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IN THE 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  
vs.  
EUROPEAN FOOD WHOLESALE INC.  
DBA POPKOFF'S FROZEN FOOD, DBA  
EUROPEAN FOOD WHOLESALE,  
VLADIMIR VERKHOLAZ AND GARY  
VERKHOLAZ

Case No. MWO - 263  
**Hearing Officer's Findings of Fact**  
Hearing Dates: March 19, August 19-21,  
2014  
Time: 9:30 a.m.  
Location: City Hall, Room 479  
Hearing Officer: Claude Dawson Ames

**I.**  
**INTRODUCTION**

On February 6, 2008, the San Francisco Office of Labor Standards Enforcement (“OLSE”) received a complaint from Magali Valladares, a former employee of Popkoff’s Frozen Food (“Popkoff’s”), alleging violations under the San Francisco Minimum Wage Ordinance (“MWO”). Specifically, Ms. Valladares alleged: (1) she received her wages by check and cash; (2) although her paystub indicates that she earned \$8.50 per hour, she really earned \$7.00 per hour; (3) the hours reported on her paystub were less than the actual hours worked; (4) she was paid \$5.00 per hour for the first three months of her employment; (5) she was not permitted to take rest periods except when she worked with machinery and in those instances, she received one ten minute rest break; (6) she received a supplemental payment of \$5.00 per day as of August 2006 which is when she began working with machinery; (7) there are approximately 19 employees at Popkoff’s; and (8) the male employees worked over 8 hours per day, over 40 hours per week, and were paid only \$7.00 per hour.

The OLSE began an investigation in OLSE Case No. MWO – 263, and as its investigation continued, the OLSE determined that the former employee’s claims were credible and that Popkoff’s had violated the Minimum Wage Ordinance. Ownership records regarding Popkoff’s revealed that the business was owned by European Food Wholesale, Inc., which also owned European Food Wholesale, a market located at 3038 Clement St. in San Francisco (hereafter “European Market”). In July 2009, the OLSE received additional claims from three employees at European Market.

The OLSE also determined that European Food Wholesale, Inc. corporate officers and managers Vladimir Verkhola and his son, Gary Verkhola, are individually liable for the MWO violations in this case because they employ and exercise control over the wages, hours and/or working conditions of their employees at Popkoff’s and European Market. Therefore, the OLSE named European Foods Wholesale, Inc. dba Popkoff’s Frozen Food and dba European Market, as well as Gary and Vladimir Verkhola (collectively, “Respondents”) as responsible parties in this case.

1 The OLSE determined that Respondents owe thirty-five employees \$252,430.15 in back wages  
2 during the audit periods for each establishment,<sup>1</sup> and \$96,838.72 in interest through April 2011. In  
3 addition, Respondents owe these thirty-five employees administrative penalties of \$3,343,100.00 and  
4 owe the City and County of San Francisco ("City") the same amount, calculated at \$50/day through  
5 April 2011.

6 The OLSE submitted a Prehearing Brief to this Hearing Officer on February 28, 2014, and  
7 Respondents submitted their Prehearing Brief on March 7, 2014. On March 14, 2014, the OLSE  
8 submitted a Reply Brief to this Hearing Officer.

9 Hearings were conducted at City Hall Room 479 on March 19, 2014, and in City Hall Room 34  
10 on August 19-21, 2014. Deputy City Attorney Cecilia Mangoba ("DCA Mangoba") represented the  
11 OLSE at all the hearings, and attorney Orrin Grover represented Respondents. Mr. Grover appeared  
12 by telephone on August 19-21, 2014.

13 At the hearings, the parties had full opportunity to present relevant evidence and argument.  
14 OLSE Exhibit 1-8, 10-34,<sup>2</sup> and 36-37 and Respondents' Exhibits A through H. The OLSE called 11  
15 witnesses, including 9 claimants, and Respondents called only one witness, Respondent Gary  
16 Verkholaz. Those who testified did so under oath.

17 The record closed at 5:00 p.m. on Friday, September 12, 2014, which was the deadline for the  
18 parties to submit Proposed Findings of Fact.

19  
20 **II.**  
21 **SUMMARY OF LEGAL STANDARDS AND EVIDENCE**

22 1. On February 23, 2004, The City and County of San Francisco established a minimum  
23 hourly wage for employees pursuant to Administrative Code Section 12R. Under MWO Section  
24 12R.4, San Francisco employers shall pay to employees no less than the minimum wage for each hour

25  
26 <sup>1</sup> July 23, 2005 through February 1, 2008 for Popkoff's Frozen Food and December 10, 2006 to  
November 21, 2009 for European Market.

27 <sup>2</sup> OLSE's Exhibit 12, which contain taxpayer records, was admitted under seal, with the  
28 exception of Bates Nos. OLSE 944-47. Additionally, all exhibits containing employee payroll stubs  
and records were admitted under seal.

1 worked in the geographic boundaries of the City. The local minimum wage exceeds the amount of the  
2 State minimum wage, and it is adjusted each year based on increases in the regional Consumer Price  
3 Index for urban wage earners and clerical workers. S.F. Admin. Code § 12R.4(b).

4 2. Under Section 12R.3 of the MWO, an “Employer” is defined as, “any person, as  
5 defined in Section 18 of the [California] Labor Code, including corporate offices or executives, who  
6 directly or indirectly or through an agent or another person, including through the services of a  
7 temporary services or staffing agency or similar entity, employs or exercises control over the wages,  
8 hours or working conditions of any Employee.”

9 3. Under Section 12R.3 of the MWO, an “Employee” is: “any person who . . . [i]n a  
10 particular week, performs at least two (2) hours of work for an Employer within the geographic  
11 boundaries of the City; and [] [q]ualifies as an employee entitled to payment of minimum wage from  
12 any employer under the California minimum wage law, as provided under Section 1197 of the  
13 California Labor Code and wage orders published by the California Industrial Welfare Commission, or  
14 is a participant in a Welfare-to-Work-Program.”

15 4. Popkoff’s Frozen Food is a business that specializes in producing frozen food products,  
16 which are sold at various establishments, including European Market.

17 5. Under Section 12R.7(b) of the Minimum Wage Ordinance, the Office of Labor  
18 Standards Enforcement is authorized to take appropriate steps to enforce the MWO, and may  
19 investigate any possible violations of the MWO by an employer. Under San Francisco Administrative  
20 Code 2A.23, the Office of Labor Standards Enforcement may also enforce the provisions of the  
21 California Labor Code to the extent permitted by State Law. In addition, California Labor Code  
22 §2666 provides that state and county government entities have all of the powers of an authorized  
23 representative of the Department of Industrial Relations in the investigation of suspected Labor Code  
24 violations.

25 6. Donna Levitt is the Division Manager of the OLSE. She testified regarding the OLSE’s  
26 regulatory authority to enforce the San Francisco MWO. She also explained that the OLSE’s  
27 investigations of MWO violations are different from those conducted by the State Department of  
28 Labor Standards Enforcement (“DLSE”) in that the latter investigate individual claims, while the

1 OLSE investigates an entire workplace when it receives notice of wage violations. In addition, the  
2 OLSE is mandated by law to maintain the confidentiality of claimants' identities in Administrative  
3 Code Section 12R.7(b):

4           The Agency shall encourage reporting pursuant to this subsection by keeping  
5 confidential, to the maximum extent permitted by applicable laws, the name and  
6 other identifying information of the Employee or person reporting the violation.  
7 Provided, however, that with the authorization of such person, the Agency may  
8 disclose his or her name and identifying information as necessary to enforce this  
9 Chapter or for other appropriate purposes.

10           7. For that reason, in this case the OLSE provided notice to Respondents of its  
11 investigation through its records request dated February 15, 2008, but did not reveal the individual  
12 identities of claimants at that time since employees were very concerned about retaliation and  
13 requested that the OLSE maintain their identities confidential.

14           8. Ms. Levitt testified that the minimum wage violations committed by Respondents at  
15 Popkoff's and European Market represented some of the most egregious her office has seen. But Ms.  
16 Levitt also explained that the OLSE investigation in this case took longer than usual because of 1) the  
17 addition of a second location to the investigation over a year after the OLSE received the initial  
18 complaint, 2) the complexity of the case, 3) Respondents' repeated requests for continuance, and 4)  
19 the sale of Popkoff's to Whittier Corporation.

20 **A: OLSE Investigation and Records Requests**

21           9. OLSE Compliance Officer Evie Valle investigated the wage claims at issue. Ms. Valle  
22 testified that in February 2008, she received a phone call from Ms. Valladares regarding the minimum  
23 wage. Ms. Valladares told Ms. Valle that she was being paid \$7/hour and that she had just resigned  
24 from her job at Popkoff's Frozen Food. For the first few months she worked at Popkoff's, Ms.  
25 Valladares was only paid \$5/hour. Within an hour of her call, Ms. Valladares came to the OLSE and  
26 brought her pay stubs. (Exh. 1 at OLSE 4-60.) Ms. Valle testified that Valladares also filled out a  
27 declaration and questionnaire, which are part of Exh. 1 at pp. OLSE 1-3. Ms. Valladares explained to  
28 Ms. Valle that when she was first hired at Popkoff's Frozen Food she earned \$5/hour for several  
months and was paid in cash.

1           10.     Ms. Valle further testified that following Ms. Vallardares's visit, she researched  
2 Popkoff's Frozen Food at the San Francisco County Clerk's Office. She learned there that Popkoff's  
3 Frozen Food was owned by European Food Wholesale, Inc. as of August 30, 2002. The document  
4 marked OLSE 944, Exh. 12, shows the corporate ownership of Popkoff's Frozen Food.

5           11.     Ms. Valle testified that she then prepared for a site visit at Popkoff's Frozen Food,  
6 which she conducted on February 15, 2008 with OLSE Compliance Officers Joshua Pastreich, Larry  
7 Griffin, and Shirley Trevinio. When they arrived at Popkoff's Frozen Food, they rang the bell and saw  
8 someone open the shade. But no one let them in. They rang the bell again and this time, Gary  
9 Verkhola opened the door. He told them the employees had gone home. The OLSE Officers asked  
10 to see the information that is required by the MWO to be posted for employees, and were admitted into  
11 the building. At that point, they saw employees in the business and pointed that out to Mr. Verkhola,  
12 who then opened the door.

13           12.     Ms. Valle testified that Mr. Verkhola then told his assistant to bring the employees to  
14 the lunch room. There were 16 employees present. The OLSE Officers explained the purpose of their  
15 visit and began interviewing employees. Their interviews confirmed Ms. Vallardares's account that  
16 female employees were paid \$5/hour for several months, after which they received \$7/hour for all  
17 hours worked. Male employees were paid \$7/hour for all hours worked.

18           13.     Ms. Valle further testified that:

- 19           • Santos Dominguez was present during the site visit and signed an employee  
20           questionnaire under penalty of perjury. (Exh. 1 at OLSE 61-62.)
- 21           • Morena de Jesus Larin was not present on the day of the site visit, but she later brought  
22           her paystubs to the OLSE (Exh. 1 at OLSE 65-82), and signed an employee declaration  
23           under penalty of perjury (Exh. 1 at OLSE 63-64).
- 24           • Manuela de Jesus Dzul was not present during the site inspection but on March 10,  
25           2008, came into the OLSE and signed an employee questionnaire regarding her hours  
26           and pay under penalty of perjury. (Exh. 1 at OLSE 83-84.)
- 27           • Maria Guadalupe Xool Polango filled out an employee questionnaire on the day of the  
28           site visit with assistance since Mayan is her first language. She also signed the

1 document under penalty of perjury (Exh. 1 at OLSE 85-86), and brought her paystubs  
2 to the OLSE (Exh. 1 at OLSE 87-140).

- 3 • Alejandra Urrutia (sometimes Vasquez) was present during the OLSE's February 15,  
4 2008 site visit and signed an employee questionnaire regarding her pay and hours  
5 under penalty of perjury (Exh. 1 at OLSE 141-142). She also brought her paystubs to  
6 the OLSE. (Exh. 1 at OLSE 143-196.)
- 7 • Dinorah Hernandez was present during the February 15, 2008 site visit, when she filled  
8 out an employee questionnaire and signed it under penalty of perjury. (Exh. 1 at OLSE  
9 197-198.) She then brought her paystubs to the OLSE. (Exh. 1 at OLSE 199-248.)
- 10 • Jose Antonio Chan Tun was also present at the site visit on February 15, 2008, and  
11 signed an employee questionnaire under penalty of perjury. (Exh. 1 at OLSE 249-250.)
- 12 • Jose Florenzio Dzul Can was also there during site visit and signed an employee  
13 declaration under penalty of perjury. (Exh. 1 at OLSE 251-252.)
- 14 • Alberto Trujeque Yam was not present during the site visit, but on March 10, 2008  
15 went to the OLSE to fill out and sign employee questionnaire under penalty of perjury.  
16 (Exh. 1 at OLSE 311-313.) He also brought a pay stub with him. (Exh. 1 at OLSE  
17 314.)
- 18 • Esmeralda Susana Flores was present during site visit and filled out an employee  
19 questionnaire under penalty of perjury. (Exh. 1 at OLSE 315-316.)
- 20 • Marta Cedillos submitted all her paystubs to Ms. Valle directly. (Exh. 1 at OLSE 317-  
21 355.)
- 22 • Neidy Areli Dominguez went to the OLSE and completed the employee form with  
23 assistance from Ms. Valle since her first language is Mayan. (Exh. 1 at OLSE 356-  
24 357.)
- 25 • Jose Abraham Dzul Tellez was present during the OLSE's February 15, 2008 site visit  
26 and signed an employee questionnaire under penalty of perjury. (Exh. 1 at OLSE 358-  
27 359.) He later brought his paystubs to the OLSE. (Exh. 1 at OLSE 360-404.)

