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Reinforcing the Seams: Guaranteeing the Promise of California's Landmark Anti-Sweatshop Law - An Evaluation of Assembly Bill 633 Six Years Later

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MEMBERS OF THE GARMENT WORKERS COLLABORATIVE

ASIAN LAW CAUCUS (ALC)

Founded in 1972, the mission of the Asian Law Caucus (ALC) is to promote, advance and represent the legal and civil rights of Asian and Pacific Islander (API) communities. Integrating legal services with community education and community organizing campaigns, the ALC strives to empower low-income API community members to assert their rights and participate actively in American society. Since the early 1990s, the ALC has played a key leadership role in the improvement of garment workers' conditions.

For more information visit www.asianlawcaucus.org or call 415-896-1701. ALC, 939 Market St., Ste. 201, San Francisco, CA 94103.

ASIAN PACIFIC AMERICAN LEGAL CENTER (APALC)

The Asian Pacific American Legal Center (APALC) is a nonprofit organization in Los Angeles dedicated to advocating for civil rights, providing legal services and education, and building coalitions to positively influence and impact Asian Pacific Americans and to create a more equitable and harmonious society. APALC is the largest provider of direct legal services, civil rights advocacy, community education, and impact litigation for low-income Asian Pacific Americans in the country. Since 1994, APALC's Workers' Rights Project has served hundreds of Asian and Latino garment workers and assisted them in recovering over 5 million dollars in unpaid wages and in demanding changes to abusive corporate practices.

For more information visit www.apalc.org or call 213-977-7500. APALC, 1145 Wilshire Blvd., 2nd Fl., Los Angeles, CA 90017.

GARMENT WORKER CENTER (GWC)

The Garment Worker Center (GWC) is an independent non-profit organization dedicated to organizing Asian and Latino garment workers in Los Angeles. The mission of the GWC is to empower garment workers in the Los Angeles area and to work in solidarity with other low-wage immigrant workers and disenfranchised communities in the struggle for social, economic and environmental justice.

For more information visit www.garmentworkercenter.org or call 213-748-5866. Garment Worker Center, 1250 So. Los Angeles St., Ste. 213, Los Angeles, CA 90015.

SWEATSHOP WATCH

Founded in 1995, Sweatshop Watch is a coalition of over 30 labor, community, civil rights, immigrant rights, women's, religious and student organizations, and many individuals, committed to eliminating the exploitation that occurs in sweatshops. Sweatshop Watch serves low-wage workers nationally and globally, with a focus on garment workers in California. We believe that workers should earn a living wage in a safe, decent work environment, and that those responsible for the exploitation of sweatshop workers must be held accountable.

For more information visit www.sweatshopwatch.org or call 213-748-5945. Sweatshop Watch, 1250 So. Los Angeles St., Ste. 214, Los Angeles, CA 90015.

WOMEN'S EMPLOYMENT RIGHTS CLINIC (WERC)

The Women's Employment Rights Clinic (WERC) is a clinical teaching program at Golden Gate University School of Law in San Francisco. WERC faculty and students advise, counsel and represent low-wage and immigrant workers in employment-related matters, including individual and systemic claims for wage and hour violations. WERC has been involved in legislative and regulatory advocacy on AB 633, and has represented hundreds of workers in wage and hour cases in court and administrative proceedings.

For more information visit www.ggu.edu/school_of_law or call 415-442-6647. WERC, 536 Mission St., San Francisco, CA 94105-2968.

Reinforcing the Seams:

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An Evaluation of Assembly Bill 633
Six Years Later

September 2005

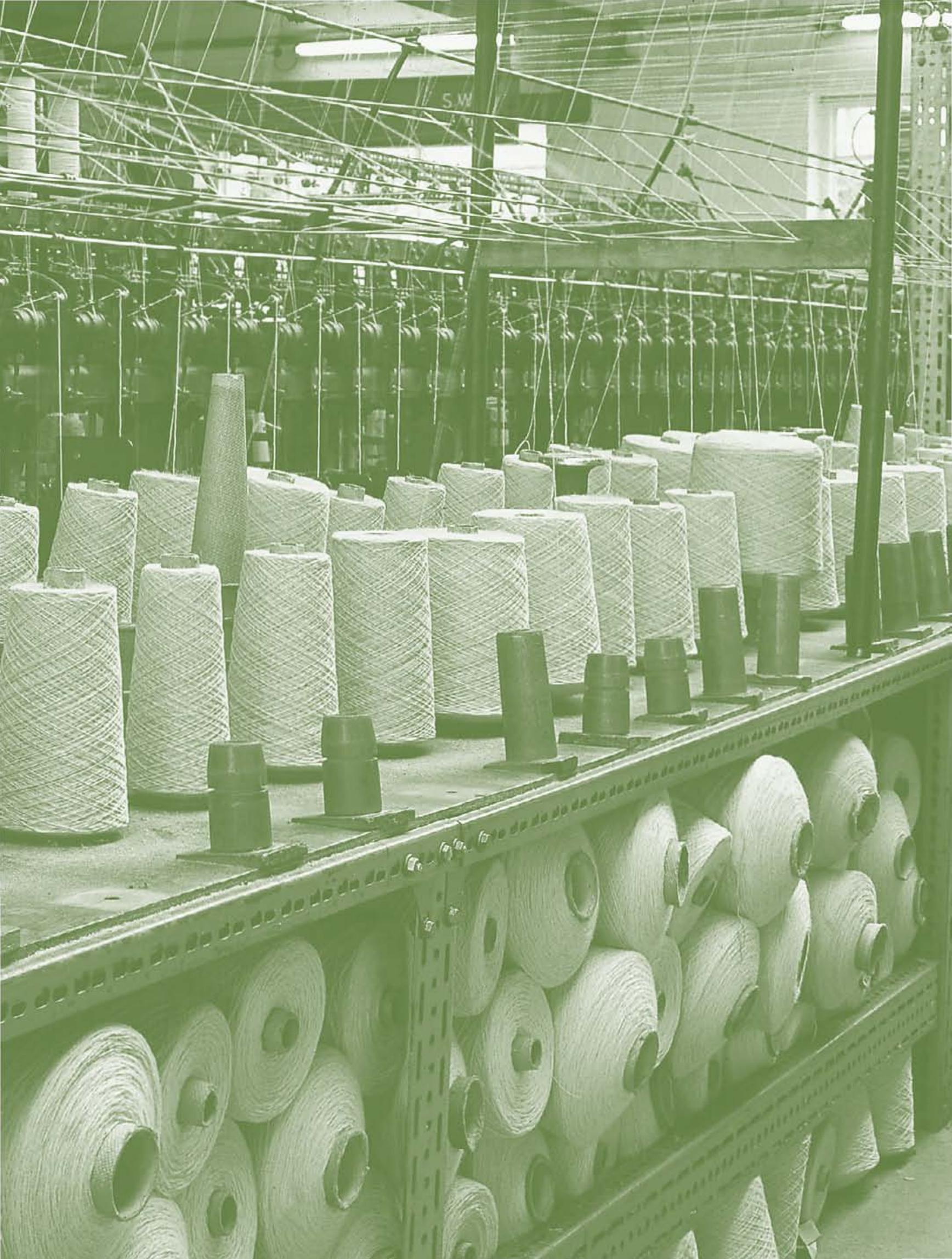
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ASIAN PACIFIC
AMERICAN
LEGAL CENTER
OF
SOUTHERN CALIFORNIA



With contributions from Asian Law Caucus,
Garment Worker Center, and Women's Employment Rights Clinic



ABOUT THE AUTHORS

This report was designed by the Garment Workers Collaborative: five California-based organizations that have worked together over the past decade by combining legal advocacy, worker organizing, and policy advocacy to achieve racial and economic justice for California’s immigrant garment workers. The Garment Workers Collaborative is comprised of the Asian Law Caucus (ALC), the Asian Pacific American Legal Center (APALC), the Garment Worker Center (GWC), Sweatshop Watch, and the Women’s Employment Rights Clinic of Golden Gate University School of Law (WERC). Together, we advocate for stronger labor law enforcement in the garment industry and for manufacturer and retailer accountability for sweatshop conditions. We also seek to empower low-income Asian and Latino garment workers to assert their workplace rights, and to ensure immigrant workers have greater access to the government agencies charged with enforcing labor laws.

ACKNOWLEDGEMENTS (in alphabetical order)

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Last but not least, we would like to give special thanks to the Racial Justice Collaborative and the Equal Justice Works Fellowship Program for making this report possible. We would also like to thank the Rosenberg Foundation and The California Wellness Foundation for their continued support of our advocacy on behalf of garment workers.

TABLE OF CONTENTS

FOREWORD BY FORMER ASSEMBLY MEMBER DARRELL STEINBERG	5
CHAPTER 1 INTRODUCTION	6
CHAPTER 2 THE GARMENT INDUSTRY IN CALIFORNIA: THE SWEATSHOP CAPITAL OF THE NATION	9
Pyramid of Profit and Power: The Structure of the Garment Industry	10
Garment Work: Long Hours at Substandard Pay	12
The Passage of AB 633: The Toughest Anti-Sweatshop Law in the Nation	12
CHAPTER 3 METHODOLOGY	14
Overview of AB 633 Claims Process	16
CHAPTER 4 KEY FINDINGS	19
Since AB 633 became law, there has been a sharp rise in the numbers of garment workers who have filed wage claims, but this increase still pales in comparison to the tens of thousands of workers who have been deprived of their wages.	19
Through AB 633's wage guarantee, garment workers are starting to recover unpaid wages from companies that use sweatshops. The overwhelming majority of these companies, however, still do not pay <i>a single penny</i> to workers, who receive only a small portion of what they are owed.	20
Guarantors and contractors low-ball settlement amounts so workers recover on average only <i>one-third</i> of wages owed, and DLSE lets some guarantors completely off the hook before all wages are paid.	24
DLSE fails to identify guarantors and conduct adequate investigations of guarantors on a consistent basis, thus undermining the wage guarantee.	26



Guarantors and contractors frequently fail to turn over business records, and half the time DLSE does not require guarantors to produce any records at all. 30

Sanctions for record-keeping violations are not pursued by DLSE, thus undercutting DLSE’s power and responsibility to investigate guarantors and enforce the wage guarantee. 30

DLSE takes almost twice as long to adjudicate wage claims than is allowed under AB 633’s expedited timeline. 31

DLSE appears to be understaffed relative to the number of workplaces it regulates, but it is unclear why the self-funding mechanism of AB 633 would not provide sufficient resources for DLSE to fully enforce the law. 31

CHAPTER 5 KEY RECOMMENDATIONS 32

Enable workers to recover the full amount of their unpaid wages, as well as the penalties and damages they are owed under the law. 33

Improve the identification and investigation of guarantors. 34

Assess sanctions against garment contractors and guarantors that fail to comply with record-keeping requirements. 35

Report regularly to the Legislature and the public on DLSE’s expenditures and activities related to AB 633, and implement DLSE quality control mechanisms. 36

CHAPTER 6 CONCLUSION 37

APPENDIX A: KEY PROVISIONS OF ASSEMBLY BILL 633 38

APPENDIX B: STATISTICAL APPENDIX 39

ENDNOTES 44



ROBERT GUMPERT

FOREWORD

BY FORMER CALIFORNIA STATE ASSEMBLY MEMBER
DARRELL STEINBERG, AUTHOR OF ASSEMBLY BILL 633



During my first term in the California State Assembly and as Chair of the Labor Committee, I sought new solutions to the state's most pressing labor problems. A top priority was addressing sweatshop abuse in California's multi-billion-dollar garment industry, where immigrant workers toil long, hard hours-- often without receiving minimum wage or overtime. I worked with an unlikely group of labor advocates, garment industry leaders, and retailers to reach a consensus about what was needed. The result was the passage of the most significant garment law in nearly two decades.

Assembly Bill 633 (AB 633), which was signed into law in September 1999, represented a huge breakthrough for tens of thousands of workers in California. All sides worked successfully to craft mechanisms to protect workers when a garment contractor goes under or refuses to pay. The bill created a unique "wage guarantee" so that apparel companies would be held responsible, along with their contractors, for ensuring workers get paid their legal wages.

AB 633 has been touted as the toughest law of its kind to address sweatshops in the garment industry. Since its passage, this landmark law has successfully helped countless garment workers recover millions of dollars in owed wages. Better enforcement of the law, however, is essential for AB 633 to fulfill its potential and ensure that garment workers are granted the most basic labor law protections: minimum wage and overtime. As a leader in today's global economy, California can and must make sweatshops history.

A handwritten signature in black ink that reads "Darrell Steinberg". The signature is fluid and cursive, with a large loop at the end.

DARRELL STEINBERG

CHAPTER 1. INTRODUCTION



When California's Assembly Bill 633 (AB 633)¹ was signed into law in September 1999, it held much promise as the strongest anti-sweatshop bill in the nation. AB 633's enactment signaled an historic consensus—among the state's legislators, industry leaders, and labor advocates — that something had to be done about horrendous labor abuses in the garment industry, and that those who profit most from sweatshops should be held responsible for eliminating them.

Before AB 633 was enacted, garment workers could not seek their unpaid wages from apparel manufacturers and retailers in wage claims before the state's Division of Labor Standards Enforcement (DLSE) — even when these companies made their clothes in sweatshops. Workers could only file claims against the sweatshops themselves, which ignored the businesses that create and perpetuate sweatshops in the first place. Thus, prior to AB 633, workers filing wage claims were deprived of a remedy when garment factories operating as sweatshops failed to pay workers their wages and absconded. AB 633's central provision, its **wage guarantee**, aims to close this loophole by requiring corporations to act responsibly and pay workers what they are owed. Specifically, AB 633 sets up an alternative mechanism apart from the court system — an expedited administrative claims process culminating in a hearing before DLSE — for garment workers to recover an estimated \$81 million in unpaid wages each year.² As part of this process, manufacturers and retailers are now legally responsible as "**guarantors**" for ensuring, along with the California garment factories they use to make their clothes, that workers are not denied their most basic right to receive minimum wage and overtime.

California has long held the unfortunate distinction of being the garment sweatshop capital of the nation. Los Angeles County alone produces approximately \$13 billion in clothing each year³ — at the expense of workers who routinely toil under inhumane and illegal conditions. The largest manufacturing employer in Los Angeles County,⁴ the garment industry is notorious for rampant workplace abuses. According to the U.S. Department of Labor,

nearly **70%** of garment factories in Los Angeles fail to pay federal minimum wage and overtime.⁵ Even though only 6% of a garment's retail cost goes to the worker who made it,⁶ retailers and manufacturers continuously seek to boost profits by demanding lower and lower labor costs and thus constantly depressing workers' wages. As a result, the average garment worker in Los Angeles made under \$10,600 in 2000,⁷ less than 77% of the poverty-level income for a family of three in that year.⁸

The very structure of the garment industry is designed to allow retailers and manufacturers to utilize and profit from low-wage, exploited labor — as they simultaneously disavow responsibility for substandard working conditions. Retailers sell brand name clothing directly to the public and place orders with manufacturers to produce their clothing. Manufacturers, in turn, typically design garments, select fabrics, and seek out contractors (garment factories) to provide the actual labor for apparel production. Contractors operate at the mercy of retailers and manufacturers, which pressure contractors to sew garments for increasingly lower prices and use contractors to avoid direct supervision of workers and (they hope) direct responsibility for sweatshop conditions. Retailers and manufacturers routinely fail to pay enough for the production of their clothes to ensure that contractors are able to pay minimum wage and overtime to garment workers, who are mostly Latina and Asian immigrant women. Many contractors, in turn, end up operating as sweatshops.

Powerful apparel companies have long hoped that, by engaging in multi-layered contractual schemes in an attempt to distance themselves from the workers who make their clothes, they could maximize profits while shielding themselves from legal responsibility for sweatshop labor. AB 633 was intended to put an end to this practice. With its wage guarantee, AB 633 explicitly acknowledges the economic reality that large clothing companies exert control over the working conditions under which their garments are produced — and thus should not escape liability when workers are deprived of their hard-earned wages.

Six years ago, AB 633 provided hope that by penetrating the industry's subcontracting structure and mandating corporate accountability through the wage claims process, the state could play a more active role in improving working conditions for garment workers. Since its enactment, thousands of garment workers have used AB 633 to claim their unpaid wages, while labor advocates have monitored AB 633's implementation and pushed the state labor agency to effectively enforce the law. Indeed, legislators, big business, workers, advocates, and the media have all closely scrutinized how AB 633 has fared over the years.

