claimant #5 may not have
19 worked all of the hours that he alleges, because his work passing out menus on the street was
20 unsupervised.

21 8. OLSE Manager Donna Levitt testified that although there are five claimants and
22 three different case numbers in this matter, the OLSE considers the claims to be part of one case
23 involving: (1) the payment practices of Chinatown Restaurant, (2) and the restaurant's failure to
24 provide the OLSE with access to the restaurant's payroll records pursuant to Section 12.R.5(c) of
25 the MWO.

26 9. Under Section 12.R.5(c) of the MWO, San Francisco employers are required to
27 retain payroll records pertaining to employees for a period of four years, and employers shall allow
28 the OLSE access to such records, with appropriate notice and at a mutually agreeable time, to

1 monitor compliance with the requirements of the MWO. During the course of investigating the five
2 claims, the OLSE made repeated written requests for access to the restaurant's payroll records
3 pursuant to Section 12.R.5(c) of the MWO. However, the restaurant failed to provide the OLSE any
4 access to payroll records during the course of the investigation. The restaurant's May 5, 2006 pre-
5 hearing statement, prepared by attorney Erik Babcock, states the following with regard to OLSE's
6 record requests:

7 "The principals of the Restaurant, Anna Wong and Jimmy Quan, are both
8 under indictment in federal court for numerous fraud charges in United
9 States v. Quan et al, N.D. Cal. No. CR 04-0343 VRW. Trial is scheduled
10 in October. If the restaurant were ordered to produce records, they could
11 be used against either Mr. Quan or Ms. Wong. The City should not be the
12 investigative handmaiden of the federal government. If the federal
13 government desires to subpoena documents, they can do so. The City's
14 request should be denied. It is a fishing expedition that is totally
15 unnecessary to resolve the issues in this proceeding."

16 10. Since the restaurant failed to provide the requested access to payroll records under
17 the MWO, the City Attorney served the restaurant with an administrative subpoena pursuant to San
18 Francisco Administrative Code Section 2A.23(c) on or around July 20, 2006. The restaurant did not
19 produce the subpoenaed documents, and on August 10, 2006, the City filed an application for a
20 court order to enforce the subpoena in San Francisco Superior Court Case No. CPF-06-506557
21 (City and County of San Francisco vs. Chinatown Restaurant, Inc.). On August 28, 2006, the court
22 granted an order to enforce the subpoena.

23 11. In its post-hearing brief, the restaurant stated that the "payroll records have since
24 been produced" pursuant to the proceedings in San Francisco Superior Court Case No. CPF-06-
25 506557. Neither party submitted evidence to establish which specific payroll records, if any, were
26 produced by the restaurant and no determination regarding the production of payroll records is
27 made herein.

28 **Penalties Sought By The OLSE On Behalf Of The Claimants And Payments Sought on
Behalf Of The City**

12. Section 12.R.7(b) of the MWO provides that penalties may be assessed on behalf
of an employee when an employer fails to pay the minimum wage. Where the OLSE, after a
hearing that affords a suspected violator due process pursuant to Administrative Code Section

1 12.R.7(b), determines that a violation has occurred, it may order any appropriate relief including,
2 but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the
3 payment of an additional sum as an administrative penalty in the amount of \$50.00 to each
4 employee or person whose rights under the MWO were violated for each day or portion thereof
5 that the violation occurred or continued. Section 12.R.7(b) further provides that the OLSE may
6 also order a violating employer or person to pay to the City a sum of not more than \$50.00 for
7 each day or portion thereof and for each employee or person as to whom the violation occurred
8 or continued (\$50.00 per day multiplied by the number of underpaid employees).

9 13. Penalties and payments under Section 12R.7(b) are available for each day a
10 violation "occurred or continued." The OLSE interprets a violation of the MWO to *occur* on each
11 day that the MWO is violated. So, for example, a violation occurs each day an employer pays any
12 employee less than the local minimum wage. The OLSE has interpreted a violation of the MWO
13 to *continue* on each day that the violation is not remedied. So, for example, a violation continues
14 each day an employer fails to pay any employee the minimum wages that are owing. The OLSE
15 requests a determination of maximum penalties that may be assessed on behalf of the five
16 claimants, as well as the maximum payment that may be sought on behalf of the City, for the
17 period the violations continued.

18 14. The OLSE asserts that it will use any payment to the City to offset the cost of
19 implementation and enforcement of the MWO in general, pursuant to MWO Section 12R.7(b),
20 which states that payments "shall be allocated to the Agency and shall be used to offset the costs
21 of implementing and enforcing this Chapter." However, Section 12R.7(b) of the MWO also more
22 specifically states that the OLSE may order payment "to compensate the City for the costs of
23 investigating and remedying the violation." The OLSE submitted a "time and cost chart" showing
24 that the department incurred costs of \$29,764.29 to investigate and remedy the violations at issue,
25 and evidence was also submitted showing costs incurred in the amount of \$17,397.25 for work
26 performed by the City Attorney's Office, for a combined cost of \$47,161.54 to enforce the MWO
27 against Chinatown Restaurant ($\$29,764.29 + \$17,397.25 = \$47,161.54$). (OLSE Post-Hearing
28 Brief, received November 13, 2006) However, the OLSE's "time and cost chart" includes two

1 entries that pertain to the contempt hearings in Superior Court Case No. 506557. The first entry is
2 a cost of \$118.01 for 3 hours of work performed by Robin Ho on September 18, 2006 for the
3 "Superior Court Hearing re Contempt." The second entry is a cost of \$162.52 for 3 hours of work
4 performed by Richard Waller on September 18, 2006 for the "Superior Court Hearing re
5 Contempt."

6 **Case No. MWO-C-15: Yi Hui Wong (Claimant #1)**

7 15. On August 12, 2004, Yi Hui Wong filed a wage claim report with the OLSE regarding
8 payment received from Chinatown Restaurant for work performed on August 7, 2004. (OLSE
9 Exhibit 1) The report states that Ms. Wong worked at the restaurant as a waitress for one day, on
10 August 7, 2004, and she worked a total of 12.5 hours. Richard Waller of the OLSE made the
11 initial entry in the OLSE case activity sheet for Case No. MWO-C-015 regarding Ms. Wong's
12 complaint. (OLSE Exhibit 25) The entry states, in pertinent part:

13 "Donna Levitt (DL), Manager OLSE interviewed claimant and receive
14 claim. Claimant states she worked twelve and one-half hours, 11 AM to
15 11:30 PM, receive \$56.00 by check and approximately \$40 in tips for 12.5
16 hrs. Less than 10 minute break at 6:30 PM."

17 16. On September 15, 2004, Richard Waller sent a letter to Chinatown Restaurant,
18 which states in pertinent part:

19 "On behalf of the City and County of San Francisco (the "City") we are
20 writing to advise you that the Office of Labor Standards Enforcement
21 ("OLSE") has received a claim that a former employee of your business
22 was not paid the San Francisco minimum wage. OLSE has determined
23 that the claim filed by Yi Hui Wong, pursuant to Administrative Code
24 Section 12R, the Minimum Wage Ordinance ("MWO") (attached) against
25 Chinatown Restaurant and/or California Chinese Cuisine, LLC is valid.

26 OLSE has made three attempts to discuss this matter with Ana, who was
27 identified by the claimant as the owner of the restaurant. However, the
28 phone calls we made in order to assess the validity of the claim were
rebuffed and/or unreturned by Chinatown Restaurant. Therefore, OLSE
made this determination of back wages due based on information
provided by the claimant.