- 1 • Luis Miguel Chan Tun (Exh. 1 at OLSE 405-406), Miguel Angel Chan Dzul (Exh. 1 at  
2 OLSE 407-408), Gabriella Uluac (Exh. 1 at OLSE 409-410), Marta Yah Nic (Exh. 1 at  
3 OLSE 443-444), Elsy Gabriela Dzul Xool (Exh. 1 at OLSE 445-446), and Alejandro  
4 (Exh. 1 at OLSE 447-448) were also present on the day of the OLSE's site visit and  
5 signed questionnaires regarding their hours and pay under penalty of perjury.
- 6 • Maria del Carmen Esquivel signed an employee questionnaire under penalty of perjury.  
7 (Exh. 1 at OLSE 409-410) and then brought her payroll records later (Exh. 1 at OLSE  
8 413-425).
- 9 • Cesar Dzul Tellez also signed an employee questionnaire under penalty of perjury  
10 during the site visit (Exh. 1 at OLSE 426-427) and later submitted his paystubs to the  
11 Exh. 1 at OLSE 428-442).

12 14. Under Section 12R.5(c) of the MWO, "Employers shall retain payroll records  
13 pertaining to Employees for a period of four years, and shall allow the [OLSE] access to such records,  
14 with appropriate notice and during business hours, to monitor compliance with the requirements of  
15 [the MWO]."

16 15. Ms. Valle testified that during the February 15, 2008 site visit, she delivered a letter to  
17 Gary Verkhola requesting payroll records and other documents. The letter stated, in part:

18 Pursuant to Section 12R.7(b) of the MWO and 12W.6 of the PSLO, please provide  
19 the documents specified below for European Food Wholesale, Inc. and all divisions,  
20 subsidiaries and parent companies operating within the geographic boundaries of  
21 the City and County of San Francisco:

- 22 • Copies of original time cards, sign-in sheets, ledgers and any and all payroll  
23 records which show the actual hours worked each day for each employee for  
24 the period February 23, 2004 to the present.
- 25 • Copies of the payroll check stub details and/or itemized pay stubs. Those  
26 records, as per Labor Code Section 226, should include the number of hours  
27 worked, the rate of pay, all deductions, net wages earned, the payroll period,  
28 the name of the employee and his/her social security number, and name of  
the employer, for each employee for the period February 23, 2004 to the  
present.
- Copies of any and all documents regarding each employee's accrual of sick  
leave, including but not limited to ledgers, tallies, calculations, and  
"Designated Person" forms for the period from February 5, 2007 to the  
present.



- 1           • Copies of any and all paid leave policies effective at any time during the period
- 2           from February 5, 2007 to the present.
- 3           • A list of former and current employees with addresses and telephone
- 4           numbers. Please include on the list all those employees who worked for the
- 5           period February 23, 2004 to the present.

6 (Exh. 6 at OLSE 651). The requested documents were due in the OLSE's office no later than  
7 February 29, 2008. (Exh. 6 at OLSE 651.)

8           16. Ms. Valle prepared a brief chronology of her investigation in this case, which the  
9 Hearing Officer admitted as OLSE Exh. 21. Ms. Valle testified regarding the events described in the  
10 chronology and the Hearing Officer reviewed the chronology.

11           17. The Hearing Officer finds that the OLSE was diligent in its investigation of this case,  
12 and that the delays in bringing the matter to hearing were the result of: 1) repeated requests for  
13 continuances from Respondents; 2) the complexity of the case; 3) the addition of a second location –  
14 European Market – to the existing investigation regarding Popkoff's Frozen Food; and 4) the  
15 purported sale of Popkoff's Frozen Food to Whittier Corporation.

16           18. Ms. Valle testified that on or about February 27, 2008, she received a phone call from  
17 Attorney Marc L. Jacuzzi, stating that he was representing European Food Wholesale, Inc. and  
18 Popkoff's and that he needed an extension to respond to the document request until March 14, 2008.  
19 Ms. Valle granted the extension. Ms. Valle further testified that she ultimately granted Respondents  
20 four extensions to the records request. On March 13, 2008, Mr. Jacuzzi requested a second extension  
21 to March 28, 2008. The OLSE granted that extension as well. On March 28, 2008, Mr. Jacuzzi called  
22 Ms. Valle to request a third extension for submission of records. During that phone conversation, Ms.  
23 Valle specifically stated that documents for both Popkoff's and European Market located at 3038  
24 Clement St. must be provided. The OLSE granted the extension until April 25, 2008.

25           19. Ms. Valle testified that Mr. Jacuzzi still did not produce records by the due date.  
26 Again, he called the OLSE for an extension. Ms. Valle told him that the OLSE could not grant  
27 additional extensions and instead would issue a Notice of Violation that would require compliance  
28 within ten days. Accordingly, on April 28, 2008, the OLSE sent a Notice of Violation to European  
Food Wholesale, Inc. for failing to produce records. (Exh. 7.) Ms. Valle also sent copies of employee

1 check stubs to Mr. Jacuzzi (redacting the confidential information), so that he would be aware of the  
2 type of documentation the OLSE was seeking. (*Id.*)

3 20. Ms. Valle further testified that on May 9, 2008, OLSE received incomplete payroll  
4 records as well as a self-audit prepared by Respondents from Mr. Jacuzzi (“Employer’s Self-Audit”),  
5 for Popkoff’s only (the documents did not include information for European Market). (Exh. 8.) Ms.  
6 Valle testified that the OLSE did not request the Employer’s Self-Audit, and ultimately did not rely on  
7 it because of the significant discrepancies between that document and the employee testimony and  
8 records. Ms. Valle testified regarding these discrepancies. For example, in the Employer’s Self-  
9 Audit, Dinora Hernandez is shown as having worked 47 hours for the pay period ending August 5,  
10 2005, corresponding to a gross wage of \$405.14 and a wage owed of \$1.74. Respondents purport to  
11 have paid Ms. Hernandez \$204 in cash (Exh. 8 at OLSE 667). But her pay stub for that same pay  
12 period shows Ms. Hernandez worked 52 hours that pay period and received only \$182 in cash and  
13 \$182.01 by check. (Exh. 1 at OLSE 201.) Ms. Valle testified that she consistently found that the  
14 Employer’s Self-Audit overstated the amount of cash purportedly paid to employees at Popkoff’s.

15 21. On July 2, 2008, Ms. Valle called Mr. Jacuzzi to inform him that she found  
16 discrepancies between the company’s payroll records and the Employer’s Self-Audit. Ms. Valle and  
17 Mr. Jacuzzi agreed to meet when Ms. Valle completed her audit.

18 22. Meanwhile, the OLSE had learned from employees at Popkoff’s that their relatives at  
19 European Market – also owned by Respondents – also were not being paid the minimum wage.  
20 Therefore, on March 13, 2008, Supervising Compliance Officer Richard Waller and Ms. Valle  
21 conducted a site visit to European Market, located at 3038 Clement St. The purpose of this visit was to  
22 examine time and payroll records and to interview employees and business representatives. They  
23 interviewed two employees and the owner, Vladimir Verkhola. At the site visit, the employees  
24 claimed that they worked a few hours per day and were paid the minimum wage. But three employees  
25 later submitted claims to the OLSE stating that they were not being paid the minimum wage and  
26 reported to the OLSE that Vladimir Verkhola had told them to give false information to the OLSE.

27 23. On October 21, 2008, Supervising Officer Waller, Ms. Valle and Deputy City Attorney  
28 Stephanie Bickham Gleason met with Gary Verkhola and Mr. Jacuzzi to discuss the significant

1 discrepancies between the employer's audit and the OLSE's audit. At that time, Gary Verkhola and  
2 Mr. Jacuzzi alleged that the employees received supplemental pay in cash in addition to their regular  
3 wages. Accordingly, the OLSE asked that the employer submit proof of any supplemental payments as  
4 well as time cards. Ms. Valle testified that the OLSE never received these records, though Mr. Jacuzzi  
5 represented that his clients would comply with the request. (Exh. 21 at OLSE 1009.)

6 24. On January 14, 2009, Ms. Valle received a call from a Popkoff's employee who  
7 reported that a few employees were working overtime and they were required to punch out after their  
8 regular hours and punch in with a different name for their overtime hours. (*Id.*)

9 25. On February 10, 2009, Ms. Valle sent Mr. Jacuzzi an email stating in part:

10 I am ready to prepare the determination and finding letter, however I would like  
11 to give Mr. Verkhola another opportunity to provide me with proof of  
12 supplemental pay and time cards to reduce the amount owed to the workers.  
Please submit the information requested no later than close business February  
17, 2009.

13 Ms. Valle testified that the employer did not produce records by the February 17, 2009 deadline. (*Id.*)

14 26. Ms. Valle testified that on March 13, 2009, she received a call from a Popkoff's  
15 employee who reported that Gary Verkhola had recently held a meeting with all of the employees and  
16 told them that they were going to be interviewed by his attorney. He instructed them to say that they  
17 had a one hour paid lunch break, that they received \$10.00 per day as supplemental pay, and that they  
18 did not work overtime. Ms. Valle further testified that Gary Verkhola told the employees that if they  
19 did not give statements as instructed, he would have to close his business and they would no longer  
20 have a job. He also said that whatever money he did have would not go toward their wages but instead  
21 to the lawyers. The employee went on to tell Ms. Valle that the true pay scheme was for all employees  
22 to be paid a base rate of \$7.00 per hour, with female employees receiving an additional \$5.00 per day  
23 when they performed work with machinery and male employees receiving \$5.00 extra per day  
24 beginning a few pay periods before the investigation began. (See Exh. 21 at OLSE 1010.)

25 27. On March 19, 2009, an employee from Popkoff's phoned Ms. Valle and said that the  
26 workers were called into a meeting with Mr. Jacuzzi, Gary Verkhola, and a translator. During this  
27 meeting the translator told the employees they could not speak with the attorney alone. If they wanted  
28 to talk to the attorney they first had to explain the reason to Gary Verkhola. The employee told Ms.

1 Valle that they were forced to sign untrue declarations under threat of losing their jobs. Respondents'  
2 attorney Mr. Jacuzzi submitted nine declarations from Popkoff's employees on April 27, 2009. (Exh.  
3 9 at OLSE 910-27.) The Hearing Officer has reviewed these documents and based on the testimony  
4 presented from employees that contradicted the statements in the declarations, particularly, that they  
5 signed the declarations under duress, finds that these declarations contained false information and that  
6 the OLSE properly did not consider them in preparing the audit for this case.

7 28. In the intervening months, Ms. Valle spoke to employees about the declarations and  
8 revising the audit. (Exh. 21 at OLSE 1010.) In addition, during this period the OLSE received two  
9 new claims from employees at European Market and began its investigation of that location. (*Id.*)

10 29. On October 5, 2010, OLSE sent an audit letter to European Food Wholesale, Inc. and  
11 European Market, located at 3038 Clement Street, again seeking records pertaining to European Food  
12 Wholesale, Inc. and any and all divisions, subsidiaries and parent companies operating within San  
13 Francisco. (Exh. 10).

14 30. On October 27, 2010, OLSE received a response from European Food Wholesale,  
15 Inc.'s new attorney, Mr. Orrin L. Grover, wherein he indicated that he understood the request in 2008  
16 to have been exclusively for records pertaining to Popkoff's. (OLSE Exh. 11).

17 31. On November 18, 2010, DCA Gleason sent Mr. Grover documents regarding  
18 ownership and past case correspondence at his request because he alleged that he did not have the  
19 complete file in this matter. (Exh. 12).

20 32. On January 10, 2011, OLSE served a subpoena for records pertaining to European  
21 Market. (Exh. 13 & Exh. 21 at OLSE 1010). By letter dated January 22, 2011, Mr. Grover objected to  
22 the request and claimed the matter was time barred. (Exh. 21 at OLSE 1010.) DCA Gleason  
23 responded to his objections by letter dated February 16, 2011. In particular, Ms. Gleason stated that  
24 Mr. Grover's clients had been notified of the OLSE's action in the February 15, 2008 letter requesting  
25 records. (Exh. 21 at OLSE 1010.)

26 33. Ms. Valle testified that in June 2011, the OLSE received a call from an employee at  
27 Popkoff's who reported that Gary Verkhola had recently held a meeting to inform his employees that  
28 he had sold the business and that the employees needed to reapply for their positions. The employee

1 said that under the new company, Whittier Corp., the employees were still working overtime and that  
2 the overtime hours were being paid at the regular minimum wage rate rather than at time and a half.  
3 (Exh. 21 at OLSE 1011).

4 34. Ms. Valle testified that she researched business registration at 2277 Shafter Street, and  
5 found that Whittier (aka Whitter) Enterprise LLC (“Whittier”), was registered at this location as of  
6 June 1, 2011. (Exh. 21 at 1011.) Accounting records showed the owner to be Alex Meseonznik. (*Id.*)

7 35. On May 30, 2012, the OLSE sent two letters requesting all purchase and acquisition  
8 agreements, start-up documents and/or all documents and correspondence between Whittier and  
9 European Wholesale Inc. or Popkoff’s Frozen Food, Inc. (Exh. 14.) The OLSE sent these letters to 1)  
10 Gary Verkhola, Popkoff’s Frozen Food Corp., dba Popkoff’s Frozen Food, Vladimir Verkhola,  
11 European Food Wholesale, Inc., Popkoff’s and 2) Alex Meseonznik at Whittier dba Popkoff’s Frozen  
12 Food. (*Id.*)

13 36. On June 15, 2012, Mr. Grover replied by letter, stating that he would not provide the  
14 documents requested. (Exh. 15.)

