

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 268
3086455

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	SAIL CITY VENTURE LIMITED First Respondent
AND	Xiang Chen Wang Second Respondent

Member of Authority: Rachel Larmer

Representatives: Martin Denyer, counsel for the Applicant
Mai Chen and Luisa Wong, counsel for the Respondents

Investigation Meeting: On the papers

Submissions and Further Information Received: 14 February 2020 from Applicant and Respondents
19 March 2020 from Second Respondent
1 April 2020 from First and Second Respondents
9 April 2020 from Applicant
5 May 2020 from First and Second Respondents

Date of Determination: 3 July 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The first respondent Sail City Venture Limited (Sail City) and the second respondent Mr Xiang Chen Wang have accepted responsibility for the employment relationship problems that the Labour Inspector identified in the Statement of Problem.

[2] The Labour Inspector sought substantial penalties against Sail City Venture Limited (Sail City) and Mr Xiang Chen Xi. The penalties related to admitted breaches by Sail City regarding failure to pay its employees the minimum wage rate, holiday pay, and failures to keep wage and time records or holiday and leave records, and for making unlawful deductions from one employee's wages.

[3] The key facts are outlined in an Agreed Summary of Facts. The parties also provided the Authority with an Agreed Schedule of Arrears that set out the various amounts that had been owed to Sail City's employees. As a result of the Labour Inspector's involvement, the employees have been paid all of the arrears they were owed.

[4] The details of the total wage arrears of \$55,469.86 that have been paid to employees were as follows:

- (a) Public holiday arrears of \$3,743.75, that was owed to one employee;
- (b) Holiday pay arrears of \$20,331.68 were owed to employees. One employee was owed \$12,667.79, with the remaining five employees being owed amounts that varied from a low of \$57.28 to a high of \$5,256;
- (c) Minimum wage arrears of \$31,394.43 owed to three employees. One employee was owed \$31,169.78, a second employee was owed \$160.14 and the third employee was owed \$64.51.

[5] Sail City accepted that it:

- (a) Failed to pay three employees minimum wages, in breach of s 6 of the Minimum Wage Act 1983 (MWA);
- (b) Failed to pay Holiday Act 2003 (HA03) entitlements to seven employees, in breach of ss 23, 24, 25, 27, 49 of HA03;
- (c) Made unlawful deductions from one employee's wages in breach of s 5 of the Wages Protection Act 1983 (WPA);
- (d) Failed to keep wage and time records in breach of s 130 of the Employment Relations Act 2000 (the Act);
- (e) Failed to keep holiday and leave records in breach of s 81 of the Holidays Act 2003 (HA03).

[6] Mr Wang has accepted that as a director of Sail City, he was “*a person involved*”, as defined by s 142W of the Act, in Sail City’s breaches of employment standards.

[7] The respondents accepted that penalties will be imposed on them. However, the Labour Inspector, Sail City and Mr Wang had different views on the appropriate quantum of penalties.

[8] The Labour Inspector submitted that total penalties of \$80,000 - \$100,000 should be imposed on Sail City and total penalties of \$40,000 to \$50,000 should be imposed on Mr Wang. Sail City and Mr Wang submitted that total penalties imposed on Sail City should not be more than \$7,800 and total penalties imposed on Mr Wang should not be more than \$3,900.

[9] This determination assesses penalties for all of the breaches that have been admitted to by Sail City and Mr Wang.

The Law

[10] The Employment Court decision of *Borsboom (Labour Inspector) v Preet Pvt Limited and Warrington Discount Tobacco Limited* identified a four step test that the Authority is to use when assessing penalties.¹ This test involves:

- (a) Step One: Identify the nature and number of the breaches separately, then consider whether penalties should be globalised;
- (b) Step Two: Assess the severity of each breach to establish a provisional starting point;
- (c) Step Three: Consider the means and ability of the person in breach to pay the penalty arrived at in Step Two; and
- (d) Step Four: Apply the proportionality or totality test to ensure the amount of each penalty is just in all the circumstances.

[11] The Employment Court has also provided additional guidance regarding the assessment of penalties in the cases of *Labour Inspector v Prabh Limited* and *A Labour*

¹ [2016] NZempC 143.

Inspector v Daleson Investment Limited.² The Authority confirms that it has had regard to the Employment Court's guidance when assessing costs in this matter.

