

# NOTES

## Making Workers Whole:

### A Retrospective Analysis of SB 588 and Enhanced Post-Judgment Collection in California

Rey Fuentes<sup>†††</sup>

*When wages are stolen, workers end up navigating a complex legal landscape to obtain relief. Indeed, they do so largely on their own and in the face of sometimes fierce opposition and retaliation. If they somehow reach a final judgment, many employers do not pay or attempt to shift or shield assets and dissolve their corporate form, all in an attempt to make themselves collection-proof. In fact, recent research suggests that only 17 percent of all final judgments are ever recovered by employees who use the state administrative process. In response to these trends, California enacted SB 588 which became effective January 2016. The legislation provides new and potentially powerful tools to help workers recover judgments entered in their favor. Using new data from the state Labor Commissioner and interviews with 22 non-profit and for-profit advocates, this paper provides a first-of-its-kind look at the effect of the new law. The paper assesses the Labor Commissioner's use of new mail levy authority, its power to issue stop orders for companies with outstanding wage claims, the effect of expanded liability included in the final law, and more.*

*This retrospective look at the effect of the new law reveals a mixed report. While new mail levy and stop order authority have together helped*

---

DOI: <https://doi.org/10.15779/Z387659G13>

†. Rey Fuentes is a 2019 graduate of the UC Berkeley School of Law.

††. This article would not have been possible without the generous support and guidance from my research supervisor and mentor, Catherine Fisk. In addition, I would like to thank the many non-profit advocates who took the time to thoughtfully describe their work and provide feedback to this article. I would also like to offer a special thank you to Seema Patel, Jay Shin, Matthew Sirolly, Tia Koonse, Anel Flores, Ruth Silver-Taube, Deylin Thrift-Viveros, and Sarah Leadem for their detailed feedback and encouragement.

*workers recover over \$3.7 million in money otherwise out of their reach, it represents only 13 percent of the outstanding judgments owed to workers. While a modest figure, these new tools have helped increase overall successful judgment collection to nearly 28 percent. At the same time, while advocates have stressed that new individual liability provisions have made wage claims more likely to settle (and thus more valuable to workers), many are still unaware of other key provisions in the law. Yet, the law is still in its infancy, and outcome data suggest that in certain industries, the Labor Commissioner's collection efforts have resulted in significant sums of money returning to workers. With continued training and implementation, there is a potential for more workers to be made whole. The paper concludes with reflections on the further effects of this sweeping law and suggestions for future research and reform Recommendations include amending substantive provisions of SB 588 to strengthen employer liability, encouraging the Labor Commissioner to clarify the operation of the law for the benefit of practitioners and employers, and building additional non-profit partnerships to extend the law's reach.*

I. INTRODUCTION.....	371
II. A BRIEF BACKGROUND ON WAGE THEFT IN CALIFORNIA.....	371
III. CHALLENGING PATHWAYS TO PURSUE RELIEF .....	374
IV. JUDGMENT RECOVERY OPTIONS IN CALIFORNIA .....	376
A. Post-Judgment Collection Methods .....	376
B. Pre-Judgment Collection Methods .....	378
1. Pre-Judgment Attachment.....	379
2. Industry-Specific Bonding Requirements.....	380
3. Other Statutory Mechanisms for Pre-Judgment Relief.....	380
4. Mechanics Liens .....	381
V. LEGISLATIVE REFORM EFFORTS .....	381
VI. SB 588: A COMPROMISE APPROACH .....	383
A. Mail Levy and Liens .....	383
B. Stop Orders and Licensing .....	384
C. Successor Liability .....	384
D. Upstream Liability.....	384
E. Individual Liability .....	385
VII. INITIAL OUTCOME DATA .....	385
A. Methods, Data Collection, and Limitations .....	385
B. Mail Levies .....	386
C. Stop Orders .....	393
D. Expanded Liabilities.....	395
E. Advocate's Response.....	396

F. Exclusions or Inaction.....	397
VII. BUILDING ON THE PROMISE OF SB 588 .....	398
IX. CONCLUSION AND RECOMMENDATIONS.....	401

## I. INTRODUCTION

Workers across industries in California consistently have their wages stolen by their employers through underpayment or noncompliance with the state’s labor laws. When these same employees receive a successful judgment against their employer, many have difficulty collecting when their employer successfully hides or shields their assets from collection.<sup>1</sup> Not only do vulnerable workers lose out on thousands of dollars in unpaid wages, inadequate recovery threatens public faith in the judicial and administrative systems in California.

Seeking to redress this imbalance, Senate Bill 588 was enacted in 2016 and grants new powers to the state Labor Commissioner’s office to assist workers who have unpaid final judgments. Specifically, the legislation allows the Labor Commissioner’s office to levy employer bank accounts, place liens on real and personal property, and impose stop orders and civil penalties on companies who fail to pay final judgments (with new authority to deploy these tools against sham corporate shells). In addition, the legislation requires reporting of unsatisfied final judgments to certain state agencies administering long-term care organizations, imposes individual liability on employers who engage in wage theft, and expands upstream liability in certain industries.

Utilizing newly available data and practitioner interviews, this paper analyzes the achievements of SB 588 since its enactment and provides suggestions for further legislative and administrative reform that may improve the law and remedy the underpayment of wages to workers across the state.

## II. A BRIEF BACKGROUND ON WAGE THEFT IN CALIFORNIA

While data on national economic growth may seemingly present a positive outlook for some workers, many in California – and particularly those in low-wage and contingent industries – have less reason to be hopeful. For example, real wages for the median worker in California *declined* by 5 percent between 1979 and 2014, while those in the 95th percentile of wages saw their earnings *increase* by 47 percent over the same

---

1. See generally Marianne Levine, *Behind the Minimum Wage Fight, a Sweeping Failure to Enforce the Law*, POLITICO, Feb. 18, 2018, <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644> [<https://perma.cc/6WV7-NT5P>] (documenting the failure of jurisdictions around the country to provide a mechanism for employees to vindicate hard-fought final judgments).

period.<sup>2</sup> Moreover, workers in the state are employed in industries where wages are barely enough to get by. Indeed, one-third of workers in California – or 4.7 million people – are low-wage workers,<sup>3</sup> an increase of 30 percent since 2000.<sup>4</sup> Over one in four low-wage workers in California live in poverty, with another third living at or near the federal poverty line.<sup>5</sup>

The problems caused by low pay are compounded when employers fail to pay all wages for work performed. “Wage theft” – a term used to identify a broad class of employer labor standards violations – can occur directly, such as when an employer retains an employee’s tips or fails to pay the minimum wage or required overtime premiums for all of the hours an employee works (either by under-counting their hours or requiring employees to work off-the-clock). Wage theft also occurs when an employer makes improper deductions from wages, denies meal or rest breaks, or fails to pay legally mandated premium pay when an employee works a split shift<sup>6</sup> or is required to be on-call in certain industries.<sup>7</sup> Studies have demonstrated that wage theft impacts workers across industries and socioeconomic backgrounds, but falls hardest on those workers in low-wage occupations.<sup>8</sup>

A landmark 2008 survey of low-wage workers found that over one-quarter of workers were paid less than the minimum wage and 76 percent reported that they worked overtime, but were not paid overtime premiums.<sup>9</sup> Recent analysis has shown that in any given week, more than one in ten employees in low-wage industries in California experience a minimum wage violation.<sup>10</sup> Day laborers, retail and restaurant workers, warehouse and

2. Annette Bernhardt et al., *LOW-WAGE CALIFORNIA: 2014 CHARTBOOK*, UC BERKELEY LAB. CTR. 2 (2015), <http://laborcenter.berkeley.edu/pdf/2014/chartbook.pdf> [<https://perma.cc/CN2K-V2D6>].

3. *See id.* at 5 (defining “low-income” to mean any worker who earned less than \$13.63 per hour in 2014).

4. *Id.* at 6.

5. *Id.* at 17.

6. *See, e.g.*, Industrial Welfare Commission Order 2-2001 § 4(C) (2018).

7. *See, e.g.*, SAN FRANCISCO, CAL., POLICE CODE art. 33G § 3300G.4(c) (2015).

8. *See, e.g.*, Rebecca Smith et al., *Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States*, NAT’L EMP. LAW PROJECT (2013), <https://www.nelp.org/wp-content/uploads/2015/03/WinningWageJusticeSummaryofResearchonWageTheft.pdf> [<https://perma.cc/Q66A-7B4W>] (documenting wage theft across industries nationally).

9. Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities*, CTR. FOR URBAN DEV. ET AL., 20–21 (2008), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> [<https://perma.cc/QCG2-9AQP>].

10. Tia Koonse et al., *Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships*, UCLA CTR. FOR LAB. RES. AND EDUC. ET AL. 3 (2015), <http://laborcenter.berkeley.edu/pdf/2015/minimum-wage-enforcement.pdf> [<https://perma.cc/UHT9-TZP6>]; *see also* Saru Jayaraman et al., *The Hands that Feed Us: Challenges and Opportunities for Workers Along the Food Chain*, FOOD CHAIN WORKERS ALLIANCE 26 (June 2016), <http://foodchainworkers.org/wp-content/uploads/2012/06/Hands-That-Feed-Us-Report.pdf> [<https://perma.cc/T5PA-PSHH>] (finding that more than nearly one in four workers in the food service and distribution business report not being paid the minimum wage).

distribution workers, farmworkers, and personal care aides are particularly vulnerable to wage theft because they don't have long tenures with single employers, making it more difficult for employees to recover stolen wages.<sup>11</sup> Occupations in these industries are among the fastest growing in California.<sup>12</sup>

Critically, wage theft robs employees of thousands of dollars in income every year.<sup>13</sup> As one study analyzing wage theft in Los Angeles identified, more than 650,000 employees in the city faced some form of wage theft in a given week, stripping them of more than \$26 million of income.<sup>14</sup> Given that these workers spend a disproportionate amount of their income on goods directly in their local communities, the aggregate effect of wage theft harms businesses and economic growth.<sup>15</sup>

Moreover, unscrupulous employers have also been successful at avoiding repayment of wages owed by changing their corporate form or shielding assets from collection. In a comprehensive report based on interviews with affected workers, the National Employment Law Project and the UCLA Labor Center chronicled commonplace evasion tactics. Workers would be promised wages that never materialized, issued checks that were returned because of insufficient funds, have their time records manipulated to reflect fewer hours worked, or threatened with deportation if they raised an issue with their pay.<sup>16</sup>

The sections that follow will attempt to explain how employees can pursue relief and the protections recent legislation has conferred. Section III will outline the limited opportunities workers have to pursue relief given employer obstruction and obfuscation, even after a final judgment is awarded. Section IV describes the limited and complicated pre- and post-judgment enforcement mechanisms afforded employees. It is within this context that Section V describes legislative attempts to bolster baseline

---

11. Jayaraman et al., *supra* note 10, at 32–33. *See also* Bernhardt et al., *supra* note 2, at 26 (finding that nearly one third of workers in the low-wage industry are in retail and food service sectors).