15 37. On June 22, 2012, OLSE served subpoenas for records including, but not limited to,  
16 corporate ownership, purchase or acquisition between European Food Wholesale, Inc., Popkoff’s, and  
17 Whittier Enterprise, LLC. (Exh. 16.)

18 38. On July 19, 2012, the OLSE received pleadings containing subpoena objections from  
19 Mr. Grover. (Exh. 17.) In these documents, Mr. Grover again purported to represent Whittier Corp.,  
20 the company that purchased European Foods Wholesale, Inc. in June 2011. (*Id.*)

21 39. On November 20, 2012, DCA Cecilia Mangoba responded to Mr. Grover’s objections  
22 by letter and sent revised subpoenas. (Exh. 18.)

23 40. On or about December 14, 2012, the OLSE learned that Robert Gentino, the new  
24 attorney of Whittier, took the position that his client did not need to respond to the subpoena. (Exh. 21  
25 at OLSE 1011.) Therefore, on April 8, 2013, the OLSE served a revised subpoena on Whittier. (Exh.  
26 19.) For several months thereafter, the OLSE’s counsel tried to obtain sales documents from Whittier  
27 Corporation through Mr. Gentino, but Whittier never produced the documents. (Exh. 20.)  
28

1 **B: Wage Claim Calculations**

2 41. Under Administrative Code Section 12R.4, with the exception of non-profit  
3 corporations and small businesses with 10 or less employees, the San Francisco minimum wage was  
4 \$8.62 in 2005, \$8.82 in 2006, \$9.14 in 2007, \$9.36 in 2008, and \$9.79 in 2009. There is no evidence  
5 that European Food Wholesale, Inc. is or ever was a nonprofit corporation or a business with 10  
6 employees or less.

7 42. Ms. Valle testified regarding the general payment scheme at Popkoff's. Respondents  
8 started female employees at \$5/hour for the first several months and paid them entirely in cash during  
9 that time. If a female employee lasted longer than the first few months, she was paid \$7/hour for all  
10 hours worked. Ms. Valle noted that some women may not have shown up on the payroll records at all  
11 if they were paid entirely in cash and dismissed in their first few months, so the amount owed by  
12 Respondents may be much higher than the amount sought by the OLSE in this case.

13 43. Ms. Valle testified that Respondents paid male employees \$7/hour from the outset of  
14 their employment. Further, Respondents paid employees receiving \$7/hour half in cash and half by  
15 check. The amount in cash is marked on the employee paychecks in handwriting, along with the  
16 number of hours worked circled. (See generally OLSE Exh. 1, 3). Ms. Valle testified that in her  
17 experience, employers who pay all or a portion of wages in cash are trying to make their payroll  
18 appear lower to evade taxes.

19 44. Ms. Valle testified regarding her audit methodology for Popkoff's. She credited the  
20 Employer all the cash paid to employees that was noted on the paystubs in handwriting. (See Exh. 1.)  
21 She credited Respondents for \$5/day paid to women who worked at the machines as of August 2006.  
22 She also credited Respondents for the \$5/day premium paid to the men (regardless of whether they  
23 worked at the machines). She credited Respondents for meal breaks to the men, who were not  
24 required to clock in and out as the women.

25 45. Under California law, qualifying employees who work more than 8 hours per day or 40  
26 hours per week, should receive time and a half pay. Employees who work more than 12 hrs/day  
27 should receive double time pay. Respondents did not pay appropriate overtime to the employees, so  
28 Ms. Valle included the amounts not paid in her audit. Ms. Valle demonstrated Respondents' failure to

1 pay overtime using the example of Santos Dominquez, who was paid \$7/hr. for 101 hours in the pay  
2 period ending November 10, 2006, though he should have received overtime for at least twenty hours.  
3 (Exh. 1 at OLSE 536).

4 46. Though Ms. Valle did not use the Employer's Self-Audit, she testified that did use part  
5 of the payroll records provided by Respondents to calculate the back wages owed to employees who  
6 presented employee questionnaires and paystubs to the OLSE as well as those who did not but were  
7 listed in the employee records. (Exh. 1 at OLSE 736-909.) She testified that she used these  
8 documents to determine actual hours worked and net payment, then using the records and the general  
9 payment scheme noted above, she calculated the totals owed for each employee. She did not include  
10 in her audit any employees who appeared to be paid minimum wage, which included some of the  
11 Russian employees. Ms. Valle testified she never received any time cards from Respondents, despite  
12 multiple requests and consistent statements from employees that they punched in and out on time  
13 cards. Employers are required under the MWO to retain records such as time cards for four years. SF  
14 Admin. Code Sec. 12R.5(c).

15 47. Ms. Valle testified that the paystubs submitted by the Popkoff's employees to the  
16 OLSE show a rate of \$8.50/hour, which is not correct according to the employees and handwritten  
17 markings by an agent of Respondents. But even that falsified rate is lower than the San Francisco  
18 minimum wage, which was \$8.62 in 2005; \$8.82 in 2006; \$9.14 in 2007; \$9.36 in 2008; and \$9.79 in  
19 2009.

20 48. Ms. Valle testified that the OLSE determined Respondents owe back wages to their  
21 employees at Popkoff's Frozen Food in the amount of \$148,714.76. (Exh. 5 at OLSE 530). In  
22 addition, Respondents owe these employees \$67,189.58 in interest and \$3,107,200 in penalties through  
23 April 4, 2011. (*Id.*)

24 49. Ms. Valle also testified regarding the audit she performed of the wages owed to the  
25 three European Market employees. That payment scheme differed from the one at Popkoff's, but  
26 demonstrated similarly egregious wage violations. In addition, none of the employees received rest or  
27 meal breaks.  
28

1           50.     Ms. Valle testified that Erkhsaikhan Sadnomvanching submitted a claim to the OLSE  
2 (Exh. 4 at OLSE 527-529) that showed she was paid \$6/hour when she first started working at  
3 European Market on December 4, 2006. After three months, her pay rate increased to \$7/hour, which  
4 she received until her last day on November 7, 2007. (*Id.*) She worked 6 days/week from 3 p.m. to 9  
5 p.m. (Exh. 5 at OLSE 613-624.)

6           51.     Respondents paid Vicente Dzul Canul \$180 for his first two weeks of employment.  
7 Thereafter he received a flat salary of \$350/week, though he was working 12 hour days. Therefore, he  
8 was paid \$3/hour-\$6/hour. (Exh. 4 at OLSE 499-500, Exh. 5 at 577, 579-613).

9           52.     Respondents paid Mario Dzul Canul his early pay in cash only, which was later  
10 changed to part in cash, part in check. Mario Canul's paychecks showed he worked 60 hours every  
11 two weeks, but in fact he worked much longer hours – 9 a.m. to 9 p.m. with no break. His schedule  
12 eventually changed to 9 a.m.-6 p.m., 6 days/week. He received \$5/hour when he started working at  
13 European Market, and his salary eventually increased to \$7/hour. (Exh. 5 at OLSE 578, 625-650).

14  
15 **C: Interest Sought by the OLSE**

16           53.     Section 12R.7(d) of the MWO provides that in any administrative action brought for  
17 the nonpayment of wages under the MWO, interest shall be awarded on all due and unpaid wages at  
18 the rate of interest specified in California Civil Code §3289(b). The section further provides that  
19 interest shall accrue from the date the wages were due and payable to the date the wages are paid in  
20 full. California Civil Code §3289(b) provides that simple interest at the rate of 10% per annum.

21           54.     The OLSE seeks a determination as to the amount of interest owed to employees  
22 through April 4, 2011 only – the date the agency issued its Amended Notice of Determination –  
23 though the OLSE could have requested interest through the date of the award. The OLSE calculated  
24 interest owed to Popkoff's employees amount of \$67,189.58 and to European Market employees in the  
25 amount of \$29,649.14. Calculations for each employee are summarized in Exhibit 32.



**D: Penalties Sought by the OLSE on behalf of the Claimants and the Department**

55. Section 12R.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 12R.7(b), determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$50.00 to each employee or person whose rights under the MWO were violated for each day or a portion thereof that the violation occurred or continued. Under Section 12R.7(b), a violation for unlawfully withholding wages shall be deemed to continue from the date the wages were due and payable to the date preceding the date the wages were paid in full. Section 12R.7(b) further provides that the OLSE may also order a violating employer or person to pay to the OLSE a sum of not more than \$50.00 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued \$50.00 per day multiplied by the number of underpaid employees. Payments to the OLSE are “to compensate the City for the costs of investigating and remedying the violation.”

56. The OLSE requests a determination of penalties owing in the amount of \$3,107,200 for the thirty two employees working at Popkoff’s Frozen Food, and to the City in the same amount, for a total of \$6,214,400, calculated as follows:

	EMPLOYEE NAME	FIRST PAY PERIOD ENDING	# DAYS	PENALTIES TO THE WORKERS \$50/DAY	PENALTIES TO THE CITY \$50/DAY	TOTAL PENALTIES OWED
1	CARLOS XOOL M	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
2	ALEXEI CALIN	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
3	JUANA M. FORTIN CASCO	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
4	SANTOS DOMINGUEZ	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
5	MORENA DE JESUS LARIN	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
6	ANDREA L. STREEPEY ARMOUR	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
7	MANUELA DE JESUS DZUL	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
8	MARIA GUADALUPE POLANCO	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
9	ALEJANDRA VAZQUEZ	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
10	JAVIER CANUL CHAB	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00

11	DINA MIRANDA	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
12	LORENA DIAZ	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
13	DINORA HERNANDEZ	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
14	JOSE ANTONIO CHAN	7/8/2005	2096	\$104,800.00	\$104,800.00	\$209,600.00
15	NUBIA TORREZ	7/22/2005	2082	\$104,100.00	\$104,100.00	\$208,200.00
16	JOSE F. DZUL CAN	8/5/2005	2068	\$103,400.00	\$103,400.00	\$206,800.00
17	ALEXANDER ABACUMOV	8/5/2005	2068	\$103,400.00	\$103,400.00	\$206,800.00
18	ALBERTO J. TRUJEQUE YAM	11/25/2005	1956	\$97,800.00	\$97,800.00	\$195,600.00
19	JUAN ISIDRO CANCHE DZUL	11/25/2005	1956	\$97,800.00	\$97,800.00	\$195,600.00
20	JOSE ISABEL DZUL TON	1/6/2006	1914	\$95,700.00	\$95,700.00	\$191,400.00
21	ESMERALDA S. FLORES	10/14/2005	1998	\$99,900.00	\$99,900.00	\$199,800.00
22	MARTHA MARIA CEDILLOS	10/14/2005	1998	\$99,900.00	\$99,900.00	\$199,800.00
23	MAGALI VALLADARES	8/5/2005	2068	\$103,400.00	\$103,400.00	\$206,800.00
24	NEYDI ARELI DOMINGUEZ EK	10/14/2005	1998	\$99,900.00	\$99,900.00	\$199,800.00
25	JOSE A. DZUL TELLEZ	4/28/2006	1802	\$90,100.00	\$90,100.00	\$180,200.00
26	LUIS MIGUEL CHAN TUN	5/12/2006	1788	\$89,400.00	\$89,400.00	\$178,800.00
27	MIGUEL ANGEL (ANGEL M) CHAN DZUL	9/29/2006	1648	\$82,400.00	\$82,400.00	\$164,800.00
28	GABRIELA ULUAC-PAC	5/26/2006	1774	\$88,700.00	\$88,700.00	\$177,400.00
29	MARIA DEL CARMEN ESQUIVEL	5/26/2006	1774	\$88,700.00	\$88,700.00	\$177,400.00
30	CESAR ARTHURO DZUL TELLEZ	7/20/2007	1354	\$67,700.00	\$67,700.00	\$135,400.00
31	MARTHA YAH	10/12/2007	1270	\$63,500.00	\$63,500.00	\$127,000.00
32	ALEJANDRA MONTIEL	9/28/2007	1284	\$64,200.00	\$64,200.00	\$128,400.00
<b>TOTAL</b>				<b>\$3,107,200</b>	<b>\$3,107,200</b>	<b>\$6,214,400</b>

57. The OLSE requests a determination of penalties owing in the amount of \$235,900 for the three claimants working at European Market, and to the City in the same amount of \$235,900, for a total of \$471,800 for that location, calculated as follows:

	EMPLOYEE NAME	FIRST PAY PERIOD ENDING	DAYS OWING	PENALTIES TO THE WORKERS \$50/DAY	PENALTIES TO THE CITY \$50/DAY	TOTAL PENALTIES OWED
1	Vicente Dzul Canul	12/16/2006	1570	\$78,500.00	\$78,500.00	\$157,000.00
3	Enkhsaikhan Sadnomvanching	12/9/2006	1577	\$78,850.00	\$78,850.00	\$157,700.00
4	Mario Antonio Dzul Canul	12/15/2006	1571	\$78,550.00	\$78,550.00	\$157,100.00
<b>Total</b>				<b>\$235,900.00</b>	<b>\$235,900.00</b>	<b>\$471,800.00</b>

58. The OLSE's penalty calculations are presented at Exhibit 32.

1 **E: Testimony of Popkoff's Frozen Foods Employees**

2 **Magali Vallardares**

3 59. Ms. Vallardares testified that she worked at Popkoff's in the production line, making a  
4 pastry similar to tortellini. The men would cut the dough, bring meat, and she and others would sit  
5 and wrap it up into the pastry. She performed this work by hand at first, then later using machines.  
6 Ms. Vallardares testified that Gary Verkhola and his assistant Vicky hired her on July 23, 2005. She  
7 quit on Feb. 8, 2008, when Gary Verkhola told her that if she wanted to continue working there she  
8 would have to keep her mouth shut. Ms. Vallardares testified that she told Gary on at least three  
9 occasions that he was not paying the San Francisco minimum wage. On at least two of those  
10 occasions (once when she was with Manuela Dzul), Mr. Verkhola claimed to be paying the California  
11 minimum wage (though that was not the case either). Ms. Vallardares testified that Gary gave her  
12 worse assignments, such as having to stand to prepare the food product, after she complained about  
13 her wages.

