

THE WAGE JUSTICE CENTER

*A California Nonprofit Organization
Dedicated to Enforcing the Basic Rights of California's Workers*

3250 WILSHIRE BOULEVARD • 14TH FLOOR • LOS ANGELES • CALIFORNIA • 90010
TELE: (213) 273-8400 • FAX: (213) 785-1708 • WEB: WWW.WAGEJUSTICE.ORG

PATHWAYS TO JUSTICE CONFERENCE

SESSION MATERIALS

Session: Mechanic's Lien Litigation: Combating Wage Theft in the Day Laborer Community

Presenters: Matthew N. Sirolly, Oscar Espino-Padron, and Renee Amador

Enclosed please find the following supplemental materials related to the above session:

- ATTACHMENT 1: MECHANIC'S LIEN CLINIC FLYERS AND POPULAR EDUCATION MATERIALS
- ATTACHMENT 2: SAMPLE MECHANIC'S LIEN CLAIM
- ATTACHMENT 3: SAMPLE MECHANIC'S LIEN FORECLOSURE COMPLAINT
- ATTACHMENT 4: SAMPLE LIS PENDENS
- ATTACHMENT 5: SAMPLE LEGAL RELEASE OF MECHANIC'S LIEN

ATTACHMENT 1



El Centro de Justicia de Sueldos

¿Trabajó en Una Propiedad y el Patrón no le Quiere Pagar?

El Centro de Justicia de Sueldos quizás le puede ayudar. Usted tiene el derecho a un *reclamo contra la propiedad* para recuperar su sueldo si:

- **No han pasado más de 90 días desde que se completo el proyecto**
- **Trabajó en una propiedad como empleado ó trabajador**
- **Trabajó haciendo instalaciones, pintura u otros cambios permanentes en la propiedad**

Este reclamo se llama un "derecho de retención" que permite asegurar su sueldo contra la propiedad para recuperar su sueldo si el dueño de la propiedad o el empleador no quiere pagar su sueldo.



***Para asistencia, por favor asista a nuestra clínica legal.
Citas son preferible.***

Las clínicas son el primer y el tercer Miércoles de cada mes a las 5:30PM en el
3250 Wilshire Blvd., Ste. 1400, Los Angeles, California 90010
(en la esquina sur-oeste de Wilshire/New Hampshire)

Estacionamiento público esta disponible en la esquina de 6th/Vermont
Tel: (213) 273-8400 • Fax: (213) 785-1708 • Web: www.wagejustice.org



Did You Work on a Property & Your Boss Did Not Pay You?

The Wage Justice Center might be able to help you. You may have a right to a claim against the real property you worked on if:

- **90 days have not passed since construction was finished**
- **You worked on the property as an employee/laborer**
- **You worked on installations, painting, demolition, planting or other permanent improvements on the property**

This type of claim is called a "laborer's lien" (or "mechanic's lien") that allows you to secure your wages against the property in order to recover your wages if the owner of the property or your employer fails to pay you.



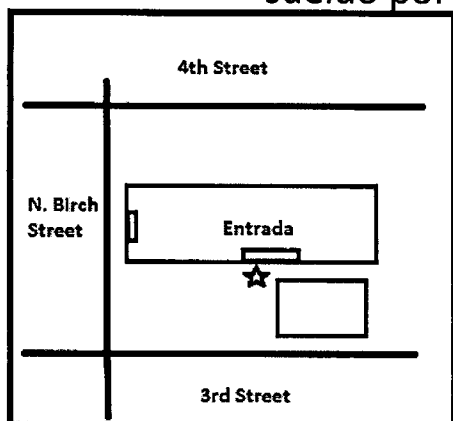
***For assistance, please attend our mechanic's lien clinic.
Appointments are highly encouraged.***

Clinics are held the first and third Wednesday of the month at 5:30 PM at
3250 Wilshire Blvd., Ste. 1400, Los Angeles, California 90010
(at southwest corner of Wilshire/New Hampshire)

Public parking is available on the corner of 6th/Vermont
Tel: (213) 273-8400 • Fax: (213) 785-1708 • Web: www.wagejustice.org

¿Su patrón no le ha pagado?

