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5 IN THE OFFICE OF THE CONTROLLER
6 CITY AND COUNTY OF SAN FRANCISCO
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9 In the Matter of:

10 CITY AND COUNTY OF SAN FRANCISCO
11 OFFICE OF LABOR STANDARDS
12 ENFORCEMENT

13 vs.

14 TONY NARENDRA SINGH dba YERBA
15 BUENA MARKET

Case No. MWO-763

Hearing Officer's Findings of Fact

Hearing Date: May 3, 2016
Time: 9:30 a.m.
Location: City Hall Room 305
Hearing Officer: Claude Dawson Ames

16 **INTRODUCTION**

17 Yerba Buena Market, owned by Tony Narendra Singh, is a liquor and convenience store
18 located in San Francisco, at 201 6th Street, in the South of Market neighborhood. The business is
19 covered by the San Francisco Minimum Wage Ordinance ("MWO") which, since its effective date of
20 February 23, 2004, has required employers in San Francisco to pay the minimum wage. The business
21 is also covered by the San Francisco Paid Sick Leave Ordinance ("PSLO"), which requires employers
22 to give employees in San Francisco paid sick leave after the first 90 days of employment.

23 The San Francisco Office of Labor Standards Enforcement ("OLSE") determined that Tony
24 Narendra Singh and Yerba Buena Market (collectively, "Yerba Buena Market"), failed to pay former
25 employee Yam Shreesh the required minimum wage and paid sick leave. OLSE determined that
26 Yerba Buena Market owes Mr. Shreesh \$10,703.64 in back wages, \$1,771.08 in interest, and \$38,350
27 in minimum wage penalties. In addition, OLSE determined that Yerba Buena Market owes \$3,000 to
28

1 the City and County of San Francisco (“City”) in penalties for failure to post employee notices and
2 keep and produce payroll records, and \$38,350 in penalties for the MWO violations.

3 Additionally, OLSE found that Yam Shreesh could not go to work from 12/12/14 through
4 12/22/14 due to an injury and received no paid sick leave from Yerba Buena Market. The OLSE
5 determined that Yerba Buena Market owes \$1,718.40 in back pay and sick leave penalties for the
6 period 12/12/14 through 12/22/14.

7 The OLSE submitted a Prehearing Statement to this Hearing Officer on November 6, 2015.
8 Yerba Buena Market submitted a series of documents to the Hearing Officer on November 6, 2015.

9 The Hearing Officer conducted a hearing on May 3, 2016, in Room 305 of San Francisco City
10 Hall. Deputy City Attorney Cecilia T. Mangoba represented the OLSE at the hearing, and Tony
11 Narendra Singh, his wife Parveen Singh, and son Aman Singh, appeared on behalf of Yerba Buena
12 Market. At the hearing, the parties had full opportunity to present relevant evidence and argument.

13 OLSE Exhibits 1-7, 9-10, and 13-15, and Yerba Buena Market’s Exhibits 1-33 were entered
14 into evidence, as were Hearing Officer’s Exhibits 1-6 The OLSE called four witnesses, including the
15 claimant, and Yerba Buena Market called no witnesses, though Tony Narendra Singh and Aman Singh
16 made comments on the matter. All witnesses at the hearing testified under oath. Yerba Buena Market
17 had the opportunity to cross examine all witnesses called by OLSE.

18 The record closed at 5:00 p.m. on Tuesday, May 24, 2016, which was the deadline for the
19 parties to submit Proposed Findings of Fact.

20 21 **SUMMARY OF LEGAL STANDARDS AND EVIDENCE**

22 **A. Legal Standards**

23 1. On February 23, 2004, the City and County of San Francisco established a minimum
24 hourly wage for employees pursuant to Administrative Code Section 12R. Under MWO Section
25 12R.4, San Francisco employers must pay to employees no less than the minimum wage for each hour
26 worked in the geographic boundaries of the City. The local minimum wage exceeds the amount of the
27 State minimum wage, and it is adjusted each year based on increases in the regional Consumer Price
28 Index for urban wage earners and clerical workers. S.F. Admin. Code § 12R.4(b).