14 60. Ms. Vallardares testified that her work hours were Monday through Friday from 8 a.m.-  
15 4:30 p.m., though she had to arrive about 20 minutes early to wash and prepare the trays and get on her  
16 uniform. She was not paid for this prep time. When she worked on the machines, Gary Verkhola  
17 would pressure the employees to work faster, and would not provide them breaks. Even when he gave  
18 them a 10 minute break, he told them they'd have to work through the break to meet their production  
19 quota.

20 61. Ms. Vallardares testified that Respondents paid her \$5/hour in cash for the first four  
21 months. She then missed two months due to a hand injury, and when she returned she was paid  
22 \$6/hour for two weeks and then \$7/hour for her remaining time at Popkoff's. Ms. Vallardares testified  
23 that believes the other Latinas were paid the same amount. Eventually Gary agreed to pay a \$5/day  
24 premium for employees who worked on the machines, but their pay was still below the minimum  
25 wage.

26 62. Ms. Vallardares was the first claimant from Popkoff's to go to the OLSE. She  
27 authenticated the claim she filed with the OLSE and her check stubs. (Exh. 1 at OLSE 1-60). Her  
28 testimony regarding the pay scheme at Popkoff's was consistent with Ms. Valle's observations and the

1 account of other workers. The circled handwritten numbers on the check stubs represented the number  
2 of hours worked, and the handwritten dollar amount the total paid in cash for that pay period. Often  
3 Respondents paid employees late or checks bounced.

4 63. During her testimony, Ms. Vallardares did not have difficulty recalling the  
5 circumstances of her employment and pay. Her testimony was also consistent with her paystubs and  
6 with the testimony from other Popkoff's employees. Accordingly, the Hearing Officer finds Ms.  
7 Vallardares's testimony credible.

8  
9 **Jose Dzul Tellez**

10 64. Jose Dzul Tellez testified that he worked in Popkoff's packaging area operating a  
11 machine for packaging products and as a dishwasher. Gary Verkoholaz hired him in February 2006.  
12 Mr. Dzul Tellez testified that he stopped working at Popkoff's in July 2009 because in the last year of  
13 his employment Gary Verkholaz would pressure the workers to finish in 8 hours what they used to  
14 complete in 12 hours or he would close the factory and they would be left without work. Mr. Dzul  
15 Tellez noted that Mr. Verkholaz started pressuring his employees to work faster after the OLSE's site  
16 visit.

17 65. Mr. Dzul Tellez testified that he worked a 12 hour shift from when he started at  
18 Popkoff's. He started work at 6 a.m. and ended around 5 or 6 p.m., Monday through Friday.  
19 Sometimes worked more than 12 hour shift, particularly in the busy end of the year period October  
20 through December. During those months he worked up to 14-15 hour days.

21 66. Mr. Dzul Tellez kept track of his hours by punching in and out on a time clock.  
22 Respondents paid Mr. Dzul Tellez \$7 per hour for every hour worked, even those for which he should  
23 have received overtime. Mr. Dzul Tellez was paid half cash, half by check. Mr. Dzul Tellez testified  
24 that he truthfully filled out and signed the OLSE employee questionnaire when the agency conducted  
25 its site visit on February 15, 2008. (Exh. 1 at OLSE 358-359.) Because he filled out the form in  
26 February, he didn't include the longer days he was required to work in October through December. He  
27 also authenticated the check stubs marked as OLSE 360-404 of Exhibit 1, which he submitted to the  
28 OLSE. He explained that Gary Verkholaz's secretary who prepared payroll handwrote on the check

1 stubs. The circled number represents the actual hours he worked, and the handwritten dollar number is  
2 the amount paid in cash.

3 67. Mr. Dzul Tellez testified that he and the other men received \$7/hour for all hours  
4 worked, but that some of the women received less. They were paid \$5/hour when they started at  
5 Popkoff's.

6 68. Mr. Dzul Tellez testified that when the OLSE went to Popkoff's, Gary told them not to  
7 answer any questions and not to sign anything. He told them that if they signed, they would lose their  
8 jobs. After the OLSE's February 2008 site visit, Respondents started paying him minimum wage  
9 though they never paid overtime.

10 69. Mr. Dzul Tellez also testified that Gary and his previous attorney asked employees to  
11 sign a declaration stating they got an extra \$100 per pay period, though employees never received that  
12 extra payment. Gary held a meeting where he told them about the declarations. After the meeting,  
13 Mr. Dzul Tellez called Ms. Valle and told her about this meeting and the declarations Gary Verkhola  
14 said that they had to sign and say they received \$100 or else he might close the factory and they would  
15 lose their jobs. Mr. Dzul Tellez testified that because they needed the jobs very much, the employees  
16 signed the false declarations. After the meeting regarding the false declaration Mr. Dzul Tellez told  
17 Gary Verkhola he wanted to talk to the attorney, but Gary did not permit him to do that. Mr. Dzul  
18 Tellez had wanted to ask why he would asked them to sign a declaration that they knew was not true.

19 70. Mr. Dzul Tellez talked to the manager Gary Verkhola had put in charge, Antonio  
20 Chan, regarding Popkoff's failure to pay minimum wage because Mr. Chan spoke English and  
21 Spanish.

22 71. Mr. Dzul Tellez testified that three times his paychecks bounced, and that some of the  
23 women experienced that as well. After one of those incidents, Mr. Dzul Tellez went to talk to Gary  
24 about the fees the bank imposed for the returned check. Mr. Dzul Tellez testified that Gary told him  
25 that the solution was for Mr. Dzul Tellez to change his name and address so the bank would not find  
26 him. Mr. Dzul Tellez said did not want to do that, and that he wanted a clean record with no debt.  
27 Gary Verkhola said that because Mr. Dzul Tellez was undocumented, it would not matter if he  
28 changed his name. Gary Verkhola took out his own identification and told Mr. Dzul Tellez he did

1 not have such ID so he would have no problem changing his name and address to evade the bank's  
2 fees for the returned check.

3 72. Mr. Dzul Tellez testified that by not receiving the minimum wage, he couldn't pay rent,  
4 had to live in groups to afford to live in San Francisco, and could not send enough money home to  
5 support his wife, daughter, and parents in Mexico. He also had difficulty buying food.

6 73. Mr. Dzul Tellez did not have any difficulty recalling the facts surrounding his  
7 employment, including the hours he worked and the pay he received. His testimony is consistent with  
8 that of other Popkoff's employees and corroborated by his paystubs. Accordingly, the Hearing Officer  
9 finds Mr. Dzul Tellez's testimony credible.

10  
11 **Neydi Arely Dominguez Ek**

12 74. Ms. Dominguez Ek testified that she worked for Popkoff's in food production,  
13 preparing the pastas and dough. Gary hired her on October 9, 2005, and she worked at Popkoff's until  
14 the end of August 2006. Respondents paid her \$5/hour for 5 months and then \$7/hour. She worked  
15 Monday through Friday, 8 a.m. to 4 or 5 p.m. She punched in and out using time cards. Ms.  
16 Dominguez Ek authenticated the OLSE questionnaire that she filled out with assistance and signed.  
17 (Exh. 1 at OLSE 356-357.)

18 75. As the other female employees, Ms. Dominguez Ek was paid in cash when she received  
19 \$5/hour. When her salary went up to \$7/hour, Respondents paid her half in cash and half by check.  
20 Not being paid the minimum wage affected Ms. Dominguez Ek greatly, because she had difficulty  
21 paying for food and rent, and could not send as much money to support her daughter in Mexico.

22 76. Ms. Dominguez Ek did not have any difficulty recalling the facts surrounding her  
23 employment, including the hours she worked and the pay she received. Her testimony was also  
24 consistent with that of other Popkoff's employees. Accordingly, the Hearing Officer finds Ms.  
25 Dominguez Ek's testimony credible.

1 **Cesar Dzul Tellez**

2 77. Cesar Dzul Tellez testified that he worked at Popkoff's packaging product and  
3 receiving deliveries for his work area. He filled out and signed an OLSE employee declaration when  
4 the agency conducted its site visit. (Exh. 1 at OLSE 426-427.) On that day, Gary Verkholaaz told all  
5 the employees not to talk to the OLSE or sign any documentation. He also submitted paycheck stubs  
6 to the OLSE. (Exh. 1 at OLSE 428-442.) He was hired by Gary Verkholaaz in August 2007 and  
7 worked continuously for Popkoff's until January 2012. He left because Gary was pressuring the  
8 employees to work faster so that he could pay them for less hours. He worked 10-12 hours per day  
9 when he started working at Popkoff's in 2007, but never received overtime. He was paid \$7 per hour  
10 for all hours worked. He was paid half in cash, half in check. As with the other witnesses, his  
11 paychecks show the actual hours worked circled and handwritten, and the amount paid in cash  
12 handwritten over the check amount. Mr. Dzul Tellez further testified that he worked Monday through  
13 Friday, generally from 6 a.m. to 5 p.m. After the OLSE's 2008 visit, the work day ended sooner and  
14 the employees worked only 6-8 hours. At that time, he received minimum wage but still no overtime.

15 78. Mr. Dzul Tellez testified that in May or June 2011, Gary announced to the workers at  
16 Popkoff's that he had sold the business. But even after the purported sale, Mr. Dzul Tellez continued  
17 to be paid in the same way (half cash, half check), his job stayed the same, operations did not change,  
18 and Gary Verkholaaz continued going to the business and telling the employees what to do. In  
19 addition, Mr. Dzul Tellez testified that he still was not being paid overtime after the sale. But under  
20 the new ownership the business purchased new machines, and Gary pressured the employees to work  
21 faster so he (Gary) could pay off the machines.

22 79. Finally, Mr. Dzul Tellez noted that paychecks were often late and bounced several  
23 times. Not being paid the minimum wage made it difficult for Mr. Dzul Tellez to pay rent, buy food,  
24 and send money to his family in Mexico.

25 80. Mr. Dzul Tellez did not have any difficulty recalling the facts surrounding his  
26 employment, including the hours he worked and the pay he received. His testimony was also  
27 consistent with that of other Popkoff's employees. Accordingly, the Hearing Officer finds Mr. Dzul  
28 Tellez's testimony credible.

1 **Morena Larin**

2 81. Ms. Larin testified that she worked at Popkoff's as a food preparer. She made a pasta  
3 product by hand out of dough and meat. Gary Verkhola and his assistant Vicky hired her in  
4 December 2004. She worked at Popkoff's until 2010, with a break for maternity leave (April 2006-  
5 January 2007) and an illness (September 2007-January 2008). She worked 8:00 a.m.- 4:00 p.m.,  
6 Monday through Friday. But she arrived around 7:40 a.m. to get the trays ready and put on her  
7 uniform. She was not paid for that time and Gary told her not to punch in on her timecard until 8:00  
8 a.m. She received only one 30 minute break during the day. After the OLSE's visit in February 2008,  
9 sometimes she would end earlier depending on workload. When she started working at Popkoff's in  
10 2004, Gary paid her \$5/hour in cash. He raised it to \$7/hour in mid-2005 and started paying her half  
11 in cash and half by check. Ms. Larin testified that Asian workers got more pay than the Latinos at  
12 Popkoff's. The Asian workers were paid a salary, not an hourly wage. Those employees earned  
13 \$100/day.

14 82. Ms. Larin authenticated the employee questionnaire and signature (Exh. 1 at OLSE 63-  
15 64), as well as the paycheck stubs she submitted to the OLSE (Exh 1 at OLSE 66-80). As with the  
16 other witnesses, Ms. Larin's paychecks were marked with the actual number of hours worked circled  
17 and in handwriting, and the amount paid in cash written over the typed amount.

18 83. She discussed with the manager Antonio Chan three times that the employees were not  
19 being paid minimum wage. Mr. Chan conveyed the concern to Gary Verkhola, who claimed he could  
20 not pay his employees more because of low sales.

21 84. Finally, Ms. Larin testified that not being paid the minimum wage caused her  
22 difficulties. For example, she had to live in a room with several others. She is a single mother and  
23 could not support her family on the pay she received from Popkoff's. Ms. Larin further testified that  
24 many times her paycheck bounced. She also received her paychecks late "very frequently." That  
25 caused her to be late paying her rent.

26 85. Ms. Larin did not have any difficulty recalling the facts surrounding her employment,  
27 including the hours she worked and the pay she received. Her testimony was also consistent with that  
28 of other Popkoff's employees. Accordingly, the Hearing Officer finds Ms. Larin's testimony credible.



1 **Marta Cedillos**

2 86. Marta Cedillos testified that she worked at Popkoff's making pasta filled with meat.  
3 Gary hired her in October 2005 and she continued working at Popkoff's until March 2008. For the  
4 first three months, Ms. Cedillos was paid \$5/hour in cash, and then her salary was increased to \$7/hour  
5 and she was paid half in cash and half in check. Ms. Cedillos testified that she generally worked 8  
6 a.m. to 4 p.m., Monday-Friday, except in August through December when she sometimes worked  
7 longer hours. Ms. Cedillos authenticated her paychecks submitted to the OLSE. (Exh. 1 at OLSE  
8 317-355.) She confirmed that the handwritten circled number on the pay stubs represents the number  
9 of hours worked and the handwritten amount is what was received in cash in addition to the check  
10 amount.