Venga a la **Clínica Legal de Derechos Laborales Para Jornaleros**
Especializamos en ayudar a jornaleros que han sido víctimas de robo de sueldo por parte de un empleador en la construcción.



Primer Sábado de cada mes, 4 pm

El Centro Cultural de México

313 N Birch Street

Santa Ana, CA 92701

Presentado por

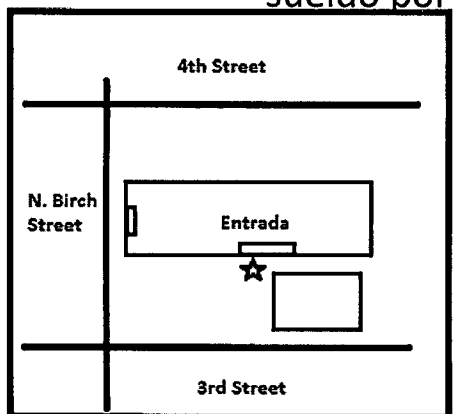
El Centro de Justicia de Sueldo

Una organización sin fines de lucro que ofrece servicios legales gratis a personas de bajos ingresos.

¿Preguntas? Llame al (949) 342-6115

¿Su patrón no le ha pagado?

Venga a la **Clínica Legal de Derechos Laborales Para Jornaleros**
Especializamos en ayudar a jornaleros que han sido víctimas de robo de sueldo por parte de un empleador en la construcción.



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Una organización sin fines de lucro que ofrece servicios legales gratis a personas de bajos ingresos.

¿Preguntas? Llame al (949) 342-6115

Siempre recuerde notar:

- Nombre del patrón
- Número de teléfono y la dirección del patrón
- Número de licencia de contratista del patrón (si lo tiene)
- Número de placas del carro del patrón
- Días y horas trabajadas en el proyecto
- Dirección de la propiedad donde hizo el proyecto
- Nombres de los propietarios de la propiedad donde hizo el proyecto

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- Número de placas del carro del patrón
- Días y horas trabajadas en el proyecto
- Dirección de la propiedad donde hizo el proyecto
- Nombres de los propietarios de la propiedad donde hizo el proyecto

Derecho de Retención Para Recuperar Sueldos

Mi sueldo debido es menos del el valor que la propiedad aumento con mi esfuerzo.



El derecho de retención es una opción poderosa que existe antes de ir a corte o a la comisión laboral.



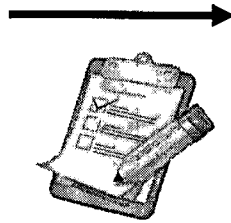
¿Que Es?

El **derecho de retención** es un derecho legal para trabajadores de construcción, sin importar su estatus migratorio, dado por el Código Civil de California y la Constitución de California que permite asegurar su sueldo contra la propiedad donde usted trabajo si el dueño o empleador no le pago por su trabajo.

¿Cómo Funciona?

Requisitos Básicos

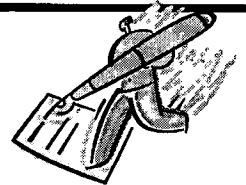
- Trabajo en la propiedad como empleado del dueño, contratista o sub-contratista
- No han pasado mas de 90 días desde que se completo el proyecto
- Trabajo haciendo instalaciones, pintura u otros cambios permanentes en la propiedad



Preparación del Derecho de Retención

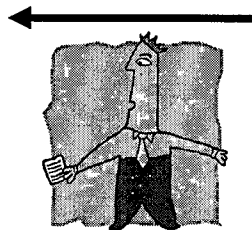
El derecho de retención se obtiene preparando un documento que contiene un resumen del reclamo basado en los requisitos de el Código Civil de California, cual incluye la **dirección, nombre de el dueño, y cantidad debida.**

Por esa razón es importante mantener un registro sobre donde trabajo (la dirección), cuantas horas trabajo por día, y cuanto le han pagado.