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

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

4. The San Francisco minimum wage was \$10.74 in 2014 and \$11.05 in 2015.

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

6. Under Section 12R.16 of the MWO, the OLSE may issue administrative citations for the following violations of the MWO:

| VIOLATION | PENALTY AMOUNT |
|---|-----------------------|
| Failure to maintain payroll records or to retain payroll records for four years – Administrative Code Section 12R.5(c) | \$500.00 |
| Failure to allow the Office of Labor Standards Enforcement to inspect payroll records – Administrative Code Section 12R.5(c) | \$500.00 |
| Retaliation for exercising rights under Minimum Wage Ordinance – Administrative Code Section 12R.6; the penalty for retaliation is \$1,000.00 per employee. | \$1,000.00 |
| Failure to Post notice of Minimum Wage rate – Administrative Code Section 12R.5(b) | \$500.00 |

| | |
|--|--|
| 1 Failure to provide notice of investigation to employees – Administrative Code Section 12R.7 (b) | |
| 2 Failure to post notice of violation to public – Administrative Code Section 12R.7(e) | |
| 3 Failure to provide employer’s name, address, and telephone number in writing – Administrative Code Section 12R.5 (b) | |

4 7. The penalty amounts increase cumulatively by fifty percent (50%) for each subsequent
5 violation of the same provision by the same employer or person within a three year period.

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

10 9. The PSLO, codified at Administrative Code Chapter 12W, requires employers to allow
11 employees performing work in San Francisco to accrue paid sick leave for those hours worked in the
12 City. Under Section 12W.2(c), “Employee” includes “any person who is employed within the
13 geographic boundaries of the City by an employer, including part-time and temporary employees...”

14 10. Under Section 12W.2(d) of the PSLO, “Employee” is defined as “any person, as
15 defined in Section 18 of the California Labor Code, including corporate officers or executives, who
16 directly or indirectly or through an agent or any other person, including through the services of a
17 temporary services or staffing agency or similar entity, employs or exercises control over the wages,
18 hours, or working conditions of an employee.”

19 11. Employees begin to accrue paid sick leave credits under Article 12W “90 days after the
20 commencement of employment with the employer.” Sec. 12W.3(a).

21 12. An Employee may use sick leave “when he or she is ill or injured or for the purpose of
22 the employee’s receiving medical care, treatment, or diagnosis, as specified more fully in California
23 Labor Code Section 233(b)(4),” as well as to care for certain family members.

24
25 **B. Claimant’s Testimony and Documentary Evidence**

26 13. Yam Shreesh testified that he worked at Yerba Buena Market from March 2014 to
27 March 2015. His duties included stocking merchandise, making food in the deli, and occasionally
28 working the cash register when others were on break. He worked 50 hours/week, with a schedule that

1 fluctuated based on the market's needs. Generally, he worked every day but Thursday, and his shift
2 was 4:00 p.m. to midnight except Fridays when he worked until 2:00 a.m. Mr. Shreesh presented a
3 calendar showing the hours he worked in March 2015 as a sample of his schedule. (OLSE Exhibit 2).

4 14. Mr. Shreesh was paid \$8/hour for the first three months that he worked; he later
5 received a raise to \$9/hour for the remainder of 2014. In 2015, he received a raise to \$10/hour. None
6 of these amounts met the City's minimum wage requirements for those years. Mr. Shreesh also
7 testified that he was paid in cash on the 1st and 15th of each month, and provided a sample envelope in
8 which he received payment. (OLSE Exhibit 4). Mr. Shreesh further testified that he never received
9 overtime. With Supervising Compliance Officer Pastreich's assistance, Mr. Shreesh completed a
10 claim form.

11 15. Mr. Shreesh testified that in December 2014 he fell and had to go to the emergency
12 room. As a result of the injury, he was home and missed work from 12/12/14 to 12/22/14, but
13 received no paid sick leave from Yerba Buena Market.

14 16. In March 2015, Tony Singh told Mr. Shreesh not to return to work because he had hired
15 someone else. He told him to come in to collect his last paycheck. When Mr. Shreesh did so, Mr.
16 Singh paid him only \$500 of the \$1,190 he owed Mr. Shreesh, saying something to the effect of, "this
17 is all you get"

18 17. Mr. Shreesh talked to his roommates and decided to file a claim with the OLSE on
19 March 23, 2015. He testified about the phone calls he made to Yerba Buena with OLSE staff present,
20 during which he spoke to Aman Singh about his employment history at the market and requested his
21 job back. At no point did Aman Singh deny that Mr. Shreesh had worked at the market.

22 18. Yam Shreesh also filed a claim with the California Department of Labor Standards
23 Enforcement ("DLSE") for waiting time penalties, because he did not timely receive his last paycheck.
24 Mr. Shreesh settled his DLSE case with Tony Singh. (OLSE Exhibit 9).