11 87. Ms. Cedillos testified that not being paid minimum wage affected her in that did not  
12 have enough money to pay the rent or personal expenses, or to send money to family in El Salvador.

13 88. Ms. Cedillos did not have any difficulty recalling the facts surrounding her  
14 employment, including the hours she worked and the pay she received. Her testimony was also  
15 consistent with that of other Popkoff's employees. Accordingly, the Hearing Officer finds Ms.  
16 Cedillo's testimony credible.

17  
18 **Maria Del Carmen Esquivel**

19 89. Maria del Carmen Esquivel testified by phone from Texas. She testified that she  
20 worked at Popkoff's and made pastries filled with meat, potatoes, cabbage, and fruit. She worked five  
21 days a week, Monday through Friday, from 8 a.m. to 4:30 p.m. She was present when the OLSE  
22 conducted its site visit and signed the OLSE questionnaire. (Exh. 1 at OLSE 411-412.) She also  
23 submitted her paystubs to the agency. (Exh 1 at OLSE 414-425.) She was paid \$5/hour in cash for the  
24 first three months, then got a raise to \$7/hour and was paid in cash and check. She twice talked to  
25 Gary about Popkoff's not paying enough to employees.

26 90. Ms. Esquivel testified that she was greatly affected by not earning the minimum wage.  
27 She could not afford her rent in San Francisco and after her husband was injured at work she could not  
28 afford to pay for food and other expenses, so they had to move to Texas.

1           91.     Ms. Esquivel did not have any difficulty recalling the facts surrounding her  
2 employment, including the hours she worked and the pay she received. Her testimony was also  
3 consistent with that of other Popkoff's employees. Accordingly, the Hearing Officer finds Ms.  
4 Esquivel's testimony credible.

5  
6 **F: Testimony of European Market Employees**

7 **Mario Antonio Dzul Canul**

8           92.     Mario Antonio Dzul Canul testified that he Vladimir Verkholaaz hired him in late May  
9 2004. He left on November 21, 2009. Mr. Dzul Canul worked at European Market as a dishwasher,  
10 and later as assistant to the cook. As a dishwasher he worked 9 a.m. to 9 p.m. from Tuesday through  
11 Saturday. He held that position about a year and a half, until February 2006. During that time, Mr.  
12 Dzul Canul was paid in cash \$300/week, which came to \$5/hour. In February 2006, he began to work  
13 Monday-Saturday from 7 a.m. to 6 p.m. During this period, he received checks twice a month and  
14 from \$300-\$500 in cash (though Ms. Valle credited \$500 to the employer in a conservative audit  
15 methodology since the exact amounts were not known). Although Mr. Dzul Canul stated on his OLSE  
16 questionnaire that he was being paid \$9/hour, that was the amount Vladimir Verkholaaz said he was  
17 paying him (he received at most \$6 or \$7/hour). Mr. Dzul Canul testified that sometimes Gary  
18 Verkholaaz went to European Market and told him what to do.

19           93.     Mr. Dzul Canul was not paid for his last week of work.

20           94.     Mr. Dzul Canul testified that he never received a break – even for lunch – at European  
21 Market.

22           95.     After the OLSE's site visit in March 2008, Vladimir Verkholaaz instructed his  
23 employees to clock out at 3 p.m. But they were required to stay and continue working until 9 p.m.

24           96.     Mr. Dzul Canul authenticated his OLSE questionnaire and paystubs he gave to the  
25 agency. (Exh. 4 at OLSE 501-526.) The questionnaire was completed by Ms. Valle. Mr. Dzul Canul  
26 verified that the information was accurate.

1            97.    When the OLSE conducted a site visit at European Market, Vladimir Verkhola  
2 instructed his employees to state they were only working 6 hours/day. But they were working much  
3 longer hours, as stated above.

4            98.    Not being paid the minimum wage made Mr. Dzul Canul's difficult in that he had  
5 problems paying rent and sending money to his family.

6            99.    Mr. Dzul Canul did not have any difficulty recalling the facts surrounding his  
7 employment, including the hours he worked and the pay he received. His testimony was also  
8 consistent with that of other European Market's employees. Accordingly, the Hearing Officer finds  
9 Mr. Dzul Canul's testimony credible.

10  
11 **Vicente Dzul Canul**

12            100.    Vicente Dzul Canul testified that he started working at European Market in 2006 and  
13 continued working there until November 21, 2009. Vladimir Verkhola hired him and supervised him.  
14 Gary Verkhola also supervised Mr. Dzul Canul at European Market.

15            101.    Mr. Dzul Canul worked 9 a.m. to 9 p.m. from Tuesdays through Saturdays as a  
16 dishwasher, food preparer, and general kitchen worker. He received no breaks all day. If Vladimir  
17 Verkhola saw an employee try to eat while working, he would scold that person and give him an  
18 additional task to perform. Mr. Dzul Canul testified he was paid \$180 for his first week (\$3/hour),  
19 which increased \$20/week until he got to \$350/week (\$5.83/hour). Mr. Dzul Canul testified that he  
20 was always paid in cash so does not have paycheck stubs. He authenticated the OLSE employee  
21 questionnaire that he signed and which Ms. Valle helped him complete that contains his schedule.  
22 (Exh. 4 at OLSE 499-500.)

23            102.    The Hearing Officer finds Mr. Dzul Canul's testimony credible.

24  
25 **G: Testimony of Gary Verkhola**

26            103.    Gary Verkhola was the only witness to testify on behalf of Respondents.

27            104.    Mr. Verkhola testified that he acquired Popkoff's around 2005. Mr. Verkhola  
28 testified that he was the sole owner and shareholder of Popkoff's during the audit period and that he

1 hired and responsible for all of its employees. Therefore, he admitted that he should be held  
2 individually liable for the MWO violations in this case. Respondents also proffered Articles of  
3 Incorporation for Popkoff Frozen Foods, Inc., which identifies Gary Verkhola as its Director. (Exh.  
4 G.)

5 105. Mr. Verkhola testified that Popkoff's generally operated at the Shafter building four  
6 days a week, depending on the months and season, with a 6:00 a.m. to 2:30 p.m. shift.

7 106. Mr. Verkhola testified that he paid employees minimum wage for working at  
8 Popkoff's, although he could not recall what the minimum wage was during the audit period. He  
9 testified that employees were paid in cash and check. He testified that employees were paid according  
10 to California's minimum wage and all billing was handled by his accountant, who he could not  
11 remember.

12 107. The Hearing Officer finds that except for the admission regarding ownership, Mr.  
13 Verkhola's testimony is not persuasive. Mr. Verkhola's testimony that he paid minimum wage is at  
14 odds with the record testimony of each of the employees who testified during the OLSE's case.

15  
16 **III.**  
17 **HEARING OFFICER'S FINDINGS**

18 The Hearing Officer was asked to address the following threshold issues by the parties in this  
19 case:

- 20 A) Has the City met the applicable statute of limitations and is the action barred by the  
21 doctrine of laches?  
22 B) Were Popkoff's Frozen Food and European Market owed by the same corporate entity  
23 (European Food Wholesale, Inc.) or are they separate entities with no common ownership?  
24 C) Are Respondents Gary Verkhola and Vladimir Verkhola individually liable for back  
25 wages, interest, and administrative penalties?

26 The Hearing Officer will address each issue, in turn, as follows.  
27  
28

1 **A: Statute of Limitations**

2 1. Respondents argue that this action is barred by the statute of limitations. According to  
3 Respondents, only three employees filed a claim for back wages (Manuela de Jesus Dzul; Alberto  
4 Trujeque Yam; Magali Vallardares). As to those employees, Respondents argue that California Labor  
5 Code § 98a required that the OLSE notify Respondents within 30 days after the claims were accepted  
6 and that a hearing be held within 90 days. As to the remaining employees enumerated above,  
7 Respondents argue that California Labor Code § 1197.5(h) imposes a three-year statute of limitations  
8 on an action to collect wages. For the reasons set forth below, the Hearing Officer rejects Respondents  
9 arguments.

10 2. Because the OLSE is enforcing the City's Minimum Wage Ordinance, the applicable  
11 statute of limitations is three years for liability based on a statute pursuant to California Civil Code  
12 Section 338(a). In *City of Los Angeles v. Belridge Oil Co.*, 42 Cal. 2d 823, 833-34 (1954), the  
13 California Supreme Court held that the statute of limitations applicable to liability created by statute is  
14 applicable to municipal ordinances. *See also County Sanitation Dist. v. Superior Court (Atl. Richfield*  
15 *Co.)*, 218 Cal. App. 98, 107 (1990).

16 3. In *Cuadra v. Milan*, 17 Cal.4th 855, 866-67 (1998), the California Supreme Court held  
17 that the Labor Commissioner had the authority to calculate back pay from the date the wage claim was  
18 filed rather than from the date the claims were heard. The California Supreme Court based its  
19 reasoning on the Commissioner's implied authority to regulate the matter, despite the absence of any  
20 such language in the statute. The Court noted that "the commissioner may exercise such additional  
21 powers as are necessary for the due and efficient administration of powers expressly granted by  
22 statute, or as may fairly be implied from the statute granting the powers." *Id.* The court noted that the  
23 filing of the claim provides notice to the employer, which "gives the employer the opportunity to  
24 preserve evidence and prepare for the hearing." *Id.* at 868.

25 4. The OLSE similarly calculates wages owed three years back from the date the  
26 employer is notified that a claim has been received and the investigation begins. Here, the OLSE  
27 notified Respondents of the investigation on February 15, 2008, when the agency delivered the request  
28 for documents. (Exh. 6 at OLSE 651-652). The OLSE used the audit period July 23, 2005-February

1 1, 2008, because it went back to the date of the documents provided by Respondents (though the  
2 OLSE could have gone back to February 2005 because of the three year limitations period). The  
3 OLSE ended the period on February 1, 2008 because Respondents began paying the minimum wage to  
4 employees at Popkoff's in the pay period following the site visit. But the OLSE could have calculated  
5 up to February 15, 2008 for those employees who were working overtime but were not paid the  
6 appropriate rate.

7 5. The OLSE Director has the authority to enforce the MWO and calculate back wages as  
8 does the Labor Commissioner at the state level. San Francisco Administrative Code § 2A.23 provides:

9 The Office of Labor Standards Enforcement shall enforce the City's Minimum  
10 Wage Ordinance (Chapter 12R of the Administrative Code), Minimum  
11 Compensation Ordinance (Chapter 12P of the Administrative Code), Health  
12 Care Accountability Ordinance (Chapter 12Q of the Administrative Code),  
13 Prevailing Wage Ordinances, and shall carry out any additional duties and  
14 functions as assigned by Charter or ordinance. The Office of Labor Standards  
15 Enforcement may enforce the provisions of the California Labor Code to the  
16 extent permitted by State law. **The Office of Labor Standards Enforcement  
17 may impose penalties and take any and all appropriate action to enforce  
18 the requirements of such provisions, including but not limited to those set  
19 forth in San Francisco Administrative Code Chapter 12R, to the extent  
20 permitted by State law.** (Emphasis added.)

21 6. Respondents argue that *Samuels v. Mix*, 22 Cal.4th 1 (1999), disapproves *Cuadra*  
22 "when it is cited on statute of limitation matters," referencing fn. 4 of that decision. But *Samuels*  
23 addresses the issue of the accrual of a cause of action when there is delayed discovery of a violation  
24 for attorney malpractice actions. The Hearing Officer finds the *Samuels* case has no relevance to  
25 statute of limitations in this case.

26 7. Respondents next assert that the applicable statute of limitations is two years, citing  
27 Cal. Labor Code § 1197.5(h). But Section 1197.5 pertains to paying equal wages to employees of both  
28 sexes:

No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

1 Cal. Lab. Code § 1197.5(a). The Hearing Officer finds that this code section has no bearing or  
2 relevance to the OLSE's enforcement of the Minimum Wage Ordinance.

3 8. Respondents also argue that the OLSE's failure "to follow California law and its own  
4 rules and regulations regarding the processing of these claims requires the dismissal of the claims for  
5 failure to prosecute." But per the Hearing Officer's previous findings set forth in this section, the  
6 OLSE has not failed to meet the applicable statute of limitations.

7 9. In 2011, the Board of Supervisors amended Section 12R.7 of the MWO to include a  
8 *policy* of making efforts to resolve cases within a year:

9 The Agency shall make every effort to resolve complaints in a timely manner  
10 and shall have a policy that the Agency shall take no more than one year to  
11 settle, request an administrative hearing under Section 12R.7(b), or initiate a  
12 civil action under Section 12R.7(c).

13 Ord. 175-11, File No. 110594, App. 9/16/11, Eff. 10/16/2011.

14 But the amendment expressly included the following language: "The failure of the Agency to  
15 meet these timelines within one year **shall not be grounds for closure or dismissal of the**  
16 **complaint.**" (Emphasis added.) (Exh. 29.) Therefore, the Hearing Officer finds that Respondents'  
17 argument that the present case should be dismissed because of OLSE's failure to resolve this case  
18 within a year is explicitly contradicted by the MWO.

19 10. Based on the foregoing, the Hearing Officer finds that the Respondents have failed to  
20 establish that this action was untimely.

## 21 **B. Doctrine of Laches**

22 11. Respondents also assert that this action should be dismissed under the doctrine of  
23 laches. They argue that the OLSE delayed in bringing this action, which prejudiced Respondents in  
24 defending against the claims because evidence was stale.

