

F I L E D

Clerk of the Superior Court

FEB 17 2004

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11 STATE OF CALIFORNIA, A PUBLIC ENTITY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN DIEGO

14 CHARLES ERVIN, SHEARWOOD  
15 FLEMING, JR., CHRISTINA VASQUEZ,  
16 AND THE UNION OF  
17 NEEDLETRADES, INDUSTRIAL &  
18 TEXTILE EMPLOYEES, AFL-CIO.

19 Plaintiffs,

20 v.

21 STATE OF CALIFORNIA, a public entity;  
22 NOREEN BLONEN, individually and in  
23 her official capacity; JOHN M. RATELLE,  
24 individually and in his official capacity;  
25 TIMOTHY MARSH, individually and in  
26 his official capacity; REGINALD ESTES,  
27 individually and in his official capacity;  
28 PIERRE SLEIMAN, individually and in  
his official capacity; CMT BLUES, INC.;  
NO FEAR, INC.; INTERNATIONAL  
NEWS INC.; NITCHES, INC.;  
TRINIDAD TEES; and DOES 1 through  
50 inclusive,

Defendants.

CASE NO. GIC 740832

STIPULATED INJUNCTION AND  
PROPOSED ORDER

Plaintiff and Defendant ("the Parties") hereby stipulate to the entry of an injunction ("Stipulated Injunction") which shall be effective for a period of two years from the date of issuance and may be extended and/or terminated by the Court upon a showing of good cause.

CDC002/337236-1

STIPULATED INJUNCTION AND PROPOSED ORDER

1 The Court will retain jurisdiction for the purpose of enforcing, modifying and/or dissolving the  
2 Stipulated Injunction, in conformity with the applicable provisions of Proposition 139, until the  
3 date of its expiration. The Stipulated Injunction includes the following terms:

4 1. Reporting. The Parties shall report to the Court after 90 days from this Stipulated  
5 Injunction (and 90 days thereafter) concerning the status of Defendant's progress toward  
6 complying with the injunction and on such further dates as ordered by the Court. The first  
7 reporting date ("First Reporting Date") shall be on April 26, 2004. The second reporting date  
8 ("Second Reporting Date") shall be July 26, 2004 (the actual hearing dates shall be determined by  
9 the Court). Defendant shall submit a written report ("Written Report") to the Court (and Plaintiff)  
10 20 days before any Reporting Date. Plaintiff may submit comments to the Court (and Defendant)  
11 on this report, in writing, 10 days before any Reporting Date. Defendant may submit a reply to  
12 the Court (and Plaintiff) to any such comments, in writing, 5 days before any Reporting Date.

13 2. Wage Plans and Duty Statements. Duty Statements shall include a description  
14 of tasks to be performed, machine used and skills required for each job. The Wage Plan will  
15 show the planned schedule of wages for each job description and the number of employees in  
16 each job. Defendant shall require each future joint venture employer to submit a Wage Plan and  
17 Duty Statements prior to commencing business and, thereafter, to update such Wage Plan and  
18 Duty Statements on an annual basis. Each Wage Plan shall be similar to wage plans of the  
19 employer's outside factories (if any) or be based on comparable wages for similar work in the  
20 locality of the prison, taking into account factors such as seniority, performance, the technical  
21 nature of the work being performed and the provisions of Proposition 139.

22 3. Defendant shall make reasonable and good faith efforts to obtain Wage Plans and  
23 Duty Statements (or the information contained therein) prior to the first Reporting Date from  
24 current joint venture employers and require updates of such Wage Plans and Duty Statements on  
25 an annual basis. A copy of any Wage Plan and Duty Statements received from a current joint  
26 venture employer shall be supplied to Plaintiff's counsel within thirty (30) business days of their  
27 receipt by Defendant. Plaintiff shall provide any comments within ten (10) days of receipt.  
28 Defendant shall report to the Court regarding progress in obtaining these Wage Plans and Duty

CDC002/357236-1

1 Statements in the First Written Report.

2 4. During the period of this Stipulated Injunction, a copy of the Wage Plan and Duty  
3 Statements received from each future joint venture employer shall be supplied to Plaintiff's  
4 counsel within thirty (30) days of receipt. Plaintiff shall provide any comments within fifteen (15)  
5 days of receipt.

6 5. Prior to providing any Wage Plan and Duty Statements to Plaintiff's counsel,  
7 Defendant may redact any personal identifying information from such Wage Plan and/or Duty  
8 Statement. Any Wage Plans and Duty Statements provided to Plaintiff's counsel shall be subject  
9 to the same protective order regarding confidentiality previously entered in this case, and in  
10 particular, Plaintiff agrees not to disclose any such information to any third party other than for  
11 purposes expressly contemplated herein.