The MWO wage claim indicates that on August 7, 2004, Yi Hui Wong
performed work for the Chinatown Restaurant and/or California Chinese
Cuisine, LLC from 11:00 AM to 11:30 PM and was paid \$56.00, the
equivalent of \$4.48 per hour. The minimum wage rate in effect at the time
was \$8.50 per hour. Pursuant to Labor Code section 510, employees

1 must be paid one and one-half times the regular rate of pay for hours
2 worked in excess of eight hours in a day. The difference between the
amount paid and amount owed under MWO (including overtime) to the
claimant is \$69.38.

3 If you agree that this claim is valid, it can be settled by mailing to this
4 office a certified check, cashiers check or money order (no other form of
payment will be accepted) made payable to the claimant for the amount
5 set forth above. The check must be received by OLSE by Friday, October
1, 2004.

6 OLSE believes this determination to be fair and reasonable. More than 30
7 days has elapsed since OLSE first contacted Chinatown Restaurant
and/or California Chinese Cuisine, LLC on this matter. Should it go
8 unresolved beyond October 1, 2004, OLSE will schedule a hearing.

9 Should it be determined that the claim is valid after providing an
10 opportunity to dispute the claim at hearing, OLSE is authorized to order
11 any appropriate relief including, but not limited to (1) reinstatement, (2)
12 payment of back wages unlawfully withheld, (3) payment of \$50.00 to
each employee or person for each day or portion thereof which the
violation occurred, and (4) payment of \$50.00 to the City for each day or
portion thereof for each employee for which a violation occurred.

13 Noncompliance with an order after hearing may result in a civil action
14 being filed against you for the remedies just described, and in addition,
15 payment of attorney's fees and costs. The City also has the right under
16 the Administrative Code Section 12R.7(b) to revoke or suspend any
registration certificates, permits or licenses held or requested by
Chinatown Restaurant and/or California Chinese Cuisine, LLC until such
time as the violation is remedied.

17 As a result of the above determination and pursuant to Administrative
18 Code section 12R.5(c), OLSE is also making formal request for access to
19 all payroll documents regarding all persons performing work for
20 compensation for Chinatown Restaurant and/or California Chinese
Cuisine, LLC from February 23, 2004 and up to the most recent pay
period.

21 Please contact Compliance Officer, Kareem Olateju at (415)-554-6214 to
22 schedule a date and time, to be before October 8, 2004 that a
23 representative of this office may visit your business to examine payroll
24 records and make copies. If you prefer, you may provide copies of the
documents listed above and they must be received in this office by the
close of business on October 8, 2004."

25 (OLSE Exhibit 2) Richard Waller testified that the portion of the letter which states that the claim
26 can be settled "by mailing to this office a certified check, cashiers check or money order" in the
27 amount of \$69.38, pertains only to the settlement of back wages owed to the claimant, and it does
28 not pertain to the settlement of any potential penalties. Although an order imposing penalties under

1 the MWO requires a due process hearing, the MWO does not preclude the OLSE from seeking
2 penalties during settlement negotiations. However, the OLSE made no attempt to seek penalties
3 when settling this matter, and the settlement proposal states that the OLSE will schedule a hearing
4 only if the case goes unresolved beyond October 1, 2004.

5 17. On Friday October 1, 2004, OLSE Manager Donna Levitt made the following entry
6 in the case activity sheet:

7 "Received call from Jimmy Quan who introduced himself as the owner of
8 Chinatown Restaurant. He said that today is the last day for him to pay
9 the \$69.38 that OLSE assessed for back wages owed to Yi Hui Wong. At
10 first he said that he doesn't know who she is & I told him about the
11 interview with her. He said that the restaurant closes at 10PM & she
12 couldn't have worked until 11:30. I pointed out that he wasn't there and
13 Anna was, and she said everyone who works there is a relative & that's
14 not true & then she hung up on us when we tried to discuss it with her. He
15 said Anna is his wife. Then he faxed a copy of a cashier's check made
16 out to Ms. Wong & said that he doesn't want to pay it until after he
17 testifies at a grand jury hearing on Wednesday regarding a \$6.75 million
18 investigation. He said he couldn't admit any guilt on anything and was
19 afraid to pay out the money before then. I suggested that he check it out
20 with his attorney & he said it's very complicated. We agreed that he would
21 call me on Thursday morning to arrange to give us the \$69.38."

22 18. According to the case activity sheet, Jimmy Quan delivered a cashier's check in the
23 amount of \$69.38 to the OLSE on Thursday October 7, 2004. Donna Levitt's activity sheet entry on
24 that date indicates that Mr. Quan was hesitant to make the payment and it states that she "typed
25 up for him a statement that he dictated and signed (in file) and gave me the check." A copy of the
26 statement was admitted into evidence, and it states: "I do not know the claimant and I am paying
27 this amount only to resolve this matter in the most economic way." (OLSE Exhibit 3)

28 19. The activity sheet entry for October 7, 2004 also states that Ms. Levitt again
requested payroll records from Mr. Quan, and he asked to have until February 1, 2005 to submit
the records. The entry states:

"I explained that it is our procedure to recover back wages for claimants
and then to review company payroll records to see if other workers are
also owed back wages. I said I would discuss his desire to wait with the
City Attorney but I didn't know what the response would be."

20. The last entry in the activity sheet for Case No. MWO-C-15 is on October 8, 2004,

1 and it states:

2 "Contacted claimant through the number she provided but it has been
3 disconnected. Wrote a letter informing her of the settlement check and
4 mailed it to her. Waiting to hear back from her and to schedule a time to
5 pick up her check."

6 The OLSE submitted a copy of a signed statement from Ms. Wong stating that she received the
7 check from the OLSE "for the underpayment of the City's MW."

8 21. Claimant Wong did not appear at any of the hearings.

9 22. Richard Waller testified that a claim generally is closed after an employer pays the
10 disputed wages. However, according to Mr. Waller, this claim was ultimately brought to hearing
11 because the restaurant failed to produce requested payroll records, and the restaurant also failed
12 to resolve a subsequent claim brought by Jin He (Claimant #5). OLSE Manager Donna Levitt
13 testified that the OLSE decided to seek penalties with regard to Ms. Wong's claim after determining
14 that the restaurant's failure to pay minimum wage was a "widespread" practice, and because the
15 restaurant failed to produce requested payroll records.

16 23. The OLSE is seeking penalties in the amount of \$3,000.00 on behalf of Claimant
17 Wong, as well as a payment in the same amount to the City. This amount was calculated by
18 multiplying \$50.00 per day by 60 days for the period August 7, 2004, the claimant's only day of
19 work at the restaurant, through October 6, 2004, the day before the disputed wage was paid.