Today, AB 633 stands as a landmark law with great potential — much of it yet to be realized — to fight against the proliferation of sweatshops and corporate abuse in the garment industry, and to serve as model legislation for other low-wage industries across California and around the nation in which workers are denied their most basic workplace rights. In documenting the successes of AB 633, as well as presenting the challenges garment workers still face in recovering their wages under the law, this report seeks to provide an answer to the pivotal question: *Has AB 633 fulfilled its promise?*

To answer this question, we analyzed a statistically random sample of over 200 AB 633 claims docketed by the state labor agency between March 31, 2001 and February 18, 2004. Our Key Findings illustrate that AB 633 is a powerful tool that has been ineffectively utilized by DLSE and hence ignored by many companies that continue to profit from sweatshop labor. This report concludes with a series of recommendations which the authors hope to pursue with key stakeholders as part of our collective responsibility to realize the promise of AB 633 —and to make sweatshops in garment and other low-wage industries a part of our past, not our future. ■



PHIL BONNER



PHIL BONNER

CHAPTER 2 • THE GARMENT INDUSTRY IN CALIFORNIA: THE SWEATSHOP CAPITAL OF THE NATION

Ten years ago, the discovery in El Monte, California, of 72 Thai garment workers forced to work behind barbed wire and under armed guard, while sewing brand-name labels for many of the nation's leading manufacturers and retailers, ripped through the foundations of the garment industry like a tumultuous fault line.⁹ The horror of the El Monte slave sweatshop brought the message home: California is the nation's sweatshop capital, where Los Angeles County alone produces approximately \$13 billion in clothing each year¹⁰— at the expense of garment workers who routinely toil under inhumane and illegal conditions.

The largest manufacturing employer in Los Angeles County,¹¹ the garment industry has long been plagued by rampant workplace abuses. According to the U.S. Department of Labor, nearly **70%** of garment factories in Los Angeles fail to pay federal minimum wage and overtime.¹² California's government agency charged with enforcing workplace health and safety laws found health and safety violations in nearly **100%** of factories inspected.¹³ A 2003 UCLA study found that three out of every four garment factories cited by the Bureau of

Field Enforcement (BOFE), part of California's Division of Labor Standards Enforcement (DLSE), violated record-keeping requirements¹⁴ or failed to obtain a license required to operate legally as a garment business in the state.¹⁵ The report also found that the garment industry was more likely than all other industries inspected by BOFE to be cited for minimum wage and overtime violations.¹⁶ Such statistics, and the deplorable conditions of the El Monte case, belie the fiction that sweatshops are isolated occurrences.

Today, apparel production remains one of California's principal industries, with Los Angeles the epicenter of production in both the state and nation.¹⁷ The garment industry continues to provide employment for a significant segment of California's workers. As of April 2005, Los Angeles County counted 63,500 garment workers,¹⁸ but there are likely thousands more employed by factories that fail to register for a business license and/or underpay payroll taxes.



PYRAMID OF PROFIT AND POWER: THE STRUCTURE OF THE GARMENT INDUSTRY

The very structure of the garment industry, both in California and around the world, is *designed* to allow apparel manufacturers and retailers to utilize and profit from low-wage, exploited labor — as they simultaneously disavow responsibility for substandard wages and working conditions.

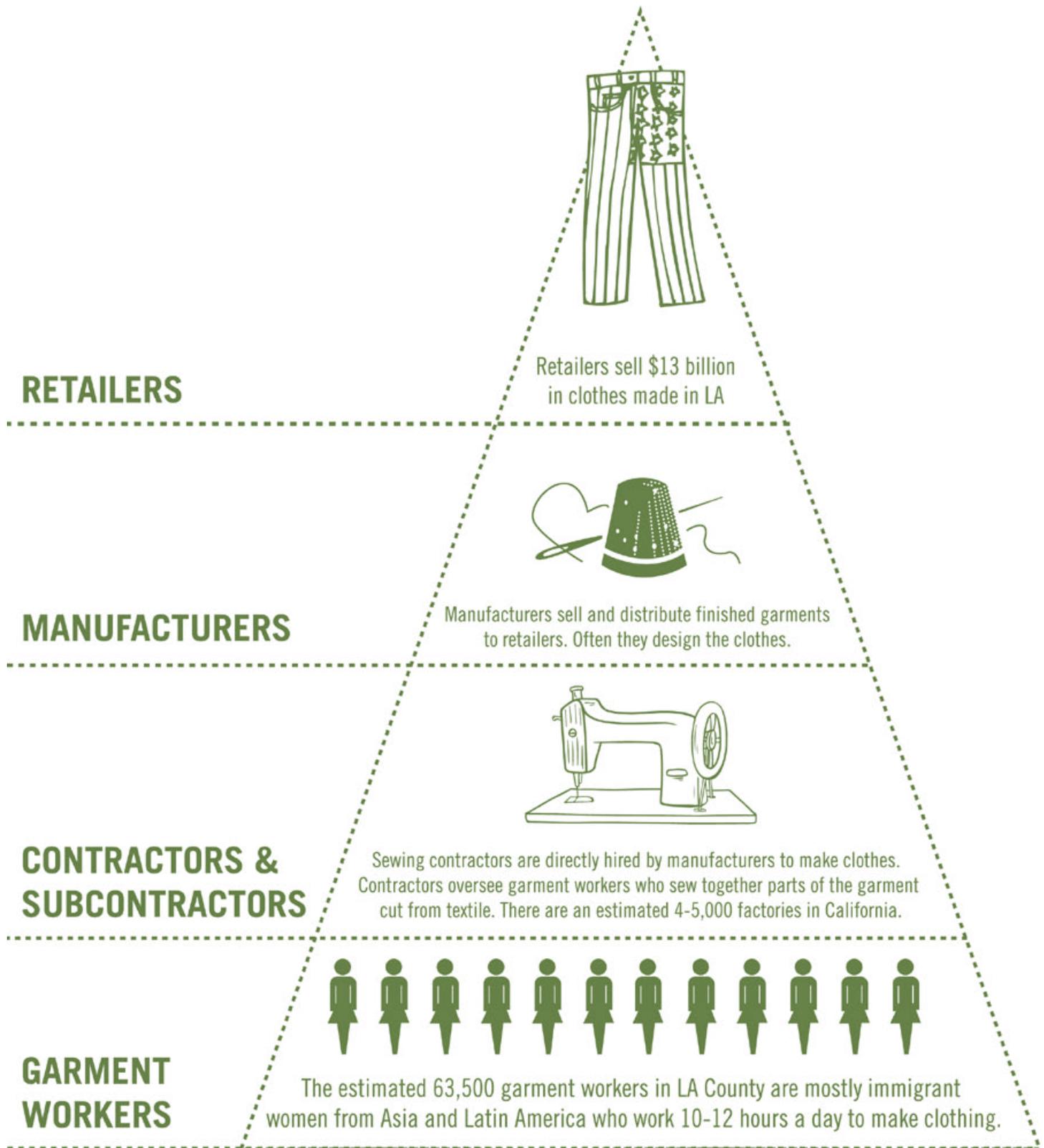
At the top of the apparel pyramid sit retailers such as Wal-Mart and Target that place orders with manufacturers and sell brand-name clothing directly to the public. Retailers reap the largest share of profits and impose the downward pressure on prices that is one of the root causes of sweatshops.

At the second level are manufacturers, such as XOXO and Dockers, that typically design garments, select fabrics, create detailed specifications for apparel production, and seek out contractors (garment factories) for the actual assembly of their clothes. Some manufacturers sell their clothing to big retail chains; other companies, such as Forever 21, bebe, Charlotte Russe, the Gap, and Guess, combine manufacturing and retailing operations and sell their private label clothing directly to the public through their own retail stores.

Retailers and manufacturers pressure contractors, who occupy the third level of the industry, to sew garments for lower and lower prices. Competition among contractors is fierce and many open up and shut down within a few months to a year. Contractors, mostly immigrant entrepreneurs with little capital and often poor knowledge of labor laws, operate at the mercy of retailers and manufacturers, who dictate the styles, quantities, turnaround times, and quality of garment production, as well as the prices they will pay for contractors to do this work. Retailers and manufacturers use contractors to avoid direct supervision of workers and (they hope) direct responsibility for sweatshop conditions — while they routinely fail to pay enough for the production of their clothes to ensure that contractors are able to pay workers minimum wage and overtime. Many contractors, in turn, end up operating as sweatshops.

At the very bottom of the pyramid — the greatest in number and lowest in economic and political power — are garment workers. They are mostly Latina and Asian immigrant women, and they comprise the foundation of the industry.¹⁹

California's Garment Industry: Pyramid of Profit and Power



© Sweatshop Watch, 2005

GARMENT WORK: LONG HOURS AT SUBSTANDARD PAY

In California, 2000 Census data indicated that garment workers earned \$5.18 per hour at a time when the minimum wage was \$5.75.²⁰ The Garment Worker Center, a non-profit organization in downtown Los Angeles, found that among the several hundred workers they assisted with AB 633 wage claims in 2001-2003, the average pay was effectively \$3.28 per hour, and the average work week was 52 hours.²¹ During a given week, month, or season, garment workers are often required to work extensive overtime but are typically denied their overtime earnings; they may also be terminated from employment without prior notice if work is slow. Workers are usually paid a piece rate of only a few cents per garment.

Even though only 6% of a garment's retail cost goes to the workers who made it,²² retailers and manufacturers demand increasingly lower labor costs and thus constantly depress workers' wages in their quest for higher profits. As a result, the average garment worker in Los Angeles made under \$10,600 in 2000, less than 77% of the poverty-level income for a family of three in that year.²³

THE PASSAGE OF AB 633: THE TOUGHEST ANTI-SWEATSHOP LAW IN THE NATION



In the wake of El Monte and other high-profile sweatshop exposés, the public spotlight illuminated the true nature of working conditions in the garment industry and raised consumer awareness about the need to hold retailers and manufacturers legally responsible in order to eradicate sweatshops.

Building upon this growing awareness, labor advocates, including the Asian Law Caucus, the Asian Pacific American Legal Center, the California Labor Federation, Sweatshop Watch, and the Union of Needletrades, Textiles and Industrial Employees (now UNITE HERE),

sponsored Assembly Bill 633 (AB 633), which state Assembly Member Darrell Steinberg introduced and state Senator Tom Hayden co-authored, to clean up the industry. Apparel representatives came to the table with labor advocates and engaged in intensive negotiations over the bill. As a culmination of these collective efforts, Governor Gray Davis signed AB 633 in September 1999. AB 633 became the law of this state on January 1, 2000.²⁴

Applauding the unlikely group of labor advocates, garment industry leaders, and retailers who worked together to pass the bill, Assembly Member Darrell Steinberg stated, "This agreement represents a huge breakthrough for thousands of garment workers. All sides worked successfully to find a solution that assures workers aren't the losers when a garment contractor goes under or refuses to pay."

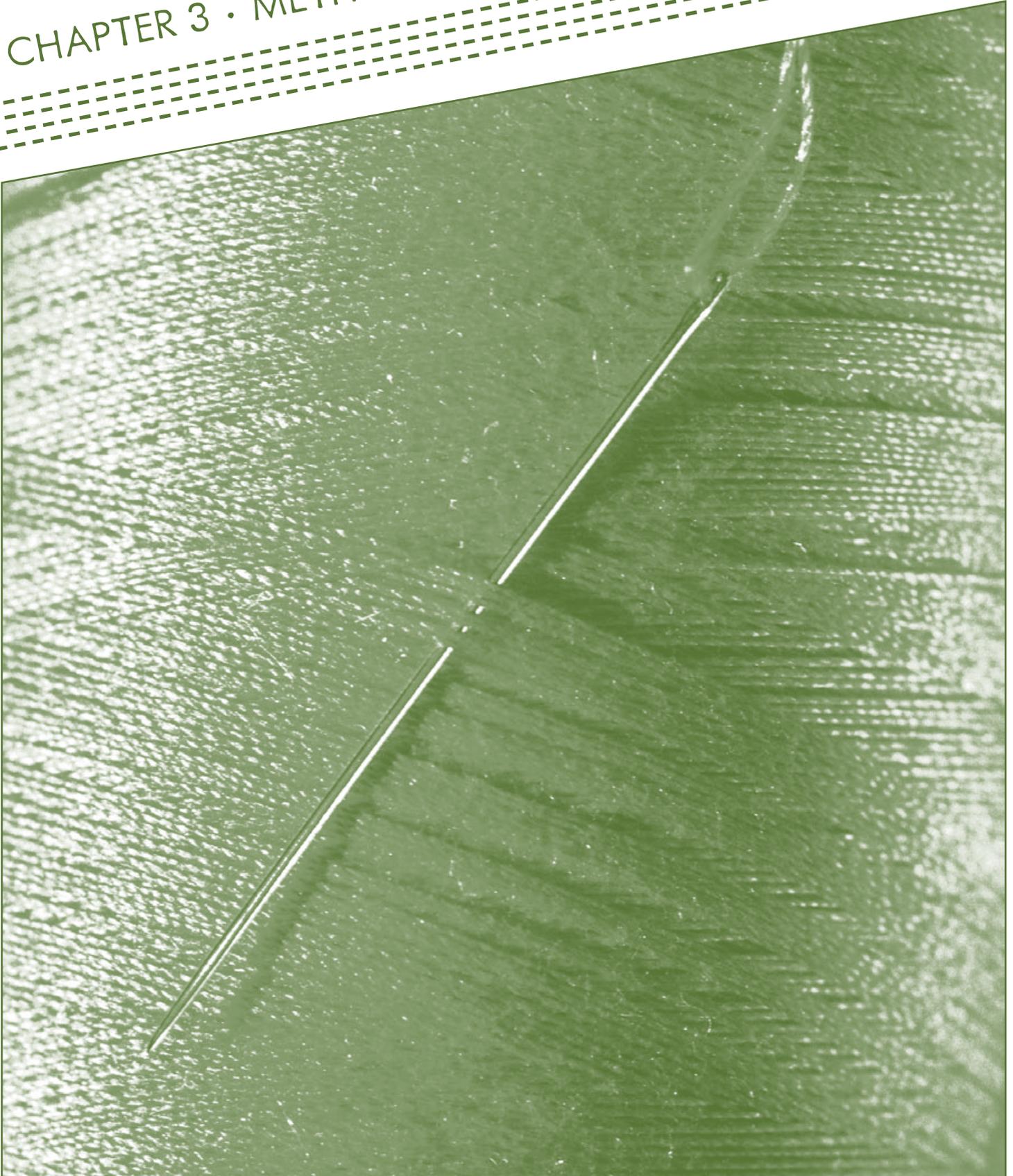
Rojana Cheunchujit, who was freed from the El Monte sweatshop in 1995, commented at the bill's passage, "I once asked my contractor employer why we got paid so little. She said it was because she did not receive much money from the manufacturers. So that was the reason I would not get paid minimum wage. This law will help the many workers who are not even getting paid minimum wage. It will make the manufacturers accountable."

After decades of advocacy, labor advocates succeeded in enacting the strongest garment worker legislation in the nation. (See Appendix A, "Key Provisions of Assembly Bill 633.") ■



車衣工友們

CHAPTER 3 • METHODOLOGY



This report is based on information from a number of sources:

- ☞ A random sample of AB 633 case files maintained by DLSE. The random sample²⁵ consisted of 208 AB 633 claims, or approximately 20%, of the 1044 AB 633 cases that had been docketed²⁶ against the first defendant (usually the contractor) between March 31, 2001 and February 18, 2004 in the DLSE Los Angeles office, and that had been closed for all defendants (both the contractor and guarantor(s)), as indicated in data provided by DLSE on April 6, 2004.²⁷ These files were provided to us by DLSE with workers' confidential information redacted.²⁸ The time period analyzed in this report begins just after that covered by a preliminary assessment of approximately the first 15 months of AB 633's implementation, from January 1, 2000 to March 26, 2001.²⁹
- ☞ Interviews with 10 DLSE staff in the wage enforcement, bureau of field enforcement, legal, and licensing units. Selected comments and proposals from these DLSE staff have been incorporated into this report's Key Findings and Key Recommendations.
- ☞ Six case studies of AB 633 claims filed by garment workers, most of whom were represented by organizations that collaborated on this report: the Asian Law Caucus, the Asian Pacific American Legal Center, the Garment Worker Center, and the Women's Employment Rights Clinic.
- ☞ Data from DLSE received in response to California Public Record Act requests, as well as data that is publicly available on DLSE's website.

The random sample includes 208 AB 633 claims filed against 160 garment contractors and 587 guarantors. Multiple garment workers from the same factory may each file individual AB 633 claims against their mutual contractor and guarantor(s). These count as multiple claims, but as **one episode**. Thus, one episode is equivalent to either (a) a single claim filed by one worker or (b) multiple claims filed by a group of workers against the same contractor. In our random sample, there were 164 episodes.³⁰

DLSE often consolidates multiple claims filed against the same defendant(s) in a single episode for purposes of the AB 633 investigation, Settlement Conference, Findings, and/or Hearing, etc. For example, DLSE may issue one subpoena against a contractor requesting payroll records for *all* workers who filed AB 633 claims in a single episode. Therefore, although data is available for each individual claim, some data is more meaningful if it is analyzed in terms of the number of episodes in which certain characteristics or behaviors occur. In those instances, this report refers to the number or percentage of episodes. ■

OVERVIEW OF AB 633 CLAIMS PROCESS

I. GARMENT WORKER FILES CLAIM

DAY 1

- Worker files claim with DLSE by filling out “Initial Report or Claim” form asking workers for basic information about themselves, the contractor, their work hours and pay, and the amount of money the worker claims to be owed.
- Worker may also be asked to fill out “Addendum to DLSE Form 1.” This form asks additional questions specific to the garment industry, such as the labels and descriptions of the clothing the worker sewed. It also asks about common workplace violations, including whether the contractor punched workers’ timecards and paid in cash with no documentation or deductions.
- Claim is soon docketed in DLSE case management system and a DLSE deputy is assigned to manage and administer the claim.