[12] Section 133A of the Act also sets out a number of matters which the Authority must have regard to when assessing penalties. These include:

- (a) The object of the Act;
- (b) Nature and extent of the breach;
- (c) Whether the breach was intentional, inadvertent or negligent;
- (d) The nature and extent of any loss or damage suffered by those affected by the breach, or gains or losses or made by the person in breach;
- (e) Whether the breaches had been remedied or mitigated;
- (f) The circumstances of the breach, including any vulnerabilities of those involved; and
- (g) Whether the person in breach had previously engaged in similar conduct.

Step One – Nature and number of breaches

Object of the Act

[13] In terms of general penalty principles, the purpose of penalties is to punish those who breach minimum employment standards. Further the purposes of penalties is also to deter others from committing breaches of employment obligations, to recognise those who have been harmed by breaches and to eliminate unfair competition by an employer who has gained a competitive advantage by breaching minimum employment standards.

Types of breaches

[14] There were six types of breaches that attract penalties:

- (a) Breaches of s 6 of the Minimum Wage Act 1983 (MWA), being the failure to pay employees at not less than the minim rate of wages for all hours worked;
- (b) Breaches of ss 23, 24, 25 and 27 of HA03 relating to payment of holiday pay upon termination;

² *Labour Inspector v Prabh Limited* [2018] NZEmpC 110 and *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

- (c) A breach of s 49 and 55 of HA03 relating to failure to pay an employee for unworked public holidays;
- (d) Breaches of s 130 of the Act relating to failing to maintain full wage and time records;
- (e) Breaches of s 81 of the HA03 relating to failing to maintain full holiday and leave records;
- (f) A breach of s 5 of the Wages Protection Act 1983 (WPA) for making unlawful deductions from one employee's wages.

Number of breaches

[15] In terms of identifying the number of breaches:

- (a) Three breaches of s 6 of the MWA for failing to pay a minimum wage to three employees;
- (b) Seventeen breaches, involving seven employees, related to failure to pay holiday pay on termination. These were assessed by the Labour Inspector as a separate breach for each provision of the HA03 breached in respect of each of employees;
- (c) One breach involving failing to pay one employee for public holiday entitlements (breaches of ss 49 and s 55 of the HA03);
- (d) Ten breaches of s 130 of the Act for failing to maintain wage and time records for ten employees – calculated as one breach per employee;
- (e) Ten breaches of s 81 of the HA03 for failing to maintain holiday and leave records for ten employees – calculated as one breach per employee ;
- (f) One breach for making unlawful deductions from the wages of one employee.

Maximum potential penalties

[16] Identifying the maximum penalties available in respect of each identified breach:

- (a) For failure to pay minimum wages is \$60,000 - Sail City and \$30,000 - Mr Wang;
- (b) For failure to pay all types of holiday pay is \$360,000 - Sail City and \$180,000 - Mr Wang;

- (c) For the public holiday pay breach is \$20,000 - Sail City and \$10,000 - Mr Wang;
- (d) For failing to maintain wage and time records of \$200,000 - Sail City and \$100,000 - Mr Wang;
- (e) For failing to maintain holiday and leave records are \$200,000 - Sail City and \$100,000 - Mr Wang;
- (f) For making unlawful deductions from an employee's wages is \$20,000 - Sail City and \$10,000 - Mr Wang.

[17] Therefore maximum potential penalties for Sail City are \$840,000 (42 breaches x \$20,000 per breach) and for Mr Wang are \$420,000 (42 breaches x \$10,000 per breach).

Should penalties be globalised?

[18] The respondents submitted that all of the breaches of the HA03 and of s 130 of the Act relating to failure to keep wage and time records were sufficiently indivisible and inter-related that they should be dealt with under one head.

[19] The respondents submitted that because proper employment records were not kept in accordance with the requirements of HA03 and the Act that in turn led to the other breaches of the HA03 and the Act, resulting in underpayment of employees' minimum entitlements.

[20] The respondents submitted that these breaches were not different and unrelated acts but resulted from a systematic shortcoming in how Sail City kept employment records.

[21] Mr Wang further submitted that these breaches resulted from him not speaking English and therefore not understanding the statutory obligations that Sail City had regarding its obligations to pay employees or to comply with other associated employment conditions.