20 **Case No. MWO-C-060: Zu Tong Jin (Claimant #2); Pei Yuan Chen (Claimant #3); and Qian**
21 **Feng Yuan (Claimant #4)**

22 24. On June 17, 2005, Zu Tong Jin (Claude) and Pei Yuan Chen (Grandy) each
23 submitted wage claim reports to the OLSE regarding payment received from Chinatown
24 Restaurant for work performed during the period June 1, 2005 through June 11, 2005. (OLSE
25 Exhibits 4 & 5)

26 25. On June 17, 2005, OLSE staff member Robin Ho made the initial entry in the case
27 activity sheet for OLSE Case No. MWO-C-060. (OLSE Exhibit 25) The entry states:

28 "Interviewed claimants and received claim. Claimant stated that each of
them worked 49 hours from 6/1/05 to 6/11/05 (9 working days), and
brought in 7 tables of business into the restaurant. Their job was passing
out flyers/menus and bringing customer in to the restaurant. When they

1 were first hired, Wan Na Wong (Aka: Ana?), the manager told them they
2 would be paid \$8.62 per hour plus commission \$2.50 per table if the
3 customer who was brought in by them and spent more than \$20. On
4 6/11/05, they were told that they were terminated because of their
5 poor performances. They were also told that they had to come back to get
6 their wage on the following payday. They were paid on the 15th and 30th of
7 each month. On 6/15/05, the payday, Ana gave \$59 to each of them as
8 their paycheck for the total hours they worked. (The \$59 was based on 7
9 tables x 8.5 = \$59.5) They refused to accept the \$59. They filed a wage
claim for a total amount of \$439.88 gross (49 hours x \$8.62 = \$422.38
plus 7 tables x \$2.5 = \$17.5), with OLSE. When I asked them if they had
any time records for their hours they worked. They told me that they were
instructed to fax the timesheet to the office when they came into work at
the beginning of their shift, and fax the timesheet again to the office when
they finished work by the end of their shift. They do not have copies of the
timesheets that they had faxed to the owner. They said that the employer
should have all of the records.”

10 Ms. Ho testified that the claimants provided additional information regarding their claims in the
11 days following their initial complaints.

12 26. On June 20, 2005, Robin Ho sent a letter to Anna Wong and Jimmy Quan
13 requesting the restaurant to provide OLSE “with payroll records for the Chinatown Restaurant from
14 February 23, 2004, through the present.” (OLSE Exhibit 7) The OLSE requested receipt of the
15 records by July 7, 2005. The June 20, 2005 entry in the case activity sheet states that Robin Ho
16 and another OLSE staff member visited the restaurant on that date to meet with Jimmy Quan and
17 discuss the claims filed by Zu Tong Jin and Pei Yuan Chen.

18 27. On June 23, 2005, Qian Feng Yuan filed a report of wage claim with the OLSE,
19 which was included in Case No. MWO-C-060. (OLSE Exhibit 6-A) Robin Ho's entry in the case
20 activity sheet on June 23, 2005 states, in pertinent part:

21 “He [claimant Yuan] stated that he got \$195 paid in cash for a total of 5
22 days worked. He worked on 5/30, 31, 6/1, 2, and 4. His schedule was
23 from 11 AM to 8 PM. Lunch break was less than half hour. His job was
24 passing out menus for the restaurant. He was told by Ana that he would
25 be paid \$8.62 per hour and \$2.5 commission for a customer/table who
26 brought in by him and spent more than \$20; and \$1.5 commission for a
customer/table who brought in by him and spent less than \$20. He
worked a total of 41 hours for the five days. He brought in 15 tables who
spent more than \$20, and 9 tables who spent less than \$20. Therefore,
he claimed that the owner owed him for a total of about \$200.00. He has
a copy of his timesheet which he will bring to me later.”

27 28. According to the case activity sheet, Robin Ho spoke to Jimmy Quan on the
28

1 telephone on June 24, 2005, during which time Mr. Quan asserted that he did not know claimants
2 Jin, Chen, or Yuan. The activity sheet further indicates Mr. Quan agreed to meet with OLSE staff
3 on June 30, 2005 to discuss the claims.

4 29. On June 30, 2005, Robin Ho made the following entry in the case activity sheet:

5 "Richard, Josh and I had a meeting with Jimmy Guan at 9 AM. We
6 presented the evidence to him. He still denied that those workers had
7 worked for the restaurant. He asked us to provide these workers tel.
8 Number and SS#. Richard responded that it was his responsibilities to
9 provide us with these information. He asked for a copy of the dollar
10 amount that each worker claimed. We gave it to him. In addition, he
11 wanted to know if there was a hearing process or a hearing book he can
12 go with. We responded that we did have the hearing process and it's his
13 choice. Richard also explained to him how the hearing process would be.
14 Then he said he would bring these workers information back and verify if
15 the information was correct. He will return to the office on July 7 with his
16 decision. He will also bring the audit record in on July 7, 2005."

17 30. The OLSE submitted calculation worksheets showing how the department
18 calculated the wages owed to Zu Tong Jin (Claimant #2), Pei Yuan Chen (Claimant #3); and Qian
19 Feng Yuan (Claimant #3). Robin Ho testified that she calculated the claimed amounts using
20 information received from the claimants during the investigation, including the number of days and
21 hours per day each claimant worked, and the number of tables each claimant brought into the
22 restaurant.

23 31. The OLSE calculated that Mr. Jin was owed a total of \$459.62 for work performed
24 during the period June 1, 2005 through June 11, 2005. This amount was calculated as follows: 45
25 hours at \$8.62 per hour ($45 \times \$8.62 = \387.90), plus 4 hours at \$12.93 per hour for overtime ($4 \times$
26 $\$12.93 = \51.72), plus 8 tables at \$2.50 per table ($8 \times \$2.50 = \20.00), the sum of which equals
27 \$459.62 ($\$387.90 + \$51.72 + \$20.00 = \459.62). (OLSE Exhibit 4) Mr. Jin's testimony at the June
28 14, 2006 hearing corroborated the amount of the claimed wage.

32. The OLSE calculated that Mr. Chen was owed a sum of \$465.74 for work performed
during the period June 1, 2005 through June 11, 2005. This amount was calculated as follows: 46
hours at \$8.62 per hour ($46 \times \$8.62 = \396.52), plus 4 hours at \$12.93 per hour for overtime ($4 \times$
 $\$12.93 = \51.72), plus 7 tables at \$2.50 per table ($7 \times \$2.50 = \17.50), the sum of which equals
 $\$465.74$ ($\$396.52 + \$51.72 + \$17.50 = \465.74). (OLSE Exhibit 5-A) Mr. Chen's testimony at the

1 September 14, 2006 hearing corroborated the amount of the claimed wage.

2 33. The OLSE calculated that Mr. Yuan was owed a sum of \$421.66 for work performed
3 during the period May 30, 2005 through June 4, 2005. Since Mr. Yuan reported that he was paid
4 \$195.00 in cash, the amount owed was determined to be \$226.66 ($\$421.66 - \$195.00 = \226.66).
5 This amount was calculated as follows: 37 hours at \$8.62 per hour ($37 \times \$8.62 = \318.94), plus 4
6 hours at \$12.93 per hour for overtime ($4 \times \$12.93 = \51.72), plus 15 tables at \$2.50 per table (15
7 $\times \$2.50 = \37.50), plus 9 tables at \$1.50 per table ($9 \times \$1.50 = \13.50), the sum of which equals
8 \$421.66 and when \$195.00 is subtracted from that amount the sum owed is \$226.66 ($\$318.94 +$
9 $\$51.72 + \$37.50 + \$13.50 = \$421.66 - \$195.00 = \226.66). (OLSE Exhibit 6-A) Mr. Yuan's
10 testimony at the June 13, 2006 hearing corroborated the amount of the claimed wage.

11 34. The total amount calculated to be owed to the three claimants was \$1,152.02
12 ($\$459.62$ for Mr. Jin + $\$465.74$ for Mr. Chen + $\$226.66$ for Mr. Yuan = $\$1,152.02$).