12. Bernhardt et al., *supra* note 2, at 34.

13. Bernhardt et al., *supra* note 9, at 50 (finding that wage theft for a full-time worker amounted to over \$3,100 per year in lost wages) (original figure adjusted for inflation).

14. Ruth Milkman et al., *Wage Theft and Workplace Violations in Los Angeles*, INST. FOR RES. ON LAB. AND EMP. 53 (2010), <http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/LAwagetheft.pdf> [<https://perma.cc/7KFD-5QKM>]. The intergenerational effect of poverty and low-income labor should not be lost on those reviewing this research. For example, the children of low-wage workers earn less money and work fewer hours when they become adults, perpetuating a cycle that keeps entire generations of workers in the same socio-economic conditions as their parents. *See* Bernhardt et al., *supra* note 2, at 38 (“All else equal, children from low-income families earn less and work fewer hours as adults.”).

15. Milkman et al., *supra* note 14, at 6, 54–55.

16. *See* Eunice Hyunhye Cho et al., *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers*, NAT'L EMP. LAW PROJECT ET AL., 5–6 (2013), <https://www.labor.ucla.edu/publication/hollow-victories-the-crisis-in-collecting-unpaid-wages-for-californias-workers/> [<https://perma.cc/7XVQ-CNT7>].

protections for employees when they seek to litigate their claims or collect on judgments. Section VI outlines the recent passage of SB 588, which seeks to bolster post-judgment collection efforts. Finally, Sections VII and VIII discuss the findings and implications from public records requests and practitioner interviews conducted by the author to determine the overall success of these recent reform efforts.

### III. CHALLENGING PATHWAYS TO PURSUE RELIEF

Employees unable to informally resolve a wage theft claim with their employer have several avenues to choose from to pursue a claim. Initially, they may file a lawsuit in small claims court (if they claim less than \$10,000),<sup>17</sup> or file a claim in state or federal court.<sup>18</sup> However, as described in more detail below, employees may not be independently represented in small claims court<sup>19</sup>, and many attorneys will turn away even meritorious wage claim cases because the amount of recovery is too small.<sup>20</sup> Therefore, many employees who chose either route are left to navigate a complicated system with slim chances of success.

Recognizing these limitations, the California Legislature created an administrative hearing process – known as a “Berman hearing” – conducted through the Department of Labor Standards Enforcement (“Labor Commissioner”) designed to quickly and efficiently conclude wage claim disputes.<sup>21</sup> The Labor Commissioner can hear cases of any size.<sup>22</sup> Claims can be litigated relatively informally before an agency Hearing Officer (the

---

17. See CAL. DEP’T OF CONSUMER AFFAIRS, IF YOU’RE THE PLAINTIFF . . . FILING YOUR LAWSUIT, [https://www.dca.ca.gov/publications/small\\_claims/file.shtml](https://www.dca.ca.gov/publications/small_claims/file.shtml) [<https://perma.cc/933C-QA4B>] (last visited Feb. 11, 2019).

18. See, e.g., *Post v. Palo/Hacklar & Ass’n*, 23 Cal.4th 942, 946 (2000) (“[I]f an employer fails to pay wages in the amount, time, or manner required by contract or statute, the employee may seek administrative relief by filing a wage claim with the commissioner or, in the alternative, may seek judicial relief by filing an ordinary civil action for breach of contract and/or for the wages prescribed by statute.”).

19. See CAL. DEP’T OF CONSUMER AFFAIRS, BASIC CONSIDERATIONS AND QUESTIONS, [https://www.dca.ca.gov/publications/small\\_claims/basic\\_info.shtml](https://www.dca.ca.gov/publications/small_claims/basic_info.shtml) [<https://perma.cc/GWU4-QMFZ>] (last visited Feb. 11, 2019).

20. As the author’s interview with a plaintiff’s attorney suggested, practitioners routinely turn down cases unless there is a chance for a significant recovery. Even then, the attorney noted that their clients were collectively owed over \$1 million in unpaid judgments which his office is still working to resolve. Telephone Interview with Organization 13 (Apr. 3, 2018) (note that some non-profit and for-profit interviewees have been anonymized; their redacted interview notes are available upon request).

21. See, e.g., *Post*, 23 Cal.4th at 947 (“The Berman hearing procedure is designed to provide a speedy, informal, and affordable method of resolving wage claims. [The] purpose of the Berman hearing procedure is to avoid recourse to costly and time-consuming judicial proceedings in all but the most complex of wage claims.”).

22. See DEP’T OF INDUS. RELATIONS, POLICIES AND PROCEDURES FOR WAGE CLAIM PROCESSING, <https://www.dir.ca.gov/dlse/Policies.htm> [<https://perma.cc/Z9YL-XXCR>] (last visited Oct. 24, 2018) (noting the Labor Commissioner’s jurisdictional limits).

equivalent of an administrative law judge). Litigants are allowed to present evidence, bring witnesses in their favor, and cross-examine witnesses of the opposing party. Claims can also be concluded in settlement conferences before a Deputy Labor Commissioner.<sup>23</sup> If a dispute is not settled or dismissed by the conclusion of the hearing process, the Hearing Officer will draft and file an Order, Decision or Award (ODA) which describes the decision and any relief awarded.<sup>24</sup> Parties can appeal the ODA to civil court within ten days of the final decision.<sup>25</sup> If no party appeals within ten days, the Labor Commissioner files the ODA with the clerk in the nearest superior court, which makes the judgment subject to any form of collection available to final judgments like any other civil action.<sup>26</sup>

Despite having access to this informal system, collecting a final wage theft judgment is far from certain. Between 2008 and 2011, only 17 percent of workers who had a judgment entered in their favor were able to recover *any* payment (representing only fifteen percent of total wages owed).<sup>27</sup> Sixty percent of employers brought into the Labor Commissioner hearing process dissolve their corporate structure over the course of the hearing process; most did so before final judgment was rendered.<sup>28</sup> In fact, those employers with final unpaid judgments stemming from the Labor Commissioner's recovery process were more likely than other employers to have suspended or dissolved their corporate structure.<sup>29</sup> This dissolution may be involuntary – since many companies that employ low-wage workers operate with little capital – but are many times voluntary attempts to tactically evade judgments issued against them. Once a company is abandoned, it is highly unlikely that an employee will be able to collect their final unpaid wages because no entity would be available to sue.<sup>30</sup>

In the face of such obstruction, it is no wonder that advocates have consistently highlighted the manifest injustice involved when claimants – many of whom are struggling, low-wage workers – pursue a wage claim

---

23. *Id.*

24. *Id.*

25. See CAL. LAB. CODE § 98.2(d) (2014).

26. See CAL. LAB. CODE § 98.2(e).

27. See Eunice Hyunhye Cho et al., *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers*, NAT'L EMPLOYMENT LAW PROJECT ET AL. 2–3, 13–14.

28. In fact, training documents obtained in a public records request from the Labor Commissioner note that judgment evasion is a persistent problem which SB 588 is meant to address through new rules on successor liability. See *infra* Sections VI(c) and VII(c); JUDGMENT ENFORCEMENT UNIT, JEU CITATION TRAINING, 12–13 (2018) (on file with author). See also Cho et al., *supra* note 27, at 14 (confirming this trend were findings that employers overwhelmingly chose not to appeal a judgment against them. Between 2008 and 2011, of the 27,000 final hearing decisions issued, only 4 percent were ever appealed by the employer).

29. Cho et al., *supra* note 27, at 2, 10.

30. See *id.* at 11. This is an area addressed by SB 588's expanded successor liability provisions. See *infra* Section VI(c).

through to final judgment and still receive nothing from the process. As the sections below will describe, various tools are available for plaintiffs to recover unpaid final judgments, but all face significant limitations. It is in the shadow of these legal mechanisms that recent legislative reforms become relevant.

#### IV. JUDGMENT RECOVERY OPTIONS IN CALIFORNIA

Judgment collection can be a complicated process for a worker who has persevered through the claim adjudication process. There are both post-judgment and pre-judgment tools available to collect unpaid wages.

##### *A. Post-Judgment Collection Methods*

After final judgment has been rendered and there is no opportunity for appeal,<sup>31</sup> the first step for the judgment creditor (e.g., the plaintiff) is identifying the judgment debtor (e.g., the employer), particularly if the employee only possesses a defunct company name and cannot identify the names of their managers or the company's owners.<sup>32</sup> While California requires employers to list their corporate name on pay stubs, and employees can access public information about their employer's corporate form from the Secretary of State,<sup>33</sup> this information can be out of date, misleading, or simply missing.<sup>34</sup>

The second step is to identify assets from which to collect. After final judgment is rendered, the clerk of the superior court sends a notice and form to the judgment debtor – to be returned to the judgment creditor – which contains information on assets that will satisfy the judgment.<sup>35</sup> Absent information volunteered by the judgment debtor (or if the information supplied is suspected to be false or incomplete), the judgment creditor may seek to compel the judgment debtor to appear in court for a

---

31. William Tanner, *How to Collect Your Judgment*, LEGAL AID SOCIETY OF ORANGE CTY. 3, <http://www.courts.ca.gov/partners/documents/collecting.pdf> [https://perma.cc/783E-TFDR].