[22] The respondents submit that the breaches of the HA03 and of s 130 of the Act shall result in one global penalty in respect of each affected employee. Although recognising that the breaches of s 81 of the HA03 and s 130 of the Act involved two different statutes, the respondents submitted that the breaches were materially identical, so only one global penalty should be imposed.

[23] The Authority has previously adopted that approach in the cases of *Labour Inspector v Just Kebab Limited*, and *A Labour Inspector of the Ministry of Business Innovation and*

Employment v Direct Auto Importers (NZ) Limited in which breaches of record-keeping under s 81 of the HA03 and s 130 of the Act (in the case of *Just Kebab Limited*) and breaches of s 81 of the HA03 and s 8 of the MWA were treated globally.³

[24] The Labour Inspector agreed that it was reasonable in the circumstances to globalise the breaches of holiday and leave and wage and time records into one breach per affected employee, leading to a total of twenty-one breaches by each respondent, reduced from an initial total of forty-two breaches.

[25] The Labour Inspector also agreed that the eighteen potential penalties in respect of holiday pay breaches could be globalised to seven penalties under the HA03.

[26] However, the Labour Inspector submitted that penalties for failures to pay minimum wage and holiday pay should be approached on a per employee basis and should not be globalised across two different statutes – the WPA and HA03.

[27] The Authority has globalised penalties on the following basis:

- (a) The breaches of the MWA are to be treated as three breaches. They are not to be globalised with the HA03 breaches;
- (b) All of the HA03 breaches (relating to holiday pay and public holidays) are globalised from 18 to 7, reflecting the seven employees who were affected;
- (c) The ten breaches of s 81 HA03 and ten breaches of s 130 of the Act are globalised into one breach per affected employee, so are treated as ten instead of 20 breaches of employment records keeping;
- (d) The unlawful deductions from the wages of one employee is treated as one breach of the WPA.

[28] Globalisation of the breaches has therefore reduced the number of breaches that attract penalties from 42 to 21.⁴ Therefore the potential maximum penalties for Sail City reduces from \$840,000 to \$420,000 and for Mr Wang from \$420,000 to \$210,000.

³ *Labour Inspector v Just Kebab Limited* [2016] NZERA 383 and *A Labour Inspector of the Ministry of Business Innovation and Employment v Direct Auto Importers (NZ) Limited* [2017] NZERA 195.

⁴ Details of globalised breaches for penalty purposes: 3 x breaches of MWA, 7 x breaches of HA03 relating to public holidays and holiday pay, 10 x breaches of record keeping under the Act and HA03, 1 x breach WPA.

Step Two: Assessing the severity of the breaches to determine a provisional penalty

Were the breaches intentional, inadvertent or negligent?

[29] Mr Wang in his affidavit stated that he did not deliberately attempt to avoid his obligations as an employer in New Zealand in that he did not initially understand what was required of him because employment relationships were different in China.

[30] Mr Wang said the breaches occurred because he was not familiar with the New Zealand culture, language, and legislative requirements. Mr Wang said that he understood that ignorance of the law did not excuse the breaches.

[31] Mr Wang said he did not commit the breaches knowingly or calculatingly and that he was very remorseful for what had happened. Although Mr Wang did not set out to deliberately breach the law, he was negligent in not taking appropriate steps to ensure that he understood what his obligations as a director of a New Zealand based employer were.

[32] Mr Wang and Sail City should have obtained the advice needed to ensure employment obligations to employees were complied with.

Assessment of severity of the breaches

[33] Step Two of the *Preet* penalties assessment formula requires an assessment of the severity of the breach in each case to determine a provisional penalty. This requires consideration of aggravating and mitigating factors. Section 133A of the Act identified the matters that the Authority must have regard to when undertaking this assessment process.

[34] The failures to pay employees the minimum wage should be assessed at fifty percent. There was a financial advantage to Sail City in receiving labour at a lower cost than other employers would be paying their labour. Setting the severity of the breaches at fifty percent also reflects the variation in the amount of arrears across each breach, with two employees having minimal arrears.

[35] The failures to pay holiday pay should result in a starting point of fifty percent as well. Again, there was the same obvious financial advantage to Sail City which received labour at a lower cost than its competitors would have. That level also reflects a variation in the amount of arrears among the different employees affected.