25
26 **C. OLSE Investigation and Records Requests**

27 19. Joshua Pastreich is a Supervising Compliance Officer of the OLSE. He testified
28 regarding his investigation of MWO and PSLO violations at Yerba Buena Market.

1 20. Officer Pastreich testified that on March 23, 2015, Yam Shreesh personally visited the
2 OLSE and filed a Minimum Wage and Paid Sick Leave claim with him. Mr. Shreesh told Officer
3 Pastreich that he was paid \$8 per hour at Yerba Buena Market from the beginning of his employment
4 in March 2014 until June 2014, when he received \$9/hour. In January 2015, Mr. Shreesh received a
5 raise to \$10 an hour. He was not paid overtime at a rate of time and one half. In addition, Mr. Shreesh
6 told the OLSE that he was not paid when he missed one week of work due to illness in December
7 2014. Officer Pastreich testified that he assisted, Mr. Shreesh with filling out a claim. (OLSE Exhibit
8 1).

9 21. On March 24, 2015, Mr. Shreesh returned to the OLSE office with a page from a
10 calendar that was a contemporary record of his hours worked and a sympathy card Mr. Singh gave him
11 when he was hospitalized. (OLSE Exhibit 2).

12 22. Officer Pastreich further testified that following Mr. Shreesh's visits, he researched
13 Yerba Buena Market and learned that Tony Narendra Singh is the owner.

14 23. On March 26, 2015, Officers Pastreich and OLSE Compliance Officer Evie Valle
15 conducted a site visit to Yerba Buena Market. Both Officers Pastreich and Valle testified regarding
16 this visit. When they arrived, Tony Singh and his son were at the location. Officer Pastreich inquired
17 as to how they were tracking employees' hours of work and requested to see the market's posters
18 informing employees of the San Francisco Minimum Wage Ordinance and the Paid Sick Leave
19 Ordinance. Tony Singh answered that they did not have, and never had, any employees, and therefore
20 had no records or posters. Officer Pastreich asked repeatedly about the claim that the market never
21 had any employees. Finally, Tony Singh admitted to a single worker named Ashok (no last name
22 provided). Later, Tony Singh admitted to a second employee named Tyrone (no last name provided),
23 and then to a worker named Tebow (whose real name was also Tyrone) (no last name provided);
24 finally, Mr. Singh admitted to a worker who he could only describe as a "Mexican guy" who had
25 worked for one day and never came back. Mr. Singh denied having employed Mr. Shreesh.

26 24. Officer Pastreich testified that, on March 26, 2015, he also served Yerba Buena Market
27 with an audit letter requesting, among other things, payroll records for all workers employed in the
28 past 3 years. (OLSE Exhibit 3). The letter also stated a request for the following documents:

- Copy of the current City & County of San Francisco Business License Registration;
- Copies of original time cards, sign-in sheets, ledgers, electronic records and any payroll records which show the actual hours worked (each day) and wages paid each employee (Any person who performs work for compensation as defined in San Francisco Admin. Code Section 12W.2(c).) for the period **March 26, 2012 to the present**;
- Copies of the payroll check stub details and/or itemized pay stubs for each employee for the period **March 26, 2012 to the present**;
- Copies of the required “Notice to Employee”, as per California Labor Code Section 2810.5, which provides notice to all employees, hired after January 1, 2012, of their rate(s) of pay, designated pay day, the employer’s intent to claim allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for overtime. The law requires that the notice contain the employer’s “doing business as” names, and that it be provided at the time of hiring and within 7 days of a change if the change is not listed on the employee’s pay stub for the following pay period.
- 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.
- Copies of any and all paid leave policies effective at any time during the period from **March 26, 2012 to the present**.
- A list, in either Excel or Access format of former and current employees with addresses, telephone numbers and job title/position, including employment start and end dates. Please include on the list all those employees who worked for the period from **March 26, 2012 to the present**.

25. The requested documents were due in the OLSE’s office no later than April 10, 2015. (OLSE Exhibit 3).

26. Officer Pastreich testified that on March 30, 2015, Mr. Shreesh came back into the OLSE office with an envelope with the word “Thanks” in the bottom corner, which Mr. Shreesh stated was one of the envelopes in which he received his pay from Mr. Singh and that the word “Thanks” was in Mr. Singh’s handwriting. (OLSE Exhibit 4).

27. On April 15, 2015, OLSE received documents from Yerba Buena Market that did not include any mention of Mr. Shreesh. (OLSE Exhibit 5).