12 6. Record-Keeping Requirements. Defendant shall inform all joint venture  
13 employers in writing of their obligation to comply with all applicable record-keeping  
14 requirements set forth in the California Labor Code and applicable Industrial Welfare  
15 Commission ("IWC") Wage Orders. Defendant shall include a provision in all future joint  
16 venture contracts making compliance with these record keeping provisions an express condition  
17 of the contract. Within thirty (30) days of the date of entry of the Stipulated Injunction, Plaintiff's  
18 counsel will serve a list of all such requirements, on counsel for Defendant. In the event of a  
19 dispute concerning these requirements, the parties agree to meet and confer before the next  
20 reporting date.

21 7. Payroll Data. Defendant shall serve Plaintiff's counsel with copies of all payroll  
22 data reflecting the hourly wage of employees of each joint venture employer commencing June 1,  
23 2004, and thereafter every 90 days, for the period of the Stipulated Injunction (or less if ordered  
24 by the Court). Such data will be subject to the protective order regarding confidentiality  
25 previously entered in this case, and, in addition, such data may be redacted to prevent personal  
26 identification information from being disclosed. Plaintiff agrees not to disclose any such  
27 information to any third party other than for purposes expressly contemplated herein. Payroll  
28 data shall correlate the individual inmate's gross wages, hours worked and rate of pay to his/her

CBC002/337236-1

1 Duty Statement. This Court may, on good cause grant Plaintiff's request to conduct a walk  
2 through of the premises of any joint venture program on the terms and conditions of the walk  
3 through conducted by Plaintiff's designated expert in the above-captioned litigation.

4 8. Comparable Wage Plans. Based on the Wage Plans submitted by joint venture  
5 employers, as described in Paragraph 2 above, Defendant shall take reasonable steps to identify  
6 the comparable wages required to be paid as required by Penal Code § 2717.8. In the event the  
7 employer does not have non-inmate employees performing similar work for that employer, then,  
8 in identifying the comparable wages, Defendant shall consider factors such as the wages paid for  
9 work of a similar nature in the locality in which it is performed, the tenure of the employee who  
10 occupies the position, the requirements of Proposition 139, and available wage survey data from  
11 the EDD (and other sources).

12 9. Defendant will complete steps to amend the Department Operations Manual  
13 (DOM) and Department of Corrections Administrative Regulations to regulate the manner within  
14 which the requirements of Proposition 139 regarding comparable wage rates for joint venture  
15 programs are to be monitored. Defendant will serve Plaintiff's counsel with a draft of its  
16 proposed revisions at the time the CDC approves the draft, not later than 6 months from the date  
17 of entry of this injunction (if available) or as soon thereafter as it is available. Defendant will  
18 consider any comments or objections from Plaintiff during the public comment period. Plaintiff  
19 reserves the right to petition the Court for appropriate relief if Plaintiff believes Defendant's  
20 revisions do not comply with the requirements of Penal Code § 2717.8.

21 10. Inmate Notification. Defendant shall take reasonable steps to require joint  
22 venture entities to advise in writing all current and future inmates employed in joint venture  
23 programs of their rights under Penal Code § 2717.8, the IWC Wage Orders, and relevant  
24 California Labor Code provisions. These rights will be explained in a notice which Defendant  
25 will require each new joint venture employer to post in a prominent location at the workplace, and  
26 in a notice to be provided to each inmate worker when the worker agrees to participate in the  
27 program. Such notice shall also be posted in the existing joint venture area.  
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CDC002/337236-1

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STIPULATED INJUNCTION AND PROPOSED ORDER

10/22/2004 FRI 15:48 [TX/RX NO 74361] 009

TX/RX NO 74361] 006

1 11. Defendant will provide Plaintiff's counsel with a copy of the draft notice/s  
2 described above. The parties will meet and confer in good faith regarding any comments or  
3 objections Plaintiff may have to the notice/s.

4 12. **Grievance Procedures.** Defendant will notify all inmates employed at Joint  
5 Venture Programs of their right to file complaints regarding claimed violations of their rights  
6 under Penal Code § 2717.8, relevant provisions of the Labor Code, and the IWC Wage Orders.  
7 Defendant shall make reasonable and good faith efforts to ensure that the filing of a 602 does not  
8 lead to a reprisal by the joint venture employer and will promptly investigate such complaints.