[36] The failures to maintain holiday and leave records should be assessed at fifty percent to reflect that some records were kept, although there were shortcomings in the records that hindered the Labour Inspector in calculating wage arrears. Likewise, the failure to maintain wage and time records should be assessed at fifty percent, for the same reasons.

[37] The unlawful deduction from wages should be assessed at fifty percent to reflect that the amount of money deducted was relatively substantial and there were multiple deductions.

Nature and extent of any loss or damage

[38] In terms of the nature and extent of any loss or damage, it is important to recognise that the employees involved have been harmed because they have lost the use of money that they were entitled to.

[39] Sail City has also reduced its labour costs thereby gaining an unfair advantage over its competitors. Such conduct is to be strongly discouraged. The record breaches also hindered the Labour Inspector's investigation.

Steps to mitigate effects of the breaches

[40] In terms of mitigating effects, Sail City has repaid its employees all arrears owing. Mr Wang is entitled to credit for the fact that he borrowed the money to be able to pay the wage arrears to employees. He also apologised to employees for the breaches that occurred.

[41] There is evidence of genuine remorse. Mr Wang and Sail City have acted in a manner that has demonstrated a willingness to resolve matters from the outset of the Labour Inspector's investigation. The respondents have accepted responsibility for their breaches and acted promptly to rectify their defaults.

[42] Despite his language barrier, Mr Wang actively co-operated with the Labour Inspector. He promptly provided the employment records that did exist upon request along with employment agreements and bank records. Mr Wang told the Labour Inspector that he wanted to fully co-operate with the investigation and he wanted to facilitate the investigation as best as he could. This was more difficult for him because he could not write in English so he had to use an online translator.

Circumstances of the breaches and any vulnerabilities

[43] There have not been particular vulnerabilities identified regarding the employees involved in the breaches. The breaches occurred over the entire period of time the business operated, from 2015 until it closed in early September 2019.

Previous conduct

[44] Neither Sail City nor Mr Wang have previously come to the attention of the Labour Inspectorate nor have had previous penalties imposed on them.

Deterrence

[45] Sail City has closed its business and it will be struck off the Companies Register once this employment matter has been resolved. Mr Wang intends to return to China once this matter has been resolved and it is unlikely that he will be operating a business in New Zealand again. Mr Wang does appear to be genuinely remorseful about the breaches that have occurred so the respondents are unlikely to repeat such conduct.

[46] However there is a strong need for deterrence generally in the level of penalties imposed, because this matter involves breaches of minimum standards.

Culpability

[47] In terms of assessing culpability, the breaches affected ten employees. The breaches were also ongoing and occurred over the entire period that Sail City was operating. The breaches arose from Mr Wang's lack of knowledge about New Zealand employment law and about minimum legal entitlements for employees.

[48] Mr Wang should have ensured as a director of a New Zealand business and/or when purchasing the restaurant that employment law obligations were met. While it is understandable that he did not have this knowledge himself, he should have sought appropriate professional advice.

Consistency

[49] There is a general need to achieve consistency of penalties. However, there were no cases that are directly comparable to this matter. The following cases have some relevance:

- (a) In *A Labour Inspector v The Ministry of Business Innovation and Employment (Douglas Hixon/Laurence Norton) v Precise Contracting Limited* a forty percent reduction was made to penalties when the only mitigating factor was that *Precise* had attempted to comply with an improvement notice.⁵
- (b) In *A Labour Inspector v The Ministry of Business Innovation and Employment v Sherrie and Henry Limited* there were a number of aggravating factors and limited mitigating factors.⁶ A fifty percent reduction was imposed during step two of the penalty assessment process.
- (c) In *A Labour Inspector v IXL Petroleum and Gas Limited* the Authority held that recognition of underpayments by the company and full repayment of those the day after the Labour Inspector's investigation report required a substantial reduction in penalty.⁷ The step two reduction was eighty percent in that matter.
- (d) In *A Labour Inspector of the Ministry of Business Innovation and Employment v Kings Curry House Limited* the penalty was reduced by seventy percent at step two for a range of reasons which had a number of similarities to this case.⁸

[50] Sail City and Mr Wang met the wages repayment obligations to employees reasonably promptly (taking into account Mr Wang's language barrier and the difficulties he experienced in getting legal advice) after receiving confirmation of the amount owing in the Labour Inspector's report and obtaining bank account details from the former employees involved.

[51] The Authority considers a reduction of fifty percent is appropriate at this stage.