32. *Id.* at 6. Indeed, even defects in the spelling of a judgment debtor's name during collections or litigation can completely limit collections. *Id.* at 10, 12 (noting examples of challenges in this regard, e.g., businesses working under a fictitious name. If a judgment creditor files a claim under a fictitious name and not the actual business's recorded name, the judgment will be impossible to collect). *See also* CAL. C.C.P. §§ 680.240–50 (defining “judgment creditor” and “judgment debtor”).

33. Cal. Lab. Code § 226(a). *See also* CALIFORNIA SECRETARY OF STATE, BUSINESS SEARCH, <https://perma.cc/JL3E-64J5>.

34. In fact, advocates for low-wage workers often instruct their clients to send checks to employer accounts and review old employment documents to identify past and current employer names for the purpose of including the company's name in a wage claim.

35. *See* CAL. C.C.P. § 116.830. While the judgment debtor can delay this process through appeal, failure to provide the information can put the judgment creditor at risk for contempt of court or arrest. *Id.*



“debtor’s examination.”<sup>36</sup> Such a procedure compels the judgment debtor to appear and provide information about their assets (e.g., property and bank accounts).<sup>37</sup> With information from the debtor’s examination, the judgment creditor can then begin using the information to access assets.

The third step, then, is to collect from the assets. Two common methods that a judgment creditor can pursue for relief before or after an examination include levying bank accounts – which allows the judgment creditor to seize funds from the debtor’s bank account – or placing a lien on real or personal property – a process that prevents the owner of the property from selling or refinancing the property until they pay the judgment.<sup>38</sup> For a bank account levy, the judgment creditor must complete a “writ of execution” that provides basic identifying information about the judgment debtor (such as their name, account number, address, etc.).<sup>39</sup> This writ is then submitted to the sheriff – the “levying officer” – who physically takes the writ to a bank and orders it to levy an amount equal to the total judgment.<sup>40</sup> The sheriff then collects the money and distributes it to the judgment creditor.<sup>41</sup>

A property lien can be issued by filing an “Abstract of Judgment” with the superior court clerk’s office.<sup>42</sup> The forms are returned from the clerk’s office with the seal of the court and can then be filed with the county recorder’s office, which keeps information about property titles in their jurisdiction.<sup>43</sup> While seemingly straightforward, the property lien requires the creditor to know the county where the property is located and show that it is owned by the individual or business which the judgment creditor has a judgment against. However, once the lien is placed, if the judgment debtor tries to sell the property or refinance their mortgage, they will be prevented from doing so until the lien is released by payment of the final judgment.<sup>44</sup>

---

36. See Tanner, *How to Collect Your Judgment*, *supra* note 31, at 24–25.

37. *Id.*

38. See *id.* at 30, 39.

39. *Id.* at 30–31.

40. *Id.* Joint bank accounts can also be levied through this process.

41. *Id.* at 30–31. The process is substantially similar for a judgment creditor who seeks to garnish the wages of the employed judgment debtor. The creditor fills out a writ of execution and “Application for Earnings Withholding” with information about the location of the debtor’s employer. The sheriff then serves this information on the employer who, absent objections from the debtor, will remit up to 25 percent of earnings to the sheriff which is then paid to the creditor. In addition, with a writ of execution and additional forms, a creditor can levy the assets of a business by requesting that the sheriff take cash directly from a till (a “till tap levy”) or assume control of the business’s assets and seize all cash that passes through on a given day (a “keeper levy”). *Id.* at 31–32, 37–38.

42. *Id.* at 39.

43. *Id.*

44. Importantly, a property lien can be placed even if the judgment debtor doesn’t own property. Once filed, if the judgment debtor then purchases property, they’ll be unable to complete their property transaction until the lien is paid off. Financial institutions will also likely compel the release of a lien before they will offer financing to a judgment debtor with a pre-recorded property lien. *Id.*

In addition, the judgment creditor can compel the sheriff to take possession of real or personal property and sell it at auction to pay back the judgment.<sup>45</sup> Liens, however, may provide little relief for many workers, since employers rarely retain assets that might be subject to collection with this method.<sup>46</sup>

Critically, a final judgment can be renewed every 10 years and the judgment debtor must pay interest on the total judgment.<sup>47</sup> Yet, both the lien and levy are time intensive, complicated processes that few workers choose to navigate on their own. Coupled with the complexity of the process, unless the underlying judgment included attorney's fees, such fees may not be recovered by a judgment creditor who hires an attorney to assist in collection.<sup>48</sup> However, if the worker won their wage claim before the Labor Commissioner, they have the option of assigning the judgment (i.e., the ODA) to the state for collection or pursuing the claim on their own.<sup>49</sup> Indeed, this may be preferred, as the Labor Code provides an aggrieved worker with the right to collect "court costs and reasonable attorney's fees for enforcing a judgment" received before the Labor Commissioner.<sup>50</sup>

### B. Pre-Judgment Collection Methods

Despite the range of tools available to the judgment creditor, the judgment debtor may attempt to avoid repayment by hiding assets, draining bank accounts, obscuring their business name, or dissolving their business – all of which severely limit the effectiveness of post-judgment remedies.<sup>51</sup> Given this challenge, some tools are available for certain workers to obtain

---

45. *Id.* at 40. While a full description of this process is beyond the scope of this paper, the sale can include the debtor's primary home, land, or vehicles. In addition, some local government codes contain provisions allowing the city government to place a lien on employer property. For example, the San Francisco Municipal Code provides that the failure to pay a citation connected to the violation of certain industry standards (e.g., failing to maintain payroll records or retaliating against an employee's minimum wage claim) can open the door to the city placing a lien on employer property to recover the citation amount. *See* SAN FRANCISCO, CAL., ADMIN. CODE Ch. 12R.16(c)–(d).

46. Indeed, many employers further obscure what little real property they have in their possession by putting title under a different entity such another shell company or a trust. Email Correspondence between author and Jay Shin, Attorney, Wage Justice Center (Jan. 19, 2019) (on file with author).

47. Tanner, *supra* note 31, at 42–43.

48. CAL. C.C.P. § 685.040. For many claimants to receive assistance then, they must usually anticipate a large expected recovery to attract private counsel.

49. CAL. LAB. COMM'R, COLLECT YOUR AWARD FROM THE CALIFORNIA LABOR COMMISSIONER'S OFFICE 7 (2014), [https://www.dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Collect%20Your%20Award%20from%20the%20California%20Labor/Brochure-JE\\_WEB-EN.pdf](https://www.dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Collect%20Your%20Award%20from%20the%20California%20Labor/Brochure-JE_WEB-EN.pdf) [<https://perma.cc/GMR5-WBHP>]. The Labor Commissioner assumes all authority conferred to a judgment creditor when collecting on behalf of an assigned ODA, which includes levying assets and placing liens. *See* CAL. C.C.P. §§ 690.020-050.

50. CAL. LAB. CODE § 98.2(k). This is an explicit statutory exception to the prohibition on attorneys' fees under CAL. C.C.P. § 685.040 ("Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title *unless otherwise provided by law.*") (emphasis added).

51. *See supra* Part III.

pre-judgment protection, such as attachment, bonding requirements, mechanic's liens, or other statutory remedies.

### *1. Pre-Judgment Attachment*

For example, a plaintiff may be able to attach their pre-judgment interest to the property or assets of the defendant.<sup>52</sup> The plaintiff must establish that they (1) have a claim “upon which an attachment may be issued” and (2) that their claim has “probable validity,” meaning “more likely than not that the plaintiff will obtain a judgment against the defendant on that claim.”<sup>53</sup> Thus, attachment operates as a temporary restraining order, protecting the status quo in the face of a meritorious claim. In addition, to meet the first prong of the test, the worker's claim must be based in contract, be a “readily ascertainable amount not less than five hundred dollars,” and arise from “the defendant[‘s] . . . trade, business, or profession.”<sup>54</sup>

However, several features of pre-judgment attachment make it an unattractive device for most low-income workers' wage claims. Foremost among them is the fact that a low-wage worker must file a lawsuit to begin the process; a barrier for most workers, least of all those without representation or resources. In addition, the defendant must be given notice and an opportunity for a hearing before the attachment can issue, the plaintiff must be able to identify the property that would be subject to the attachment,<sup>55</sup> and pre-judgment attachment is unavailable in a proceeding before the Labor Commissioner.<sup>56</sup> Moreover, the plaintiff must post a minimum bond of \$10,000 or an amount sufficient to allow the defendant to recover damages if they prove that the attachment was wrongful.<sup>57</sup> Thus, a plaintiff not only risks claims by the defendant for improper encumbrance of their property, but, as commentators have noted, may also limit other theories of recovery in their case, such as tort claims.<sup>58</sup>

---

52. See, e.g., CAL. C.C.P. § 481.010 *et. Seq.*

53. *Kemp Bros. Constr. Inc. v. Titan Elec. Corp.*, 146 Cal. App. 4th 1474, 1481 (2007). See also CAL. C.C.P. § 481.190 (defining “probable validity”).

54. CAL. C.C.P. § 483.010(a)–(c) (noting that the claim must also not be secured by interest in real property, which would not be a likely component of a worker's wage claim). See *Kemp Bros. Constr. Inc. v. Titan Elec. Corp.*, 146 Cal. App. 4th 1474, 1481 (2007) (noting that an ascertainable claim is one that can be inferred directly from the underlying contract).

55. CAL. C.C.P. § 484.040.

56. See Cho et al., *supra* note 16, at 8.

57. CAL. C.C.P. § 489.220.

58. See *Writs of Attachment for Wage Claims*, WAGE LAW (May 27, 2008), [https://www.californiawagelaw.com/wage\\_law/2008/03/writs-of-attach.html](https://www.californiawagelaw.com/wage_law/2008/03/writs-of-attach.html) [<https://perma.cc/E396-4D6E>] (noting that since attachment claims sound in contract, “the plaintiff is equitably estopped [from bringing a related tort claim] by virtue of having obtained an advantage by proceeding on the contract claim.”).