II. INVESTIGATION

DAY 10 – 59

- Within 10 days of receiving a claim, DLSE must send a “Notice of Claim and Meet and Confer Conference” to the worker, the contractor, and any potential guarantors. The notice includes basic information about the claim and notifies all parties of the date of the Meet-and-Confer conference (“Settlement Conference”), which should occur no later than 60 days after the date DLSE received the claim.
- A deputy from the AB 633 wage adjudication unit of DLSE (District deputy) issues subpoenas to the contractor and potential guarantors for business records.
- An investigator from DLSE’s Bureau of Field Enforcement (BOFE deputy) is assigned to the case.
- The BOFE deputy interviews the worker and any witnesses, visits the contractor and inspects business records, and attempts to contact and obtain business records from potential guarantors.
- The BOFE deputy prepares a “Findings and Assessment” (“DLSE Findings”). DLSE Findings state the results of the investigation, including an assessment of wages, damages, and penalties owed and findings of guarantor liability.

III. MEET-AND-CONFER CONFERENCE (“SETTLEMENT CONFERENCE”)

DAY 60

- DLSE deputy managing the case convenes and oversees the Settlement Conference. The worker, contractor, and all named guarantors are required to attend.
- The BOFE deputy presents DLSE Findings to the parties.
- The parties have the opportunity to settle the claim.
- If the defendants do not attend or if a settlement is not reached, a formal hearing should be scheduled within 30 days of the Settlement Conference.

IV. HEARING

DAY 90 – 105

- A DLSE hearing officer presides over an administrative hearing.
- All parties testify, present evidence, and/or witnesses, and have the opportunity to cross-examine other parties. The BOFE deputy is asked to testify about her investigation, including a proposed assessment of guarantor liability, but cannot testify about her assessment of wages, damages, and penalties due.

V. ORDER, DECISION OR AWARD (“ORDER”)

DAY 105 – 120

- Within 15 days of the hearing, DLSE must issue a decision, or “Order, Decision, or Award” (“Order”). The Order is a written determination that includes the award of any wages, damages, and/or penalties found to be due from the contractor and/or guarantors. It also includes a statement of facts, explanation of the law, and the reasoning behind the Order award.

VI. APPEAL

DAY 120 – 130

- Within 10 days after the Order is issued, any party may file an appeal with the California Superior Court.

VII. JUDGMENT AND COLLECTIONS

DAY 130 AND ON

- If the Order is not appealed or paid, DLSE sends a copy of the Order to the Superior Court. The Superior Court then enters a judgment reflecting the amount of wages, damages, and penalties awarded in the Order.
- DLSE provides the worker with the option of attempting to collect the Judgment herself or assigning it to the California Franchise Tax Board. If the worker is unable to collect her unpaid wages from the contractor and/or guarantors, she may submit a claim for unpaid wages to the state’s Garment Special Fund, which is funded by a portion of garment registration fees paid by garment contractors and guarantors to operate their business legally in California.



ROBERT GUMPERT

CHAPTER 4 • KEY FINDINGS

When it was signed into law six years ago, AB 633 was lauded as a model piece of legislation signaling that California was serious about addressing the root cause of sweatshops in the garment industry. Since the bill's passage, the state labor agency has been entrusted with the vital task of enforcing AB 633, and thus with the responsibility of translating this historic law from paper into practice.

This evaluation is based on a statistical analysis of a random sample of over 200 wage claims between March 31, 2001 and February 18, 2004.³¹ Our Key Findings reveal that although AB 633 has helped some garment workers reclaim their wages, DLSE's implementation of the law has fallen short of realizing AB 633's promise.

■ **Since AB 633 became law, there has been a sharp rise in the numbers of garment workers who have filed wage claims, but this increase still pales in comparison to the tens of thousands of workers who have been deprived of their wages.**

AB 633 establishes an alternative mechanism apart from the court system — an expedited administrative claims process before DLSE — for garment workers to recover their unpaid wages from companies responsible for sweatshops. In recognition of rampant labor law violations in the garment industry, the Legislature intended this process to enable more and more workers to file claims and seek redress for exploitative working conditions.

This intention appears to have been realized. The number of wage claims filed by garment workers statewide, and particularly in Los Angeles, has increased **four-fold** since AB 633 became law.

- ⌘ Average annual number of wage claims filed by garment workers statewide:
- 1995-1998: **565**³²
 - 2001-2004: **2,282**³³

Nonetheless, the number of garment workers who have filed claims represents only a tiny fraction of the tens of thousands of garment workers — 70% of whom have been denied minimum wage and overtime³⁴ — who labor in sweatshops and are covered by the protections of AB 633.

■ Through AB 633’s wage guarantee, garment workers are starting to recover unpaid wages from companies that use sweatshops. The overwhelming majority of these companies, however, still do not pay *a single penny* to workers, who receive only a small portion of what they are owed.

Before AB 633 was enacted, garment workers could not seek unpaid wages from garment manufacturers and retailers in wage claims before DLSE — even when these companies made their clothes in sweatshops. Thus, prior to AB 633, workers filing wage claims were deprived of a remedy when contractors operating as sweatshops failed to pay workers their wages and absconded. AB 633’s wage guarantee aims to close this loophole exploited by companies that profit from sweatshop labor. Garment manufacturers and retailers are now legally responsible as “**guarantors**” for ensuring, along with the contractors they use to make their clothes, that workers are paid minimum wage and overtime.

In the time period covered by our evaluation, the average amount garment workers recovered from contractors and guarantors was **over three times** larger than the average amount recovered during the first 15 months of AB 633’s implementation.³⁵

Our evaluation reveals that **guarantors are paying** workers some portion of their unpaid wages, predominantly as a result of Orders³⁶ or settlements with workers:

- ✂ Guarantors paid almost **30%** of the total amount of money paid to workers.³⁷ Before AB 633 became law, companies that used sweatshops were not required to pay a cent of workers’ administrative wage claims.
- ✂ Guarantors that paid workers as a result of an Order paid **100%** of the amount ordered against them.³⁸ This is in stark contrast to the first 15 months of AB 633’s implementation, when guarantors did not pay anything pursuant to an Order.³⁹
- ✂ Over **25%** of the guarantors entered into settlements with workers.⁴⁰ Almost **80%** of the wages that workers recovered from guarantors was paid through settlements.





CASE STUDY: The Wage Guarantee Pays Off

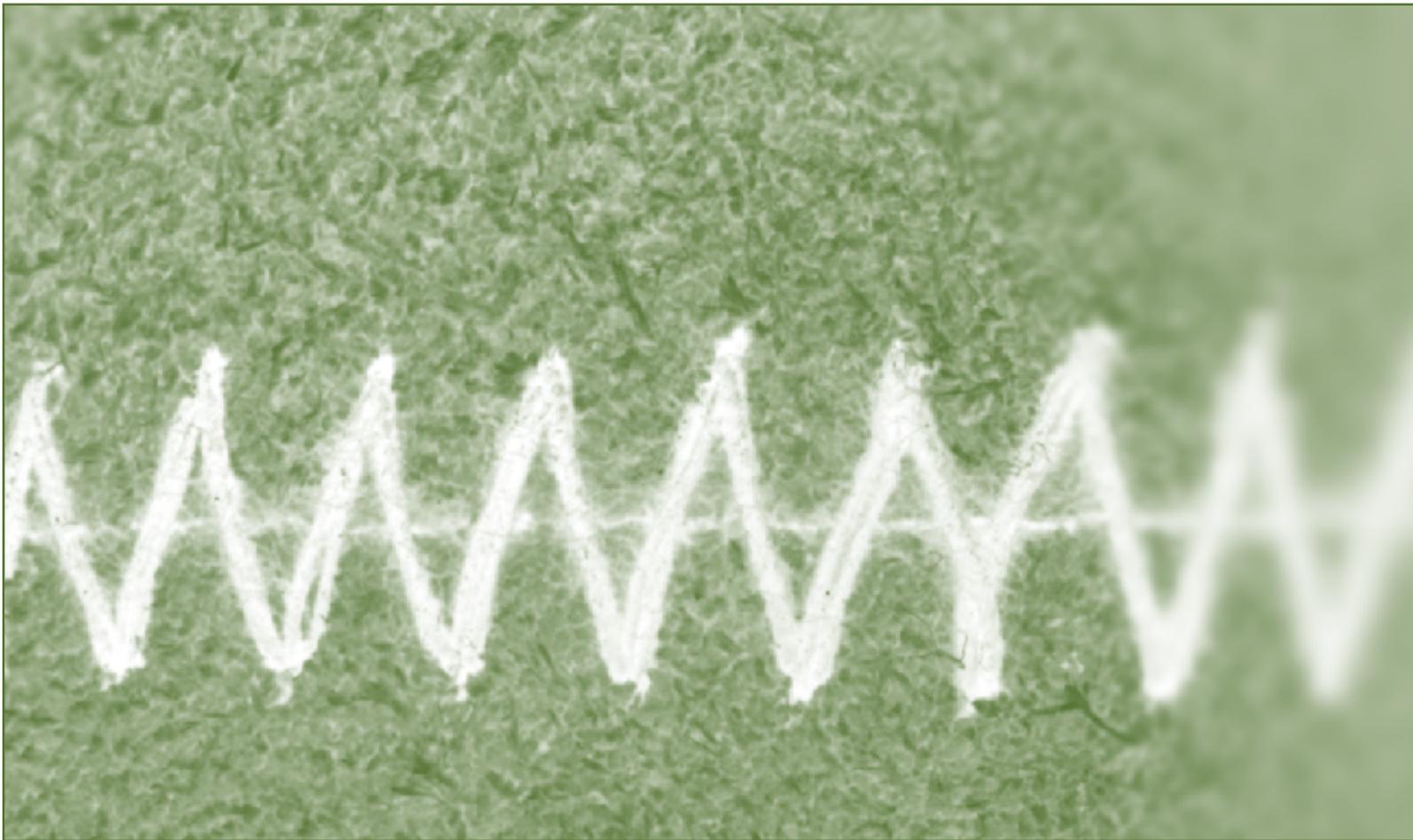
In January 2004, Maria Lopez,⁴¹ a Los Angeles garment worker represented by the Asian Pacific American Legal Center, filed a claim for wages owed against the sweatshop contractor Pocket Fashion and the clothing companies whose garments she made at the sweatshop, including Charlotte Russe (a private label retailer). Ms. Lopez typically worked at the sweatshop 6 days a week, for up to 10.5 hours a day. She was forced to work “off-the-clock”: to punch her time card well after she began working, and to punch out well before she stopped. She was paid by the piece and not compensated for all the minimum wage and overtime she had earned.

At the hearing, Charlotte Russe claimed through its attorney that it was not a wage guarantor under AB 633. However, written purchase orders submitted by Charlotte Russe itself belied its claim that it was not connected to the sweatshop conditions at Pocket Fashion and instead demonstrated the company’s involvement in Pocket Fashion’s manufacturing operations. Ms. Lopez argued to DLSE that these documents illustrated that Charlotte Russe ordered the sweatshop to make thousands of garments for Charlotte Russe’s “Rampage” stores; that Charlotte Russe communicated with the sweatshop regarding detailed instructions on how to make those garments, including quantity, style, size, color, and fit of each garment; and that she was then required to sew Charlotte Russe clothing according to its specifications, while her most basic rights to receive minimum wage and overtime were being violated.

In May 2005, DLSE issued an Order against Pocket Fashion and Charlotte Russe. DLSE found that Pocket Fashion had engaged in numerous illegal practices, including denying Ms. Lopez minimum wage and overtime. DLSE also found that Charlotte Russe was legally responsible for Ms. Lopez’s unpaid wages for the period of time she worked on Charlotte Russe clothing. Charlotte Russe did not appeal the decision. Instead, the company paid 100% of the amount it owed Ms. Lopez.

Despite these indications that garment workers are receiving some protection from the wage guarantee, workers are still being deprived on average of **two-thirds** of their wages owed.

- ⌘ Workers received from contractors and guarantors **only 31%** of total *wages* claimed.⁴² This amount does not include any damages, penalties, or other payments to which they are also lawfully entitled—and which typically more than double their claim amount.
- ⌘ Only **15%** of guarantors paid any money to workers (as a result of an Order, settlement, or judgment). **85% paid nothing.**
- ⌘ Guarantors paid on average only **11%** of the average wages claimed by workers.⁴³
- ⌘ Even for the subset of workers whose claims were fully adjudicated (i.e., an Order was issued in their favor following an administrative hearing), **60%** of guarantors against which Orders were issued did **not pay a single penny owed** to the worker.⁴⁴ Moreover, DLSE collected on only three of the 12 judgments entered against guarantors after they failed to pay Orders.⁴⁵



CASE STUDY: The Black Hole of Collections

For four years, Elena Rodriguez⁴⁶ worked as a single needle sewing machine operator at K&S, a garment factory in downtown Los Angeles. During this time she worked up to 58 hours a week and was never allowed to punch her own time card, which was routinely falsified to reflect fewer hours than she actually worked. She was paid in cash for the weeks when she was paid less than minimum wage.

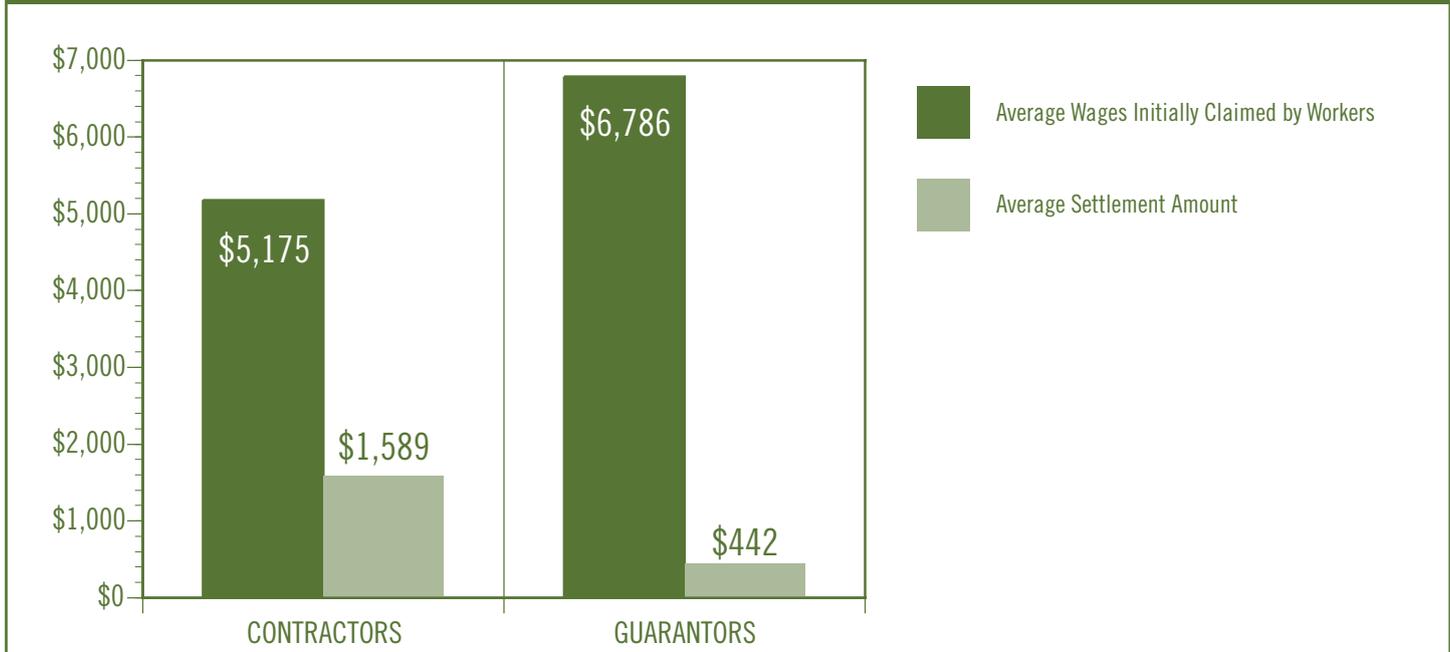
After the hearing on her case, Ms. Rodriguez won an Order from DLSE totaling almost \$20,000 in unpaid wages, penalties, and damages. Nevertheless, the contractor paid *absolutely nothing*, even after a judgment was entered, and Ms. Rodriguez was not provided any assistance with collections. In the end, she was left with nothing more than a piece of paper.