13 35. The OLSE activity sheet entry for July 7, 2005, which was input by Robin Ho, states

14 "Jimmy called me to request to change today's meeting from 9 AM to 3
15 PM. Rich, Josh and I met with Jimmy and Ana (his wife) at 3 PM instead.
16 Jimmy DID NOT bring any payroll records that he had agreed to provide.
17 He and his wife refused to present any audit records and said they would
18 only produce those records to the court. In regards to the three claims,
19 Jimmy and Ana made an offer with three cashier checks: \$200.00 to Zu
20 Tong Jin, \$200.00 to Pei Yuan Chen and \$20.00 to Qian Feng Yuan, for a
21 total of \$420.00. (Note: The total amount of the back wage is \$1152.02)
22 Jimmy and Ana also wrote a check \$700 payable to the City and County
of San Francisco. They said the City could do whatever they want with
the \$700. But they won't give the money (\$700) to the claimants. They
want a hearing if the three claimants refuse to accept the offer. They have
a copy of the dollar amount that each claimant had claimed from our last
meeting. But they did not present any evidence/records that would
support their disagreements with those claims, citing that they would
present their own evidence at the hearing only.

23 I called Zu Tong Jin and updated him regarding the result of the meeting.
24 And told him about Jimmy and Ana's offer. He was unhappy with the offer
and will come into the office tomorrow at 9:00 AM with the other two
claimants."

25 36. Robin Ho's July 8, 2005 activity sheet entry states:

26 "Three claimants came in and they all disagreed with Jimmy and Ana's
27 offer. They are willing to testify if there is a hearing. However, after Rich
28 consulted with Donna, we decided to take Jimmy's initial offer, asked

1 Jimmy to pay the city \$732.02 (Not \$700) that will come up to the same
2 total amount of the money owed to the three workers. Then the City will
3 cut three checks to each individual. The workers happy with it. Jimmy
4 delivered the check \$732.02 at 5 PM today. Zu Tong Jin signed and took
5 \$200 check, Pei Yuan Chen signed and took the \$200 and Qian Feng
6 Yuan signed and took the \$20 check today."

4 37. The July 22, 2005 activity sheet entry by Robin Ho states:

5 "Three claimants came in and signed off the worker address confirmation
6 form and W9 form. Winny have submitted the request to controller's office
7 in order to cut the checks.

8 The wage claim is settled. However, Jimmy did not provide the audit
9 records to us."

9 38. Robin Ho made the final entry in the activity sheet on August 2, 2005. The entry
10 states:

11 "Three workers signed and received their checks today. They are very
12 happy and thank for all the work the office had done for them."

12 39. Richard Waller testified that a claim generally is closed after an employer pays the
13 requested amount of unpaid wages. However, according to Mr. Waller, these three claims were
14 ultimately brought to hearing because the restaurant failed to produce requested payroll records,
15 and the restaurant also failed to resolve a subsequent claim brought by Jin He (Claimant #5).
16 Although a due process hearing is required before an order imposing penalties may be issued, the
17 Hearing Officer notes that the OLSE could have sought penalties from the restaurant as part of its
18 settlement proposal yet it failed to do so.

19 40. The OLSE is seeking penalties in the following amount on behalf of the claimants:

20 (1) \$1,850.00 for claimant Zu Tong Jin which is calculated by multiplying \$50.00 per day by 37
21 days for the period June 1, 2005 (the date employment commenced) through July 7, 2005 (the day
22 before the wage claim was resolved); (2) \$1,850.00 for claimant Pei Yuan Chen which is calculated
23 by multiplying \$50.00 per day by 37 days for the period June 1, 2005 (the date employment
24 commenced) through July 7, 2005 (the day before the wage claim was resolved); and (3)
25 \$1,950.00 for claimant Qian Feng Yuan which is calculated by multiplying \$50.00 per day by 39
26 days for the period May 30, 2005 (the date employment commenced) through July 7, 2005 (the
27 day before the wage claim was resolved). The OLSE also seeks payment in the in the amount of
28 \$5,650.00 to the City pursuant to MWO Section 12R.7(b), which amount is the sum of the penalties

1 sought on behalf of the three claimants (\$1,850.00 + \$1,850.00 + \$1,950.00 = \$5,650.00).

2 Case No. MWO-C-070: Jin He (Claimant #5)

3 41. On August 12, 2005, Jin He filed a report of wage claim, which the OLSE
4 designated as OLSE Case No. MWO-C-070. (OLSE Exhibit 15) The claim states that Mr. He
5 worked at the restaurant handing out menus on the street for the period May 29, 2005 through
6 August 1, 2005. The claim further states that Mr. He received no pay for 260 hours of work
7 performed during the period July 1, 2005 through August 1, 2005. (OLSE Exhibit 15) Robin Ho
8 testified that the claim was referred to the OLSE by the Chinese Progressive Association (CPA).

9 42. On August 12, 2005, Robin Ho made the initial entry in the case activity sheet,
10 which states in pertinent part:

11 "This case is referred by CPA. Josh Winny and I went to CPA this
12 morning and conducted an interview with the claimant at CPA. Jin He, the
13 claimant stated that the restaurant owed his wage from July 1 to August
14 1. He had worked for the restaurant from May 29, 05 to August 1, 05. He
15 was fired on August 1, 05 because his performance was not satisfactory.
16 Anna Wong, the owner told him that she would pay his wage from July 1
17 to August 1 on August 4. However, she didn't. The claimant went back to
18 request his wage on 8/9/05. Anna did not want to talk to him at all, but
19 she called the police and tried to use the police to threaten him, because
20 he was on a student visa. The claimant left the restaurant and he did not
21 know whether the police came or not. The next day, on 8/10/05, he went
22 back to the restaurant again and requested his wage. Jimmy Quan said
23 that he would pay him tomorrow (8/11/05). So he went back on 8/11/05
24 again to request his wage. Jimmy and Anna did not want to speak to him
25 when they saw him. They called the police again. The claimant left the
26 restaurant because he was worried about his student visa that may not
27 qualify him to work so many hours. His co-worker told him later that the
28 police did show up at the restaurant after he left."

(OLSE Exhibit 25) The entry further states that the claimant provided the OLSE staff with
"timesheets, paychecks and tips/commission records," copies of which were submitted into the
record and for the period June 1, 2005 through August 1, 2005. (OLSE Exhibit 17-A) Robin Ho
testified that, based on those records, the OLSE determined that in addition to receiving no
payment for work performed for the period July 1, 2005 through August 1, 2005, Mr. He was
underpaid for the period June 1, 2005 through June 30, 2005.

43. The August 12, 2005 case activity sheet entry also states that the Chinese
Progressive Association "decided to protest in front of the restaurant from 12 noon to 2 PM today,"

1 which protest Robin Ho and two other OLSE staff members watched from the second level of the
2 restaurant while having tea. The case activity sheet states:

3 "At 12 noon, CPA along with the claimant protested in front of the
4 restaurant with the signs. The Chinese media also presented. We sat
5 upstairs and overheard Anna screamed and yelled in front of the camera.
6 She told everyone that the claimant was illegal alien, etc. we didn't want
7 to get involved the protest and stayed at upstairs. Jimmy was surprised to
8 see us in his restaurant. He asked us what we wanted from him. We
9 reminded him that the audit record request was over due, when he would
10 produce the records to us. He said 8/17/05, b/c he has a trial for his
11 criminal case on 8/16/05."

12 Finally, the entry states the following with regard to Mr. Quan's response when the OLSE staff
13 informed him that Jin He had filed a complaint that morning:

14 "Jimmy denied the claimant worked for the restaurant without asking what
15 the complaint was about. He denied everything. He didn't want to answer
16 any questions. I tried to schedule a meeting with him next week. But he
17 didn't want to say which date he would be available and kept talking on
18 his cell phone and claimed that it was the FBI calling him right now. He
19 was too busy, and he couldn't talk to us. All workers were out of the
20 restaurant and stayed at the alley (outside the restaurant kitchen.) We
21 tried to interview some workers, but they all run away when we tried to
22 approach them."