## 2. Industry-Specific Bonding Requirements

In an attempt to protect workers in the face of inadequate post-judgment recovery, the California legislature has also created industry-specific bonding requirements that cover potential future wage theft violations. For example, in 2003 the California Legislature enacted AB 1688 which required carwash operators to register with the Labor Commissioner. Registration requires providing proof of a surety bond in the amount of \$15,000 “for the benefit of any employee damaged by his or her employer’s failure to pay wages, interest on wages, or fringe benefits.”<sup>59</sup> Subsequent legislation increased the bond requirement to \$150,000, providing greater protection for employees in the carwash industry.<sup>60</sup> Similarly, employers who have been penalized for violations of the law governing garment workers in the past three years are required to deposit or file a bond for up to \$5,000 to cover potential future wage claims.<sup>61</sup> These bonding requirements, while not a guarantee that all harmed employees will be made whole, provide some measure of relief and place an affirmative burden on the employer to recognize and limit the risks of wage theft.

## 3. Other Statutory Mechanisms for Pre-Judgment Relief

Other mechanisms for pre-judgment relief can come from specific statutory tools. For example, before a wage claim is filed, if an employee is aware that the employer is moving assets that rightfully belong to the employee (e.g., wages), they may file a fraudulent transfer claim.<sup>62</sup> In addition, an employee who is owed wages could recover by petitioning the court to appoint a receiver to sell an establishment’s liquor license.<sup>63</sup>

---

59. A.B. 1688, 2003-04 Leg., Reg. Sess. (Cal. 2003).

60. See CAL. LAB. CODE § 2055(b).

61. See CAL. LAB. CODE § 2675(a)(3).

62. See CAL. CIV. CODE § 3439.01(b) (allowing any claim for fraudulent assets to lie as long as the employee can identify a right to payment, even before the claim is reduced to judgment). However, these claims still require an employee to bring a claim wages at the same time they claim that an employer is fraudulently transferring assets, so it does not operate as a pure pre-judgment remedy for the worker. Email Correspondence with Jay Shin, Attorney, Wage Justice Center (Jan. 19, 2019) (on file with author).

63. See CAL. BUS. AND PROF. CODE § 24074 (allowing an employee to make a subordinated claim for wages against the value of the liquor license with proper notice to an escrow agent holding the license or other “valuable consideration” prior to final judgment); see also CAL. C.C.P. § 708.630. These sales could be of little avail to some workers if the establishment has delinquent tax liabilities that are greater than the “probable sale of the license.” CAL. C.C.P. § 708.630(b). In addition, state tax collectors can prevent the transfer or sale of liquor license due to the owner’s existing tax liability, a right workers do not possess if they have an outstanding wage claim. See CAL. BUS. AND PROF. CODE § 24049; Email Correspondence with Jay Shin, Attorney, Wage Justice Center (Jan. 19, 2019) (on file with author).

#### 4. Mechanics Liens

Finally, California law, like jurisdictions around the country, grants certain workers the right to a pre-judgment lien (so-called “mechanics” or “designer liens”) to satisfy unpaid wages.<sup>64</sup> Laborers, subcontractors, material suppliers, direct contractors, equipment lessors, and design professionals (e.g., architects) have access to this remedy which, like post-judgment liens, encumber the owner’s property until they pay for things like back wages for workers.<sup>65</sup> Indeed, subject to notice, recording, and timeline requirements, the lien can be placed to help recover the value of labor, services, or improvements made to physical property.<sup>66</sup> The lien has priority status over other liens that “[attach] after the commencement of work of improvement” or that were “unrecorded at the commencement of the work” and of “which the claimant had no notice,” thereby enabling it, in some circumstances, to be paid first by any person subject to the lien if the property is sold.<sup>67</sup> However, despite the pre-judgment features that make a mechanic’s lien attractive, it is still a complicated process to navigate, making it difficult for a low-income worker who may lack access to legal representation or assistance.

#### V. LEGISLATIVE REFORM EFFORTS

Given the inherent challenges employees face to bring a successful suit against their employer and the narrow and complicated mechanisms available to recover any money from such judgments, advocates have trained their attention on establishing stronger pre- and post-judgment protections. For example, recognizing the limits of post-judgment collection, in 2011 California enacted AB 469 which made significant changes to judgment enforcement.<sup>68</sup> Not only did the bill create criminal penalties for the violation of the Labor Code, it extended the period the Labor Commissioner could collect penalties on final judgments (from one year to three).<sup>69</sup>

For instance, the legislation required parties with an action before the Labor Commissioner to report any change of address to aid in collection.<sup>70</sup> If a final judgment remains unsatisfied for more than 10 days, the party can be compelled by the Labor Commissioner to provide a full accounting of

---

64. See CAL. CIV. CODE § 8400 *et seq.*

65. CAL. CIV. CODE § 8400(a)-(f).

66. CAL. CIV. CODE §§ 8410-8424.

67. See CAL. CIV. CODE § 8450.

68. See A.B. 469, 2011-12 Leg., Reg. Sess. (Cal. 2011).

69. CAL. LAB. CODE § 200.5.

70. CAL. LAB. CODE § 98(a).

their assets.<sup>71</sup> An employer who has a history of wage theft violations must post a bond “sufficient and adequate in the circumstances” to cover future claims for wages, interest, and damages from violation of the Wage Orders.<sup>72</sup> Similarly, in 2014, California enacted AB 1386, which granted enhanced powers to the Labor Commissioner to place property liens on employer property by recording a certificate of lien directly with the county recorder’s office.<sup>73</sup>

Despite these and other efforts at reform,<sup>74</sup> wage theft has continued and grown more pervasive,<sup>75</sup> compelling advocates to train their attention on pre-judgment enforcement mechanisms. Efforts began in the carwash industry with AB 2517 which would have allowed workers in that industry to place a pre-judgment lien on their employer’s property when filing a claim for unpaid wages.<sup>76</sup> However, despite the coordinated strategy among those in the carwash industry, the legislation had little support among a broader group of advocates and failed on a full vote of the state Assembly.<sup>77</sup>

A similar fate befell subsequent attempts at establishing the ability for employees to place a pre-judgment lien (e.g., a “wage lien”) on their employer’s property. In 2013 and 2014, AB 1164 and AB 2416 would have provided any employee the opportunity to place what amounted to a mechanic’s lien on their employer’s property for the recovery of wages alleged to have been unlawfully withheld.<sup>78</sup> A statewide coalition of workers along with the Service Employees International Union lobbied for these bills, which helped get AB 2416 through to the Senate.<sup>79</sup> The state Chamber of Commerce assailed each measure as unrestrained tools ripe for abuse.<sup>80</sup> For example, those opposed to the bill noted that the legislation could be abused by workers who did not have a valid claim and would force many law-abiding companies out of business through nuisance litigation and encumbered assets.<sup>81</sup> Neither bill passed.

---

71. See CAL. LAB. CODE § 240(b) (making the employer subject to a \$10,000 civil penalty for failing to account for assets owed).

72. See *id.*; CAL. LAB. CODE § 243(b). This follows the industry-specific models of bond requirements. See *supra* Section IV(b)(ii).

73. CAL. LAB. CODE § 98.2(g)(1)-(5).

74. See, e.g., A.B. 1897, 2013-14 Leg., Reg. Sess. (Cal. 2014) (establishing joint and several liability for labor contractors who fail to provide adequate workers’ compensation).

75. See *supra* Part II.

76. See A.B. 2517, 2011-12 Leg., Reg. Sess. (Cal. 2012) (failing to move beyond the Assembly).

77. See *id.*, Telephone Interview with Matthew Sirolly (Feb. 5, 2018).

78. See A.B. 1164, 2013-14 Leg., Reg. Sess. (Cal. 2013) (dying in committee); A.B. 2416, 2013-14 Leg., Reg. Sess. (Cal. 2014) (dying after moving to the state senate).

79. See Telephone Interview with Matthew Sirolly (Feb. 5, 2018).

80. See CAL. CHAMBER OF COM., JOB KILLER: AB 2416 (STONE) (2014), <http://cbpa.com/wp-content/uploads/2014/05/AB-2416-ASM-Jud-OPPOSE.pdf> [<https://perma.cc/5JDQ-5V4S>].

81. *Id.* at 3, 6.

In the face of repeated failures to enact a wage lien bill, statewide advocates fashioned successful legislation that would provide enhanced protections for workers as they seek to recover wages after final judgments entered in their favor. The bill – SB 588 – contains multiple provisions, detailed below, that strengthen the Labor Commissioner’s enforcement powers as they collect final judgments on behalf of workers.<sup>82</sup>

## VI. SB 588: A COMPROMISE APPROACH

Senate Bill 588 provided a number of new tools for the Labor Commissioner to use to enhance employer compliance with final judgments, in addition to some modest new tools for advocates. Indeed, enhancing post-judgment collection by the Labor Commissioner was more politically palatable than providing employees with pre-judgment enforcement tools.<sup>83</sup> For ease of analysis, the final bill can be thought of as comprising five major provisions: (1) mail levies and liens, (2) stop orders and licensing revocation, (3) enhanced successor liability, (4) upstream liability for specific industries, and (5) individual liability for individual employers.

### *A. Mail Levy and Liens*

Senate Bill 588 added Section 96.8 to the Labor Code, allowing the Labor Commissioner to levy the bank accounts or assets of defendant employers who fail to satisfy a final judgment. Specifically, the legislation combined the writ of execution and sheriff levy process described above in Section IV(a) above into a single procedure controlled by the Labor Commissioner which can now act as a “levying officer” to recover final judgments.<sup>84</sup> Now the Labor Commissioner’s staff can identify delinquent judgment debtors and levy business accounts at any financial institution in California by mail in order to seize assets to satisfy the judgment. The levy can even extend to those third parties who have assets of the judgment debtor who may be personally liable for refusing to surrender assets that the judgment debtor could use to satisfy the judgment.<sup>85</sup> Moreover, the legislation allows the Labor Commissioner to place liens on real and personal property in order to satisfy final judgments.<sup>86</sup>

---

82. The initial version of this legislation also provided for pre-judgment attachment (e.g., a mechanics lien). However, in the face of another defeat, advocates crafted a more targeted version aimed at bolstering post-judgment collection. Telephone Interview with Matthew Siroly (Feb. 5, 2018).

83. *Id.*

84. *Id.* Importantly, the Labor Commissioner currently contracts with certain non-profits who use this levying authority on behalf of clients.