28. Officer Pastreich further testified that, on June 3, 2015, Mr. Shreesh came into the OLSE office stating that he had just received a phone call from Yerba Buena (he had not picked up the call). Mr. Shreesh called back Yerba Buena Market with Supervising Compliance Officer Pastreich, and with Compliance Officers Evie Valle and Jorge Saavedra in a conference room. Both Officers Pastreich and Valle testified regarding the follow-up phone call. Aman Singh, the owner’s son,

1 answered the phone. Mr. Shreesh said that he really wanted to work again and the son responded that
2 he was interested in hiring him back but he wanted to talk to him in person. Mr. Shreesh reported that
3 he had been working at the market for a year and most of the time he had been paid \$8 an hour and
4 then \$10. He wanted to know if he would be paid \$8, \$10 or minimum wage. When Mr. Shreesh
5 mentioned the minimum wage, the son immediately asked if he had filed a complaint. Mr. Shreesh
6 said that he had not. Aman Singh told Mr. Shreesh to come to the market to talk to his father in
7 person. Then Mr. Shreesh stated that he was still owed \$690 because, when he left, he was owed
8 \$1,090 but Tony (Mr. Singh) only paid him \$500. Aman Singh continued to tell Mr. Shreesh to come
9 to the store to talk to his father in person the following morning.

10 29. Officer Pastreich and Mr. Shreesh testified that on June 4, 2015, rather than go to the
11 market, Mr. Shreesh came back to the OLSE office to try to speak to Tony Singh directly using the
12 speaker phone. Officer Valle was also present. On Mr. Shreesh's first two attempts to call the market,
13 there was no answer. On the third attempt, Aman Singh answered. Mr. Shreesh asked to speak to
14 Tony Singh, but Aman Singh said that he was not there and that he would not return for a while and
15 that Mr. Shreesh should come to the market and speak with him.

16 30. Former OLSE Compliance Officer Ardis Graham testified that he and Mr. Shreesh
17 went to the Yerba Buena Market on or about June 4, 2015. Officer Graham entered the store first and
18 posed as a customer so he would be able to overhear the conversation between Mr. Shreesh and Aman
19 Singh. Mr. Graham testified that he heard the claimant and Aman Singh discuss the claimant's
20 employment at the market. Mr. Graham testified further that Mr. Shreesh asked for the money owed
21 to him, which the man behind the counter stated would not be paid because Mr. Shreesh allegedly
22 came to work drunk. Former Compliance Officer Graham confirmed the interaction and conversation
23 in a text message. (OLSE Exhibit 6).

24
25 **D. Administrative Citations**

26 **1. Citation dated June 5, 2015**

27 31. On June 5, 2015, Supervising Compliance Officer Pastreich and Compliance Officer
28 Carmen Herrera went to Yerba Buena Market to serve citations regarding their visit on March 26,

1 2015, for failure to maintain records (Admin. Code Sec. 12R.5(c) (\$500.00)), failure to provide
2 records (regarding Yam Shreesh) (Sec. 12R.5(c) (\$500.00)), and failure to post the MWO poster (Sec.
3 12R.5(b) (\$500.00)). (OLSE Exhibit 7). Officer Pastreich testified that when they arrived at the
4 market, they saw Aman Singh behind the register and an older Nepalese man behind the deli counter.
5 Aman Singh began telling the worker to “go outside, go outside.” Officer Herrera tried to interview
6 the man but he was very frightened. He gave his name as Gurun Rotna. He claimed to have worked at
7 the market for a month and a half. Officer Pastreich asked Aman Singh to call Tony Singh. Tony
8 Singh answered the phone but said that he had just had oral surgery and could not talk to Officer
9 Pastreich. Officer Pastreich told Tony Singh that he would leave the citations with Aman Singh.

10 32. Officer Pastreich testified that the OLSE officers observed that there was a Minimum
11 Wage Poster on the wall on this visit, but that there were no time records for any workers, including
12 Gurun Rotna.

13 33. On June 14, 2015, OLSE received a request for hearing from Yerba Buena Market
14 regarding the poster and records citations totaling \$1,500. (Hearing Officer Exhibit 1).