23 44. On August 15, 2005, Robin Ho made an entry in the case activity sheet. The entry
24 states that based on the information provided by the claimant, Chinatown Restaurant owed him
25 back wages in the amount of \$2,444.94." The entry also states, in pertinent part:

26 "Jimmy showed up at 4 PM after his meeting in court regardless we have
27 rescheduled the meeting for tomorrow. He asked if we could show any
28 papers related to the claim to him. He also denied that the worker had
worked for the month of July, citing he had asked the worker to stop work
since July 1. But the worker didn't listen and kept coming back. We told
Jimmy that we have the evidence from the worker to proof that he did
work for the whole month of July and August 1. And the evidence of how
many tables that the worker brought into the restaurant. Jimmy denied
everything that we told him and said "he didn't bring in any tables at all '0'
tables." Then I showed the evidences and the worker's time sheet. He
started to scream and yell, and said very loudly "He (the worker) had
already violated the law, he stole the property of the restaurant; I want a
hearing..." I gave a copy of our audit that indicated how much he owed to
the worker. He said he would call us after Tuesday to schedule a meeting
probably on Wednesday (8/17/05).

I talked to the worker after Jimmy left. I told him that Jimmy denied he had
worked for the restaurant in July. The worker said "no such thing. He

1 lied." I also asked the worker how he got these copies of his timesheets
2 and the evidence of how many tables he brought in every day. He said
3 that he made copies of them."

4 45. On August 18, 2005, Robin Ho and Donna Levitt met with Jimmy Quan and Anna
5 Wong to discuss Jin He's claim. Robin's Ho's case activity sheet entry for that date states that
6 Jimmy Quan agreed to pay the full amount of claimed back wages only if Jin He would fill out a W-
7 4 form.

8 46. According to the case activity sheet, the claimant informed Robin Ho on August 19,
9 2005 that he would not agree to fill out a W-4 form. The August 22, 2005 entry states that Jimmy
10 Quan "requested to settle the case if Jin He could provide his name, address and telephone
11 number even without his SS#." The August 23, 2005 entry states:

12 "Talked to Jimmy that the worker agreed to provide the information that
13 he requested. But Jimmy added another requirement that the worker had
14 to sign his name on the paper and declare what information he would
15 provide. I communicated with the worker regarding Jimmy's additional
16 requirement. The worker felt that he couldn't meet Jimmy's unreasonable
17 request any more. He refused to do so and wanted a hearing."

18 47. On August 25, 2005, according to the case activity sheet, the OLSE left a voicemail
19 message with Jimmy Quan informing him that the worker would provide the requested information,
20 but he would not agree to sign a written statement. Chinatown Restaurant did not tender or make
21 any payment to the claimant or the OLSE for the wages claimed by Mr. He.

22 48. On August 29, 2005, the OLSE issued a "Notice of Determination" in Case No.
23 MWO-C-070. (OLSE Exhibit 18) The notice states, in pertinent part:

24 "The Office Labor Standards Enforcement (OLSE) has made a
25 determination that Chinatown Restaurant violated the Minimum Wage
26 Ordinance by underpaying claimant Jin He, \$2,444.94 for the time period
27 July 1, to August 1, 2005. This determination is based on the review of
28 documents and records including timesheets, payroll checks, commission
 checks, statements of yourselves and the claimant. The worksheet
 detailing the amount owed is enclosed for your review.

 OLSE believes that this determination is fair and reasonable. If you
 disagree with the determination you may request a due process hearing
 by submitting a written objection by no later than the close of business
 September 6, 2005. The request for hearing must contain the grounds for
 the objection and any supporting documentation and sent to Donna Levitt,
 Manager, 1 Dr. Carlton B. Goodlett Place, San Francisco.

1 Restitution should be made by check payable to the City and County of
2 San Francisco-OLSE and mailed to the Office of Labor Standards
3 Enforcement, Living Wage/Living Health Unit City Hall, Room 430, 1 Dr.
4 Carlton B. Goodlett Place, San Francisco.

5 If a request for hearing or the assessed back wage payment of \$2,444.94
6 is not received by the close of business September 6, 2005, this matter
7 will be referred for formal hearing at which time OLSE may order
8 administrative penalties of \$100 for each day or portion thereof a violation
9 occurred or continued, pursuant to San Francisco Administrative Code,
10 Section 12R.7(b).

11 A copy of the San Francisco Administrative Code, Chapter 12R is
12 enclosed for your information. The right to a hearing and administrative
13 penalties is contained in § 12.R7(b)."

14 49. On September 6, 2005, Jimmy Quan made a written request to the OLSE for a due
15 process hearing. (OLSE Exhibit 19) The request states, in pertinent part:

16 "I received a U.S. Mail from you dated 8/29/05. I disagree with the
17 determination. I would like to set up a due process hearing as soon as
18 possible, please make sure Jin He is present, so I can cross exam."

19 50. On October 27, 2005, Robin Ho made an entry in the case activity sheet which
20 indicates that the OLSE proposed a settlement offer to Jimmy Quan for a compromised amount of
21 the wage claim, and the matter did not get resolved.

22 51. On June 5, 2006, counsel Jill Figg faxed and mailed a letter to Jimmy Quan, which
23 states in pertinent part:

24 "I am responding to your voicemail message this morning in which you
25 expressed the desire to meet today or tomorrow to discuss settlement. I
26 do not believe that a meeting would be productive. However, Donna Levitt
27 and I have both informed you on various occasions that if you would like
28 to make a settlement offer you should do so in writing and any offer must
include the following items:

- 1) full settlement of all back wages owing to Jin He;
- 2) a proposal for settlement of penalties; and
- 3) production of all requested payroll documents by a date prior to the hearing."

52. On June 5, 2006, Jimmy Quan faxed a responsive letter to Jill Figg, which
states in relevant part:

"In response to your written reply to my voicemail message that I received
this morning, I am disappointed in your decision in denying me the
opportunity to meet with you and your clients, to discuss a possible
settlement offer. I am deeply saddened by your lack of consideration, and

efforts to find a mutual resolution in this matter.

1 My proposal to settle was a gesture in my part to move forward in this
2 case, in hopes of possibly finding an acceptable resolution to this
3 misunderstanding. I've even purchased a cashier check, long before the
4 filing of my motions. This cashier check is made out to the City & County
5 of San Francisco, as a settlement offering if we had met. (See attach -
6 Cashier check: 410846049)

7 If your decisions and actions are truly for the best interest of your clients,
8 and not for your department's financial gain, then why you had refused
9 my request to meet and discuss a settlement? Was your clients even
10 informed of my proposal or given the opportunity to contribute to your
11 decision?

12 Time conservation and cost efficiency is vital in our case. Initializing
13 immediate steps towards a settlement agreement or even a partial
14 settlement agreement is the best course of action in this case to conserve
15 time and money for both of us.

16 My intention is to quickly find a mutual resolution to this, so we can move
17 forward in our lives. With this in mind, I am attempting once again to
18 schedule a meeting with you and your clients, so that we can discuss the
19 possible option of a settlement."

20 (OLSE Exhibit 36) Mr. Quan attached a copy of the cashier's check in the amount of \$2444.96,
21 which is dated May 22, 2006, and is paid to the order of the City and County of San Francisco.

22 (OLSE Exhibit 36)

23 53. On June 6, 2006, Jill Figg faxed a responsive letter to Jimmy Quan, which states in
24 pertinent part:

25 "I have received your letter dated June 6, 2006 regarding settlement of
26 Jin He's claims. While the Office of Labor Standards Enforcement (OLSE)
27 and I appreciate your interest in settlement, you have only responded to
28 one of the three conditions set forth in my letter to you dated June 5,
2006. Specifically, I informed you that if you would like to make a
settlement offer, you should do so in writing and any offer must include
the following items:

- 1) full and unconditional settlement of all back wages owing to Jin he;
- 2) a proposal for settlement of penalties; and
- 3) production of all requested payroll documents by a date prior to the hearing.