85. See CAL. LAB. CODE § 96.8(c); (f).

86. See CAL. LAB. CODE §§ 238.2; 238.3.

### *B. Stop Orders and Licensing*

The legislation also conferred new authority to the Labor Commissioner to deny a delinquent judgment debtor the ability to do business in California. With Sections 238 and 238.1 of the Labor Code, if a final judgment is not satisfied within 30 days after the employer had an opportunity to appeal, the Labor Commissioner may issue a citation requiring that the employer cease all business operations in the state.<sup>87</sup> In addition, the section allows the Labor Commissioner to issue citations with civil penalties for violation of this section.<sup>88</sup> To avoid these consequences, the employer can either post a bond ranging from \$50,000 to \$150,000 (depending on the size of the final judgment) to satisfy outstanding liabilities or file proof of settlement with the employee.<sup>89</sup> Similarly, employers in the long-term care industry can be denied a new license or a license renewal for failure to satisfy final judgments against them.<sup>90</sup> Indeed, this long-term care section of the legislation is mandatory, requiring the Labor Commissioner to pass along all records of unsatisfied judgments to the state Departments of Public Health and Social Services.<sup>91</sup>

### *C. Successor Liability*

In addition, and in conjunction with the Labor Commissioner's stop order and bonding authority, Section 238(e) of the Labor Code was added. This section significantly broadens the definition of successor employers in order to prevent employers from quickly changing their corporate form to evade a stop order (and thus payment of the final judgment). An employer will be treated as if it were the judgment debtor if its employees are (1) engaged in substantially similar work and working conditions under nearly identical supervision as the debtor or (2) the new corporate entity has substantially similar production processes, creates the same products, or provides a similar service to the same "body of customers."<sup>92</sup>

### *D. Upstream Liability*

Further, the bill expands liability for unpaid judgments in certain industries where joint employment is pervasive. Under Section 238.5, any

---

87. CAL. LAB. CODE § 238(a). Importantly, Section 238 does not require action by the Labor Commissioner to trigger the stop order. However, since it is unlikely that this provision of the law will be self-enforcing, the Labor Commissioner's action would seem to be a condition precedent for compliance. *See* JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 8.

88. CAL. LAB. CODE § 238(f).

89. CAL. LAB. CODE § 238(b)–(c); § 238.1.

90. CAL. LAB. CODE § 238.4.

91. *See* CAL. LAB. CODE § 238.4(b) (using the mandatory "shall").

92. CAL. LAB. CODE § 238(e).



business that contracts with entities providing property services<sup>93</sup> or long-term care is made jointly and severally liable for wage claims brought by employees performing the work.<sup>94</sup> Thus janitors or nurses, for example, who would otherwise face a judgment-proof defendant if they brought a wage claim against their employer are now allowed to satisfy wage judgments against joint employers. Importantly, this section of the law, by its own terms, restricts recovery to wages, not penalties or damages an employee might otherwise recover.<sup>95</sup>

#### *E. Individual Liability*

Finally, the bill expands the liability that certain employers can face in their individual capacity for failure to pay an employee their full wages. Under Section 558.1 of the Labor Code, any person acting on behalf of an employer “who violates, or causes to be violated” any provision of the state’s Wage Orders or certain portions of the Labor Code<sup>96</sup> can be held personally liable for any violation. Importantly, these new liabilities are limited to the “owner, director, officer, or managing agent of the employer.”<sup>97</sup>

### VII. INITIAL OUTCOME DATA

Given the potentially significant impact SB 588 may have on judgment recovery in wage theft claims, this section will outline data relevant to understanding the impact of certain sections of the legislation.

#### *A. Methods, Data Collection, and Limitations*

Two principal methods were employed to gather data for analysis: public records requests and practitioner interviews. Records requests were sent to the California Labor Commissioner, the Department of Public Health, and the Department of Social Services, each of which is tasked with

---

93. CAL. LAB. CODE § 238.5(e)(1) (including janitorial, security guard, valet parking, landscaping, and gardening services).

94. This section of the legislation allows the Labor Commissioner to cite all parties who are engaged in wage theft. *See* JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 16..

95. *See* CAL. LAB. CODE § 238.5(a)(1). *Cf.* CAL. LAB. CODE § 2810.3 (defining in sub-section (a)(4) that wages owed to certain “Labor Contractors” are “all sums payable to an employee or the state based upon any failure to pay wages, as provided by law”) (emphasis added).

96. Including waiting time penalties, itemized wage statements, failure to provide meal or rest breaks, actions to recover minimum wages and overtime premiums, or expense reimbursements. *See* CAL. LAB. CODE § 558.1(a).

97. CAL. LAB. CODE § 558.1(b). This individual liability is similarly to other existing provisions within the Labor Code, specifically section 2810.3 of the California Labor Code, which makes “client employers” who engage work by contract personally liable for failure to pay wages due, among other things.

deploying the new tools available to state agencies because of the passage of SB 588.<sup>98</sup> The data from these sources are current from the effective date of the legislation – January 1, 2016 – to the date the records requests were returned in April 2018 and include information about mail levies issued, liens placed, stop orders enforced, or long-term care licensing renewals revoked.

Given the difficulty of evaluating the impact of successor, upstream, and individual liability provisions in the final bill through records requests, the author conducted structured interviews with representatives from 22 non-profit and for-profit firms about the impact of the law. The organizations represent workers across nearly every major region in the state and include those organizations deeply involved with the passage of SB 588 and those whose clients are the beneficiaries of the enhanced collection methods available because of the legislation.

Technical barriers within the Labor Commissioner's office prevented them from providing summary records of judgment collection efforts prior to the passage of SB 588.<sup>99</sup> However, such data may form the basis for future analysis of the ultimate effectiveness of the legislation when additional comparator data become available.

### *B. Mail Levies*

As described above in Section VI(a), the mail levy provision of SB 588 allows the Labor Commissioner's staff, or their designees, to act as levying officers, bypassing the need to complete a writ of execution and direct the local sheriff's office to produce the writ and collect assets directly from target financial institutions. From January 1, 2016 to April 4, 2018,<sup>100</sup> the Labor Commissioner, through the Judgment Enforcement Unit (JEU), sent out 3,997 mail levies in 1,572 cases, which represents over \$25 million in unpaid final judgments (see Table 1).

---

98. Copies of the records request are available upon request.

99. Telephone Interview with Matthew Siroly (Feb. 5, 2018).

100. This is the date range for all public records request data from the Labor Commissioner described in this and other sections unless otherwise noted.

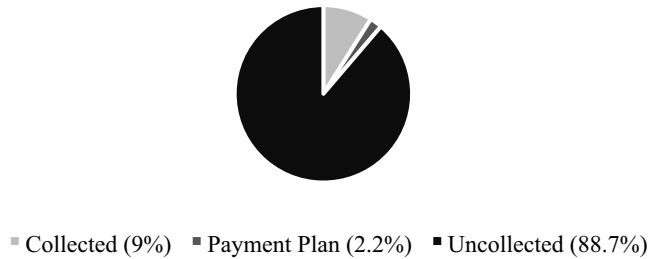
**TABLE 1: Mail Levy Activity**

Number of Mail Levy Cases	Total Levies Performed	Total Judgment Amounts	Total Collected	Total Payment Plan
1572	3997	\$25,483,023	\$2,295,714	\$572,549

Source: Department of Labor Standards Enforcement, Judgement Enforcement Unit, January 1, 2016-April 4, 2018

As Figure 1 details, of that total judgment amount, the Labor Commissioner was able to recover over \$2.2 million and agree to over \$500,000 in payment plans with the target employers, or roughly \$1,800 per case. This represents an 11 percent success rate in recovering unpaid wages for workers, or the rate at which the Labor Commissioner is able to recover unpaid wages relative to the total final judgments. Importantly, this success rate represents the recovery of wages by the Labor Commissioner *in addition to* prior judgment satisfaction. In other words, this success rate does not reflect the Labor Commissioner’s overall success rate, only the effect of collections now authorized by SB 588 on outstanding judgments.

**FIGURE 1: Judgment Enforcement Unit Final Judgment Collection Success**



However, the success rate by industry varies widely, with the Labor Commissioner recovering over 100 percent of the wages owed in some industries (such as in pest control or cargo loading industries)<sup>101</sup> to nothing at all (such as in the metal fabrication or recycling industries). Table 2 lists the total judgments collected by industry type and includes the total final judgments, the amount collected by levy, and any payment plan agreed to

---

101. Likely due to interest owed by the defendant on the total judgment amount.

by the employer.<sup>102</sup> The Labor Commissioner's average success rate across industries is 14 percent. Moreover, it appears that successful collections are clustered in a few industries. As displayed in Table 2, the first 16 industries in which the mail levy success rate exceeded 20 percent represented nearly 46 percent of all wages recovered.

<b>Industry</b>	<b>Total Judgments</b>	<b>Total Levies</b>	<b>Total Collected</b>	<b>Payment Plans</b>	<b>Success Rate</b>	<b>Efficiency Rate (Dollar per Mail Levy)</b>
Pest Control	\$10,408	1	\$11,525	\$0	110.7%	\$11,525
Transportation-Cargo Loading	\$120,228	43	\$33,032	\$93,411	105.2%	\$768
Grocery	\$232,538	13	\$65,494	\$100,000	71.2%	\$5,038
Agriculture-Farm Labor	\$89,820	17	\$56,284	\$0	62.7%	\$3,311
Agriculture-Packing & Processing	\$15,679	4	\$9,521	\$0	60.7%	\$2,380
Machinery Repair	\$82,904	10	\$47,686	\$0	57.5%	\$4,769
Gas Station	\$46,644	7	\$26,297	\$0	56.4%	\$3,757
Manufacturing-Computer/tech	\$299,496	26	\$134,121	\$0	44.8%	\$5,158
<b>Landscaping and Nurseries*</b>	\$175,286	50	\$36,766	\$32,347	39.4%	\$735
<b>Transportation-Parking Services*</b>	\$39,232	14	\$6,013	\$6,447	31.8%	\$429
Laundry (incl. Dry Cleaners)	\$39,961	8	\$20	\$12,000	30.1%	\$3
<b>Health Care - Homecare*</b>	\$1,997,126	347	\$467,400	\$25,353	24.7%	\$1,347
Child Care (not in-home)	\$42,402	14	\$9,472	\$0	22.3%	\$677
<b>Security Guard*</b>	\$340,449	87	\$30,201	\$41,671	21.1%	\$347
Medical	\$74,297	23	\$9,711	\$5,022	19.8%	\$422

102. For the purposes of evaluating the success rate of the Labor Commissioner's mail levy process, the author has included all amounts collected and those that reflect settlement agreements. This means that the success rate slightly overestimates collections, given the variability in settlement agreements converting to recovered wages.