Registración de el Derecho de Retención

El derecho de retención se registra con la **Oficina de Registros de Los Ángeles**. Esto afecta el título de la propiedad y da saber al publico que existe un reclamo.

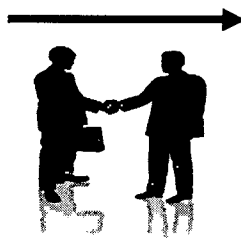


Notificación al Dueño y Empleador

Copias de el derecho de retención se envían por carta certificada al empleador y al dueño de la propiedad dándoles notificación de el reclamo y las consecuencias.

Tiempo de Negociar

El dueño y el contratista tienen **90 días** para pagar desde cuando se registro el documento dando el derecho de retención. El derecho de retención le pone presión al dueño y al contratista para negociar y llegar a una solución.



Presentación de Demanda

Antes de **completar los 90 días** desde que se registro el derecho de retención, con la ayuda de un abogado usted puede presentar una demanda en la corte para hacer un juicio hipotecario de la propiedad si no se llega a un acuerdo.

Construction Laborer's Lien to Recover Your Unpaid Wages

Owed unpaid wages for construction work? A construction lien ("mechanic's lien") may be the answer!



What is it?

A lien is a powerful tool you can use before you go to court or the labor commissioner to "attach" or hold property.

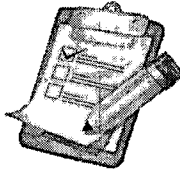


A **construction laborer's lien** (also known as a mechanic's lien) is a legal right for workers, regardless of your immigration status, provided by the California Civil Code and the California Constitution that allows you to secure your wages against the real property that you worked on to improve if the owner or your employer does not pay you. See Civil Code §§ 8400-8494 Cal. Constitution article 14 § 3.

How Does it Work?

Basic Requirements

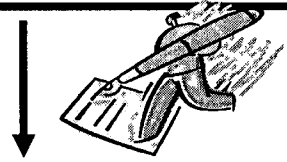
- You worked on the property as an employee/laborer of the owner or a contractor. You **do not** need to have been hired directly by the property owner.
- Less than 90 days have passed since the project was completed
- You did installation, demolition, painting, or other work that permanently changed the property



Preparing the Laborer's Lien

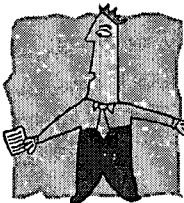
To create the lien, you must prepare a form document that contains certain information required by the California Civil Code, including the **property address, owner's name, and amount owed.**

For this reason, it is important to keep a record of where you worked (the address), how many hours you worked, and how much you have been paid.



Recording the Laborer's Lien

The lien document is registered with the **Los Angeles County Recorder**. This affects the title of the property and notifies the public and potential buyers that you have a lien claim.



Notifying the Owner and Employer

Copies of the lien document are sent via certified mail to the employer and/or the property owner, giving them notification of the lien claim and its consequences.



Time to Negotiate

The property owner or employer have **90 days to pay** from the date your lien is recorded. The lien puts a lot of pressure on the owner and contractor to negotiate with you and come to an agreement to pay your wages.



Filing a Lawsuit

Within 90 days after recording the lien document, you must file a lawsuit in court to foreclose on and enforce the lien if no agreement can be reached. Often such a lawsuit is unnecessary, but if it is necessary you may need an attorney to help you with it.