Your letter of June 6, 2006 fails to address the second and third items above. If you would like to make a settlement offer that includes all three items listed above, please feel free to do so in writing to me."

54. Claimant Jin He credibly testified at the June 14, 2006 hearing that he worked at the

1 Chinatown Restaurant distributing menus for the period May 29, 2005 through August 1, 2005. Mr.
2 He further credibly testified that the payroll records that he provided to the OLSE accurately reflect
3 the number of hours he worked during the period June 1, 2005 though August 1, 2005, as well as
4 the amount of wages he was paid for work performed during that period. Based on the evidence
5 presented, the OLSE properly calculated the amount of wages owed to claimant He.

6 55. At the conclusion of Mr. He's testimony on June 14, 2006, counsel for Chinatown
7 Restaurant gave the claimant the May 22, 2006 money order, payable to the City and County of
8 San Francisco in the amount of \$2,444.96.

9 56. The OLSE is seeking penalties in the amount of \$18,900.00 on behalf of Claimant
10 He, as well as a payment in the same amount to the City. This amount was calculated by
11 multiplying \$50.00 per day by 378 days for the period June 1, 2005, the first day the claimant was
12 underpaid, though June 13, 2006, the day before the disputed wage was paid.

13 Chinatown Restaurant's Opposition to the Claims

14 57. Chinatown Restaurant argues that the penalties sought by the OLSE are excessive
15 and in violation of the due process clauses of the federal and state Constitutions.

16 58. The restaurant further argues that penalties to the claimants and/or payments to the
17 City should not be ordered under MWO Section 12.R.7 for the following reasons:

- 18 (a) "The restaurant disputed liability for all of the claims but either paid them or tendered
19 payment in order to avoid the large cost of litigating them."
20 (b) "Except as to Jin He, all of the claims were 'de minimus' and they were settled, with one
21 claim having been settled over a year before the initiation of the instant proceeding."
22 (c) "The OLSE represented that no hearings would be commenced if Respondent paid the
23 claims that it settled; it should be estopped from initiating such hearings after obtaining
24 Respondent's settlements in reliance on its representations."
25 (d) "As to Jin He's claims, which any trier-of-fact would surely question because of Mr. He's
26 contradictory statements under oath, Respondent received no prior demand from either
27 Mr. He or the CPA to explain why Mr. He did not receive in the mail the check that was
28 apparently promised upon his termination."

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(e) "Even though Respondent believed that Mr. He did not really work the hours that he claimed, Respondent still tendered Mr. He full payment of his wage claim on August 12, 2005, immediately upon being notified that Mr. He did not receive the check he was promised in the mail. Respondent's condition that Mr. He supply his social security number was not an illegal condition, since all employees are required to provide their employers with their social security numbers."

(f) "The MWO does not provide for any monetary administrative penalties for an employer's failure to deliver payroll records in response to an OLSE demand."

(Respondent's Post-hearing Brief, pages 6 – 7)

59. The evidence does not support the restaurant's assertion that it tendered to Mr. He the full amount of the disputed wage on August 12, 2005 as stated in its post-hearing brief.

HEARING OFFICER'S FINDINGS

1. The undersigned hearing officer shall make written findings on the following issues:

- (1) Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to Yi Hui Wong? If so, how much does it owe Claimant Wong in administrative penalties?
- (2) Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to Zu Tong Jin? If so, how much does it owe Claimant Jin in administrative penalties?
- (3) Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to Pei Yuan Chen? If so, how much does it owe Claimant Chen in administrative penalties?
- (4) Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to Qian Feng Yuan? If so, how much does it owe Claimant Yuan in administrative penalties?
- (5) Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to Jin He? If so, how much does it owe Claimant He in back wages? How much does it owe Claimant He in administrative penalties?
- (6) Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to any Claimant? If so, how much does it owe the City in administrative penalties?
- (7) Does Chinatown Restaurant owe any payments to the City for violating the MWO?

1 2. OLSE's request for a determination as to whether Chinatown Restaurant violated
2 the MWO by failing to pay minimum wage to any Claimant is included in the above issues for
3 determination, which address each of the five claimants in OLSE Case Nos. MWO-C-015, MWO-
4 C-060, and MWO-C-070. For due process reasons under the facts of this case, the undersigned
5 hearing officer previously ruled on the record that no determination would be made herein
6 regarding whether the restaurant violated the MWO by failing to pay minimum wage to any non-
7 claimant employees.

8 3. In its February 17, 2006 pre-hearing statement, the OLSE also requested the
9 hearing officer to make a determination whether Chinatown Restaurant failed to give the OLSE
10 reasonable access to payroll records. During the hearings, the OLSE argued that the restaurant's
11 failure to produce requested payroll records is a violation of the MWO which may result in an
12 order imposing penalties under Section 12R.7. However, Section 12R.7 does not provide for the
13 assessment of penalties based on an employer's failure to produce requested payroll records.
14 Under the MWO, the consequence of an employer's failure to produce records is the triggering of
15 the presumption under Section 12R.5(c) that the employer paid no more than the applicable
16 federal or state minimum wage to its employees. In this case, there is no need to make a
17 determination whether the restaurant failed to produce payroll records because the scope of the
18 hearings is limited to the five named claimants, and the OLSE was able to establish the actual
19 amount of pay received by the five claimants and therefore did not rely upon the presumption
20 under Section 12R.5(c). Moreover, issues pertaining to OLSE's outstanding record requests are
21 the subject of the litigation in San Francisco Superior Court Case No. 506557, and the OLSE has
22 reserved the right to request subsequent hearings regarding other possible violations of the MWO
23 by Chinatown Restaurant.

24 4. Chinatown Restaurant's request for a determination as to whether the amount of
25 penalties sought by the OLSE is constitutional, is discussed below, in Paragraph No. 20 of the
26 Hearing Officer's Findings.

27 5. Chinatown Restaurant is covered by the San Francisco Minimum Wage Ordinance
28 (MWO), which since its effective date of February 23, 2004, has required employers in San

1 Francisco to pay the local minimum wage. [Administrative Code Section 12R.4]

2 6. After a hearing that affords a suspected violator of the MWO due process, and
3 upon determination that a violation has occurred, the OLSE may order an administrative penalty
4 in the amount of \$50.00 to each employee whose rights were violated for each day or portion
5 thereof that the violation occurred or continued. [Administrative Code Section 12R.7(b)] Under the
6 MWO, the OLSE may also order a violating employer or person to pay to the City a sum of not
7 more than \$50.00 for each day or portion thereof and for each employee or person as to whom
8 the violation occurred or continued. [Administrative Code Section 12R.7(b)]

9 **Issue #1: Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to Yi
10 Hui Wong? If so, how much does it owe Claimant Wong in administrative penalties?**

11 7. The OLSE submitted sufficient evidence to establish that Claimant Wong was
12 owed wages in the amount of \$69.38 under the MWO for work performed on August 7, 2004.
13 Chinatown Restaurant did not present any evidence to refute the claim. Therefore, the
14 undersigned hearing officer finds that Chinatown Restaurant violated the MWO by failing to pay
15 minimum wage to Claimant Wong.