<b>TABLE 2: Mail Levies by Industry, by Success Rate</b>						
<b>Industry</b>	<b>Total Judgments</b>	<b>Total Levies</b>	<b>Total Collected</b>	<b>Payment Plans</b>	<b>Success Rate</b>	<b>Efficiency Rate (Dollar per Mail Levy)</b>
Clinic						
Health Care Industry- Hospitals	\$31,360	4	\$0	\$5,533	17.6%	\$0
Retail-Laborer	\$456,209	104	\$75,935	\$0	16.6%	\$730
<b>Transportation-Trucking ‡</b>	\$2,221,581	469	\$246,167	\$113,897	16.2%	\$525
Transportation-Other	\$148,076	56	\$20,099	\$0	13.6%	\$359
<b>Construction †</b>	\$3,292,928	508	\$312,677	\$42,583	10.8%	\$616
Computer Industry-Software Development	\$422,025	52	\$45,523	\$0	10.8%	\$875
Transportation-Delivery /Messenger	\$165,404	41	\$16,546	\$0	10.0%	\$404
<b>Janitorial*</b>	\$1,097,862	256	\$106,389	\$2,534	9.9%	\$416
Telemarketing	\$60,743	40	\$1,850	\$4,176	9.9%	\$46
Unknown	\$506,788	89	\$48,044	\$0	9.5%	\$540
Hotel/Resort	\$97,000	15	\$8,194	\$0	8.4%	\$546
Domestic/ Household Worker	\$572,447	45	\$46,298	\$0	8.1%	\$1,029
Retail-General/Other	\$451,646	81	\$34,297	\$0	7.6%	\$423
Transportation-Cab/Car Service	\$77,094	6	\$5,110	\$0	6.6%	\$852
<b>Restaurant - All</b>	\$4,513,295	499	\$178,810	\$87,577	5.9%	\$358
Engineering	\$166,372	16	\$8,489	\$0	5.1%	\$531
Admin/Office	\$226,464	75	\$9,175	\$0	4.1%	\$122
Health Care Industry-Tech/ Professional	\$151,570	25	\$5,462	\$0	3.6%	\$218
Fitness and Health Clubs	\$96,516	11	\$2,911	\$0	3.0%	\$265

<b>TABLE 2: Mail Levies by Industry, by Success Rate</b>						
<b>Industry</b>	<b>Total Judgments</b>	<b>Total Levies</b>	<b>Total Collected</b>	<b>Payment Plans</b>	<b>Success Rate</b>	<b>Efficiency Rate (Dollar per Mail Levy)</b>
<b>Health Care - Care-Giver (not in-home)*</b>	\$1,740,779	92	\$37,964	\$0	2.2%	\$413
Marketing Services	\$224,392	16	\$4,055	\$0	1.8%	\$253
Beauty Shops & Barber Shops	\$147,431	31	\$2,606	\$0	1.8%	\$84
Entertainment – All	\$167,688	24	\$2,000	\$0	1.2%	\$83
Education	\$135,080	36	\$1,360	\$0	1.0%	\$38
Manufacturing-Garment	\$604,383	30	\$4,774	\$0	0.8%	\$159
Sales – All	\$557,261	74	\$3,000	\$0	0.5%	\$41
Financial Services – All	\$875,670	96	\$4,309	\$0	0.5%	\$45
Warehouse	\$105,584	34	\$200	\$0	0.2%	\$6
Transportation-Car Wash	\$148,934	18	\$178	\$0	0.1%	\$10
Manufacturing-Other	\$553,103	68	\$117	\$0	0.0%	\$2
Apartment Management/Real Estate Investment	\$91,409	5	\$0	\$0	0.0%	\$0
Architecture	\$43,549	9	\$0	\$0	0.0%	\$0
Communications, Utilities, Newspapers	\$31,640	14	\$0	\$0	0.0%	\$0
Irrigation District	\$3,150	2	\$0	\$0	0.0%	\$0
Manufacturing-Garment-AB 633	\$92,071	1	\$0	\$0	0.0%	\$0
Metal Fabrication/ Machine Shop	\$245,636	53	\$0	\$0	0.0%	\$0
Recycling	\$319,068	135	\$0	\$0	0.0%	\$0
Retail-Jewelry	\$22,496	1	\$0	\$0	0.0%	\$0
Social Services	\$9,139	1	\$0	\$0	0.0%	\$0
Temp/Staffing Service	\$32,538	21	\$0	\$0	0.0%	\$0

<b>Industry</b>	<b>Total Judgments</b>	<b>Total Levies</b>	<b>Total Collected</b>	<b>Payment Plans</b>	<b>Success Rate</b>	<b>Efficiency Rate (Dollar per Mail Levy)</b>
Transportation-Ambulance Service	\$54,671	20	\$0	\$0	0.0%	\$0
Veterinary/Animal Services	\$76,832	2	\$0	\$0	0.0%	\$0
*= Industries included in the upstream liability provision in Cal. Lab. Code § 238.5. ‡ = Industries affected by significant JEU investigation, citation, or stop order actions. <i>See infra</i> Table 5.						

Finally, the target of the mail levy has consistently been large, national financial institutions to whom the mail levies can be easily delivered, such as JPMorgan Chase Bank, Wells Fargo, or Bank of America. As Table 3 shows, 14 financial institutions make up more than 67 percent of all garnishee targets who received mail levies from the Labor Commissioner. Mail levies were also sent to well-known businesses, such as H&M, Wal-Mart, Inc., and CVS, given that accounts receivable may also be subject to a mail levy if identified.<sup>103</sup>

---

103. However, in no case was the Labor Commissioner able to recover funds from these target companies. But, as the Labor Commissioner's own training documents suggest, if an employee knows the employers largest customers, this information can help the Judgment Enforcement Unit locate accounts receivable for collection purpose. *See* JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 6.

**TABLE 3: Top Mail Levy Garnishees**

<b>Target Garnishee</b>	<b>Total Mail Levies Received</b>
JPMorgan Chase Bank	647
Wells Fargo	647
Bank of America	572
US Bank	242
Citibank	226
Bank of the West	103
Union Bank	98
Comerica Bank	33
Bridge Bank	30
East West Bank	28
Hanmi Bank	28
Radobank N.A.	24
California Bank & Trust	21
Fresno County Federal Credit Union	15
<b>Total Levies Issued</b>	<b>2,714</b>
<b>All Levies Issues</b>	<b>3,997</b>
<b>Share of All Levies Issues</b>	<b>67.9%</b>

Source: Department of Labor Standards Enforcement, Judgement Enforcement Unit, January 1, 2016-April 4, 2018.

This initial data suggests that while there has been some success with the new mail levy authority granted to the Labor Commissioner, there is room for improvement. With a success rate of only 11 percent, the agency has not been able to meaningfully enhance collections, though it is still an improvement on top of the 17 percent success rate at which employers voluntarily agree to pay some amount of a final judgments.<sup>104</sup> Put another way, this figure represents material, however modest, progress as building upon existing voluntary compliance. In addition, over two-thirds of all the money collected under SB 588 has come from mail levies, and the efficiency and ease with which the agency can now levy financial institutions across the state means that they will continue using and expanding its reach.<sup>105</sup>

104. See *supra* Part III.

105. Indeed, the Labor Commissioner is working with the Wage Justice Center – a non-profit in southern California – to assist in using the agencies new mail levy authority to collect for their clients. Telephone Interview with Matthew Sirolly (Feb. 5, 2018).



### C. Stop Orders

With Sections 238 and 238.1 of the Labor Code, the Labor Commissioner can now take the extraordinary step of denying businesses the right to operate in California if there are unsatisfied final judgments against them.<sup>106</sup> To enforce this section, the JEU has the power to investigate a target employer, issue citations that include civil penalties,<sup>107</sup> and formally issue stop orders. As Table 4 describes, of 124 cases investigated from January 1, 2016 to April 4, 2018, the JEU has conducted 93 site inspections, issued 30 investigative subpoenas, and issued stop orders in 29 cases. These 124 cases represented over \$3.5 million in total final judgments. However, the JEU has only recovered a little over \$400,000 and put over \$500,000 on payment plans. This translates into a success rate of 26 percent or an average of \$3,305 recovered per case. In addition, of the total amount recovered by the JEU, 84 percent was collected after the office conducted an inspection or issued a stop order.

**TABLE 4: Stop Order Activity**

<b>Number of Stop Order Cases</b>	<b>Total Stop Orders Issued</b>	<b>Total Judgment Amounts</b>	<b>Total Collected</b>	<b>Total Payment Plan</b>	<b>Total Collected After Inspection/Stop Order</b>
124	29	\$3,581,023	\$409,899	\$512,960	\$346,285

Source: Department of Labor Standards Enforcement, Judgement Enforcement Unit, January 1, 2016-April 4, 2018.

In addition, like mail levies, the results of collection varied widely by industry. As Table 5 shows, the bulk of cases resulting in action by the JEU using stop orders, citations, and inspections occurred in the construction, restaurant, and trucking sectors. Yet, while the JEU handled 44 construction cases representing over half a million dollars in outstanding judgments, the office was only able to collect \$7,500 – a 1.4 percent success rate (the bulk of which came after an inspection or stop order was issued). Conversely, the JEU has had a success rate of over 16 percent in the restaurant industry, recovering over \$100,000 with nearly three-quarters of collections coming after inspections or stop orders were issued.

106. Within the limitation mentioned. *Supra* Section VI(b).

107. See CAL. LAB. CODE § 238(f) (making employers subject to civil penalties in the amount of \$2,500 for conducting business in violation of Section 238 and \$100 per day for every day the employer continues to conduct business, with a maximum penalty of \$100,000).