The fact that workers may pursue wage claims all the way through a hearing, only to be unable to collect on a judgment in their favor, not only demoralizes workers but also undermines the purpose of the state's labor protections.

It is unclear why so many guarantors and contractors continue to ignore Orders and judgments, although the fact that they are able to do so with relative impunity can only embolden predatory garment companies. Low-wage workers are ill-equipped to pursue collections on their own, and DLSE seldom pursues collections on their behalf, despite DLSE's legislative authority to do so.⁴⁷ Instead, DLSE gives workers the option of referring outstanding judgments to the California Franchise Tax Board (FTB) for collection efforts.⁴⁸ However, FTB has not actively pursued collection of judgments, including those from AB 633 wage claims.⁴⁹ Furthermore, the California Department of Industrial Relations (DIR), the agency that oversees DLSE, provides FTB with funds to pay for the salary of only one employee assigned to process collections claims.⁵⁰ As of February 2004, FTB took an average of 18 months to process a collections claim.⁵¹ Moreover, once DIR refers claims to FTB, DIR stops monitoring the claims and closes those cases in DIR's database.⁵²

AVERAGE WAGES CLAIMED VS. SETTLEMENT AMOUNT



■ Guarantors and contractors low-ball settlement amounts so workers recover on average only *one-third* of wages owed, and DLSE lets some guarantors completely off the hook before all wages are paid.

The vast majority of claims are resolved through settlements.

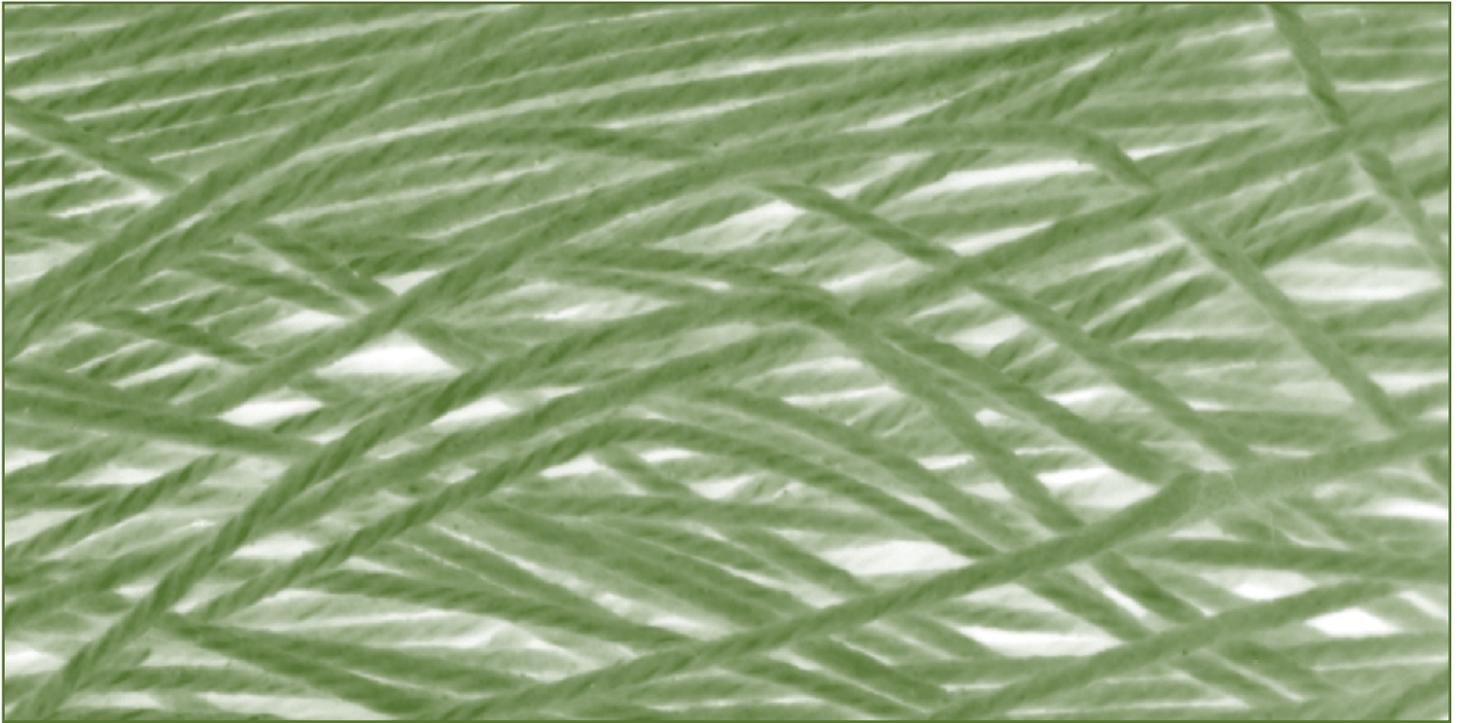
- ⌘ Over **75%** of workers reached settlements (including joint settlements⁵³) with the contractor and/or one or more guarantors. Workers recovered an average settlement of \$1,772.
- ⌘ When we examine settlement rates of contractors (including joint settlements), contractors settled in over **60%** of claims. In these claims, contractors paid an average settlement of \$1,589. Almost **99%** of the money contractors paid to workers was through settlements.
- ⌘ When we examine settlement rates of guarantors (including joint settlements), over **25%** of guarantors settled. In these claims, guarantors paid an average settlement of \$442. Almost **80%** of the money guarantors paid to workers was through settlements.

Settlements have the potential to improve the ability of workers — who in many cases have been waiting years to recover unpaid wages — to *actually* receive their wages more quickly than if they proceeded to a hearing, where outcomes are not certain.⁵⁴ Settlements also offer the advantage of saving scarce time and resources of all parties involved.

However, contractors and guarantors pay settlement amounts far below the wages owed to workers.

- ⌘ Workers who reached settlements with contractors and/or guarantors received only **34%** of total wages claimed.⁵⁵
- ⌘ Workers who settled with contractors recovered less than **31%** of total wages claimed from these contractors.⁵⁶
- ⌘ Workers who settled with guarantors recovered only **16%** of total wages claimed from these guarantors.⁵⁷
- ⌘ Even when workers were still owed wages, **11%** of all guarantors were completely let off the hook after the workers settled with the contractor and/or the other guarantor(s).⁵⁸ DLSE abandoned the wage guarantee and did not give workers the option to seek the balance of wages owed against any remaining guarantor(s).

Settlements in which workers feel compelled to accept such low amounts serve to undermine the purpose of the wage guarantee. Contractors and guarantors have no incentive to ensure that workers are paid their wages in the first place since they end up paying so little to resolve claims.



CASE STUDY:

Taking the Low Road on Settlements

Laura Sanchez and Julia Mera,⁵⁹ two workers not represented by an advocate, filed AB 633 wage claims against C&C Apparel Inc., a garment contractor. Both Ms. Sanchez and Ms. Mera routinely worked 11 hours a day, almost non-stop — with at most only one 15-minute break daily. They were paid by the piece and forced to sign time cards that did not accurately reflect all the hours they worked — or else they would not have been paid at all.

At the Settlement Conference, a DLSE deputy told Ms. Sanchez and Ms. Mera it was better to accept a small settlement now than to continue to a hearing where they might not win anything. As a result, the workers reported later to the Garment Worker Center that they felt pressured to accept a low settlement (just over 22% of wages claimed by one worker and over 47% by the other). Furthermore, when the workers asked for a copy of the settlement agreements they had signed, DLSE refused to give them a copy.



Workers may be willing to accept settlement amounts that are only a fraction of what they are owed because they urgently need the money to meet basic living expenses, and because they know that even if they win their claim, it is very unlikely they will be paid pursuant to an Order or judgment. Many workers may also feel pressured to accept low settlements recommended by DLSE, whose statements carry much authority and power in the eyes of workers. Moreover, there is currently no procedure in place for DLSE deputies to inform workers of their right to recover unpaid wages from the Garment Special Fund, which was created by the Legislature precisely for the purpose of paying workers otherwise unable to collect the wages they are owed.⁶⁰ DLSE's failure to inform workers of the existence of this fund may contribute to workers accepting low settlements instead of continuing with a time-consuming claim that they believe will not improve their ability to recover their wages.

■ DLSE fails to identify guarantors and conduct adequate investigations of guarantors on a consistent basis, thus undermining the wage guarantee.

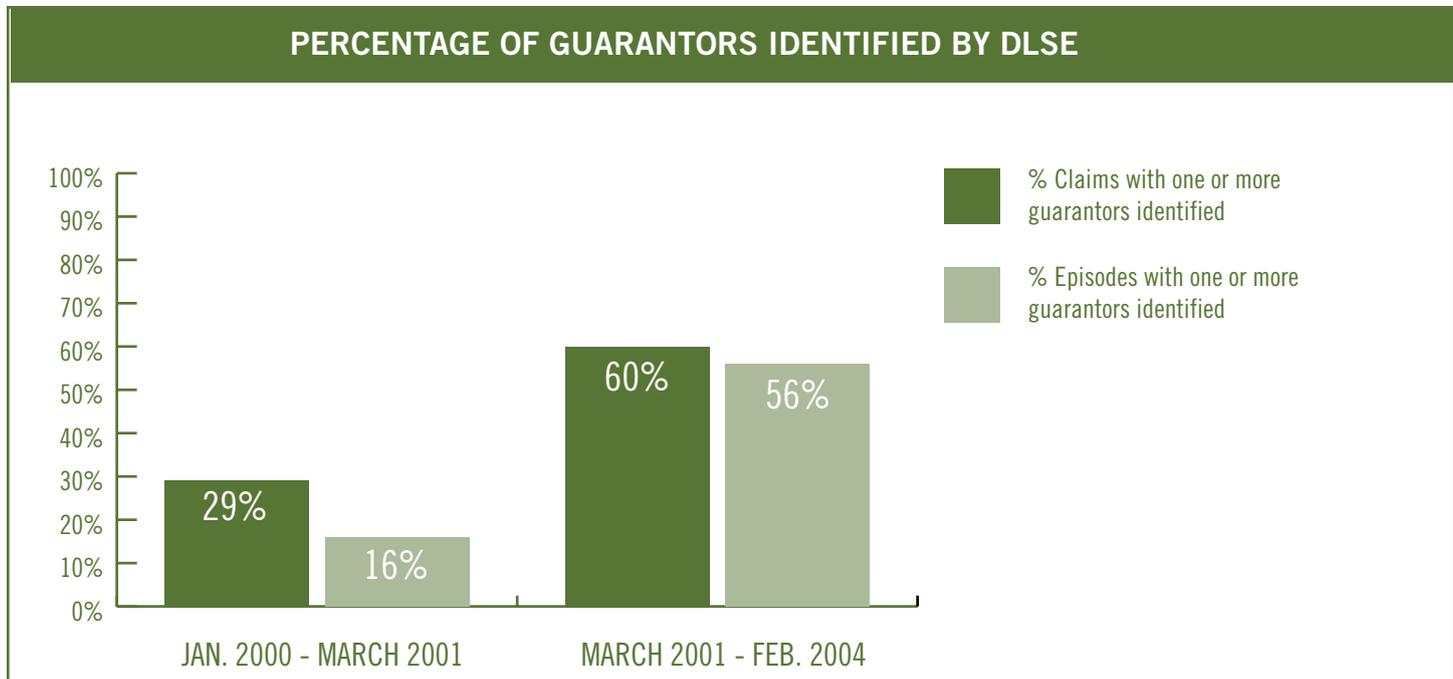
Every AB 633 wage claim should typically involve a minimum of two defendants: the contractor and the guarantor. DLSE is charged with investigating each claim and identifying potential guarantors.⁶¹

⌘ In the time period covered by our evaluation, DLSE identified⁶² wage guarantors in about **half** the episodes.⁶³ This is **3.5 times** the rate at which DLSE identified guarantors during the first 15 months of AB 633’s implementation.⁶⁴

DLSE appears to be doing a better job of identifying guarantors, which is the first step in enforcing AB 633’s wage guarantee. Nevertheless, DLSE should be identifying guarantors in *every* case in which it is possible to do so — not merely *half* the time. Indeed, workers — not DLSE — identified **50%** of all guarantors.⁶⁵ Without adequate identification of guarantors by DLSE, the wage guarantee holds little meaning.

Once guarantors are identified, conducting a proper and thorough investigation of guarantors is the second step — and perhaps most important one — in enforcing the wage guarantee. In each AB 633 wage claim, DLSE must issue what is called a “Findings and Assessment” (referred to in our evaluation as the “DLSE Findings”) after conducting an independent investigation of the claim.⁶⁶

As part of this investigation, a fact-specific examination into a contractor’s relationship with potential guarantors is necessary to prevent guarantors from using contractual schemes to obscure their true connection to sweatshops. DLSE’s investigative powers, including the authority to issue subpoenas and inspect business records, are often the only effective tool for pursuing claims against guarantors. Thorough investigations enable DLSE to identify the correct legal names of guarantors, conduct follow-up on guarantors identified by workers, and identify additional guarantors otherwise unknown to workers. Moreover, DLSE Findings, which present the results of the agency’s investigation including a determination of wages owed and assessment of guarantor liability, can be effective in spurring guarantors to pay workers.⁶⁷



CASE STUDIES:

Guarantors Ante Up When DLSE Findings Raise Stakes

Between August 2003 and May 2004, 33 garment workers filed AB 633 wage claims in San Francisco against the garment contractor GNT, Inc. (GNT). The 33 claimants worked primarily as single needle seamstresses, but performed other duties for GNT, including packaging, inspection, cleaning, cutting thread, and making samples. Claimants regularly worked 9.5 hours a day, Monday through Saturday, with only one half-hour lunch break; some also routinely worked on Sundays. Although each claimant worked overtime, none were paid for it, and several were denied minimum wage.

At the Settlement Conference on their claims, the workers, represented by the Asian Law Caucus, obtained approximately \$145,000 in back wages from the five guarantors in their case: Jessica McClintock, Biscotti, Profile Design/Bellwether, Western Wear, and Shane Hunter. The guarantor settlements (in addition to approximately \$35,000 from another alleged guarantor, Recreational Equipment, Inc. (REI), in a separate settlement with DLSE) paid nearly 100% of the workers' unpaid wages. The presentation of DLSE Findings at the Settlement Conference sent a clear message to the guarantors regarding their legal liability, thus enhancing the workers' ability to negotiate favorable settlements with the guarantors.



Juan Ramirez,⁶⁸ a worker represented by the Garment Worker Center (GWC), filed an AB 633 wage claim against a garment contractor and numerous guarantors whose labels he had sewn at the factory. The worker furnished DLSE with the labels but the correct legal entities of the manufacturers associated with the labels could not be discerned. However, the BOFE investigator accessed the contractor's garment registration information with the state, which contained information indicating that JBL Cal Apparel, Inc. (JBL) was the primary guarantor. As a result, DLSE was able to notify JBL of the claim and its potential liability.