9 13. **Security Bond.** Beginning on the date the Stipulated Injunction is issued, each  
10 new joint venture employer will be required to post a Security Bond (or the equivalent) in the  
11 amount of two months wages for the workforce contemplated after 6 months of operation. The  
12 bond (or its equivalent) shall be retained by Defendant for the duration of the contract and, in the  
13 event that the bond is called by Defendant, the funds shall be used first to pay past due wages  
14 (distributed according to the regulations promulgated in accordance with Proposition 139). In  
15 the event of any surplus, such surplus may be used to pay amounts due to the State.

16 14. **Default Notification.** In the event that a joint venture employer fails to pay the  
17 full payroll due and owing, Defendant will notify the Court and Plaintiffs' counsel of the default  
18 in the next applicable Written Report and shall inform the Court of what steps are being taken to  
19 remedy any such default.

20 15. **Back Comparable Wages from Western Mfg. and Pub Brewing.** Plaintiff has  
21 alleged that Pub Brewing and Western Mfg., also known as On Display, have failed to comply  
22 with the comparable wage provisions of Penal Code § 2717.8. Defendant shall, as part of its  
23 obligations pursuant to this Stipulated Judgment, investigate the issue of Pub Brewing and  
24 Western Mfg.'s prior compliance with comparable wage provisions of Penal Code § 2717.8. If  
25 Defendant concludes that either of these employers has failed to comply with the comparative  
26 wage provisions of Penal Code § 2717.8, Defendant shall take reasonable steps, in accordance  
27 with the provisions of the contract with the employer and/or the Penal Code, to secure payment of  
28 any wages owing. Defendant shall report on this issue, including (but not limited to) its

CDC002/337236-1

1 assessment of any back comparable wages owing and the employer's ability to pay any or all of  
2 such amounts, to the Court at the Second Reporting Date (and 90 days thereafter if appropriate).  
3 Plaintiff reserves the right to contest Defendant's determination as to comparable wages owing  
4 and to submit her own report for the Court's review and consideration of this issue.

5 16. Mediation by the Court. In the event that the Parties and the representatives of  
6 Western Mfg. and Pub Brewing cannot agree upon an amount to be collected from these entities,  
7 the parties shall make reasonable efforts to bring these joint venture employers into the Court for  
8 mediation.

9 17. Collection of Back Wages from Pub Brewing. Defendant contends that it has  
10 made reasonable and good faith efforts to collect the amounts it determined are due and owing to  
11 employees of the Pub Brewing Company for back wages not paid. Plaintiff disagrees. Defendant  
12 shall make reasonable good faith efforts to collect the amounts it determined are due and owing to  
13 inmate employees of the Pub Brewing Company, and shall update the Court on efforts to collect  
14 the amounts due in the reports referenced above. Effective immediately, Defendant shall take  
15 reasonable steps to ensure that Pub Brewing Company may not remove its operating tools and  
16 machinery from Defendant's prison facilities unless that employer posts a bond for the amount of  
17 back wages due and owing to inmate employees.

18 18. The State believes that the existing counterclaim against CMT Blues in the  
19 ongoing arbitration proceedings already incorporates a claim for back wages due and owing to all  
20 former inmate employees of CMT Blues. Plaintiff disagrees. Nevertheless, Defendant agrees to  
21 seek to amend its counterclaim to expressly incorporate such claim.

#### 22 COSTS AND ATTORNEYS' FEES

23 In addition to reserving jurisdiction to enforce this injunction, the Court reserves  
24 jurisdiction to determine the issue of attorneys' fees and costs. Any claim for costs and/or  
25 attorneys' fees shall be served and filed by May 1, 2004. Any opposition to any request for  
26 attorneys' fees and/or costs shall be served and filed thirty (30) days before the hearing date. Any  
27 reply shall be served and filed fifteen (15) days before the hearing date. This paragraph shall be  
28 without prejudice to any application for attorneys' fees in consequence of the Stipulated

CDC002/337236-1

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STIPULATED INJUNCTION AND PROPOSED ORDER

10/22/2004 FRI 15:48 [TX/RX NO 7436] 01

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1 Injunction. Counsel shall confer and agree on a suitable hearing date.

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**IT IS SO ORDERED.**

Dated: FEB 17 2004

WILLIAM C. PATE  
WILLIAM C. PATE  
JUDGE OF THE SUPERIOR  
COURT

Dated: 2/16/04

PLAINTIFF:  
  
CRISTINA VASQUEZ

Dated: 2/9/04

STATE OF CALIFORNIA:  
By: 