<b>Industry</b>	<b>Number of Cases</b>	<b>Total Judgment Amounts</b>	<b>Total Collected</b>	<b>Total Payment Plan</b>	<b>Collected After Inspection/ Stop Order</b>	<b>Success Rate</b>	<b>Share of Payment After Stop Order</b>
Warehouse	1	\$49,266	\$32,000	\$32,000	\$32,000	129.9%	100.0%
Transportation-Cargo Loading	1	\$110,687	\$33,032	\$93,411	\$32,173	114.2%	97.4%
Transportation-Other	2	\$186,603	\$0	\$157,477	\$0	84.4%	0.0%
Unknown	1	\$7,689	\$5,200	\$0	\$0	67.6%	0.0%
<b>Transportation-Trucking</b>	11	\$728,343	\$222,879	\$113,897	\$196,211	46.2%	88.0%
<b>Restaurant - All</b>	46	\$1,402,661	\$109,287	\$116,176	\$80,901	16.1%	74.0%
<b>Construction</b>	44	\$532,279	\$7,500	\$0	\$5,000	1.4%	66.7%
Beauty Shops & Barber Shops	2	\$37,379	\$0	\$0	\$0	0.0%	0.0%
HealthCare Industry-Care-Giver (not in-home)	2	\$292,939	\$0	\$0	\$0	0.0%	0.0%
Health Care Industry-Homecare	3	\$41,171	\$0	\$0	\$0	0.0%	0.0%
HealthCare Industry-Hospitals	1	\$8,536	\$0	\$0	\$0	0.0%	0.0%
Health Care Industry-Tech/Professional	1	\$89,888	\$0	\$0	\$0	0.0%	0.0%
Machinery Repair	1	\$13,770	\$0	\$0	\$0	0.0%	0.0%
Medical Clinic	4	\$49,685	\$0	\$0	\$0	0.0%	0.0%

**TABLE 5: Investigation, Citation, and Stop Order by Industry, by Success Rate**

Industry	Number of Cases	Total Judgment Amounts	Total Collected	Total Payment Plan	Collected After Inspection/ Stop Order	Success Rate	Share of Payment After Stop Order
Transportation-Car Wash	1	\$4,223	\$0	\$0	\$0	0.0%	0.0%

#### D. Expanded Liabilities

As described in Section VI, SB 588 expands employer liability in three central ways: creating stricter upstream liability for certain industries (long-term care, janitorial, security guard, valet parking, landscaping, and gardening services), creating stricter successor liability to combat corporate succession that frustrates collection, and creating individual management liability for wage theft claims.<sup>108</sup> The effect of successor liability at compelling compliance with stop order demands is hard to quantify at this stage. Training documents from the Labor Commissioner suggest that the agency considers this broadened successor liability to be a powerful new tool to keep companies accountable.<sup>109</sup> Given that many employers quickly dissolve and alter their corporate form in the face of a wage claim, this is an important area to continue monitoring.<sup>110</sup>

In addition, while direct data from the Labor Commissioner and conversations with advocates reveal little concrete data on the success of the law's upstream liability provision, some insights from the mail levy results are important.<sup>111</sup> For example, the industries in which the agency has found the most success in collecting final judgments with mail levies include landscaping and nurseries, parking services, homecare, and security guard firms. These are industries where expanded liability attaches. However, the JEU has been far less successful at collecting final judgments against janitorial or other long-term care companies. These data suggest that

108. See CAL. LAB. CODE §§ 238.5(e)(1); 238(e); and 558.1.

109. See JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 13–20.

110. Data from a study of wage theft claims filed with the Labor Commissioner in California indicated that employers who dissolved their corporate structures did so within 7.7 months of a claim being filed by an employer. See Cho et al., *supra* note 16, at 11.

111. Those organizations who have had occasion to use the upstream liability section have noted that it has been valuable at allowing them to scale the corporate chain more effectively. However, the fact that only a narrow number of industries are included within the scope of the law may limit its effectiveness. See, e.g., Telephone Interview with Organization 5 (Mar. 1, 2018).

the liability provisions may be having an effect of enhancing collection efforts in some industries more than others.

### *E. Advocate's Response*

For those sections of the legislation that are less susceptible to quantitative analysis, the author conducted multiple structured interviews with non-profit and advocacy organizations around the state. As expected, those closest to the passage of the legislation were aware of its central provisions, but many organizations, while aware of the legislation's successful passage, were unaware of certain key components. The staff at five non-profit organizations, for example, were unaware of the upstream liability provision in Section 238.5 of the Labor Code and the ability of state departments to deny license renewals for long-term care organizations that have outstanding final judgments.<sup>112</sup>

However, certain provisions of the bill are well known and seen as highly effective tools for wage collection: chief among them is the individual liability provision in Section 558.1. Many interviewees suggested that the ability to extend liability to individual managers who directly engage in wage theft has made a meaningful, if not crucial, impact on their practice by increasing the settlement value of claims before the Labor Commissioner.<sup>113</sup> In one instance, a non-profit advocate faced an employer who used multiple tactics to avoid payment, such as threatening to file for bankruptcy if the plaintiff demanded more money above the employer's initial settlement offer.<sup>114</sup> When the attorneys amended the complaint to include an individual liability claim for nearly all wages owed, the employer changed posture and offered a settlement three times larger than their initial offer.<sup>115</sup> Another non-profit was able to litigate a \$9 million case against a long-term care organization, while yet another was able to settle an entire judgment for a client, worth over \$90,000 – both made stronger by their ability to bring claims against individual managers that caused the violation.<sup>116</sup> The settlement effect of this provision is an important area to continue monitoring, given that employees are more

---

112. Telephone Interviews with Organization 1 (Feb. 12, 2018); Organization 3 (Feb. 28, 2018); Organization 4 (Feb. 22, 2018); Organization 12 (Mar. 20, 2018); and Organization 15 (Apr. 16, 2018).

113. Telephone Interviews with Organization 1 (Feb. 12, 2018); Organization 2 (Mar. 9, 2018); Organization 4 (Feb. 22, 2018); Organization 5 (Mar. 5, 2018); Organization 7 (Mar. 12, 2018); Organization 8 (Mar. 14, 2018); Organization 11 (Mar. 16, 2018); Organization 12 (Mar. 20, 2018); Organization 14 (Apr. 5, 2018).

114. Telephone Interview with Organization 5 (Mar. 5, 2018).

115. *Id.*

116. Telephone Interviews with Organization 2 (Mar. 9, 2018); Organization 4 (Feb. 22, 2018).

successful collecting their unpaid wages through settlement than as a final judgment.<sup>117</sup>

Several practitioners mentioned that the ability to pressure settlement was incredibly valuable because even the truncated Berman hearing process is still far too long for many clients to wait for relief and more than enough time for employers to shift assets.<sup>118</sup> Indeed, as one long-term care advocate mentioned, many of their clients work for closely held corporations (such as a family-owned businesses) in which the employer, without the individual liability component, would be able to shield much of their assets from recovery behind their limited liability corporations.<sup>119</sup>

Several non-profit advocates have noted serious limitations of the law. For example, advocates assisting employees who were recovering unpaid wages using the law's upstream liability component (under Section 238.5) were limited to recovering wages and not penalties.<sup>120</sup> In addition, while no appellate court has yet ruled on this issue, some advocates stressed that defendants have objected to the application of individual liability outside of the Berman hearing process, arguing that there was no clear legislative intent to expand such liability outside of hearings before the Labor Commissioner.<sup>121</sup>

#### *F. Exclusions or Inaction*

Finally, some elements of the law have yet to be engaged or enforced by the Labor Commissioner. For example, the Labor Commissioner has yet to record a bond by any employer, one of the two prescribed methods that the employer can pursue to avoid a stop order being issued against them for failing to pay final judgments.<sup>122</sup> In addition, as responses to the author's record requests reveal, as of April 2018, the Labor Commissioner had yet to use its authority under SB 588 to place a lien on an employer's real or personal property.

Further, SB 588 creates a mandatory requirement that the Labor Commissioner provide notice to the Departments of Public Health and Social Services of all long-term care organizations operating in the face of unpaid final judgments.<sup>123</sup> However, on only two occasions from January

---

117. Of the \$164 million dollars in wages collected for workers between 2008 and 2011, nearly three quarters came from settlement rather than final judgment. *See* Cho et al., *supra* note 16, at 15.

118. *E.g.*, Telephone Interview with Organization 5 (Mar. 5, 2018).

119. Telephone Interview with Organization 7 (Mar. 12, 2018).

120. Telephone Interview with Organization 4 (Feb. 22, 2018).

121. Telephone Interviews with Organization 7 (Mar. 12, 2018); Organization 4 (Feb. 22, 2018).

122. *See* CAL. LAB. CODE § 238 *et seq.* In addition, the Labor Commissioner has only received one employer accord settling a wage claim in the face of a stop order.

123. CAL. LAB. CODE § 238.4(b) ("If the Labor Commissioner finds that an employer in the long-term care industry is conducting business in violation of Section 238, the Labor Commissioner *shall*

2016 to April 2018 did the Labor Commissioner forward such notice.<sup>124</sup> Records requests to the both the Departments of Public Health and Social Services reveal that the agencies have never taken action to deny an institution a new license or revoke a renewal.<sup>125</sup> This accords with advocates' experiences within the long-term care community, as they note that there are no systems in place for the Departments of Public Health and Social Services to use SB 588 to hold non-compliant employers accountable.<sup>126</sup>

## VII. BUILDING ON THE PROMISE OF SB 588

The sweeping provisions of SB 588 have provided renewed vigor to the fight to enhance protections for workers injured by wage theft. Yet, both positive outcomes and serious cautions can be gleaned from the data presented above.

To begin, the actual amount of money recovered under SB 588 by the Labor Commissioner is relatively small compared to the total outstanding judgments owed to employees. Total judgments subject to either mail levies or investigations and stop orders between January 2016 and April 2018 is over \$29 million. Of that total, \$3.7 million was collected or committed by an employer in the form of a payment plan, or a mere 13 percent of all total judgments.<sup>127</sup> Yet, combined with the prior judgments successfully collected by workers, this suggests that the total final judgement collection rate increases to nearly 28 percent.<sup>128</sup> In other words, SB 588 has made marked improvement in *overall* final judgment collection – though the overall rate remains modest.