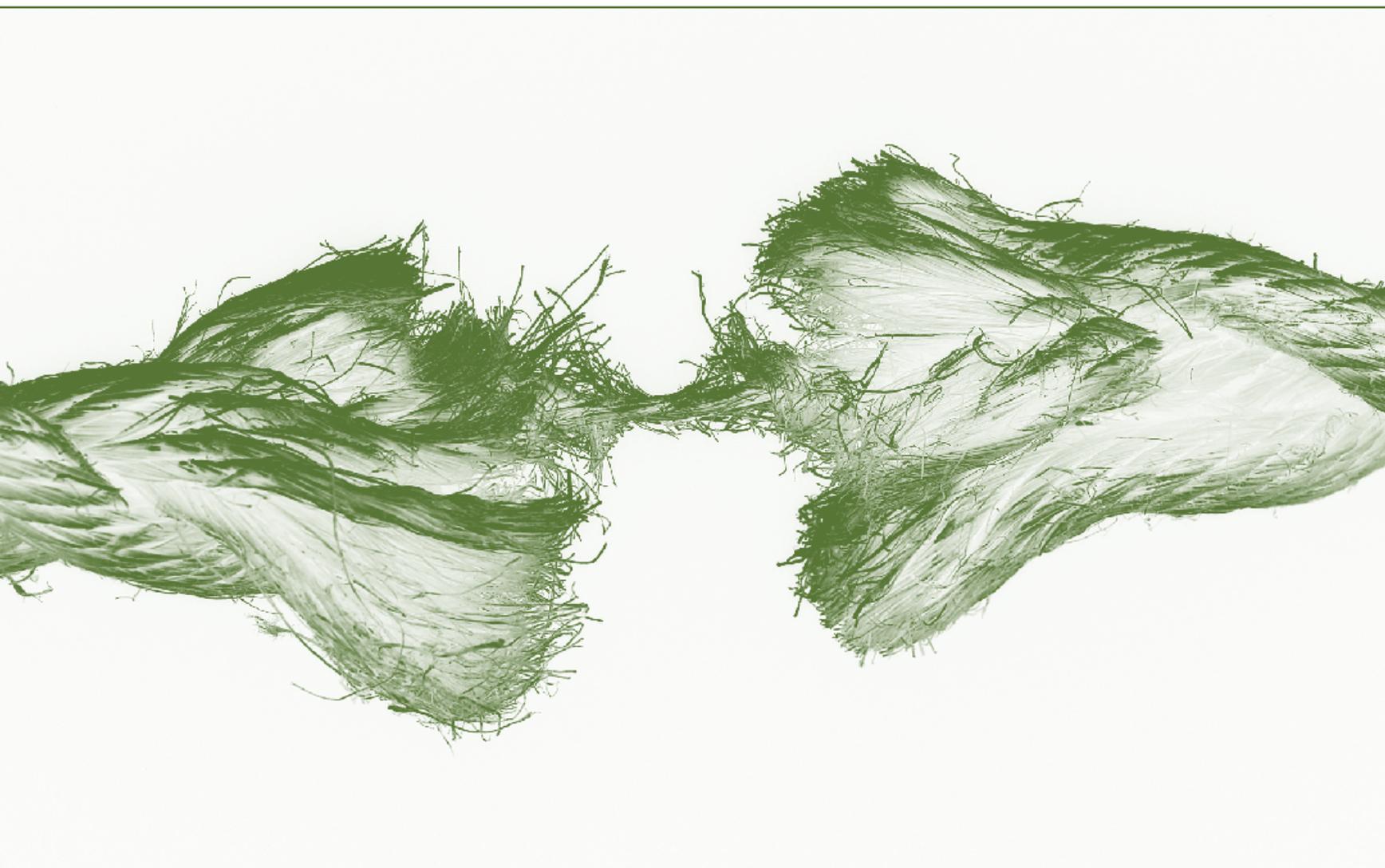
After conducting an independent investigation of the facts, the BOFE deputy assessed liability against JBL in the DLSE Findings. According to the DLSE Findings, the investigation revealed that there was "compelling evidence of duplicate employee time cards being kept...[by the contractor]." Although JBL initially contested the worker's claim, JBL and the contractor jointly settled with the worker at the hearing for almost the entire amount in the DLSE Findings. The worker received 100% of wages owed, in addition to payment for failure to provide breaks, plus almost all of the damages assessed by DLSE.

However, both the DLSE's investigations and Findings with respect to guarantors can be cursory and superficial, lacking the follow-through necessary to ensure that workers are able to receive full protection from AB 633's wage guarantee. Many guarantors are either not pursued seriously or dropped from claims without explanation.

- ⌘ DLSE failed to issue subpoenas for business records to **over 60%** of guarantors. DLSE did not have a standard practice of automatically sending subpoenas to each guarantor identified, despite the fact that such subpoenas are necessary to conduct a proper investigation of the claim.
- ⌘ DLSE failed to conduct *any* investigation whatsoever of **13%** of guarantors that were identified. It was unclear why no investigation was conducted.

- ⌘ In claims in which DLSE Findings were issued, **11%** of the guarantors identified by workers were *not* mentioned in DLSE Findings.⁶⁹ It was not apparent that an investigation of the guarantors had *ever* been conducted, and *no reason* was given for the omission. In addition, **7%** of the guarantors were *not* mentioned in DLSE Findings *even though* DLSE had conducted some investigation of the guarantors and there was no apparent reason why they were subsequently released from the claims.

Our review of DLSE case files reveals a fundamental problem: the complete lack of a paper trail on what happens to many guarantors after they are identified. We are left to surmise that guarantors slip through the cracks because investigations are incomplete or shoddy, and there is no documentation or explanation required to justify the results.



CASE STUDIES:

When Guarantors Slip Through the Cracks

In wage claims filed by 33 garment workers against the garment contractor GNT (see Case Study, page 27), the workers provided evidence to DLSE that they sewed labels for Recreational Equipment, Inc. (REI). However, REI's mere counter assertion in a cover letter to DLSE that it had never placed garment orders directly with GNT was sufficient to convince DLSE that REI was not liable under AB 633 for the workers' wages. Despite the fact that the company's statement was never investigated or independently verified by DLSE, DLSE dismissed the workers' claims against REI without notifying the workers' representative, the Asian Law Caucus (ALC). REI was not even required to cooperate in the DLSE investigation by providing some minimal explanation for how its garments were ordered for production at the sweatshop, such as providing a list of companies that acted as purported intermediaries between REI and the sweatshop.

After the ALC and the Chinese Progressive Association helped the workers to organize and lead a successful corporate accountability campaign (including a massive letter-writing campaign and rally) to publicly pressure REI to pay back wages to the workers, REI not only agreed to provide a "grant" of \$35,000 to assist the former GNT workers, but also a list of California factories that REI uses to make its clothes. These significant results achieved by the workers and their advocates outside of the DLSE process highlight the critical information that should have been uncovered by DLSE as part of a proper investigation — information that is readily available from companies but has not been systematically sought by DLSE.



In the spring and summer of 2001, hundreds of seamstresses — who had worked for several months in three sweatshops in downtown San Francisco without receiving any pay whatsoever — were deprived of more than \$1.4 million in unpaid wages and penalties when the sweatshops shut down and declared bankruptcy. This scenario was precisely the type of situation contemplated by AB 633's wage guarantee.

With the assistance of the Chinese Progressive Association, the Women's Employment Rights Clinic at Golden Gate University School of Law (WERC), and the Asian Law Caucus, the workers filed AB 633 wage claims against the sweatshops and alleged guarantors for which the workers made clothes (including bebe, Sam's Club, Kmart, Mervyn's, Target, Nordstrom's, JC Penney, Sears, and Cut Loose, among others). However, DLSE brought little pressure to bear on the alleged guarantors and did not pursue AB 633 wage claims against them. Instead, DLSE utilized an alternative mechanism under AB 633 to file a lawsuit in state court for wages, damages, and penalties against the individual sweatshop owners and operators only, and failed to name a single guarantor.

As a result of the perseverance of the workers' advocates, discussions are ongoing with several companies whose garments were made at the sweatshops. However, to date, DLSE has not placed sufficient resources into pursuing any potential claims against the alleged guarantors — despite the fact that the state court judge issued a tentative decision finding that the workers are owed over \$1.4 million in unpaid wages and penalties.



As a counterpoint to the above examples of DLSE's failure to properly investigate and pursue guarantors, the recent claim brought by Maria Lopez⁷⁰ in Los Angeles against the private label retailer Charlotte Russe (see Case Study, page 21) showcases what can be achieved when DLSE does what AB 633 requires — investigates the actual business practices of the potential guarantor, instead of relying upon the superficial assertions of the company.

Despite repeated declarations by Charlotte Russe's attorney that the company was not a wage guarantor, the DLSE hearing officer ruled otherwise after evaluating the facts of the case. As this case demonstrates, even if a company claims that it is not responsible for a worker's unpaid wages, DLSE should ensure it is mandatory practice — not a rare occurrence — to examine the actual business practices of the entity in question and require, at a minimum, that the company provide any information in its possession that might assist DLSE to assess the facts and identify the appropriate guarantors.

■ **Guarantors and contractors frequently fail to turn over business records, and half the time DLSE does not require guarantors to produce any records at all.**

AB 633 mandates that within 10 days after a claim is filed, DLSE must issue a subpoena for the contractor's business records — including employee payroll records and records of the contractor's business relationship with guarantors.⁷¹ One of the primary purposes of the subpoena is to enable DLSE to identify guarantors, as well as collect proof of minimum wage and overtime violations. Without these records, it is difficult — and sometimes impossible — to identify wage guarantors and pursue claims against them. That is precisely why AB 633 explicitly includes strict record-keeping requirements, including the power of DLSE to demand inspection of records and seek sanctions for failure to comply with these requirements.

Two other key mechanisms are designed to buttress DLSE's investigative power and provide effective means to identify guarantors and determine their share of liability: 1) contractors and guarantors are required to maintain written contracts of their business relationship with each other;⁷² and 2) on the itemized deduction statements that must be provided to workers each pay period, contractors are required to list the names of guarantors for which the contractor made clothes during the pay period.⁷³

Despite these requirements, contractors in case after case do not turn over written records related to the guarantors with which they do business. They also frequently fail to comply with DLSE subpoenas and routinely produce incomplete payroll records at best.⁷⁴

⊗ Although DLSE issued subpoenas for business records to contractors in almost 85% of episodes, contractors failed to provide any documents 18% of the time, and provided documents only 52% of the time.⁷⁵ When contractors did provide documents, they were *incomplete* almost **90%** of the time.

⊗ To the best of our knowledge, *not one* contractor submitted copies of written contracts with guarantors. Furthermore, there were *no* itemized wage deduction statements listing guarantor names in any of the case files we examined.⁷⁶

Guarantors exhibited similarly low compliance rates in response to DLSE subpoenas, which were issued to guarantors much less frequently than to contractors, despite the fact that business records from guarantors are central to conducting a proper investigation of the claim.

⊗ DLSE issued subpoenas to guarantors in **less than 50%** of episodes, and failed to issue subpoenas to **over 60%** of guarantors.⁷⁷

⊗ Only 54% of the guarantors to which subpoenas were issued provided any documents in response.

⊗ To the best of our knowledge, of the guarantors that provided documents, only 9% of these guarantors provided copies of written contracts with contractors.⁷⁸

■ **Sanctions for record-keeping violations are not pursued by DLSE, thus undercutting DLSE's power and responsibility to investigate guarantors and enforce the wage guarantee.**

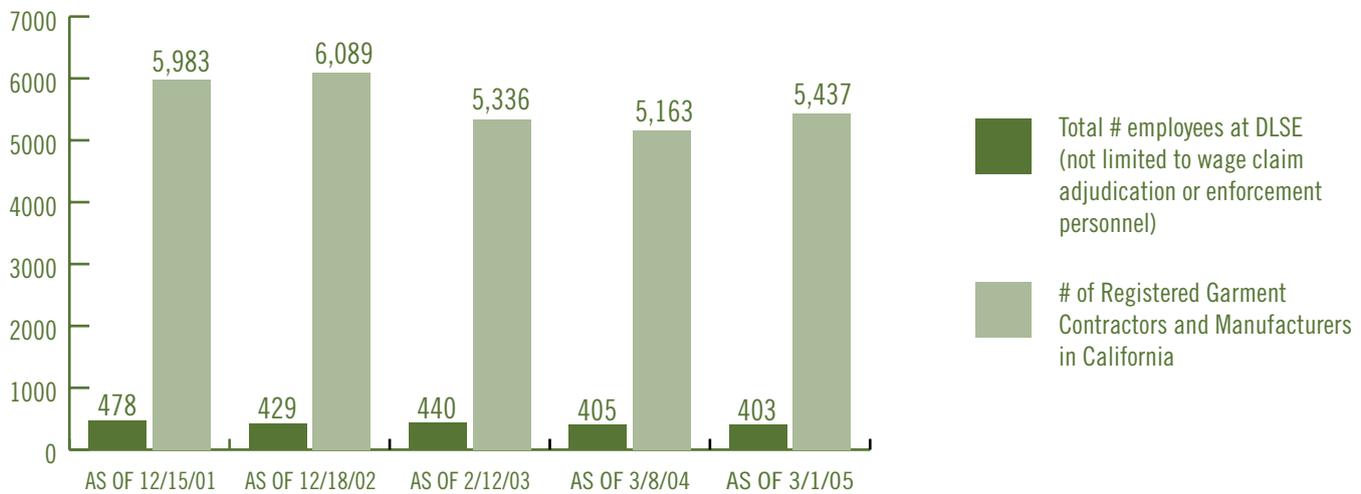
DLSE has the ability to seek various sanctions for failure to comply with subpoenas and maintain required records, including the power to revoke garment registration licenses that are a necessary condition of operating a garment business in the state.⁷⁹ However, DLSE does not seek sanctions against contractors that fail to comply with key record-keeping requirements.

⊗ DLSE revoked the garment registration license of **only one** contractor in **only one** episode of the 81 episodes in which contractors either provided no business records or incomplete records in response to a subpoena.

⊗ In other words, there was a **less than 1%** chance that a contractor's registration would be revoked if it failed to provide necessary business records to DLSE.

DLSE's failure to utilize available sanctions allows contractors and guarantors to continue flouting the law without any repercussions.

DLSE STAFFING LEVELS VS. CALIFORNIA GARMENT WORKPLACES



Source: DLSE e-mail, May 31, 2005

■ DLSE takes almost twice as long to adjudicate wage claims than is allowed under AB 633's expedited timeline.

AB 633 mandates that DLSE must fully adjudicate a wage claim (i.e., reach a final disposition against all defendants involved) within 120 days from the date DLSE receives the claim. DLSE has not met AB 633's expedited timeline.

- ⌘ On average, it took almost **200 days** to adjudicate an AB 633 claim. This figure is especially problematic given the fact that the vast of majority of claims were resolved short of a Settlement Conference or hearing.⁸⁰

The longer that garment workers have to wait for the resolution of their claims, the harder it is for them to meet basic subsistence needs. Each day that their claim remains unresolved places a disproportionate burden on garment workers who are deprived of minimum wage and overtime. Furthermore, the longer it takes to adjudicate a claim, the more time contractors have to shut down their operations and disappear — often making it much more difficult for workers to prove their cases. AB 633's expedited timeline should be the rule, not the exception, for all low-wage workers who file wage claims at DLSE.

■ DLSE appears to be understaffed relative to the number of workplaces it regulates, but it is unclear why the self-funding mechanism of AB 633 would not provide sufficient resources for DLSE to fully enforce the law.

As of March 2005, the ratio of registered garment businesses to the total number of DLSE employees was over **13 to 1**. This does not even account for companies that operate unregistered, let alone businesses in other low-wage industries which DLSE is responsible for inspecting. All DLSE staff who were interviewed mentioned that insufficient numbers of staff combined with a heavy caseload hampered their ability to enforce AB 633.

The California Legislature intended AB 633's garment registration fees to generate enough funds to implement and enforce the law.⁸¹ Between October 2002 and May 2005, DLSE received \$10,158,975 in garment registration fees.⁸² It is unclear how this funding has been spent to date.⁸³ ■

CHAPTER 5 • KEY RECOMMENDATIONS



Our Key Findings indicate that although AB 633 can be a potent tool for workers who are seeking their unpaid wages, DLSE has failed to fully enforce AB 633's provisions and thus many companies responsible for sweatshops continue to ignore the law. The following Key Recommendations⁸⁴ should be implemented by DLSE to ensure that AB 633 lives up to its original intent and that basic labor standards are a guarantee, not an illusion, for our state's garment workers:

- ✕ Enable workers to recover the full amount of their unpaid wages, as well as the penalties and damages they are owed under the law.
- ✕ Improve the identification and investigation of guarantors.
- ✕ Assess sanctions against garment contractors and guarantors that fail to comply with record-keeping requirements.
- ✕ Report regularly to the Legislature and the public on DLSE's expenditures and activities related to AB 633, and implement DLSE quality control mechanisms.

ENABLE WORKERS TO RECOVER THE FULL AMOUNT OF THEIR UNPAID WAGES, AS WELL AS THE PENALTIES AND DAMAGES THEY ARE OWED UNDER THE LAW

For the first time in administrative wage claims, garment workers are able to seek redress from companies that use sweatshop labor. Guarantors *are* paying workers, who are receiving some protection from the wage guarantee. However, the core purpose of the wage guarantee is undermined when workers recover *only a fraction* — less than one-third — of the total amount of their unpaid wages. Furthermore, workers are not recovering damages and penalties which usually more than double their claim amount, and which are designed to deter future workplace violations. Contractors and guarantors have no incentive to ensure that workers are paid their wages in the first place when they end up paying so little to resolve wage claims.

Two of our Key Findings in particular reveal serious problems with DLSE's enforcement of the wage guarantee. First, not only are guarantors generally settling claims for an extremely small portion (less than one-sixth) of workers' wages, but DLSE lets one out of every ten guarantors off the hook after workers settle with the contractor and/or the other guarantor(s) — even when workers are still owed wages. In these cases, DLSE abandons the wage guarantee by not providing workers with the option to seek the balance of wages owed against the remaining guarantor(s).

Second, even workers who prevail at a full administrative hearing are often unable to recover their wages. DLSE Orders are flagrantly disregarded by contractors and guarantors alike. Three out of every five guarantors and 18 out of 19 contractors against which Orders were issued did **not pay a single penny owed** to the worker, and DLSE did not enforce judgments entered after Orders were not paid.

Without judgment collection, garment companies will continue to view the administrative claims process as little more than an inconvenience, with no serious consequences attached to flouting DLSE's authority. Workers who spend time they cannot afford to waste and who take many risks to pursue claims may win a judgment that is a mere paper tiger. This kind of hollow result reduces AB 633 to little more than an empty promise.