25 12. The Hearing Officer is unpersuaded by Respondents' argument. A party asserting  
26 laches against an administrative agency must demonstrate: 1) unreasonable delay, and 2) either  
27 acquiescence in the act about which plaintiff complains or resulting prejudice. *Johnson v. City of*  
28 *Loma Linda*, 24 Cal. 4th 61, 68 (2000). The OLSE presented evidence at the hearing that the agency  
was working diligently to move this case to hearing and that any delay was caused by: 1) Respondents,

1 2) the complexity of the case, 3) the addition of a second location (European Market) to the  
2 investigation; and 4) the sale of Popkoff's Frozen Food to Whittier Corp. Thus, there was no  
3 "unreasonable delay" on the part of the OLSE, and Respondents cannot meet the first requirement to  
4 impose laches.

5 13. Additionally, for laches to apply Respondents also have to show either "acquiescence in  
6 the act of which plaintiff complains" or resulting prejudice. *Id.* Respondents presented no evidence  
7 that the OLSE acquiesced in payment of less than minimum wage to Respondents' employees.  
8 Moreover, the OLSE presented evidence that it provided Respondents notice of this investigation and  
9 the audit period as of February 15, 2008 (Exh. 6), and Respondents therefore were in the position to  
10 preserve documentary evidence necessary to defend this action. Respondents were the ones to request  
11 repeated continuances and in 2011 sold the business without using any of the proceeds to pay back  
12 wages owed. Therefore, the Hearing Officer finds that any prejudice resulting from the delay in  
13 bringing this case to a hearing has accrued to the employees who have had to wait to recover the  
14 wages rightfully due to them.

15 14. Based on the foregoing analysis, the Hearing Officer finds that the doctrine of laches  
16 does not apply.

17  
18 **C. Ownership Issues**

19 15. Respondents contend that Popkoff's and European Market were separate businesses  
20 entities and were not owed by European Food Wholesale, Inc.

21 16. However, the Hearing Officer finds that during the relevant audit periods in this case,  
22 European Food Wholesale, Inc. was doing business as European Market and Popkoff's. Ms. Valle  
23 testified that she researched corporate ownership for Popkoff's and European Market shortly after the  
24 OLSE received the initial complaint regarding the business. She analyzed records at the San Francisco  
25 County Clerk's Office, the Treasurer/Tax Collector's Office, and also requested documents from the  
26 State.

27 17. Ms. Valle testified that the Tax Collector's Business Tax System showed that European  
28 Food Wholesale, Inc. was doing business as both European Market and Popkoff's Frozen Food, and



1 paid taxes jointly for these locations through the relevant time periods for this case. (Exh. 12 at OLSE  
2 943). European Food Wholesale, Inc. continued paying taxes for Popkoff's Frozen Food under  
3 Certificate No. 346956 until January 30, 2008, which was only one day before the audit period in this  
4 case ended for Popkoff's Frozen Food. (*Id.*). Ms. Valle noted that this change in the tax certificate  
5 number was requested on February 22, 2008, about a week after the OLSE's site visit to Popkoff's  
6 Frozen Food. (Exh. 12 at OLSE 948). In the tax records available to the OLSE, European Food  
7 Wholesale, Inc. paid taxes under Certificate No. 346956 during at least 2004-2006. (Exh. 12 at OLSE  
8 955-958). Ms. Valle further testified that through those years, Certificate No. 346956 corresponded to  
9 both European Market and Popkoff's Frozen Food.

10 18. Ms. Valle further testified that the County Clerk records showed European Food  
11 Wholesale, Inc. as the owner of Popkoff's Frozen Food effective August 30, 2002. (Exh. 12 at OLSE  
12 944). Through Respondents claim that Popkoff's Frozen Food was separate from European Market  
13 and owned by Popkoff's Frozen Food, Inc., that corporation was not the registered owner of Popkoff's  
14 Frozen Food until June 24, 2008. (Exh. 12 at OLSE 947). Again, Respondents made that change  
15 apparently after the OLSE began investigating Popkoff's Frozen Food for minimum wage violations.

16 19. Thereafter Vladimir Verkhola submitted documentation for payroll taxes under Cert.  
17 No. 346956 for tax year 2009-2010. (Exh. 12 at OLSE 952). But Gary Verkhola appears to have  
18 signed for his father in the 2010-2011 Business Registration Renewal for European Food Wholesale,  
19 Inc. (Exh. 12 at OLSE 953). Vladimir Verkhola is listed as the President and receives mail for  
20 European Food Wholesale, Inc. (Exh. 12 at OLSE 953-954).

21 20. In a document filed with the City's Treasurer-Tax Collector's Office on February 22,  
22 2008 – one week after the OLSE's site visit to Popkoff's – Gary Verkhola attempted to identify  
23 European Food Wholesale, Inc. as the owner of Popkoff's Frozen Food. (Exh. 36 at OLSE 1085-86.)  
24 Although Vladimir Verkhola is listed as the registered owner, Gary Verkhola signed the document  
25 as the President of the business.

26 21. The Hearing Officer finds that this evidence, taken together, shows that the OLSE  
27 properly named the Respondents in this case. European Food Wholesale, Inc. was doing business as  
28 both Popkoff's and European Market. The Hearing Officer further finds that Vladimir Verkhola and

1 Gary Verkhola were corporate officers of European Food Wholesale, Inc. and together were involved  
2 in running the business.

3 22. The Hearing Officer further finds that it was not until after the OLSE began its MWO  
4 investigation that Gary and Vladimir Verkhola attempted to separate the two businesses owned by  
5 European Food Wholesale, Inc. in an apparent attempt to avoid liability for violations of the MWO.  
6

7 **D: Individual Liability**

8 23. The Hearing Officer finds that Gary and Vladimir Verkhola are individually liable for  
9 the wages, interest, and administrative penalties awarded in this case. Under the Minimum Wage  
10 Ordinance, "Employer" is defined to mean "any person, as defined in Section 18 of the California  
11 Labor Code, including corporate officers or executives, who directly or indirectly or through an agent  
12 any other person, including through the services of a temporary services or staffing agency or similar  
13 entity, employs or exercises control over the wages, hours or working conditions of any Employee."  
14 Both Gary and Vladimir Verkhola are the proper subject of this administrative action since they fit  
15 the definition of "Employer" under the MWO.

16 24. The Popkoff's employees testified that Gary Verkhola hired them and managed at  
17 Popkoff's Frozen Food. The European Market employees testified that Vladimir Verkhola hired  
18 them and managed them at European Market. In addition, Gary Verkhola regularly went to European  
19 Market and directed the workers there as well.

20 25. Both Gary and Vladimir Verkhola are corporate officers for European Food  
21 Wholesale, Inc. (Exhs. 12 & 36.)

22 26. Ms. Valle testified regarding the documents that show Gary Verkhola was the  
23 President of Popkoff's Frozen Food. He is listed as the President in both the 2009-2010 and 2010-  
24 2011 Business Registration Renewals filed with the City. (Exh. 12 at OLSE 950-951.) He is also  
25 listed as the President in a document he filed with the Treasurer-Tax Collector's Office in February  
26 2008. (Exh. 36 at OLSE 1085-1086.)

27 27. Further, Gary Verkhola testified that he was the sole owner of Popkoff's Frozen Food.  
28 He made no reference to corporate ownership or any other shareholders.

1           28.     Similarly, Secretary of State records show that Vladimir Verkhola was the agent for  
2 service of process for European Food Wholesale, Inc. (Exh. 12 at OLSE 945). He is listed as the  
3 owner of European Food Wholesale, Inc. (Exh. 36 at OLSE 1085).

4           29.     Respondents did not call Vladimir Verkhola as a witness in this case to rebut that he is  
5 properly named as a respondent in this case, and their failure to do so, supports the OLSE's charge that  
6 he is properly named as a respondent in this case.

7           30.     The Hearing Officer finds that the legal authorities Respondents cite to dispute  
8 individual liability have no bearing or relevancy to the City's MWO. Respondents cite *Reynolds v.*  
9 *Bement*, 36 Cal.4th 1075 (2005) and *Bradstreet v. Wong*, 161 Cal.App.4th 1440 (2008), to support  
10 their claim that individual officers, directors, and shareholders of a corporation have no personal  
11 liability to the corporation's employees for unpaid overtime. But in *Martinez v. Combs*, 49 Cal.4th 35  
12 (2010), the California Supreme Court abrogated both the *Reynolds* and *Bradstreet* cases and held that  
13 the applicable wage order of the Industrial Welfare Commission (IWC), not the common law, defines  
14 the employment relationship and determines who may be liable in an action to recover minimum  
15 wages.

16           31.     The Hearing Officer finds that San Francisco's Minimum Wage Ordinance defines the  
17 employment relationship. The MWO's definition of "Employer" is broader than the IWC's definition,  
18 because the MWO expressly mentions corporate officers or executives, while the IWC does not.

19           32.     Additionally, Ms. Valle testified that Popkoff's Frozen Food, Inc. has been suspended  
20 as a corporation for nonpayment of taxes according to records obtained by the California Secretary of  
21 State. Therefore, Gary and Vladimir Verkhola cannot shield themselves from liability for MWO  
22 violations committed by this corporation.

23           33.     The Hearing Officer therefore finds that both Vladimir and Gary Verkhola are  
24 Employers and liable for back wages, interest, and administrative penalties owed for MWO violations  
25 as alleged in this case.

1 **E: Respondents' Other Arguments**

2 34. Respondents have also asserted that the requirements of California Labor Code § 98(a),  
3 which apply to the State Labor Commissioner's enforcement of the California minimum wage, also  
4 apply in this matter. The OLSE, however, maintains that this section imposes no requirements in its  
5 enforcement of the Minimum Wage Ordinance as a Charter City. The Hearing Officer agrees with the  
6 OLSE that Respondents have failed to demonstrate or provide controlling legal authority indicating  
7 that § 98(a) applies.

8 35. Finally, Respondents' argue that they were denied a timely formal hearing.

9 36. Respondents claim that they requested hearings in this matter on March 29, 2010 and  
10 April 18, 2011. (Respondents' Prehearing Statement at 9; Exhs. A & E). But following receipt of  
11 both documents, the OLSE arranged informal conferences as requested by Respondents. (Exh. 21 at  
12 1010-11; *see also* OLSE's 12/4/13 letter setting forth a detailed account of OLSE's communications  
13 with Respondents' counsel.) After numerous attempts to reach Respondents' counsel Grover, the  
14 OLSE held the first requested informal conference on July 27, 2010. (*Id.*) The parties were not able  
15 to resolve the case that day, but Mr. Grover offered to produce documents that he did not later send.

16 37. During this period the OLSE began to investigate European Market and request  
17 documents pertaining to that location. (*Id.*) Following receipt of Respondents' April 18, 2011  
18 communication, the OLSE again scheduled an informal conference as requested. (Exh. 21 at 1011.)  
19 Even though Mr. Grover had requested that conference, he failed to appear for the May 3, 2011  
20 meeting. The parties talked on the phone but were again unable to resolve the case. (*Id.*) The  
21 following month the OLSE learned that Popkoff's Frozen Food had been sold to Whittier Corporation,  
22 and the agency began to investigate the sale to determine if there might be successor liability. (*Id.*)  
23 Finally, when the OLSE requested the present hearing, Respondents' attorney repeatedly objected to  
24 the scheduled date claiming conflicts and the need for more time. (Exh. 21 at 1011-12.)

25 38. After careful review of the record, the Hearing Officer finds the Respondents' argument  
26 unpersuasive and that the OLSE properly granted Respondents' request for a formal hearing as  
27 required under the MWO.

1 IV.

2 FINDINGS REGARDING THE WAGES, INTEREST, AND PENALTIES

3 39. In its December 4, 2013 letter to the Controller requesting appointment of a hearing  
4 officer for this matter pursuant to Administrative Code Section 12R.7(b), the OLSE requested written  
5 findings on potential violations of the MWO relating to 35 employees regarding whether Respondents  
6 are liable for administrative penalties. The undersigned now addresses each of those issues, in turn, as  
7 follows.

8 (a) Carlos Xool M.

9 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Carlos  
10 Xool M? If so, how much does it owe Mr. Xool M. in back wages, interest, and administrative  
11 penalties?

12 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
13 wage and/or overtime to Carlos Xool M, based on the documentary evidence, Ms. Valle's credible  
14 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Mr.  
15 Xool M. a total of \$19,386.89, but they should have paid him \$25,075.60 under the MWO. (Exh. 5  
16 (Popkoff's Audit Summary) at OLSE 531, 532.) Further, Respondents owe Mr. Xool M. penalties and  
17 interest for 2096 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to  
18 order Respondents to pay Carlos Xool M. \$5,688.71 in back wages, \$3,015.11 in interest, and  
19 \$104,800 in penalties. (*Id.*)

20  
21 (b) Alexei Calin

22 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Alexei  
23 Calin? If so, how much does it owe Ms. Calin in back wages, interest, and administrative penalties?

24 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
25 wage and/or overtime to Alexei Calin, based on the documentary evidence, Ms. Valle's credible  
26 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Mr.  
27 Calin a total of \$1,611.76, but they should have paid him \$2,022.38 under the MWO. (Exh. 5 at  
28 OLSE 531, 533.) Further, Respondents owe Mr. Calin penalties and interest for 2096 days. (*Id.*)

1 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Alexei  
2 Calin \$410.62 in back wages, \$234.79 in interest, and \$104,800 in penalties.

3  
4 **(c) Juana M. Fortin Casco**

5 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Juana  
6 M. Fortin Casco? If so, how much does it owe Ms. Fortin Casco in back wages, interest, and  
7 administrative penalties?

8 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
9 wage and/or overtime to Juana M. Fortin Casco, based on the documentary evidence, Ms. Valle's  
10 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
11 paid Mr. Casco a total of \$12,568.28, but they should have paid him \$14,954.60 under the MWO.  
12 (Exh. 5 at OLSE 531, 534.) Further, Respondents owe Mr. Casco penalties and interest for 2096 days.  
13 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
14 Casco \$2,386.32 in back wages, \$1,242.46 in interest, and \$104,800 in penalties. (*Id.*)

15  
16 **(d) Santos Dominguez**

17 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Santos  
18 Dominguez? If so, how much does it owe Mr. Dominguez in back wages, interest, and administrative  
19 penalties?