ATTACHMENT 2

RECORDING REQUESTED BY:

CLAIMANT NAME

WHEN RECORDED MAIL TO:

CLAIMANT NAME

C/O THE WAGE JUSTICE CENTER
3250 WILSHIRE BLVD., 13TH FLOOR
LOS ANGELES, CALIFORNIA 90010
TELEPHONE: (213) 273-8400
FACSIMILE: (213) 785-1708

MECHANICS LIEN FOR UNPAID VALUE OF LABOR PERFORMED

NOTICE IS HEREBY GIVEN that pursuant to California Civil Code § 8400 et seq., Claimant *NAME OF CLAIMANT*, as a "laborer" under Civil Code § 8024, claims a lien upon the real property and buildings, improvements or structures thereon, as described below, and recites that:

1. Claimant was employed by *NAME OF EMPLOYER*, ("Employer") and performed labor on the jobsite described below.
2. The Employer failed to pay the Claimant the agreed wages or legal minimum compensation for work performed by Claimant at this jobsite, so that the Claimant has not been paid for his labor. There are due and owing contributions totaling _____ in unpaid wages. Claimant is also owed interest on this amount at 10% per annum and the costs of verifying and recording this lien. This sum is the demand by Claimant, after deducting all just credits.
3. The property on which the work was performed, and upon which this lien is made is described as follows:

Address: *ADDRESS*

Assessor's Parcel Number: _____

Legal Description: _____

4. The Claimant performed labor in *DESCRIBE IMPROVEMENTS* and other home improvement services during the period of *DATE* to *DATE*. This labor was necessary for the construction, alteration or repair of buildings, improvements or structures upon the described property.

5. The name of the owners or reputed owners of the described property are: *NAME/S OF OWNER/S*.

Executed ON _____, in the County of Los Angeles, State of California.

NAME OF CLAIMANT

NOTICE OF MECHANIC'S LIEN

ATTENTION!

Upon the recording of the enclosed MECHANIC'S LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded.

The party identified in the mechanic's lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC'S LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

VERIFICATION

I am the claimant and the forgoing Claim of Lien is true of my own knowledge, except for matters stated in it on the basis of my information or belief, and as to those matters I believe to be true.

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

Date:

NAME OF CLAIMANT

PROOF OF SERVICE AFFIDAVIT

I, _____, declare:

On, _____, I served the Notice of Mechanic's Lien in accordance with California Civil Code §8416(a)(7) in the form specified by California Civil Code §8416(a)(8) along with a true and correct copy of the Mechanic's Lien on the date, place and in the manner of service set forth below:

Date of Service: _____

Place from which Notice Mailed: 3250 Wilshire Blvd., 13th Floor, Los Angeles, CA 90010

Manner of Service:

Registered Mail

Certified Mail

First Class Mail with Certificate of Mailing

Postage prepaid, addressed to the following address:

TITLE/CAPACITY AND ADDRESS OF PERSON SERVED

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on _____ at Los Angeles, California.

Served by:

ATTACHMENT 3

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TEL _____
FAX _____

Attorney for Plaintiff,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____ - _____ DISTRICT

LIMITED CIVIL

Case No.:

_____, an individual;
Plaintiff,
v.
_____; and
DOES 1-10, inclusive,
Defendants.

**COMPLAINT FOR FORECLOSURE OF
MECHANIC'S LIEN**

**[AMOUNT DEMANDED DOES NOT
EXCEED \$10,000]**

Plaintiff _____ hereby complains and alleges against Defendants as follows:

GENERAL ALLEGATIONS AND BACKGROUND

1. Plaintiff is a day laborer who brings this action for the foreclosure of a mechanic's lien against Defendants.

1 2. From approximately _____, Plaintiff _____
2 (hereinafter "Plaintiff") performed personal services as a laborer on the real property located at
3 _____ (hereinafter "_____"). Plaintiff was
4 promised \$ _____ per day (or \$ _____ an hour for an 8-hour day).

5 3. Plaintiff was employed by _____ and _____. (See Exhibit A,
6 Plaintiff's Mechanic's Lien.)

7 4. Defendants _____ (hereinafter "Defendants") were at all times
8 relevant the owners or reputed owners of the _____ property, located in the
9 County of _____, State of California.