If DLSE were to actively pursue judgment collection, we project two interrelated positive outcomes: 1) contractors and guarantors would take the claims process more seriously; and 2) workers' ability to recover their wages,

as well as damages and penalties — either through settlements, Orders, or judgments — would improve because workers would have more incentive not to settle up-front for such a small fraction of what they are owed.

DLSE must take the following steps so that workers have a meaningful opportunity to recover their unpaid wages, as well as attendant damages and penalties:

- ⌘ If a worker settles with a contractor and/or one or more guarantors for an amount less than wages owed, DLSE should automatically continue the claim against the remaining guarantor(s) to recover the balance of wages owed instead of terminating the case, unless the worker is fully informed of his/her right to proceed with the claim against all remaining guarantors but consents in writing to waive that right.
- ⌘ DLSE should ensure that workers (particularly those who are not represented by an advocate) understand that they are not required or being encouraged by DLSE to settle their claims for only a fraction of their wages, and that they are legally entitled to damages and penalties.
- ⌘ DLSE should inform workers about the possibility of recovering their unpaid wages from the Garment Special Fund, including providing written notice in each worker's primary language about the procedure and requirements for applying to the Fund.
- ⌘ DLSE must make collections a priority by enforcing judgments on behalf of workers⁸⁵ either in-house or through an effective arrangement with the Franchise Tax Board or appropriate state agency. DLSE should also exercise its authority to assess penalties against contractors and guarantors that do not pay outstanding judgments.⁸⁶

In addition, DLSE's implementation of the following three categories of Key Recommendations will also enhance workers' ability to receive full protection from AB 633's wage guarantee.

IMPROVE THE IDENTIFICATION AND INVESTIGATION OF GUARANTORS

Although workers have received some protection from the wage guarantee, guarantors are still able to evade responsibility when DLSE fails to consistently identify and investigate guarantors. Our Key Findings reveal that half the time, the burden of identifying potential guarantors falls on workers. Even though workers are one reliable source of information on guarantors, not all workers are aware of the identity of guarantors (for example, some may not sew labels into clothing or are unable to read the labels). DLSE has neglected its responsibility to utilize investigative resources and powerful means of guarantor identification at its disposal – including the authority to require contractors and guarantors to maintain and turn over business records.

Furthermore, DLSE does not routinely conduct a thorough and proper investigation of all potential guarantors identified in wage claims. Several troubling questions raised by our Key Findings include:

- ⌘ why some guarantors are not investigated *at all*, even after they are initially identified by workers;
- ⌘ why subpoenas are issued against guarantors less than 50% of the time; and
- ⌘ why some guarantors appear to be investigated but are subsequently dropped from DLSE Findings for no apparent reason.

Particularly problematic is anecdotal evidence from our case studies that may illuminate why some guarantors disappear from claims: in some cases, DLSE has relied upon the superficial assertions of a company that it has no business relations with the sweatshop, without requiring the company to provide any information explaining how its clothes were ordered for production at the sweatshop.

In order for the wage guarantee to hold any meaning, DLSE must consistently examine the actual business practices of potential guarantors through effective identification procedures and adequate investigations, as follows:

DLSE MUST TAKE MEANINGFUL STEPS TO IDENTIFY GUARANTORS IN ADDITION TO WORKERS' INITIAL IDENTIFICATION OF GUARANTORS.

- ⌘ DLSE should enforce current law requiring contractors to list on workers' itemized wage deduction statements the names of guarantors for which they made clothes during the pay period.⁸⁷
- ⌘ DLSE should enforce current law requiring contractors and guarantors to keep written contracts with each other, documenting information about price, quantity, style of garments to be produced, and the length of time in which the garments must be manufactured.⁸⁸
- ⌘ DLSE deputies and BOFE deputies should routinely request copies of garment registration applications and renewals of the contractor and guarantor(s) immediately after a worker files an AB 633 claim, and not on a discretionary basis. The current application for garment registration asks applicants to list the garment companies with which they do business, and are therefore a potential source for identifying guarantors.
- ⌘ To facilitate DLSE investigators' ability to identify guarantors and share information about guarantors, DLSE should set up a computerized master list of all guarantors included on contractors' garment registration applications and named in AB 633 wage claims, including business name and address, agent for service of process, and any associated labels identified in the wage claims. Tracking label names (which are often different from the company's legal name) will enable DLSE to identify and investigate guarantors more efficiently in the future. DLSE could simply add this data to the garment registration database that is publicly available on DLSE's website.⁸⁹

ASSESS SANCTIONS AGAINST GARMENT CONTRACTORS AND GUARANTORS THAT FAIL TO COMPLY WITH RECORD-KEEPING REQUIREMENTS

DLSE MUST CONDUCT ADEQUATE INVESTIGATIONS OF GUARANTORS.

- DLSE should make it a consistent practice to issue a subpoena for records against all guarantors and contractors.
- DLSE should establish clear guidelines for investigating guarantors, including the routine use of investigative checklists, forms, and questions (regarding, e.g., how to properly determine guarantor liability in the absence of records), as well as implement training and quality control mechanisms to ensure that DLSE staff follow these guidelines.
- In response to a subpoena for records, a company that claims it is not a guarantor should be required, at minimum, to provide DLSE with an affidavit affirming: a diligent search and reasonable inquiry have been made in an effort to comply with the demand; whether the inability to produce records is because a particular record has never existed, has been destroyed, or is no longer in the company's possession or control; the names and addresses of any and all businesses known or believed by that company to have possession, custody, or control of the record not produced, including those businesses the company contracted with during the claim period so that DLSE can identify the relevant guarantor(s); and any and all information the company has about how its garments were ordered for production at the garment contractor at issue.⁹⁰ Companies that fail to submit such an affidavit should not be dismissed from the claim; instead, such failure should trigger the legal presumption that a worker's competent testimony as to guarantor liability prevails in DLSE Findings and at the hearing.
- DLSE should give no weight to representations of fact regarding the business practices of a guarantor made by the guarantor's attorney at the Settlement Conference or hearing. DLSE should assess the facts based on bona fide business records submitted by the guarantor; if none are provided, DLSE should enforce the legal presumption that a worker's competent testimony as to guarantor liability prevails.⁹¹

Because shoddy or non-existent record-keeping enables sweatshops to conceal wage and hour violations and guarantors to hide their connection to sweatshop labor, AB 633 mandates that guarantors and contractors must keep and turn over written business records. These records are central to DLSE's ability to identify guarantors, adequately investigate a claim, and determine wages owed. Precisely for these reasons, record-keeping requirements are routinely ignored by contractors and guarantors attempting to avoid liability under the law.

DLSE currently possesses useful tools to enforce key record-keeping requirements. However, DLSE rarely, if ever, utilizes these tools. Without real repercussions for non-compliance with record-keeping laws, sweatshops will continue to operate illegally and off the books, and guarantors will remain invisible while they continue to profit from sweatshop labor.

DLSE must put real muscle behind record-keeping requirements that are integral to enforcing the wage guarantee, by implementing the following:

ASSESS MONETARY PENALTIES AND DAMAGES

- DLSE should exercise its authority to assess monetary penalties when, in response to a subpoena for records, a garment contractor claims it does not possess employee payroll records and/or written contracts indicating the price per unit agreed to between the contractor and guarantor(s).⁹²
- DLSE should exercise its authority to assess monetary damages against guarantors that in bad faith refuse to produce records or otherwise cooperate with a DLSE investigation.⁹³

REVOKE GARMENT REGISTRATION LICENSES

- ⌘ DLSE should exercise its authority to revoke a contractor's or guarantor's garment registration if the contractor or guarantor fails to maintain and/or produce written contracts for inspection during a DLSE investigation.⁹⁴
- ⌘ DLSE should exercise its authority to revoke a contractor's garment registration if it fails to comply with a subpoena for records,⁹⁵ or fails to include guarantor names on wage deduction statements.⁹⁶

DENY INCOMPLETE GARMENT REGISTRATION APPLICATIONS

- ⌘ DLSE should refuse to issue a garment registration license unless the registration application is completed in full. The current application for registration asks applicants to list the garment companies with which they do business. Often, this section of the application is left blank, but a license is issued nonetheless.

REPORT REGULARLY TO THE LEGISLATURE AND THE PUBLIC ON DLSE'S EXPENDITURES AND ACTIVITIES RELATED TO AB 633, AND IMPLEMENT DLSE QUALITY CONTROL MECHANISMS

DLSE PUBLIC ACCOUNTABILITY

It is imperative that DLSE leverage its resources to maximize enforcement of AB 633 as the Legislature intended when it enacted this landmark law. Full transparency and public accountability will help DLSE reach this goal.

The authors of this report call on DLSE to immediately prepare a report documenting its actual expenditures for AB 633, as well as how the agency spends the funds allocated for the administration of AB 633. DLSE should present this report to the Legislature at a public hearing. If DLSE believes that more resources are necessary to fully implement the law, it should provide a detailed explanation, including an analysis of any staffing deficiencies. Furthermore, DLSE should regularly report to the Legislature on its expenditures and activities related to AB 633.

Moreover, AB 633's final regulations authorize DLSE to distribute publications about industry practices and patterns of violations.⁹⁷ Since October 2002, DLSE has issued only 2 such publications.

DLSE should immediately issue an updated publication about common industry practices and violations. This information would be helpful in DLSE's assessment of how to most effectively allocate its resources.

DLSE INTERNAL TRAINING AND QUALITY CONTROL

DLSE should institute regular comprehensive trainings for DLSE personnel who work on AB 633 claims (such as BOFE deputies, DLSE deputies, and AB 633 hearing officers). Internal quality control mechanisms will help ensure that the law is fully enforced and that workers are able to recover what they are owed. ■

CHAPTER 6 • CONCLUSION



Investing in the well-being of California's low-wage workforce — by requiring corporations to act responsibly and to pay workers what they are owed — is critical to the long-term vitality of our state. Six years ago, the Legislature passed AB 633 in recognition of this fact. The bill's goal was simple: to guarantee basic labor protections in an industry notorious for forcing workers to toil in abysmal conditions — far below the bare minimum standards required by law.

This report illustrates how AB 633 can be a powerful tool for workers to recover their wages and hold corporations accountable. But poor implementation of AB 633 by DLSE and flagrant disregard of the law by many apparel companies effectively strip AB 633 of its power. Policy makers and labor agency officials must play an active role in addressing these challenges so that AB 633 operates as a potent law not only on paper, but also in practice. In this era of economic globalization, we share a common responsibility to nurture an economy that is vibrant and productive; corporations must be required to do their part to promote fair standards for living and working in this state. With proper enforcement of AB 633, we take critical steps in the right direction towards building a more just and healthy California. ■



APPENDIX A

KEY PROVISIONS OF ASSEMBLY BILL 633

The cornerstone provisions of AB 633, which took effect on January 1, 2000, include the following:

NEW WAGE GUARANTEE

- ➔ Manufacturers and retailers that contract to have garment manufacturing operations performed (“guarantors”) are liable for their garment contractors’ violation of minimum wage and overtime laws.⁹⁸

EXPEDITED CLAIMS PROCESS

- ➔ An expedited administrative process at DLSE of no longer than 120 days for garment workers to have their wage claims adjudicated.⁹⁹

STRENGTHENED RECORDKEEPING REQUIREMENTS

- ➔ Requirement that garment contractors and guarantors maintain certain records, including written contracts with detailed information about the contract terms and conditions. These records must be maintained for four years and made available to DLSE for inspection and copying, as a condition of garment registration and renewal.¹⁰⁰
- ➔ Requirement that DLSE issue a subpoena to garment contractors for books and records within 10 days of receiving an AB 633 claim, and requirement that garment contractors provide complete and accurate records within 10 days of receiving the subpoena as a condition of continued garment registration.¹⁰¹
- ➔ Requirement that as a condition of continued registration, contractors provide workers with information about the guarantors for which they are producing clothes, on the workers’ itemized wage deduction statements.¹⁰²

FUNDING FOR STATE ENFORCEMENT

- ➔ Increased registration fees for contractors and guarantors that operate their business in California, in order to fully fund enforcement of AB 633 as well as contribute to the state’s Garment Special Fund, which covers unpaid wages for workers unable to collect on a judgment in their favor.¹⁰³

SUCCESSOR LIABILITY FOR CONTRACTORS

- ➔ Establishment of successor liability so that garment contractors cannot shut down and subsequently re-open under a different name to avoid paying the wages of their former workers.¹⁰⁴

APPENDIX B

STATISTICAL APPENDIX

Following are supporting tables and data for selected Key Findings.

RANDOM SAMPLE

Our evaluation includes data from a random sample of 208 AB 633 claims filed by garment workers in Los Angeles.

Year Claim Filed	2000 ¹⁰⁵	2001	2002	2003	2004 ¹⁰⁶
# of AB 633 Claims (in Random Sample)	4	73	70	61	0

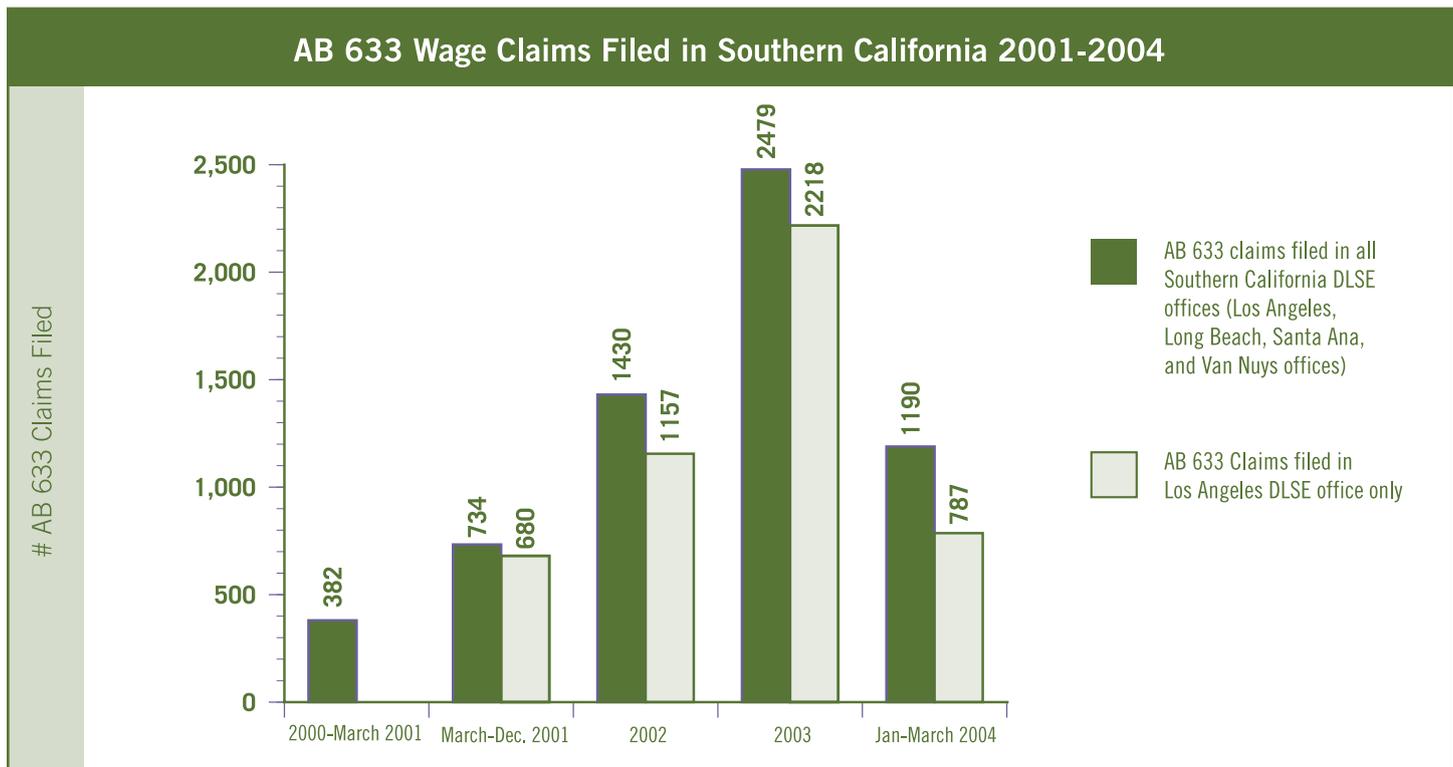
MULTIPLE CLAIMANT EPISODES

Fifty-five (33.5%) of the 164 episodes (against 54 contractors; 1 of the 54 contractors had 2 separate episodes filed against it by multiple claimants) involved more than one worker (not all of whom are part of the random sample) from the same factory.

A total of 356 workers (including 99 workers who are part of the random sample) were involved in the multiple claimant episodes. The number of workers per multiple claimant episode could be determined in 98 of those 99 claims. Of these 98 claims, the average number of workers per multiple claimant episode was 6.5 workers, and the median was 28 workers.