16 8. Based on the evidence, the undersigned hearing officer finds that Case No. MWO-
17 C-015 was dispensed with through a full and final settlement on October 7, 2004, more than a
18 year before the OLSE requested an administrative hearing. Administrative penalties are therefore
19 found to be unwarranted. This determination is supported by the following: (1) a hearing is
20 required before penalties may be ordered under the MWO, and the plain meaning of the
21 language in the OLSE's September 15, 2004 settlement letter was that a hearing would not be
22 conducted if the disputed amount of unpaid wages was submitted to the department on or before
23 October 1, 2004; (2) the OLSE extended the payment deadline to October 7, 2004, at which time
24 the restaurant submitted the full amount of disputed wages; (3) settlement of the claim was not
25 made contingent upon the payment of any penalties or the production of payroll records; and (4)
26 at the time the wage claim was settled, the OLSE failed to reserve the right to request a hearing
27 and seek penalties at a later time. Based on the testimony of OLSE staff, the agency decided to
28 seek penalties after settling the claim because the agency determined the restaurant's failure to

1 pay minimum wage to its employees was a widespread practice, and because the restaurant
2 failed to produce requested payroll records. Although the OLSE made a formal request for payroll
3 records on September 15, 2004, settlement of the wage claim was not made contingent on the
4 restaurant's cooperation with the records request, which was addressed separately from the
5 wage claim in the September 15, 2004 letter and which had a separate compliance deadline of
6 October 8, 2004. The facts in this case, viewed in their entirety, support the determination that the
7 case was fully and finally settled before a hearing was requested. Moreover, the totality of
8 circumstances may reasonably be considered as giving rise to waiver on the part of the OLSE to
9 seek administrative penalties with regard to this claim. Chinatown Restaurant therefore does not
10 owe any administrative penalties to the claimant or any payments to the City for this claim.

11 **Issue #2: Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to**
12 **Zu Tong Jin? If so, how much does it owe Claimant Jin in administrative penalties?**

13 9. The OLSE submitted sufficient evidence to establish that Claimant Jin was owed
14 wages in the amount of \$459.62 under the MWO for work performed during the period June 1,
15 2005 through June 11, 2005. Chinatown Restaurant did not present any evidence to refute the
16 claim. Therefore, the undersigned hearing officer finds that Chinatown Restaurant violated the
17 MWO by failing to pay minimum wage to Claimant Jin.

18 10. According to the OLSE's case activity sheet for Case No. MWO-C-060, OLSE staff
19 had a meeting with Jimmy Quan on June 30, 2005, at which time OLSE staff informed Mr. Quan
20 that it was "his choice" to submit the disputed wages for claimants Jin, Chen, and Yuan or request
21 a hearing. The case activity sheet further shows that on July 7, 2005, Chinatown Restaurant
22 made an offer to settle, and the restaurant informed the OLSE that it wanted a hearing if the
23 claimants refused the offer. The July 8, 2005 entry in the case activity sheet states that although
24 the workers refused the restaurant's initial settlement offer, an alternative settlement was reached
25 and the restaurant submitted the full amount of disputed wages on that date. The July 22, 2005
26 entry states: "The wage claim is settled. However, Jimmy did not provide the audit records to us."

27 11. Based on the evidence, the undersigned hearing officer finds that Case No. MWO-
28 C-060 was dispensed with through a full and final settlement on July 8, 2005, more than five

1 months before the OLSE requested an administrative hearing. Administrative penalties are
2 therefore found to be unwarranted. This determination is supported by the following: (1) a hearing
3 is required before penalties may be ordered under the MWO, and the settlement discussions
4 between the OLSE and Chinatown Restaurant were based on the premise that a hearing would
5 be conducted only if the disputed wage was not paid by the restaurant; (2) the restaurant
6 submitted the full amount of disputed wages on July 8, 2005; (3) settlement of the claim was not
7 made contingent upon the payment of any penalties or the production of payroll records; and (4)
8 at the time the wage claim was settled, the OLSE failed to reserve the right to request a hearing
9 and seek penalties at a later time. Although the OLSE made a written request for payroll records
10 on June 20, 2005, receipt of those records was not made a condition of settling the wage claim.
11 The facts in this case, viewed in their entirety, support the determination that the case was fully
12 and finally settled before a hearing was requested. Moreover, the totality of circumstances may
13 reasonably be considered as giving rise to waiver on the part of the OLSE to seek administrative
14 penalties with regard to this claim. Chinatown Restaurant therefore does not owe any
15 administrative penalties to the claimant or any payments to the City for this claim.

16 **Issue #3: Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to**
17 **Pei Yuan Chen? If so, how much does it owe Claimant Chen in administrative penalties?**

18 12. The OLSE submitted sufficient evidence to establish that Claimant Chen was
19 owed wages in the amount of \$465.74 under the MWO for work performed during the period June
20 1, 2005 through June 11, 2005. Chinatown Restaurant did not present any evidence to refute the
21 claim. Therefore, the undersigned hearing officer finds that Chinatown Restaurant violated the
22 MWO by failing to pay minimum wage to claimant Chen.

23 13. Based on the evidence, the undersigned hearing officer finds that Case No. MWO-
24 C-060 was dispensed with through a full and final settlement on July 8, 2005, more than five
25 months before the OLSE requested an administrative hearing. Administrative penalties are
26 therefore found to be unwarranted. This determination is supported by the following: (1) a hearing
27 is required before penalties may be ordered under the MWO, and the settlement discussions
28 between the OLSE and Chinatown Restaurant were based on the premise that a hearing would

1 be conducted only if the disputed wage was not paid by the restaurant; (2) the restaurant
2 submitted the full amount of disputed wages on July 8, 2005; (3) settlement of the claim was not
3 made contingent upon the payment of any penalties or the production of payroll records; and (4)
4 at the time the wage claim was settled, the OLSE failed to reserve the right to request a hearing
5 and seek penalties at a later time. Although the OLSE made a written request for payroll records
6 on June 20, 2005, receipt of those records was not made a condition of settling the wage claim.
7 The facts in this case, viewed in their entirety, support the determination that the case was fully
8 and finally settled before a hearing was requested. Moreover, the totality of circumstances may
9 reasonably be considered as giving rise to waiver on the part of the OLSE to seek administrative
10 penalties with regard to this claim. Chinatown Restaurant therefore does not owe any
11 administrative penalties to the claimant or any payments to the City for this claim.

12 **Issue #4: Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to**
13 **Qian Feng Yuan? If so, how much does it owe Claimant Yuan in administrative penalties?**

14 14. The OLSE submitted sufficient evidence to establish that Claimant Yuan was owed
15 wages in the amount of \$421.66 under the MWO for work performed during the period May 30,
16 2005 through June 4, 2005, and that \$226.66 remained unpaid prior to the filing of the claimant's
17 wage claim. Chinatown Restaurant did not present any evidence to refute the claim. Therefore,
18 the undersigned hearing officer finds that Chinatown Restaurant violated the MWO by failing to
19 pay minimum wage to claimant Yuan.

20 15. Based on the evidence, the undersigned hearing officer finds that Case No. MWO-
21 C-060 was dispensed with through a full and final settlement on July 8, 2005, more than five
22 months before the OLSE requested an administrative hearing. Administrative penalties are
23 therefore found to be unwarranted. This determination is supported by the following: (1) a hearing
24 is required before penalties may be ordered under the MWO, and the settlement discussions
25 between the OLSE and Chinatown Restaurant were based on the premise that a hearing would
26 be conducted only if the disputed wage was not paid by the restaurant; (2) the restaurant
27 submitted the full amount of disputed wages on July 8, 2005; (3) settlement of the claim was not
28 made contingent upon the payment of any penalties or the production of payroll records; and (4)

1 at the time the wage claim was settled, the OLSE failed to reserve the right to request a hearing
2 and seek penalties at a later time. Although the OLSE made a written request for payroll records
3 on June 20, 2005, receipt of those records was not made a condition of settling the wage claim.
4 The facts in this case, viewed in their entirety, support the determination that the case was fully
5 and finally settled before a hearing was requested. Moreover, the totality of circumstances may
6 reasonably be considered as giving rise to waiver on the part of the OLSE to seek administrative
7 penalties with regard to this claim. Chinatown Restaurant therefore does not owe any
8 administrative penalties to the claimant or any payments to the City for this claim.