20 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
21 wage and/or overtime to Santos Dominguez, based on the documentary evidence, Ms. Valle's credible  
22 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Mr.  
23 Dominguez a total of \$54,622.42, but they should have paid him \$70,346.42 under the MWO. (Exh. 5  
24 at OLSE 531, 535-36.) Further, Respondents owe Mr. Dominguez penalties and interest for 2096  
25 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents  
26 to pay Mr. Dominguez \$15,724 in back wages, \$7,040.35 in interest, and \$104,800 in penalties. (*Id.*)

1           **(e) Morena de Jesus Larin**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
3 Morena de Jesus Larin? If so, how much does it owe Ms. Larin in back wages, interest, and  
4 administrative penalties?

5           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
6 wage and/or overtime to Morena de Jesus Larin, based on the documentary evidence, Ms. Larin's  
7 credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of other  
8 Popkoff's employees. Respondents paid Ms. Larin a total of \$16,358.65, but they should have paid  
9 her \$19,779.07 under the MWO. (Exh. 5 at OLSE 531, 537-38.) Further, Respondents owe Ms. Larin  
10 penalties and interest for 2096 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for  
11 the OLSE to order Respondents to pay Ms. Larin \$3,420.42 in back wages, \$1,602.80 in interest, and  
12 \$104,800 in penalties. (*Id.*)

13  
14           **(f) Andrea Streepey**

15           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
16 Andrea Streepey? If so, how much does it owe Ms. Streepey in back wages, interest, and  
17 administrative penalties?

18           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
19 wage and/or overtime to Andrea Streepey, based on the documentary evidence, Ms. Valle's credible  
20 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
21 Streepey a total of \$2,337.96, but they should have paid her \$2,801 under the MWO. (Exh. 5 at OLSE  
22 531, 539.) Further, Respondents owe Ms. Streepey penalties and interest for 2096 days. (*Id.*)  
23 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
24 Streepey \$463.04 in back wages, \$264.54 in interest, and \$104,800 in penalties. (*Id.*)  
25 (See generally, OLSE 531 - Popkoff's Audit Summary).

1           **(g) Manuela de Jesus Dzul**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
3 Manuela de Jesus Dzul? If so, how much does it owe Ms. Jesus Dzul in back wages, interest, and  
4 administrative penalties?

5           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
6 wage and/or overtime to Manuela de Jesus Dzul, based on the documentary evidence, Ms. Valle's  
7 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
8 paid Ms. Dzul a total of \$9,811.51, but they should have paid her \$11,776.49 under the MWO. (Exh.  
9 5 at 531, 540.) Further, Respondents owe Ms. Dzul penalties and interest for 2096 days. (*Id.*)  
10 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
11 Dzul \$1,964.98 in back wages, \$980.30 in interest, and \$104,800 in penalties. (*Id.*)

12  
13           **(h) Maria Guadalupe Polanco**

14           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Maria  
15 Guadalupe Polanco? If so, how much does it owe Ms. Polanco in back wages, interest, and  
16 administrative penalties?

17           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
18 wage and/or overtime to Maria Guadalupe Polanco, based on the documentary evidence, Ms. Valle's  
19 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
20 paid Ms. Polanco a total of \$29,158.10, but they should have paid her \$33,806.95 under the MWO.  
21 (Exh. 5 at OLSE 531, 542.) Further, Respondents owe Ms. Polanco penalties and interest for 2096  
22 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents  
23 to pay Ms. Polanco \$4,648.85 in back wages, \$2,167.13 in interest, and \$104,800 in penalties. (*Id.*)

24  
25           **(i) Alejandra Vasquez**

26           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
27 Alejandra Vasquez? If so, how much does it owe Mr. Vasquez in back wages, interest, and  
28 administrative penalties?



1 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
2 wage and/or overtime to Alejandra Vasquez, based on the documentary evidence, Ms. Valle's credible  
3 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
4 Vasquez a total of \$27,474.29, but they should have paid him \$31,926.90 under the MWO. (Exh. 5 at  
5 OLSE 531, 5543-44.) Further, Respondents owe Ms. Vasquez penalties and interest for 2096 days.  
6 (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay  
7 Ms. Vasquez \$4,452.61 in back wages, \$1,992.54 in interest, and \$104,800 in penalties. (*Id.*)

8  
9 **(j) Javier Canul Chab**

10 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Javier  
11 Canul Chab? If so, how much does it owe Mr. Canul Chab in back wages, interest, and administrative  
12 penalties?

13 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
14 wage and/or overtime to Javier Canul Chab, based on the documentary evidence, Ms. Valle's credible  
15 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Mr.  
16 Chab a total of \$18,573.87, but they should have paid him \$24,034.53 under the MWO. (Exh. 5 at  
17 OLSE 531, 545.) Further, Respondents owe Mr. Chab penalties and interest for 2096 days. (*Id.*)  
18 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Mr.  
19 Chab \$5,460.66 in back wages, \$2,899.11 in interest, and \$104,800 in penalties. (*Id.*)

20  
21 **(k) Dina Miranda**

22 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Dina  
23 Miranda? If so, how much does it owe Ms. Miranda in back wages, interest, and administrative  
24 penalties?

25 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
26 wage and/or overtime to Dina Miranda, based on the documentary evidence, Ms. Valle's credible  
27 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
28 Miranda a total of \$11,915.12, but they should have paid her \$14,222.54 under the MWO. (Exh. 5 at

1 OLSE 531, 546.) Further, Respondents owe Ms. Diaz penalties and interest for 2096 days. (*Id.*)  
2 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
3 Miranda \$2,307.42 in back wages, \$1,172.70 in interest, and \$104,800 in penalties. (*Id.*)  
4

5 **(l) Lorena Diaz**

6 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Lorena  
7 Diaz? If so, how much does it owe Ms. Diaz in back wages, interest, and administrative penalties?

8 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
9 wage and/or overtime to Lorena Diaz, based on the documentary evidence, Ms. Valle's credible  
10 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
11 Diaz a total of \$6,158.76, but they should have paid her \$7,378 under the MWO. (Exh. 5 at OLSE  
12 531, 547.) Further, Respondents owe Ms. Diaz penalties and interest for 2096 days. (*Id.*)

13 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
14 Diaz \$1,219.24 in back wages, \$610.33 in interest, and \$104,800 in penalties. (*Id.*)  
15

16 **(m) Dinora Hernandez**

17 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Dinora  
18 Hernandez? If so, how much does it owe Ms. Hernandez in back wages, interest, and administrative  
19 penalties?

20 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
21 wage and/or overtime to Dinora Hernandez based on the documentary evidence, Ms. Valle's credible  
22 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
23 Hernandez a total of \$32,657.73, but they should have paid her \$37,633.82 under the MWO. (Exh. 5  
24 at OLSE 531, 548-49.) Further, Respondents owe Ms. Torrez penalties and interest for 2096 days.

25 (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay  
26 Ms. Hernandez \$4,976.09 in back wages, \$2,258.68 in interest, and \$104,800 in penalties. (*Id.*)  
27  
28

1           **(n) Jose Antonio Chan**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Jose  
3 Antonio Chan? If so, how much does it owe Mr. Chan in back wages, interest, and administrative  
4 penalties?

5           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
6 wage and/or overtime to Jose Antonio Chan based on the documentary evidence, Ms. Valle's credible  
7 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Mr.  
8 Chan a total of \$54,837.96, but they should have paid him \$70,602.57 under the MWO. (Exh. 5 at  
9 OLSE 531, 550-51.) Further, Respondents owe Mr. Chan penalties and interest for 2096 days. (*Id.*)  
10 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Mr.  
11 Chan \$15,764.61 in back wages, \$7,085.45 in interest, and \$104,800 in penalties. (*Id.*)

12  
13           **(o) Nubia Torrez**

14           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Nubia  
15 Torrez? If so, how much does it owe Ms. Torrez in back wages, interest, and administrative penalties?

16           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
17 wage and/or overtime to Nubia Torrez based on the documentary evidence, Ms. Valle's credible  
18 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
19 Torrez a total of \$11,440.12, but should have paid her a total of \$13,609.94 under the MWO. (Exh. 5  
20 at OLSE 531, 552.) Further, Respondents owe Ms. Torrez penalties and interest for 2082 days. (*Id.*)  
21 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
22 Torrez \$2,169.82 in back wages, \$1,136.61 in interest, and \$104,100 in penalties. (*Id.*)

23  
24           **(p) Jose F. Dzul Can**

25           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Jose F.  
26 Dzul Can? If so, how much does it owe Mr. Dzul Can in back wages, interest, and administrative  
27 penalties?

1 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
2 wage and/or overtime to Jose F. Dzul Can based on the documentary evidence, Ms. Valle's credible  
3 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Mr.  
4 Dzul Can a total of \$48,180.90, but should have paid him a total of \$59,658.84 under the MWO.  
5 (Exh. 5 at OLSE 531, 553-54.) Further, Respondents owe Mr. Dzul Can penalties and interest for  
6 2068 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order  
7 Respondents to pay Mr. Dzul Can \$11,477.94 in back wages, \$5,028 in interest, and \$103,400 in  
8 penalties. (*Id.*)

9  
10 **(q) Alexander Abacumov**

11 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
12 Alexander Abacumov? If so, how much does it owe Mr. Abacumov in back wages, interest, and  
13 administrative penalties?

14 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
15 wage and/or overtime to Alexander Abacumov based on the documentary evidence, Ms. Valle's  
16 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
17 paid Mr. Abacumov a total of \$3,394.96, but should have paid him a total of \$3,757.09 under the  
18 MWO. (Exh. 5 at OLSE 531, 555.) Further, Respondents owe Mr. Abacumov penalties and interest  
19 for 2068 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order  
20 Respondents to pay Mr. Abacumov \$362.13 in back wages, \$199.61 in interest, and \$103,400 in  
21 penalties. (*Id.*)

22  
23 **(r) Alberto J. Trujeque Yam**

24 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
25 Alberto J. Trujeque Yam? If so, how much does it owe Mr. Trujeque in back wages, interest, and  
26 administrative penalties?

27 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
28 wage and/or overtime to Alberto J. Trujeque Yam based on the documentary evidence, Ms. Valle's

1 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
2 paid Mr. Trujeque Yam a total of \$6,248.75, but should have paid him a total of \$6,901.78 under the  
3 MWO. (Exh. 5 at OLSE 531, 555.) Further, Respondents owe Mr. Trujeque Yam penalties and  
4 interest for 1956 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to  
5 order Respondents to pay Mr. Trujeque Yam \$653.03 in back wages, \$336.45 in interest, and \$97,800  
6 in penalties. (*Id.*)

7  
8 **(s) Juan Isidro Canche Dzul**

9 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Juan  
10 Isidro Canche Dzul? If so, how much does it owe Mr. Canche Dzul in back wages, interest, and  
11 administrative penalties?

12 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
13 wage and/or overtime to Juan Isidro Canche Dzul based on the documentary evidence, Ms. Valle's  
14 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
15 paid Mr. Canche Dzul a total of \$33,930.99, but should have paid him a total of \$41,712.82 under the  
16 MWO. (Exh. 5 at OLSE 531, 557-58.) Further, Respondents owe Mr. Canche Dzul penalties and  
17 interest for 1956 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to  
18 order Respondents to pay Mr. Canche Dzul \$7,781.83 in back wages, \$3,493.56 in interest, and  
19 \$97,800 in penalties. (*Id.*)

20  
21 **(t) Jose Isabel Dzul Ton**

22 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Jose  
23 Isabel Dzul Ton? If so, how much does it owe Mr. Dzul Ton in back wages, interest, and  
24 administrative penalties?

25 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
26 wage and/or overtime to Jose Isabel Dzul Ton based on the documentary evidence, Ms. Valle's  
27 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
28 paid Mr. Dzul Ton a total of \$16,794.95, but should have paid him a total of \$21,013.81 under the

1 MWO. (Exh. 5 at OLSE 531, 559.) Further, Respondents owe Mr. Dzul Ton penalties and interest for  
2 1914 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order  
3 Respondents to pay Mr. Dzul Ton \$4,218.86 in back wages, \$2,071.85 in interest, and \$95,700 in  
4 penalties. (*Id.*)

5  
6 **(u) Esmeralda Flores**

7 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
8 Esmeralda Flores? If so, how much does it owe Ms. Flores in back wages, interest, and administrative  
9 penalties?

10 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
11 wage and/or overtime to Esmeralda Flores based on the documentary evidence, Ms. Valle's credible  
12 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
13 Flores a total of \$8,210.31, but should have paid her a total of \$11,051.11 under the MWO. (Exh. 5 at  
14 OLSE 531, 560.) Further, Respondents owe Ms. Flores penalties and interest for 1998 days. (*Id.*)  
15 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
16 Flores \$2,840.80 in back wages, \$1,238.66 in interest, and \$99,900 in penalties. (*Id.*)

17  
18 **(v) Martha Cedillos**

19 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Martha  
20 Cedillos? If so, how much does it owe Ms. Cedillos in back wages, interest, and administrative  
21 penalties?