SINCE AB 633 BECAME LAW, THERE HAS BEEN A SHARP RISE IN THE NUMBERS OF GARMENT WORKERS WHO HAVE FILED WAGE CLAIMS, BUT THIS INCREASE STILL PALES IN COMPARISON TO THE TENS OF THOUSANDS OF WORKERS WHO HAVE BEEN DEPRIVED OF THEIR WAGES.

Of the 5833 AB 633 wage claims filed in Southern California¹⁰⁷ between March 31, 2001 and March 31, 2004, 83% were filed in the Los Angeles DLSE office.



THROUGH AB 633'S WAGE GUARANTEE, GARMENT WORKERS ARE STARTING TO RECOVER UNPAID WAGES FROM COMPANIES THAT USE SWEATSHOPS. THE OVERWHELMING MAJORITY OF THESE COMPANIES, HOWEVER, STILL DO NOT PAY A SINGLE PENNY TO WORKERS, WHO RECEIVE ONLY A SMALL PORTION OF WHAT THEY ARE OWED.

	AVERAGE ¹⁰⁸ RECOVERY PER WORKER	TOTAL RECOVERY
UCLA Preliminary Assessment ¹⁰⁹ (382 workers)	\$417	\$159,271
Our Evaluation (208 workers)	\$1,365	\$283,912

In our evaluation, workers in 157 (76%) of 208 claims, or 129 (79%) of 164 episodes, received money from the contractor and/or one or more guarantors. Of these:

TOTAL AMOUNT RECEIVED BY WORKERS	\$283,912
Total Amount Paid by Contractors	\$201,182
Total Amount Paid by Guarantors	\$ 82,730
Portion of Total Amount Paid by Guarantors that was Paid Pursuant to Settlements	\$ 65,782

Only 86 (15%) of 586 guarantors in 39 (34%) of 115 episodes paid any money to workers. It could not be determined whether the worker received any money or not from 1 guarantor out of 587. Workers who received money from a guarantor(s) may also have recovered money from the contractor. Guarantors paid workers for the following reasons:

	# Guarantors (of 586)
Settlement with guarantor only	59
Joint Settlement between worker, contractor and one or more guarantor(s)	7
Guarantor paid (all or part of) Order ¹¹⁰	7
Guarantor paid Order by Settlement ¹¹¹	10
Guarantor paid (all or part of) judgment	3 ¹¹²
Total	86

	AGAINST CONTRACTORS	AGAINST GUARANTORS
# Orders ¹¹³ Issued	19	20
# Orders by Settlement ¹¹⁴ Issued	14	15
Total	33	35 ¹¹⁵

The total amount of money workers received from contractors and/or guarantors was on average only 31% of initial wages claimed. The following chart contains data from a set of 160 (80%) out of 200 claims, or 136 (86%) out of 158 episodes, in which it was possible to determine the initial wages claimed and how much total money the worker received from the contractor and/or guarantor(s) (including claims in which workers did not receive any money but excluding claims in which workers voluntarily withdrew their claims).

(OF 160 CLAIMS)	TOTAL AMOUNT \$	AVERAGE AMOUNT \$
Wages Initially Claimed	\$857,274	\$5,358
Amount Received From Contractor and/or Guarantor(s)	\$267,026	\$1,669

GUARANTORS AND CONTRACTORS LOW-BALL SETTLEMENT AMOUNTS SO WORKERS RECOVER ON AVERAGE ONLY ONE-THIRD OF WAGES OWED, AND DLSE LETS SOME GUARANTORS COMPLETELY OFF THE HOOK BEFORE ALL WAGES ARE PAID.

	PRELIMINARY ASSESSMENT ¹¹⁶	OUR EVALUATION
Total # Claims	382	208
Total # Claims in which worker reached one or more settlements (with contractor and/or guarantor(s))	108	157 ¹¹⁷

SETTLEMENTS WITH CONTRACTORS AND/OR GUARANTORS

In 157 (76%) of 208 claims, or 129 (79%) of 164 episodes, workers reached one or more settlements with the contractor and/or one or more guarantor(s). Of these, for the 155 claims in which it was possible to determine the amount of the settlement(s):

- ➔ Total settlement amount: \$274,679 (97% of \$283,912, the total amount received by workers in the random sample; 34% of \$805,662, the total wages initially claimed in these 155 claims)
- ➔ Average settlement amount/claim: \$1,772

SETTLEMENTS WITH CONTRACTORS

Workers in 127 (61%) of 208 claims, or 112 (68%) of 164 episodes, settled with contractors (including 21 joint settlements). Of these, for the 125 claims in which it was possible to determine the amount paid by contractors (including contractors that paid \$0):

- ➔ Total settlement amount paid by contractors: \$198,611 (only 31% of \$646,841, the total wages initially claimed in these 125 claims)
- ➔ Average settlement amount/claim paid by contractors: \$1,589

SETTLEMENTS WITH GUARANTORS

Workers in 60 (29%) of 208 claims, or 42 (26%) of 164 episodes, entered into settlement agreements (including joint settlements and Orders by Settlement) with 150 guarantors. For 149 out of these 150 guarantors, it was possible to determine if and how much guarantors paid:

- ➔ Total settlement amount paid by guarantors: \$65,782 (80% of \$82,730, the total amount of money paid by all guarantors; 16% of \$407,153, the total wages initially claimed in these 60 claims)
- ➔ Average settlement amount/claim paid by guarantors: \$442

150 (26%) of the 587 guarantors entered into settlements with workers (including Orders by Settlement and joint settlements). Of these 150 guarantors that reached settlements with workers:

- ➔ 3, or 2%, settled before a Settlement Conference,
- ➔ 109, or 73%, settled at a Settlement Conference,
- ➔ 13, or 9%, settled after a Settlement Conference, but before a Hearing,
- ➔ 22, or 15%, settled at a Hearing,
- ➔ 1, or 1%, settled after a Hearing, but before an Order was issued, and
- ➔ 2, or 1%, settled after an Order was issued.

GUARANTORS AND CONTRACTORS LOW-BALL SETTLEMENT AMOUNTS SO WORKERS RECOVER ON AVERAGE ONLY ONE-THIRD OF WAGES OWED, AND DLSE LETS SOME GUARANTORS COMPLETELY OFF THE HOOK BEFORE ALL WAGES ARE PAID.

DLSE FINDINGS

DLSE issued Findings in 79 (55%) of 145 claims, or 62 (55%) of 112 episodes (in which it could be determined whether or not DLSE Findings were issued). Of these 79 claims or 62 episodes involving 365 (67%) of 545 guarantors:

- 186 (51%) of these 365 guarantors, in 61 (77%) of the 79 claims, or 46 (74%) of the 62 episodes, were assessed liability in DLSE Findings.
- Of the 186 guarantors against which DLSE Findings were issued, only 54 (29%) paid workers money. But these 54 guarantors paid over 70% (\$60,058 of \$82,730) of the total amount of money paid by all guarantors.
- Of the total of 86 guarantors who paid workers, 54 (63%) were assessed liability in DLSE Findings.

DLSE FAILS TO IDENTIFY GUARANTORS AND CONDUCT ADEQUATE INVESTIGATIONS OF GUARANTORS ON A CONSISTENT BASIS, THUS UNDERMINING THE WAGE GUARANTEE.

IDENTIFICATION OF GUARANTORS		
	Preliminary Assessment ¹¹⁸	Our Evaluation
Claims with one or more guarantor identified	112 (29%) of 382	125 (60%) of 208
Episodes with one or more guarantor identified	30 (16%) of 189	91 (56%) of 164

In our evaluation, the number of guarantors identified per claim ranged from 0 to 17. The average number of guarantors identified per claim was 2.8 (of all 208 claims).

METHOD OF INITIAL IDENTIFICATION ¹¹⁹	# Guarantors Identified (of all 587 guarantors)
WORKERS INITIALLY IDENTIFIED GUARANTORS BY:	296 (50%) (TOTAL)
Listing guarantor information on Addendum to Initial Claim form	115
Providing a (copy of) a label	26
Other methods (e.g., letter from advocate, listing on Initial Claim form)	92
A combination of 2 of the above methods	63
DLSE INITIALLY IDENTIFIED GUARANTORS BY:¹²⁰	277 (47%) (TOTAL)
Investigations (e.g., BOFE deputy visited factory or guarantor, DLSE asked for information from contractor and/or guarantor, contractor listed guarantor(s) on DLSE garment registration application, DLSE Findings mentioned guarantors)	96
Contractors' responses to DLSE subpoena	17
Notice of Claim or Meet and Confer ¹²¹	149
DLSE subpoena sent to guarantor ¹²²	15
CANNOT TELL HOW GUARANTORS WERE IDENTIFIED	14 (2%) (TOTAL)



GUARANTORS AND CONTRACTORS FREQUENTLY FAIL TO TURN OVER BUSINESS RECORDS, AND HALF THE TIME DLSE DOES NOT REQUIRE GUARANTORS TO PRODUCE ANY RECORDS AT ALL.

SUBPOENAS TO CONTRACTORS

DLSE issued subpoenas to contractors in 158 (79%) of 199 claims, or 133 (84%) of 158 episodes (in which it could be determined whether one had been issued). Of the subset of 147 claims and 127 episodes in which it could be determined whether or not the contractor provided documents:

- Contractors in 29 (20%) of these 147 claims, or 23 (18%) of 127 episodes, provided no documents in response to the subpoena, even though the claim did not settle near the subpoena response due date, nor did the worker withdraw his/her claim near the subpoena response due date.¹²³
- Contractors in only 76 (52%) of these 147 claims, or 66 (52%) of 127 episodes, provided documents in response to the subpoena. Documents were incomplete in 67 (88%) of these 76 claims, or 58 (88%) of these 66 episodes.

SUBPOENAS TO GUARANTORS

DLSE issued subpoenas to only 180 (38%) of the 475 guarantors against which it was possible to determine whether or not a subpoena had been issued (in 64 (46%) of 139 claims, or 52 (49%) of 106 episodes).

- Only 98 (54%) of the 180 guarantors that were issued subpoenas provided documents in response (in 47 (73%) of 64 claims, or 40 (77%) of 52 episodes).

SANCTIONS FOR RECORD-KEEPING VIOLATIONS ARE NOT PURSUED BY DLSE, THUS UNDERCUTTING DLSE'S POWER AND RESPONSIBILITY TO INVESTIGATE GUARANTORS AND ENFORCE THE WAGE GUARANTEE.

DLSE revoked the garment registration of only 1 contractor in only 1 (1%) of 81 episodes in which it could be determined whether garment registration revocation would have been an appropriate enforcement action. This contractor's registration was revoked for one year because of non-compliance with a DLSE subpoena. This episode involved 20 workers from the same factory who filed AB 633 claims. ■



ENDNOTES

¹ The bill was authored by Assembly Member Darrell Steinberg and co-authored by Senator Tom Hayden during the 1999-2000 Session. AB 633 is codified in amendments to California Labor Code sections 2671, 2675, 2675.5, 2676, 2677, and 2680, and the addition of 2673.1 and 2684, effective January 1, 2000. (All subsequent references to the California Labor Code are referred to as the “Labor Code.”) ² Edna Bonacich and Richard P. Appelbaum, *Behind the Label*, p. 181 (University of California Press, 2000) (referred to as *Behind the Label*); U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, “2000 Southern California Garment Compliance Survey” (Aug. 2000) (referred to as “2000 Garment Compliance Survey”) (on file with authors). This amount was calculated using a method described in *Behind the Label*: multiplying average annual back wages owed per garment factory (updated for the year 2000) by the “estimated [number] of garment shops in Los Angeles.” ³ California Trade and Commerce Agency, Office of Economic Research, “Apparel and Fashion Design” (June 2000) (on file with authors).

⁴ Los Angeles County Economic Development Corporation, “Los Angeles County Profile” (April 2004) (referred to as “Los Angeles County Profile”), available at http://www.laedc.org/data/about_LA_county/la_profile.shtml (last visited Aug. 29, 2005). ⁵ U.S. Department of Labor, News Release “Only One-Third of Southern California Garment Shops in Compliance With Federal Labor Laws” (Aug. 25, 2000) (referred to as “DOL News Release”), available at <http://www.dol.gov/esa/media/press/whd/sfwh112.htm> (last visited July 28, 2005). Because federal minimum wage and overtime are lower than California’s minimum wage and overtime, it is likely that the rate of violation of minimum wage and overtime laws in California exceeds 70%, the rate of violation of federal minimum wage and overtime laws. ⁶ *Behind the Label*, p. 2.

⁷ Sweatshop Watch and Garment Worker Center, “Crisis or Opportunity? The Future of Los Angeles’ Garment Workers, the Apparel Industry and the Local Economy,” p. 5 (Nov. 2004) (referred to as “Crisis or Opportunity?”), citing 2000 U.S. Census PUMS data. ⁸ “Poverty Thresholds 2000,” 2000 U.S. Census (referred to as “Poverty Thresholds 2000”), available at <http://www.census.gov/hhes/www/poverty/threshld/thresh00.html> (last visited July 26, 2005). ⁹ Representing these workers in a federal lawsuit against the manufacturers and retailers, the Asian Pacific American Legal Center (APALC) served as lead counsel, along with co-counsel Bird, Marella, Boxer & Wolpert, the ACLU of Southern California, Rothner, Segall, Bahan & Greenstone, Hadsell & Stormer, the Asian Law Caucus, and the ACLU Immigrants’ Rights Project. The lawsuit resulted in over \$4 million in payments to the workers. ¹⁰ See endnote 3 above. ¹¹ See endnote 4 above. ¹² See endnote 5 above.

¹³ Department of Industrial Relations, Division of Occupational Safety and Health, “Garment Survey 2000” (Aug. 25, 2000) (on file with authors). ¹⁴ Shoddy or non-existent record-keeping (including failure to keep accurate and complete employee

payroll records) is part and parcel of worker exploitation in garment sweatshops because it is easier for factories to violate wage and hour laws without a paper trail, and harder for workers to prove their true hours worked and wages owed.

¹⁵ Paul M. Ong and Jordan Rickles, “Analysis of the California Labor and Workforce Development Agency’s Enforcement of Wage and Hour Laws,” p. 69 (Feb. 2004) (referred to as “Analysis of Enforcement of Wage and Hour Laws”), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1054&context=lewis> (last visited July 28, 2005). ¹⁶ See endnote 15 above. ¹⁷ *Behind the Label*, p. 16; Los Angeles County Profile.

¹⁸ California Employment Development Department, Industry Employment Data, Monthly and Annual Average Estimates, “Los Angeles-Long Beach-Glendale Metro Div Current Month Industry Employment with Descriptive Narrative (Press Release)” (July 22, 2005), available at [http://www.calmis.ca.gov/file/lfmonth/la\\$PDS.pdf](http://www.calmis.ca.gov/file/lfmonth/la$PDS.pdf) (last visited July 28, 2005) (data is for “apparel manufacturing” employees). ¹⁹ According to the 2000 Census, 70% of garment workers in Los Angeles are Latino, and 20% are Asian. Roughly 85% of the garment workforce are women, and 94% are immigrants. *Behind the Label*, p. 174. ²⁰ “Crisis or Opportunity?,” p. 4 (based on Census 2000 PUMS data). ²¹ “Crisis or Opportunity?,” p. 4. ²² *Behind the Label*, p. 2. ²³ See endnotes 7 and 8 above. ²⁴ The final implementing regulations became effective in October 2002, nearly three years after the law’s passage. This delay cost the state millions of dollars because increased registration fees mandated by AB 633 were not collected – fees that were intended to fund AB 633’s enforcement. In the period from October 2002 to May 2005, over \$10 million in garment registration fees were collected. Data from DLSE Licensing Unit, “Garment Applications and Amounts by Month on or after 10/9/2002,” Report run on May 17, 2005 (referred to as “Garment Applications and Amounts Report”) (on file with authors). ²⁵ The random sample was generated using SPSS statistical analysis software and consisted of two runs of 104 out of 1044 claims. The findings from this random sample of 208 claims generally have a 5.1% margin of error with a 90% confidence interval, although the margin of error may vary by question. ²⁶ Six of the random sample cases were filed by the workers at DLSE before March 31, 2001, but not docketed (entered by DLSE in its claim tracking system) until on or after March 31, 2001. ²⁷ Because most AB 633 claims involve multiple defendants (i.e., a contractor and one or more guarantors) whose interests are not always aligned, it is common for AB 633 claims to conclude at different times against different defendants. For example, a guarantor may settle with the worker shortly after she files an AB 633 claim, but the contractor may never settle, which usually results in the claim proceeding to judgment — a process that may take many months. In order to give an accurate snapshot of how the AB 633 process works from start to finish, the random sample was selected from wage claims in which the claim had concluded