10 5. Plaintiff performed various permanent works of improvement, repair, and alteration
11 upon _____, including but not limited to _____ while employed
12 as a laborer.

13 6. On or around _____, Plaintiff was not paid the full agreed
14 wages or legal minimum compensation for work performed.

15 7. On _____, Plaintiff served notice of his mechanic's lien with a
16 proof of service affidavit via certified mail to Defendants, the owners or reputed owners of
17 _____ (See Exhibit A, Plaintiff's Mechanic's Lien.)

18 8. On _____, Plaintiff's mechanic's lien was duly recorded with the
19 _____ County Recorder's Office against the _____ property
20 in the amount of _____ (under document number _____). (See Exhibit
21 A.)

22 9. Plaintiff's mechanic's lien was timely filed after Plaintiff ceased furnishing his
23 labor to Defendants and upon _____ and before the expiration of 90 days after the
24 completion of the work of improvement, no notice of completion or cessation having been
25 recorded.

26 10. Plaintiff files for foreclosure of his mechanic's lien within 90 days after recordation
27 of his lien claim with the _____ County Recorder's Office.

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2 **JURISDICTION AND VENUE**

3 11. This Court has jurisdiction over all causes of action asserted in this Complaint
4 pursuant to Article VI, Section 10 of the California Constitution, because this case is not given by
5 statute to any other trial court. This Court has jurisdiction over Defendants named herein because
6 Defendants reside in the State of California.

7 12. Venue is proper in this Court because the injuries alleged occurred in
8 _____ County and the property that is the subject of this action is located in
9 _____ County. (See Cal. Code Civ. Proc. §392.)

10 **PARTIES**

11 **A. PLAINTIFF**

12 13. _____: Plaintiff is a natural person residing at all times relevant to
13 this action in _____ County, California.

14 **B. DEFENDANTS**

15 14. _____: Plaintiff is informed and believes, and on that basis
16 alleges, that Defendants are natural persons who are, and during the relevant period have been, the
17 owners or reputed owners of the _____ property and reside in _____ County,
18 California.

19 15. **DOE DEFENDANTS:** The true names and capacities of the Defendants sued
20 herein as DOES 1 through 10 are unknown to the Plaintiff, and therefore Plaintiff sues these
21 Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names
22 and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that
23 each of the fictitiously-named Defendants is responsible for the occurrences and injuries to
24 Plaintiff as herein alleged.

25 **CAUSE OF ACTION**

26 **FORECLOSURE OF MECHANICS LIEN**

27 ***(PLAINTIFF AGAINST DEFENDANTS _____,***

1 *AND DOES 1-10)*

2 16. The Foreclosure of Mechanics Lien Cause of Action is alleged by Plaintiff against
3 the Defendants _____ and DOES 5-10 (collectively "Defendants"). Plaintiff
4 re-alleges and incorporates by reference every allegation contained in the preceding paragraphs of
5 this Complaint as though set forth fully herein.

6 17. Plaintiff served on the Defendants and subsequently recorded a verified claim of a
7 mechanic's lien with the Los Angeles County Recorder's Office after Plaintiff ceased providing
8 his labor and before the expiration of 90 days after completion of the work of improvement, no
9 notice of completion or cessation of labor having been recorded.

10 18. Plaintiff files a foreclosure action to enforce and foreclose on his mechanic's lien
11 before the expiration of 90 days after recordation of his mechanic's lien with the Los
12 Angeles _____ County Recorder's Office.

13 19. A copy of Plaintiff's mechanic's lien, including the required statutory notice of
14 lien, is attached to this Complaint as Exhibit A and is incorporated herein by reference. At the time
15 that Plaintiff served and recorded his mechanic's lien, the amount stated in the lien claim remained
16 owing and unpaid by Defendants.