In addition, the combined use of mail levies, JEU investigations, and stop orders can be a potent combination for enhancing collections. Mail

---

*notify* the State Department of Public Health or the State Department of Social Services.”) (emphasis on mandatory language added).

124. These two notices were likely the two confirmed to have been received by the Department of Social Services in a records request sent to that agency.

125. No records of license revocation or renewal denial were submitted by either Department of Public Health or Department of Social Services. In addition, DSS has no record of any notice from the Labor Commissioner.

126. Telephone Interviews with Organization 7 (Mar. 12, 2018); Organization 8 (Mar. 14, 2018); Organization 10 (Mar. 15, 2018); Organization 14 (Apr. 5, 2018).

127. The Labor Commissioner collected approximately \$2.7 million with levies and investigations and stop orders and obtained commitments from employers to pay over \$1 million in payment plans. *See supra* Part VII.

128. As described in Part III, before the enactment of SB 588, 17 percent of final judgments resulted in some payment to the effected worker. Since post-judgement collection efforts are focused on unsuccessful collections, this means that the 13 percent success rate is likely connected to the remaining 83 percent of cases. This suggests that the overall success rate, for all collections, is  $17\% + (.13 \times 83\%) = 27.79\%$ . Email Correspondence between author and Matthew Sirolly, Director, Wage Justice Center (Jan. 19, 2019) (on file with author).

levies have made demonstrable progress in recovering funds for farm laborers, grocery workers, and laundry and dry-cleaning workers. Those employers for whom mail levies have been less effective, such as restaurants owners, are the very industries for whom stop orders have had the greatest effect. This suggests that the threat of stop orders in cash-poor industries, such as construction and restaurants, may motivate employers to satisfy judgments.<sup>129</sup> Alternatively, for those employers whose assets are held in cash, mail levies have been effective at cornering employer assets in the most common financial institutions, ensuring that if a delinquent employer has a final judgment, they will not be able to hide their assets in financial institutions in the state.

However, the law is still in its infancy. The Judgment Enforcement Unit has made judgment collection under SB 588 a priority in enforcement and training, committing, for example, to use mail levies in *every* case in which they are involved.<sup>130</sup> Advocates can assist these efforts by ensuring that any information about an employer's assets or accounts receivable are forwarded to the JEU. In addition, given that stop orders demonstrably increase compliance and final payment, the Labor Commissioner should consider deploying this option more aggressively.

Moreover, contrary to popular understanding of the bill, SB 588 does provide a pre-judgment collection mechanism, however narrow, against the worst offenders under Sections 238 and 238.1. Once any employer has violated Section 238 (by continuing to operate their business in the face of an unsatisfied judgment, without posting bond or presenting a settlement), they may be subject to prejudgment attachment through a personal or real property lien for violations that occur *after* the initial unsatisfied judgment.<sup>131</sup> Combined with broader successor liability under 238(e), there is a strong chance that non-compliant employers under some circumstances would be subject to pre-judgment attachment.<sup>132</sup>

The same impact may be true for the upstream liability granted to employees who work in the long-term care or property services industries (i.e., janitorial, security guard, valet parking, landscaping, and gardening services) who may be able to bring claims against the highest corporate echelons.<sup>133</sup> Section 238.5 allows *any* employee who provides services under contract in these industries to bring a strict liability claim for unpaid

---

129. However, even the threat of stop orders has been ineffective at motivating employers in the construction industry to pay final judgments. *See supra* Section VII(c).

130. JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 6.

131. *See* CAL. LAB. CODE §§ 238.2, 238.3 (drafted in such a way that any employer in violation of Section 238 may be subject to a property lien).

132. *See* JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 20.

133. *See* CAL. LAB. CODE § 238.5(e)(1).

wages against “*any individual or business entity*” that would now be jointly and severally liable for all unpaid wages.<sup>134</sup>

Yet, strikingly, nearly three years after the passage of SB 588, some tools remain unused. On only two occasions has the Labor Commissioner complied with the mandatory reporting requirements under the bill to notify state departments about unsatisfied judgments in the long-term care industry. The Departments of Public Health and Social Services have done no better, having never revoked a license request or a renewal over unsatisfied final judgments. This is indeed a blind spot in our current enforcement regime and advocates should continue to pressure the Labor Commissioner and the Departments of Public Health and Social Services to take action against non-compliant employers.<sup>135</sup> In the face of such inaction, the legislature should amend the legislation to make license revocation mandatory upon a finding that an employer has an unsatisfied judgment and to require the agencies to investigate when prompted by advocates about such judgments. Moreover, it remains to be seen how and when the Labor Commissioner will deploy their new authority to place liens on the real and personal property of employers.

Finally, as advocates attest in interviews with the author, for their practice both within and outside of the Labor Commissioner hearing process, upstream and individual liability have proven to be critical new tools in their arsenal. Even the most recalcitrant employers have blinked and settled cases when their own money is on the line and new authority to reach further up the joint employer chain means that more money may be recovered for workers. More research will be needed to understand the full effect of the successor liability provisions of the bill and the legal limits of the individual liability component outside of the Berman hearing process.

Moving forward, while full implementation of this legislation should be a priority, additional efforts are required by state agencies and the legislature. Given gaps in practitioner understanding of key provisions of this legislation – such as the long-term care and upstream liability provisions – the Labor Commissioner should consider providing or re-circulating a summary of the current law. This effort could coincide with the agency proffering guidance to advocates about ways in which their advocacy could enhance final judgment, for example, by providing key information on accounts or joint employers the agency could use in enforcement actions. The legislature should also consider expanding the

---

134. See CAL. LAB. CODE § 238.5(a)(1) (emphasis added). See also, JUDGMENT ENFORCEMENT UNIT, *supra* note 28, at 23.

135. However, advocates recognized that even if the Labor Commissioner fulfilled its mandatory reporting requirement, the language with respect to DPH and DSS is permissive, allowing the agencies to use discretion when reviewing licenses. This is so given that it is the mission of these agencies to maximize operating facilities, yet they are doing so on the back so unpaid labor. See Telephone Interviews with Organization 6 (Mar. 6, 2018); Organization 7 (Mar. 12, 2018).



industries included in the upstream liability provisions of the law. For example, warehouse workers are a key industry in which joint employer relationships have been abused to underpay workers.

#### IX. CONCLUSION AND RECOMMENDATIONS

SB 588 addressed a significant gap in the enforcement of wage claims, particularly by providing enhanced enforcement powers to the Labor Commissioner after research indicated that final judgments in favor of employees have largely gone unpaid. In addition, the legislation made some existing enforcement tools easier to deploy, such as making the Labor Commissioner a levying officer so that the office could mail levies to financial institutions to collect on unpaid judgments without relying on a local sheriff and allowing the agency to place pre-judgment liens against businesses that have refused to satisfy final judgments.

While the new law is a far cry from a true pre-judgment wage lien, it builds upon the existing post-judgment collection regime by enhancing the lien and levy authority of the Labor Commissioner, granting the agency the power to issue stop orders for unpaid wages, and expanding successor liability, individual liability for employers who engage in wage theft, and upstream liability in certain industries where joint employment makes judgment collection more difficult.

Yet, SB 588 has not improved wage judgment collection nearly as much as advocates had hoped, partly because the Labor Commissioner has not yet used all the powers the statute has given it. For example, the agency has not utilized its ability to place a lien on an employer's real or personal property, has rarely forwarded notice of unsatisfied judgments in the long-term care industry to the Departments of Public Health and Social Services, and has issued relatively few stop orders given the known magnitude of wage theft and unpaid final judgments.

However, over \$3.7 million has been recovered for employees under the new law out of over \$29 million in outstanding judgments. While this is a small amount in the face of existing unpaid judgments, the Labor Commissioner has already made quick work of the mail levy provision, which accounts for over two-thirds of the total money collected under the new law. The agency has also had particular success at recovering money for employees in the property services industries, workers the law was designed to protect with new upstream liability provisions. While the mail levy has accounted for more overall dollars collected for workers, the stop order provision has been more potent, recovering nearly 26 percent of outstanding judgments, or nearly \$1 million of over \$3.5 million in unpaid final judgments. This suggests that continued use of the stop order provision may be an effective tool to bring employers to the table. Records also indicate that the Labor Commissioner is moving swiftly to train and

equip their staff regarding new enforcement tools available to them. And the data suggest that these efforts have increased the post-judgment success rate from 17 to nearly 28 percent.

In addition to continued efforts to establish a true pre-judgment wage lien law for workers in California, advocates should consider the following proposals to enhance judgment collection based on the data presented:

1. Encourage the Labor Commissioner to draft clear guidance and a summary of existing law for practitioners, particularly descriptions of new individual and successor liability provisions available in wage theft cases;
2. Encourage the Labor Commissioner to review and expand enforcement efforts for workers in industries designated for special protection by SB 588, particularly workers in the janitorial industry and health care professionals for whom mail levies have been ineffective;
3. Amend the liability provision in Section 238.5 of the Labor Code to include more industries beyond property services and long-term care businesses, such as warehouse and distribution workers, as well as to encompass more than just wages, such as business expenses under Section 2802 of the Labor Code or other damages and penalties that an employee could recover;
4. Amend Section 238.4 of the Labor Code to require the Departments of Public Health and Social Services to revoke a new license or deny a renewal if a long-term care company has an unsatisfied final judgment;
5. Amend Section 238.4 of the Labor Code to require the Labor Commissioner to forward notice of unpaid final judgments to the Departments of Public Health and Social Services if prompted by advocates;
6. Amend Section 558.1 of the Labor Code to include other Labor Code protections, such as the ability for employees to recover sick leave penalties under Section 246;
7. Consider expanding license revocation provisions to include more industries, such as food service (e.g., requiring the revocation of liquor licenses in the face of unpaid final judgments and/or ensuring that any forced sale of the license gives preference to the employee's wage claim). Similar tools are available in other industries;<sup>136</sup> and
8. Identify areas where the Labor Commissioner could improve non-profit partnerships to raise community awareness of wage theft issues as well as surface areas for investigation and litigation.

---

136. See, e.g., CAL. BUS. AND PROF. CODE § 7071.11(b), 7071.17 (preventing the renewal, reissuance, or reinstatement of any construction license if final wages claims remain unsatisfied).