ENDNOTES CONTINUED

against each and every defendant. Including open claims in the random sample would have resulted in the omission of critical information necessary to inform a reliable understanding of the AB 633 claims process.²⁸ Review and analysis of these case files was conducted by a team of students and volunteers working under the supervision of Judy Marblestone, Attorney and Equal Justice Works Fellow at APALC.²⁹ Gary Blasi, *et al.*, “Implementation of AB 633: A Preliminary Assessment,” p. 4 (July 26, 2001) (referred to as “Preliminary Assessment”), available at <http://www.law.ucla.edu/AB633PreliminaryReportDraft72601.htm> (last visited July 26, 2005). This Preliminary Assessment is the first and only other evaluation of AB 633 conducted since it passed.³⁰ Episodes involving more than one worker from the same factory are referred to as “multiple claimant episodes.” Not all workers in the multiple claimant episodes are part of the random sample. There are more episodes than contractors in the random sample because 4 contractors were each involved in 2 separate episodes apiece.³¹ See Chapter 3: Methodology for more information about the random sample. Some comparisons are made in this Chapter to a Preliminary Assessment of AB 633 conducted by the UCLA School of Law. The Preliminary Assessment analyzed the implementation and enforcement of AB 633 during the first 15 months of its implementation, from January 2000 to March 2001. See endnote 29 above.³² Letter dated December 21, 2000 to Assembly Member Gloria Romero from State Labor Commissioner, Arthur Lujan (on file with authors).³³ Data from California Labor and Workforce Development Agency (received June 20, 2005 and July 29, 2005) (on file with authors).³⁴ See endnotes 5 and 18 above.³⁵ Comparison data for the first 15 months of implementation was taken from the Preliminary Assessment, p. 3. See endnote 29 above. Amounts were recovered from settlements or Order, Decision, or Awards (referred to in our evaluation as “Orders”). Average amount recovered could not be assessed against average amount claimed because this data was not available in the Preliminary Assessment. In the Preliminary Assessment, the median amount claimed per worker was \$920. In our evaluation, the median amount claimed per worker was \$1553.³⁶ An Order results from a full administrative hearing and includes a statement of facts, explanation of the law, and the reasoning behind the Order award. Orders differ from “Orders by Settlement,” which are issued when claims settle at the hearing, but before any evidence or testimony is introduced.³⁷ This amount was paid by 86 guarantors, and includes payments resulting from settlements, Orders, and judgments.³⁸ This was calculated from the set of 20 guarantors against which Orders were issued; 8 of 20 guarantors paid the Order and paid it in full.³⁹ Comparison data for the first 15 months of implementation was taken from the Preliminary Assessment, pp. 3, 6. See endnote 29 above.⁴⁰ Settlements include Orders by Settlement (issued when settlements are reached at the hearing,

but prior to the presentation of evidence by any party) and joint settlements (settlements between the worker, the contractor, and one or more guarantors; settlement payments come from one or more of these defendants who are parties to the joint settlement).⁴¹ All names of garment workers in this and subsequent Case Studies of this report have been changed to maintain worker anonymity. Technical terms referencing various aspects of the AB 633 claims process are defined in **Overview of AB 633 Claims Process**, p.16.⁴² This percentage was derived from analyzing aggregate wages for all workers in the random sample; some individual workers received less than 31% of their wages initially claimed, some received more.⁴³ This average was calculated from a set of 352 guarantors, which included guarantors that were potentially liable for the worker’s wages but paid no money to the worker. This set excluded (a) guarantors against which the worker voluntarily withdrew or abandoned his or her claim; and (b) guarantors in claims where workers had already received *all* of his or her wages claimed, thus eliminating any potential liability for remaining guarantors.⁴⁴ This was calculated from the set of 20 guarantors against which Orders were issued; 12 of 20 guarantors paid nothing. Our evaluation also found that only 1 of 19 contractors paid workers as a result of an Order. This finding further underscores the need to fully enforce the wage guarantee.⁴⁵ For 2 of these judgments, DLSE collected only a small portion (just over 5%) of the judgment amount.⁴⁶ Pseudonym.⁴⁷ See Labor Code sections 98.2(i) and 98.3 (a).⁴⁸ See California Revenue and Taxation Code section 19290 (referred to as “Revenue and Taxation Code”).⁴⁹ California State Auditor, “Franchise Tax Board: Significant Program Changes Are Needed to Improve Collections of Delinquent Labor Claims,” pp. 1, 13 (May 2004) (referred to as “FTB Report 2004”), available at <http://www.bsa.ca.gov/bsa/pdfs/2003-131.pdf> (last visited July 27, 2005). The FTB is authorized to collect the delinquent “fees, wages, penalties, costs, and interest (claims) that result from labor law violations by California employers,” including violations of AB 633. An analysis of claims referred to the FTB in 2001-2003 showed that the FTB collected full or partial payment on only 20% of these claims.⁵⁰ FTB Report 2004, pp. 18-19.⁵¹ FTB Report 2004, p.13 (based on a sample of 60 claims).⁵² FTB Report 2004, p. 18.⁵³ For the purposes of this report, a joint settlement is one between a worker, the contractor, *and* one or more guarantors. Workers entered into joint settlements in 21 (10%) of the 208 claims in our evaluation.⁵⁴ This is particularly true when considering the abysmal rate of recovery on Orders even when workers prevail at a hearing. See endnote 44.⁵⁵ This percentage was derived from comparing *aggregate* wages received and claimed by all workers in the random sample for whom wage data was available; some individual workers received less than this percentage of their wages initially claimed, some received more.⁵⁶ See endnote 55.⁵⁷ See endnote 55.⁵⁸ Multiple guarantors are typically involved in each AB 633 claim. The average number of guarantors identified per claim in

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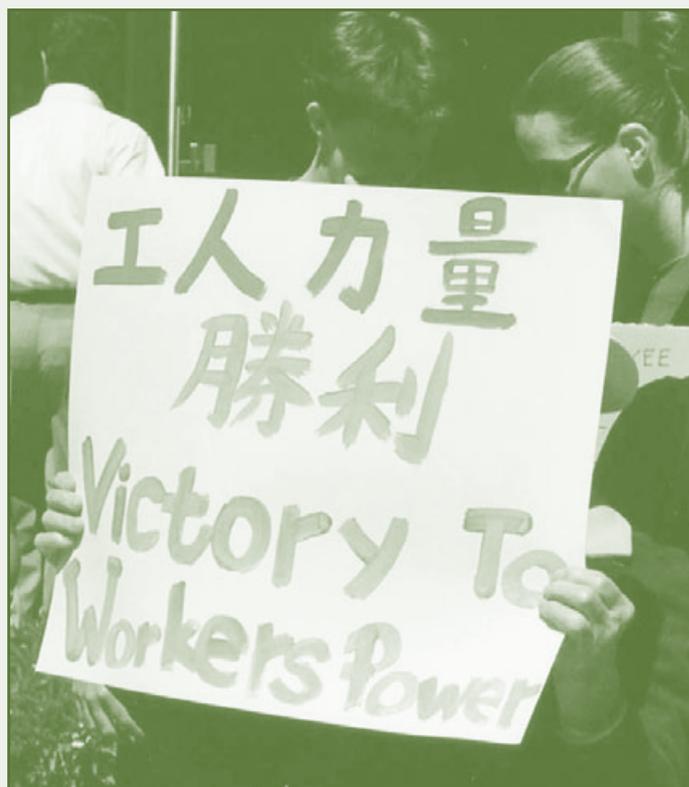
our evaluation was 2.8.⁵⁹ Pseudonyms.⁶⁰ See Labor Code section 2675.5.⁶¹ See Labor Code section 2673.1(d)(3). When more than one guarantor is identified, DLSE must determine each guarantor's share of liability. The average number of guarantors identified per claim in our evaluation was 2.8.⁶² In our evaluation, we determined that a guarantor was "identified" if DLSE had taken some step to notify the guarantor of its potential liability, including any of the following: sending a notice of the claim and settlement conference, sending a subpoena, assessing liability in a Findings and Assessment (referred to in our evaluation as "DLSE Findings"), holding a hearing, and/or issuing an Order.⁶³ It is helpful to analyze guarantor identification by *episode* in order not to overstate the data. See **Chapter 3: Methodology**. Workers from the same factory who file wage claims together, or around the same time, often work on clothing for the same guarantors; if each guarantor were counted once per *claim* filed by each worker, the number of guarantors identified would be artificially inflated due to duplicative counts.⁶⁴ Comparison data for the first 15 months of implementation was taken from the Preliminary Assessment, pp. 4-5. See endnote 29 above. In the Preliminary Assessment, a guarantor was "identified" if the guarantor was entered into DLSE's computer tracking system, signifying that some step had been taken to notify the guarantor of its potential liability.⁶⁵ See **Appendix B** for detailed data. It is commendable that DLSE seeks information from workers about guarantors. However, DLSE's over-reliance on workers for information neglects DLSE's independent obligation to conduct adequate investigations. In our evaluation, we determined that workers identified guarantors by submitting labels of clothes they made at the contract shop; submitting lists of guarantor names via advocates who were representing them in their claims; and/or listing the guarantors or their associated clothing labels on DLSE's "Addendum" form as part of filing the initial claim. It is likely that workers verbally identified additional guarantors to DLSE investigators, but this method of identification by workers was not possible to discern from a manual review of the case files. Presumably, any instances in which guarantors were initially identified through worker testimony have been subsumed under other methods of identification otherwise attributable to DLSE's identification of guarantors.⁶⁶ See Labor Code section 2673.1 (d)(3).⁶⁷ Over 70% of the 150 settlements entered into by guarantors occurred at the "Meet-and-Confer" settlement conference (referred to in our evaluation as the "Settlement Conference"), when DLSE Findings were issued. Guarantors who were assessed liability in DLSE Findings were more likely to pay workers. Over 60% of the 86 guarantors who paid workers were assessed liability in DLSE Findings.⁶⁸ Pseudonym.⁶⁹ This data may include guarantors DLSE could not locate, but this was not possible to determine since no indication to that effect was written in the case file; it does not include guarantors against which workers voluntarily withdrew or abandoned their claims.⁷⁰ Pseudonym.⁷¹ See Labor Code section 2673.1(d)(1).⁷² See California Code

of Regulations section 13659 (a) and (b) (referred to as "Code of Regulations").⁷³ See Code of Regulations section 13659 (c).⁷⁴ Incomplete payroll records are used to cover up wage and hour violations. In addition, payroll records are manipulated in a variety of ways to cheat workers out of the wages they are owed. For example, many garment workers are forced to work "off-the-clock": to punch their time cards well after they have started working, and to punch out long before they stop working. Time cards are routinely doctored to reflect fewer hours than are actually worked, and workers are then required to sign falsified time cards in order to get paid. Documents indicating piece rate production are also routinely doctored to indicate fewer pieces than are actually sewn. Pay stubs are routinely falsified to indicate higher wage rates than are actually paid to workers.⁷⁵ This data was analyzed from the subsets of episodes in which it could be determined whether or not DLSE had issued a subpoena to the contractor and whether or not documents were provided. See **Appendix B** for detailed explanation of data. Episodes in which contractors did not provide any documents in response to the subpoena were *excluded* from our analysis if the claim settled shortly (approximately one month) after the subpoena response due date, if the worker withdrew his/her claim, or if the contractor could not be located to issue the subpoena. It is helpful to analyze subpoena compliance by *episode* in order not to overstate the data; if subpoena compliance were analyzed *per claim* filed by each worker, the compliance rate would be artificially inflated due to duplicative counts in cases where multiple workers filed claims against the same contractor.⁷⁶ No DLSE case files contained a written contract submitted by a contractor, nor any itemized wage deduction statements listing guarantor names. It is possible that such documents were submitted to the Bureau of Field Enforcement (BOFE) and are maintained in separate files to which we did not have access.⁷⁷ This data was analyzed from the subsets of episodes in which it could be determined whether or not DLSE had issued a subpoena to the guarantor and whether or not documents were provided. See **Appendix B** for detailed explanation of data.⁷⁸ Of the 98 guarantors that provided documents, nine provided copies of a written contract. It is possible that written contracts for an additional number of guarantors were submitted to the Bureau of Field Enforcement (BOFE) and are maintained in separate files to which we did not have access.⁷⁹ See Labor Code section 2673.1(d)(1) and 2675; Code of Regulations section 13659 (b) and (c).⁸⁰ Workers in less than half of the claims participated in Settlement Conferences. Hearings were held in only 17% of the claims.⁸¹ See Labor Code sections 2674.2 and 2675.5.⁸² Garment Applications and Amounts Report.⁸³ It is possible that a portion of this amount is being deposited into the Garment Special Fund to pay workers who cannot collect wages owed from contractors and/or guarantors. See Labor Code section 2675.5.⁸⁴ Interviews with DLSE staff informed a number of these recommendations.⁸⁵ See Labor Code sections 98.2(i) and 98.3(a).⁸⁶ See Labor Code section 2678 (a)(1).⁸⁷ See Code of

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Regulations section 13659 (c).⁸⁸ See Code of Regulations section 13659 (a) and (b); Labor Code section 2673 (e).⁸⁹ See “DLSE Garment manufacturers and contractors registration database,” available at <http://www.dir.ca.gov/databases/dlse/r/Garmreg.html> (last visited July 26, 2005).⁹⁰ These requirements mirror those mandated under California Code of Civil Procedure section 2031.230.⁹¹ See Code of Regulations section 13655.⁹² See Labor Code sections 2673 and 2678 (a)(3).⁹³ See Labor Code section 2673.1(e).⁹⁴ See Code of Regulations section 13659 (a) and (b).⁹⁵ See Labor Code section 2673.1(d)(1).⁹⁶ See Code of Regulations section 13659 (c).⁹⁷ See Code of Regulations section 13632.⁹⁸ See Labor Code sections 2671 and 2673.1.⁹⁹ See Labor Code section 2673.1.¹⁰⁰ See Code of Regulations section 13659.¹⁰¹ See Labor Code section 2673.1 (d)(1).¹⁰² See Code of Regulations section 13659 (c).¹⁰³ See Labor Code section 2675.5 and Code of Regulations section 13635.¹⁰⁴ See Labor Code section 2684.¹⁰⁵ Six of the random sample cases were filed by the workers at DLSE before March 31, 2001, but not docketed (entered by DLSE in its claim tracking system) until on or after March 31, 2001, which is why they are included in the random sample.¹⁰⁶ There are no cases in 2004, because the random sample includes only claims docketed against the first defendant between Jan. 1, 2004 and Feb. 18, 2004 and none of these claims were closed for all defendants based on data provided by DLSE on April 6, 2004.¹⁰⁷ Southern California includes the Los Angeles, Long Beach, Santa Ana, and Van Nuys DLSE offices.¹⁰⁸ Both averages are calculated using the total number of workers in each Assessment (382 in the Preliminary Assessment and 208 in our Evaluation). Thus, the averages are probably slightly lower than they should be because they include claims in which workers received no money because they voluntarily withdrew their wage claims, thus relieving defendants of any potential legal responsibility to pay. The average recovery per worker in our Evaluation rises to \$1,669 if it is calculated from the set of 160 claims in which the worker did not voluntarily withdraw or abandon his or her claim (comparable data is not available for the Preliminary Assessment).¹⁰⁹ Preliminary Assessment, p. 4. See endnote 29 above.¹¹⁰ An “Order” results from a full administrative hearing. Such Orders include a statement of facts, explanation of the law, and the reasoning behind the Order award.¹¹¹ “Orders by Settlement” are issued when claims settle at the hearing, but before any evidence, testimony, etc. is introduced. Defendants who enter Orders by Settlement waive their right to a full administrative hearing. If they do not pay the Order by Settlement amount, then the Order by Settlement will be entered as a final judgment.¹¹² One of these judgments was paid in satisfaction of an Order and 2 judgments were paid in satisfaction of Orders by Settlement.¹¹³ See endnote 110 above.¹¹⁴ See endnote 111 above.¹¹⁵ An additional 4 Orders which were issued in favor of guarantors (i.e., guarantors were

not found liable) are not included here.¹¹⁶ See endnote 29 above.¹¹⁷ Settlements include negotiated settlements reached prior to a hearing, as well as Orders by Settlement (settlements reached at the hearing).¹¹⁸ Preliminary Assessment, pp. 4-5. See endnote 29 above.¹¹⁹ Initial identification was determined by locating the document in each case file with the earliest date on which the guarantor’s name appeared.¹²⁰ The number of guarantors whose initial identification is attributed to DLSE may be inflated because workers may have initially identified some of these guarantors, told DLSE which labels they worked on, and then DLSE followed-up on the worker testimony. However, it was impossible to determine this information from the case files, so such initial identification is attributed to DLSE.¹²¹ For guarantors that were mentioned for the first time on the Notice, it is unclear exactly how they were identified so such identification is attributed to DLSE.¹²² DLSE sent subpoenas to 180 guarantors. However, the number in this chart is much lower because it signifies guarantors that were *initially* identified (first mentioned in the case file) through the subpoena (as opposed to, e.g., guarantors that were first identified by workers and then DLSE sent a subpoena).¹²³ Claims in which contractors did not provide any documents in response to the subpoena were excluded if the claim settled shortly (up to approximately one month) after the subpoena response due date, if the worker withdrew his/her claim, or if the contractor could not be located to issue the subpoena.



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