17 20. The cost of verifying and recording the mechanics lien was \$_____, no part of
18 which has been repaid by Defendants.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for the following relief:

- 21 1. That the rights, claims, ownership, liens, titles, and demands of all persons in the
22 above described real property be adjudged subject, subsequent and subordinate to
23 Plaintiff's mechanics lien;
- 24 2. That Plaintiff's mechanics lien, referred to as Exhibit A, be foreclosed and
25 judgment be made for the sale of the property according to law;
- 26 3. That Plaintiff's mechanics lien be deemed to be for an amount in excess of
27 \$_____, to be determined at trial, together with interest at the rate of ten
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percent per annum from the time of filing Plaintiff's lien herein, and the costs of verifying and recording said lien;

4. That the proceeds of the sale be applied to the amounts due to Plaintiff, including the principal amount of lien, recording and verifying costs, attorney's fees and interest to which they are entitled to by law;
5. That Defendants and all persons claiming under Defendants, after the attachment of Plaintiff's mechanics lien be barred and foreclosed from all rights, claims, interests, or equity of redemption in the property encumbered by the judgment lien when time for redemption has elapsed;
6. If there is a deficiency of proceeds to satisfy the amounts due to Plaintiff, judgment for the deficiency be entered against the Defendants following proceedings prescribed by law;
7. For costs of suit herein incurred; and
8. For such other and further relief as the Court may deem proper.

Dated: _____

By: _____

ATTACHMENT 4

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Attorneys for Plaintiff,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____ - _____ DISTRICT
LIMITED CIVIL

Case No.: _____

_____, an individual;
Plaintiff,
v.
_____, an individual; and
DOES 1-10, inclusive,
Defendants.

NOTICE OF PENDENCY OF ACTION

NOTICE IS HEREBY GIVEN that an action has been commenced and is pending in the above-entitled court, upon a complaint of the above-named plaintiff against the above-named defendants; that the object of said action is to foreclose and enforce a mechanic's lien upon the premises hereinafter described, and the dwelling house situated thereon, for labor furnished and used in the alternation, improvement and repair of said dwelling house, and amounting to the sum of \$ _____, in addition to interest and costs; notice and claim of said lien was recorded by Plaintiff _____ on _____ under document number _____, in the records of the _____ County Registrar-Recorder's Office; and that the premises affected by said lien and these foreclosure proceedings is situated at

1 _____, State of California, and described as follows, to wit:

2 **Address:**

3 **Assessor's Parcel Number:**

4 **Legal Description:**

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Dated: _____

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By: _____

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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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Attorneys for Plaintiff,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____ - _____ DISTRICT
LIMITED CIVIL

Case No.:

_____, an individual;
Plaintiff,
v.
_____, an individual; and
DOES 1-10, inclusive,
Defendants.

PROOF OF SERVICE

PROOF OF SERVICE

Case No:

I am employed in the County of _____, my business address is _____ . I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service. On _____, I caused a copy of the following document(s):

NOTICE OF PENDENCY OF ACTION

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed certified mail envelope and addressed as follows:

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- CERTIFIED MAIL:** Such correspondence was deposited certified mail, return receipt requested, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
- PERSONAL:** Such envelope was delivered by hand to the offices of the addressee.
- FACSIMILE:** Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on _____ at _____, California.

By:

ATTACHMENT 5

Recording requested by _____

And when recorded mail this document to:

C/O _____

For recorder's use

LEGAL RELEASE OF CLAIM OF MECHANICS LIEN

THE MECHANIC'S LIEN RECORDED BY:

LIENED AGAINST:

_____, as owners or reputed owners of
the property located at _____

The Mechanics Lien claimed upon the following described real property in the City of _____,
County of _____, State of California, signed _____ and recorded in the Office
of the County Recorder of _____, State of California, on **October 19, 2012**, under Document
Number _____, in the Official Records of _____ County, State of California
is hereby released and forever discharged:

Property Location: _____

Property Legal Description: _____

Assessor's Parcel Number: _____

Executed on _____, in the County of _____, State of California.

Lien Holder's Signature

Lien Holder's Printed Name

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)