15 **2. Citation dated June 24, 2015**

16 34. On June 24, 2015, Officers Pastreich and Valle went to Yerba Buena Market and
17 served additional citation letters for failure on June 5 to maintain payroll records in violation of
18 Admin. Code Sec. 12R.5(c) (\$750.00) and for failure to provide OLSE the name, address, and
19 telephone number of former employees in violation of Sec. 12R.5(b) (\$750.00). (OLSE Exhibit 7).
20 They also served Yerba Buena with a Determination Letter, which has since been updated through the
21 date of the hearing. (Hearing Officer Exhibit 2). Tony Singh was present. Officer Pastreich asked to
22 see the sign-in sheets. Tony Singh was able to produce some sign-in sheets at that time. Tony Singh
23 claimed that he had given OLSE all of the requested information. Officer Pastreich showed Tony
24 Singh the Determination Letter that named Yam Shreesh and told him that he had not given OLSE
25 information concerning Mr. Shreesh. Mr. Singh said that he knew Mr. Shreesh but that he had never
26 worked at the store. Officer Pastreich then asked Aman Singh if he knew Mr. Shreesh, but Aman
27 Singh just looked at his father for a reaction and would not answer the question. Finally, Aman Singh
28 said that he just worked there and could not answer any questions. Officer Pastreich told him that he

1 knew he had offered Mr. Shreesh his job back, confirmed that Mr. Shreesh had worked at the market
2 for a year, confirmed Mr. Shreesh's pay rates and his schedule. Aman Singh denied that he had said
3 that and claimed that he did not remember if he had spoken to Mr. Shreesh on the phone. Officer
4 Pastreich told Aman Singh that he was on the other end of the line and personally heard the
5 conversation. After that, Aman Singh did not say anything.

6 35. On July 10, 2015, OLSE received an appeal from Yerba Buena Market of the second
7 round of citations. (Hearing Officer Exhibit 3).

8
9 **E. California Department of Labor Standards Enforcement Case**

10 36. On August 18, 2015, Mr. Shreesh had a settlement conference at the California DLSE
11 over his final wages owed by Yerba Buena (\$690.00 plus penalties for waiting time because he was
12 not paid immediately after his employment ended). The parties resolved the case with Mr. Tony Singh
13 paying Mr. Shreesh \$1,671.00. (OLSE Exhibit 9).

14
15 **F. Wage Claim Calculations**

16 37. Officer Pastreich testified regarding his audit methodology. He credited Yerba Buena
17 Market all of the cash that it had paid to Mr. Shreesh.

18 38. Under California law, qualifying employees who work more than 8 hours per day or 40
19 hours per week should receive time and a half pay. Employees who work more than 12 hours/day
20 should receive double time pay. Yerba Buena Market did not pay appropriate overtime to Mr.
21 Shreesh, so Officer Pastreich included the amounts not paid in his audit under back wages owed.

22 39. Officer Pastreich testified that he never received any daily time records from Yerba
23 Buena Market, despite multiple requests. Employers are required under the MWO to retain records
24 for four years. SF Admin. Code Sec. 12R.5(c).

25 40. Officer Pastreich testified that the OLSE determined that Yerba Buena Market owes
26 back wages to Mr. Shreesh in the amount of \$10,703.64, \$1,771.08 in interest, and \$38,350 in
27 penalties through May 3, 2016. Officer Pastreich testified that he reduced this amount owed when Mr.
28

1 Shreesh clarified that he received \$9/hour from May 2014 to January 2015. (*See* second Audit
2 Summary, OLSE Exhibit 10).

3 41. Officer Pastreich testified that Mr. Singh also owes Mr. Shreesh \$1,718.40 in paid sick
4 leave, which includes a penalty of three times the lost wages for the period December 12, 2014-
5 December 22, 2014.

6 42. In addition, OLSE determined that Yerba Buena Market owes \$3,000 to the City in
7 penalties for failure to post employee notices and keep and produce payroll records, and \$38,350 in
8 penalties for the MWO violations.

9
10 **G. Interest Sought by the OLSE**

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

17 44. The OLSE seeks interest in the amount of \$1,771.08 in interest for the MWO violations
18 through the date of hearing, May 3, 2016.