9 **Issue #5: Did Chinatown Restaurant violate the MWO by failing to pay minimum wage to
10 Jin He? If so, how much does it owe Claimant He in administrative penalties?**

11 16. The OLSE submitted sufficient evidence to establish that Claimant He was owed
12 wages in the amount of \$2,444.96 under the MWO for work performed during the period June 1,
13 2005 through August 1, 2005, and Chinatown Restaurant did not present sufficient evidence to
14 refute the claim. Based on the evidence, Chinatown Restaurant first offered to pay the full amount
15 of owed wages without condition on June 5, 2006 in an effort to settle the case before it
16 proceeded to hearing. However, the OLSE did not accept the payment because the restaurant
17 failed to propose a settlement of penalties and the restaurant also failed to produce requested
18 payroll records, each of which the OLSE had made conditions for settling the case. At the June
19 14, 2006 hearing, counsel for the restaurant finally handed the claimant a money order for the full
20 amount of claimed back wages.

21 17. Based on the evidence and pursuant to Section 12R.7(b) of the MWO, the
22 undersigned hearing officer finds that Chinatown Restaurant should be ordered to pay maximum
23 penalties to the claimant. The OLSE interprets a violation of the MWO to *occur* on each day that
24 an employer pays any employee less than the local minimum wage. The OLSE interprets a
25 violation of the MWO to *continue* on each day an employer fails to pay any employee the
26 minimum wages that are owing. This interpretation is consistent with the language of the MWO,
27 and the undersigned hearing officer finds that the OLSE used the proper method of calculating
28 penalties. In this case, the violation continued for 378 days, beginning with the initial day that the

1 employee was underpaid (June 1, 2005) and continuing until the day before the wage was finally
2 paid to the claimant (June 13, 2006).


3 18. The undersigned hearing officer further finds that maximum penalties in the
4 amount of \$18,900.00 may be assessed on behalf of Claimant He for the period June 1, 2005 to
5 June 13, 2006. Although the restaurant claims to have tried to resolve the wage claim in an
6 expeditious manner, the restaurant failed to actually hand over a check for the owed wages until
7 June 14, 2006, long after it had requested a due process hearing. At the hearings, the restaurant
8 limited its presentation to a brief cross-examination of the claimant without offering any
9 independent evidence disputing the wage claim. Chinatown Restaurant opted to proceed to
10 hearing after the OLSE informed the restaurant in the August 29, 2005 Notice of Determination
11 that penalties and/or payments of up to \$100.00 may be ordered under Section 12R.7 of the
12 MWO for each day a violation is found to have continued.

13 19. In accordance with Section 12R.7(b), the hearing officer further finds that an
14 additional sum should be paid to the City in the amount equal to the OLSE's costs of investigating
15 and remedying the violations at issue, and not to exceed the amount of \$18,900.00. Although the
16 OLSE contends that the amount to be paid to the City does not need to be tied to the cost of
17 investigating and remedying this particular claim, Section 12R.7(b) of the MWO specifically states
18 that the OLSE may order payment on behalf of the City "to compensate the City for the costs of
19 investigating and remedying the violation." Although the Section further states that the payment to
20 the City "shall be allocated to the Agency [OLSE] and shall be used to offset the costs of
21 implementing and enforcing this Chapter," the two provisions are consistent with one another only
22 if the amount of payment to the City is allocated to the OLSE to cover the cost of enforcing the
23 MWO with regard to the violation at issue (i.e. investigating and remedying the violation).
24 Accordingly, the payment which the OLSE orders on behalf of the City must be commensurate
25 with the costs incurred to investigate and remedy Mr. He's claim. The OLSE submitted evidence
26 pertaining to costs incurred to investigate and remedy all five claims at issue. The OLSE must
27 therefore recalculate the amount of costs incurred to investigate and remedy Mr. He's claim, and
28 only that amount may be assessed. It is noted that the OLSE's "time and cost chart" includes two

1 entries that pertain to the contempt hearings in Superior Court Case No. 506557, which costs
2 should not be included in the claimed costs.

3 20. The Minimum Wage Ordinance specifically sets forth the maximum amount of
4 penalties that may be assessed after a hearing that affords a suspected violator due process.
5 [Administrative Code Section 12R.7(b)] Since the OLSE is an administrative body of limited
6 jurisdiction, the department's authority is limited to the powers that have been expressly or
7 implicitly conferred upon it. (See *City and County of San Francisco v. Board of Permit Appeals*
8 (1989) 207 Cal.App.3d 1099) Neither the OLSE nor any of its designees has the authority to
9 invalidate sections of the MWO, including the provision for penalties. Accordingly, no
10 determination is made concerning the Constitutional challenges raised by Chinatown Restaurant
11 concerning what it believes to be excessive penalties under the MWO.

12
13 Dated: February 13, 2007


Peter Kearns
Hearing Officer

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3 **TABLE 1**
4 **WITNESS LIST – OLSE and CHINATOWN RESTAURANT**

5

HEARING DATE	NAME OF WITNESS	IDENTITY OF WITNESS
6 June 13, 2006 & September 14, 2006	Donna Levitt	OLSE Manager
7 June 13, 2006	Richard Waller	OLSE Supervising Compliance Officer
8 June 13, 2006	Mitchell Bonner	Restaurant patron and friend of claimant Jin He
9 June 13, 2006	Qian Feng Yuan	Claimant #4
10 June 14, 2006	Zu Tong Jin (Claude)	Claimant #2
11 June 14, 2006	Jin He (Alex)	Claimant #5
12 September 13, 2006	Robin Ho	OLSE Compliance Officer
13 September 13, 2006	Kareem Olateju	OLSE Compliance Officer
14 September 14, 2006	Pei Yuan Chen (Grandy)	Claimant #3

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PROOF OF SERVICE

I, DEBBIE TOY, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the Controller's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Suite 325, San Francisco, CA 94102.

On February 13, 2007, I served the attached:

STATEMENT OF FINDINGS OF HEARING OFFICER,
Re Employer Chinatown Restaurant – Possible Violation(s) of San Francisco
Administrative Code Chapter 12R "Minimum Wage Ordinance"
(OLSE-Case Nos. MWO-C-015; MWO-C-060; & MWO-C-070),

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Erik Babcock, Esq.
Law Offices of Erik Babcock
1212 Broadway, Suite 726
Oakland, CA 94612
Counsel for Anna Wong

Jill Figg, Deputy City Attorney
San Francisco City Attorney's Office, Labor Team
1390 Market Street, 5th Floor
San Francisco, CA 94102
Counsel to the Office of Labor Standards Enforcement (OLSE)

Jimmy Quan and Anna Wong, Owners
Chinatown Restaurant
744 Washington Street
San Francisco, CA 94108

Donna Levitt, Division Manager
Office of Labor Standards Enforcement
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94549

and served the named document in the manner indicated below:

BY MAIL: I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the Controller's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Suite 316, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

BY FACSIMILE: I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was (415) 554-7466. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission.

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

Executed February 13, 2007, at San Francisco, California.



DEBBIE TOY