22 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
23 wage and/or overtime to Martha Cedillos based on the documentary evidence, Ms. Cedillos' credible  
24 testimony, Ms. Valle's credible testimony and audit, and the credible testimony of other Popkoff's  
25 employees. Respondents paid Ms. Cedillos a total of \$29,098.24, but should have paid her a total of  
26 \$34,496.33 under the MWO. (Exh. 5 at OLSE 531, 561-62.) Further, Respondents owe Ms. Cedillos  
27 penalties and interest for 1998 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for  
28

1 the OLSE to order Respondents to pay Ms. Cedillos \$5,398.09 in back wages, \$2,487.20 in interest,  
2 and \$99,900 in penalties. (*Id.*)

3  
4 **(w) Magali Valladares**

5 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Magali  
6 Valladares? If so, how much does it owe Ms. Valladares in back wages, interest, and administrative  
7 penalties?

8 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
9 wage and/or overtime to Magali Valladares based on the documentary evidence, Ms. Valladares'  
10 credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of other  
11 Popkoff's employees. Respondents paid Ms. Valladares a total of \$27,843.36, but should have paid  
12 her a total of \$33,226.88 under the MWO. (Exh. 5 at OLSE 531, 563-64.) Further, Respondents owe  
13 Ms. Valladares penalties and interest for 2068 days. (*Id.*) Accordingly, the Hearing Officer finds it  
14 appropriate for the OLSE to order Respondents to pay Ms. Valladares \$5,383.52 in back wages,  
15 \$2,518.24 in interest, and \$103,400 in penalties. (*Id.*)

16  
17 **(x) Neydi Areli Dominguez Ek**

18 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Neydi  
19 Areli Dominguez Ek? If so, how much does it owe Ms. Dominguez Ek in back wages, interest, and  
20 administrative penalties?

21 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
22 wage and/or overtime to Neydi Areli Dominguez Ek based on the documentary evidence, Ms.  
23 Dominguez Ek's credible testimony, Ms. Valle's credible testimony and audit, and the credible  
24 testimony of other Popkoff's employees. Respondents paid Ms. Dominguez Ek a total of \$7,042.81,  
25 but should have paid her a total of \$10,231 under the MWO. (Exh. 5 at OLSE 531, 565.) Further,  
26 Respondents owe Ms. Dominguez Ek penalties and interest for 1998 days. (*Id.*) Accordingly, the  
27 Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms. Dominguez Ek  
28 \$3,188.19 in back wages, \$1,664.40 in interest, and \$99,900 in penalties. (*Id.*)

1           **(y) Jose A. Dzul Tellez**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Jose  
3 A. Dzul Tellez? If so, how much does it owe Mr. Dzul Tellez in back wages, interest, and  
4 administrative penalties?

5           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
6 wage and/or overtime to Jose A. Dzul Tellez based on the documentary evidence, Mr. Dzul Tellez's  
7 credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of other  
8 Popkoff's employees. Respondents paid Mr. Dzul Tellez a total of \$34,556.77, but should have paid  
9 him a total of \$41,657.46 under the MWO. (Exh. 5 at OLSE 531, 566-67.) Further, Respondents owe  
10 Mr. Dzul Tellez penalties and interest for 1802 days. (*Id.*) Accordingly, the Hearing Officer finds it  
11 appropriate for the OLSE to order Respondents to pay Mr. Dzul Tellez \$7,100.69 in back wages,  
12 \$2,807.76 in interest, and \$90,100 in penalties. (*Id.*)

13  
14           **(z) Luis Miguel Chan Tun**

15           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Luis  
16 Miguel Chan Tun? If so, how much does it owe Mr. Chan Tun in back wages, interest, and  
17 administrative penalties?

18           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
19 wage and/or overtime to Luis Miguel Chan Tun based on the documentary evidence, Ms. Valle's  
20 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
21 paid Mr. Chan Tun a total of \$37,375.36, but should have paid him a total of \$46,555.20 under the  
22 MWO. (Exh. 5 at OLSE 531, 569.) Further, Respondents owe Mr. Chan Tun penalties and interest  
23 for 1788 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order  
24 Respondents to pay Mr. Chan Tun \$9,179.84 in back wages, \$3,703.39 in interest, and \$89,400 in  
25 penalties. (*Id.*)



1           **(aa) Miguel Angel Chan Dzul**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Miguel  
3 Angel Chan Dzul? If so, how much does it owe Mr. Chan Dzul in back wages, interest, and  
4 administrative penalties?

5           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
6 wage and/or overtime to Miguel Angel Chan Dzul based on the documentary evidence, Ms. Valle's  
7 credible testimony and audit, and the credible testimony of other Popkoff's employees. Respondents  
8 paid Mr. Chan Dzul a total of \$25,845.61, but should have paid him a total of \$31,297.85 under the  
9 MWO. (Exh. 5 at OLSE 531, 570.) Further, Respondents owe Mr. Chan Dzul penalties and interest  
10 for 1648 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order  
11 Respondents to pay Mr. Chan Dzul \$5,452.24 in back wages, \$2,074.57 in interest, and \$82,400 in  
12 penalties. (*Id.*)

13  
14           **(bb) Gabriela Uluac Pac**

15           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
16 Gabriela Uluac Pac? If so, how much does it owe Ms. Uluac Pac in back wages, interest, and  
17 administrative penalties?

18           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
19 wage and/or overtime to Gabriela Uluac Pac based on the documentary evidence, Ms. Valle's credible  
20 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
21 Uluac Pac a total of \$11,991.56, but should have paid her a total of \$16,729.46 under the MWO.  
22 (Exh. 5 at OLSE 531, 571.) Further, Respondents owe Ms. Uluac Pac penalties and interest for 1774  
23 days. (*Id.*) Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents  
24 to pay Ms. Uluac Pac \$4,737.90 in back wages, \$2,028.98 in interest, and \$88,700 in penalties. (*Id.*)

1           **(cc) Maria del Carmen Esquivel**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Maria  
3 del Carmen Esquivel? If so, how much does it owe Ms. Esquivel in back wages, interest, and  
4 administrative penalties?

5           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
6 wage and/or overtime to Maria del Carmen Esquivel based on the documentary evidence, Ms.  
7 Esquivel's credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of  
8 other Popkoff's employees. Respondents paid Ms. Esquivel a total of \$18,825.93, but should have  
9 paid her a total of \$24,393.36 under the MWO. (Exh. 5 at OLSE 531, 572-73.) Further, Respondents  
10 owe Ms. Esquivel penalties and interest for 1774 days. (*Id.*) Accordingly, the Hearing Officer finds it  
11 appropriate for the OLSE to order Respondents to pay Ms. Esquivel \$5,571.11 in back wages,  
12 \$2,365.52 in interest, and \$88,700 in penalties. (*Id.*)

13  
14           **(dd) Cesar Arturo Dzul Tellez**

15           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Cesar  
16 Arturo Dzul Tellez? If so, how much does it owe Cesar Arturo Dzul Tellez in back wages, interest,  
17 and administrative penalties?

18           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
19 wage and/or overtime to Cesar Dzul Tellez based on the documentary evidence, Mr. Dzul Tellez's  
20 credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of other  
21 Popkoff's employees. Respondents paid Mr. Dzul Tellez a total of \$11,940.01, but should have paid  
22 him a total of \$14,630.25 under the MWO. (Exh. 5 at OLSE 531, 574.) Further, Respondents owe  
23 Mr. Dzul Tellez penalties and interest for 1354 days. (*Id.*) Accordingly, the Hearing Officer finds it  
24 appropriate for the OLSE to order Respondents to pay Mr. Dzul Tellez \$2,690.24 in back wages,  
25 \$921.69 in interest, and \$67,700 in penalties. (*Id.*)

1           **(ee) Martha Yah**

2           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Martha  
3 Yah? If so, how much does it owe Ms. Yah in back wages, interest, and administrative penalties?

4           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
5 wage and/or overtime to Martha Yah based on the documentary evidence, Ms. Valle's credible  
6 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
7 Yah a total of \$4,088.99, but should have paid her a total of \$5,120.21 under the MWO. (Exh. 5 at  
8 OLSE 531, 575.) Further, Respondents owe Ms. Yah penalties and interest for 1270 days. (*Id.*)  
9 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
10 Yah \$1,031.22 in back wages, \$342.52 in interest, and \$63,500 in penalties. (*Id.*)

11  
12           **(ff) Alejandra Montiel**

13           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
14 Alejandra Montiel? If so, how much does it owe Mr. Montiel in back wages, interest, and penalties?

15           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
16 wage and/or overtime to Alejandra Montiel based on the documentary evidence, Ms. Valle's credible  
17 testimony and audit, and the credible testimony of other Popkoff's employees. Respondents paid Ms.  
18 Montiel a total of \$1,775.34, but should have paid her a total of \$2,365.11 under the MWO. (Exh. 5 at  
19 OLSE 531, 576.) Further, Respondents owe Ms. Montiel penalties and interest for 1284 days. (*Id.*)  
20 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Ms.  
21 Montiel \$589.77 in back wages, \$204.28 in interest, and \$64,200 in penalties. (*Id.*)

22  
23           **(gg) Vicente Dzul Canul**

24           Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
25 Vicente Dzul Canul? If so, how much does it owe Vicente Dzul Canul in back wages, interest, and  
26 penalties?

27           The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
28 wage and/or overtime to Vicente Dzul Canul based on the documentary evidence, Mr. Dzul Tellez's

1 credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of other  
2 Popkoff and European Market employees. Respondents paid Mr. Dzul Tellez a total of \$53,200, but  
3 should have paid him a total of \$108,631.35 under the MWO. (Exh. 5 at OLSE 578, 579-612.)  
4 Further, Respondents owe Mr. Dzul Tellez penalties and interest for 1570 days. (*Id.*) Accordingly,  
5 the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Mr. Dzul Tellez  
6 \$55,431.35 in back wages, \$15,357.24 in interest, and \$78,500 in penalties. (*Id.*)

7  
8 **(hh) Mario Antonio Dzul Canul**

9 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to Mario  
10 Antonio Dzul Canul? If so, how much does it owe Mario Dzul Canul in back wages, interest, and  
11 penalties?

12 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
13 wage and/or overtime to Mario Antonio Dzul Canul based on the documentary evidence, Mr. Dzul  
14 Canul's credible testimony, Ms. Valle's credible testimony and audit, and the credible testimony of  
15 other Popkoff and European Market employees. Respondents paid Mr. Dzul Canul a total of  
16 \$74,544.80, but should have paid him a total of \$118,707.32 under the MWO. (Exh. 5 at OLSE 578,  
17 625-650.) Further, Respondents owe Mr. Dzul Canul penalties and interest for 1571 days. (*Id.*)  
18 Accordingly, the Hearing Officer finds it appropriate for the OLSE to order Respondents to pay Mr.  
19 Dzul Canul \$44,162.52 in back wages, \$12,686.19 in interest, and \$78,550 in penalties. (*Id.*)

20  
21 **(ii) Enkhsaikhan Sadnomvanching**

22 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to  
23 Enkhsaikhan Sadnomvanching? If so, how much does it owe Ms. Sadnomvanching in back wages,  
24 interest, and penalties?

25 The Hearing Officer finds that Respondents violated the MWO by failing to pay minimum  
26 wage and/or overtime to Enkhsaikhan Sadnomvanching based on the documentary evidence, Ms.  
27 Valle's credible testimony and audit, and the credible testimony of other Popkoff and European  
28 Market employees. Respondents paid Ms. Sadnomvanching a total of \$11,736.00, but should have

1 paid her a total of \$15,857.52 under the MWO. (Exh. 5 at OLSE 578, 613-24.) Further, Respondents  
2 owe Ms. Sadnomvanching penalties and interest for 1577 days. (*Id.*) Accordingly, the Hearing  
3 Officer finds it appropriate for the OLSE to order Respondents to pay Ms. Sadnomvanching \$4,121.52  
4 in back wages, \$1,605.71 in interest, and \$78,850 in penalties. (*Id.*)

5  
6 **(jj) Penalties to the City**

7 Did Respondents violate the MWO by failing to pay minimum wage and/or overtime to any  
8 employee? If so, how much do Respondents owe the City in administrative penalties?

9 The OLSE seeks an award of \$3,343,100.00 in penalties to the City, calculated at a rate of \$50  
10 per day per employee through April 4, 2011, pursuant to Administrative Code Section 12R.7(b). (Exh.  
11 33 at OLSE 1075-77.) Respondents object to any award of penalties, arguing that in the context of  
12 this case and based on the OLSE's alleged delay in processing this case, an award of penalties would  
13 be unconstitutional. Respondents, however, have failed to cite any authority in support of their  
14 argument. Moreover, as indicated above, the Hearing Officer rejects Respondents' argument that the  
15 OLSE delayed in bringing this enforcement action.

16 Respondents have not presented persuasive argument or authority to prevent imposing  
17 penalties pursuant to Section 12R.7(b). The Hearing Officer therefore finds that Respondents are  
18 delinquent in paying their employees back wages and interest owed, as set forth below. It is therefore  
19 appropriate for the OLSE to order Respondents to pay the City \$3,343,100.00 in penalties as set forth  
20 in the OLSE's Audit Summaries at Exhibit. 5, pages OLSE 531 and 578.

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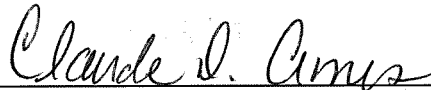
V.

**CONCLUSION**

Accordingly, based on the foregoing findings of fact, the Hearing Officer concludes that Respondents owe the thirty-five enumerated employees a total of \$252,430.15 in back wages during the relevant audit periods, and \$96,838.72 in interest through April 2011. The Hearing Officer further concludes that Respondents owe the thirty-five employees administrative penalties of \$3,343,100.00 and owe the City and County of San Francisco \$3,343,100.00 in penalties.

Respectfully submitted,

Dated: November 17, 2014

  
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CLAUDE DAWSON AMES  
Hearing Officer