19
20 **H. Penalties Sought by the OLSE on behalf of the Yam Shreesh and the City**

21 45. Section 12R.7(b) of the MWO provides that penalties may be assessed on behalf of an
22 employee when an employer fails to pay the minimum wage. Where the OLSE, after a hearing that
23 affords a suspected violator due process pursuant to Administrative Code Section 12R.7(b),
24 determines that a violation has occurred, it may order any appropriate relief including, but not limited
25 to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an
26 additional sum as an administrative penalty in the amount of \$50.00 to each employee or person whose
27 rights under the MWO were violated for each day or a portion thereof that the violation occurred or
28 continued. Under Section 12R.7(b), a violation for unlawfully withholding wages shall be deemed to

1 continue from the date the wages were due and payable to the date preceding the date the wages were
2 paid in full. Section 12R.7(b) further provides that the OLSE may also order a violating employer or
3 person to pay to the OLSE a sum of not more than \$50.00 for each day or portion thereof and for each
4 employee or person as to whom the violation occurred or continued \$50.00 per day multiplied by the
5 number of underpaid employees. Payments to the OLSE are “to compensate the City for the costs of
6 investigating and remedying the violation.”

7 46. The OLSE requested a determination of MWO penalties owing in the amount of
8 \$38,250 for Mr. Shreesh, and to the City in the same amount, for a total of \$76,500.

9 47. The PSLO provides that “[i]f any paid sick leave was unlawfully withheld, the dollar
10 amount of paid sick leave withheld from the employee multiplied by three, or \$250.00, whichever
11 amount is greater, shall be included in the administrative penalty paid to the employee.”

12 48. OLSE found that Yerba Buena Market failed to provide 40 hours of paid sick leave to
13 Mr. Shreesh when he was sick. Therefore, OLSE determined that Yerba Buena Market owes Mr.
14 Shreesh \$429.60 in back wages and \$1,288.80 in penalties (3 x \$429.60).

15 49. The OLSE’s penalty calculations are presented in OLSE Exhibit 10 (see second Audit
16 Summary).

17
18 **I. Yerba Buena’s Defense**

19 50. Yerba Buena Market contends that Yam Shreesh never worked at the business. Yerba
20 Buena Market has not produced sufficient, admissible evidence to support this position.

21 51. In his opening statement, Mr. Singh stated that Mr. Shreesh was not an employee but
22 that he did perform “some help for little money” around the market, such as unloading merchandise.

23 52. Yerba Buena Market offered into evidence declarations from individuals who claim
24 never to have seen Mr. Shreesh at the market. (Yerba Buena Market Exhibit 20). The undersigned
25 affords these declarations very little weight, as the witnesses were not called to testify and subject to
26 cross examination. At most, these declarations show that some people who go to the market did not
27 see or recognize Mr. Shreesh. They do not prove that Mr. Shreesh never worked there.

1 this small business, as evident by Yerba Buena Market’s presentation at the hearing, justify reducing
2 the penalty amount. Yerba Buena Market is a small, family-run corner store with few employees. The
3 Hearing Officer believes it is appropriate to reduce the penalties owed Mr. Shreesh under the MWO to
4 \$5,000.

5 3. The Hearing Officer finds that Yerba Buena Market also owes Mr. Shreesh \$429.60 in
6 lost wages for failure to provide paid sick leave when Mr. Shreesh missed work in December 2014,
7 but the Hearing Officer waives administrative penalties for the reasons discussed in the preceding
8 paragraph.

9 4. The Hearing Officer upholds the administrative citations dated June 5, 2015, and June
10 24, 2015 and finds that OLSE proved by a preponderance of the evidence that Yerba Buena Market
11 failed to keep payroll records on March 26 and June 5, failed to allow OLSE access to records on
12 March 26 and June 5, and failed to post the minimum wage on March 26. The Hearing Officer
13 reduces the penalties owed to the City to \$5,000 for the reasons discussed above with regard to the
14 penalties to Mr. Shreesh, and because Yerba Buena Market showed that it failed to post the minimum
15 wage poster due to cleaning and that it has taken steps to accurately record employee payroll
16 information. As a result, the Hearing Officer upholds the \$3,000 in citations and finds that Yerba
17 Buena Market owes the City \$5,000 in administrative penalties.

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CONCLUSION

Accordingly, based on the foregoing findings of fact, the Hearing Officer concludes that Yerba Buena Market owes Yam Shreesh a total of \$10,703.64 in back wages, \$1,718.40 in interest, and \$5,000 in penalties for MWO violations. The Hearing Officer also concludes that Yerba Buena Market owes Yam Shreesh \$429.60 in back wages under the PLSO for the period he was sick in December 2014. Finally, the Hearing Officer upholds the administrative citations totaling \$3,000 and concludes that Yerba Buena Market owes the City and County of San Francisco \$5,000 in penalties.

Respectfully submitted,

Dated: June 7, 2016



CLAUDE DAWSON AMES

Hearing Officer