Step Three: Ability to Pay

[52] Impecuniosity is a relevant factor in reducing penalties that may otherwise be payable.

[53] Sail City and Mr Wang have provided the Authority with detailed financial information that show that they have very limited means. Sail City's bank records as at 31 January 2020 were \$46.05 while Mr Wang's bank account showed he had a current balance of less than \$10 as at 15 March 2020.

⁵ [2017] NZERA 56.

⁶ [2017] NZERA 289.

⁷ [2017] NZERA 128.

⁸ [2017] NZERA 105.

[54] Sail City operated at a loss for the entire time that it was in business. It was a small business that never managed to break even. The losses it experienced were attributable to its ongoing expenses being higher than gross profit. In particular, rental expenses and labour costs accounted for seventy eight percent of its total operating expenses and eighty percent of gross profit.

[55] Mr Wang did not pay himself a salary because as the financial position of Sail City did not allow it. Sail City's company accounts therefore reflect true operating loss.

[56] In June 2019 Mr Wang attempted to sell the Sail City restaurant business in order to improve his cash flow position. However, there were no purchasers. Sail City ceased trading in September 2019 due to the significant losses it was sustaining, while burdened with the ongoing costs associated with its fixed lease which at that time had two more years to run.

[57] Mr Wang borrowed money from his ex-wife, who used her personal overdraft facility to cover the remaining rent on the lease for the building, in order to negotiate a rental settlement with the landlord.

[58] Sail City managed to settle the lease issues by finding another tenant for the property. However the settlement still involved almost \$50,000 having to be paid to the landlord. Sail City was also required to transfer all assets that remained at the premises back to the landlord. As a result, Sail City does not have any remaining assets.

[59] Mr Wang advised that Sail City will be removed from the Companies Register once this employment issue and the associated flow on tax consequences have been fully resolved.

[60] Sail City has almost no cash reserves and no assets that it can sell, so it is realistically not in a position to be able to pay any penalties imposed.

[61] Mr Wang never paid himself a salary because the business was always running at a loss. He was living in New Zealand with his ex-wife who was employed so they lived off her salary and an overdraft facility in his ex-wife's name.

[62] Mr Wang borrowed money from his ex-wife to pay the wage arrears to all of Sail City's former employees in November 2019, given that Sail City was not in a position itself to pay this money.

[63] Mr Wang and his ex-wife divorced in September 2019. Mr Wang remains in New Zealand while he is trying to resolve this employment matter, but he has not had an income since the Sail City restaurant closed in September 2019. He flew back to China after his divorce in 2019 and only returned to New Zealand in February 2020 in order to resolve these employment issues.

[64] It has been difficult for Mr Wang to find a job in New Zealand because he does not speak English and he cannot read or write in English. In addition, he has been suffering from health issues related to his failed business and these unresolved employment matters.

[65] Mr Wang has no assets of value that can be sold or cash reserves he can use. He is relying on the goodwill of his ex-wife for living essentials and she has let him live in her home while this matter is being resolved. Mr Wang said he is unable to borrow from a bank because he has no income and no assets.

[66] It is to be expected that the imposition of penalties may result in financial hardship to those the penalties are imposed on. The Employment Court in *Daleson Investment* held that liability to pay penalty is different from subsequent enforcement, and that the financial circumstances of a defaulting party is not a factor that Parliament considered pivotal to the penalty setting exercise.⁹

[67] In this case the inability of the respondents to pay penalties should result in a reduction of thirty percent to the penalties that would otherwise be imposed.

Step Four: Proportionality of Outcome

[68] Penalties must not be reduced to such an extent that it creates an incentive for employers to breach their employment standard obligations.

[69] The Authority therefore needs to consider whether the penalties imposed would be significantly out of proportion to the gravity of the breaches against the risk that penalties are at the level that could create a significant risk of non-payment.

[70] The Labour Inspector submitted that a risk of non-payment may be necessary in order for the penalty imposed to reflect the gravity of the breaches. The Labour Inspector therefore

⁹ *Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

sought total penalty in the range of \$80,000 to \$100,000 for Sail City, compared to the penalty of \$7,800 that Sail City said would be appropriate and proportionate to the breaches.

[71] The Labour Inspector submitted that a total penalty of \$40,000 should be imposed on Mr Wang, compared to the total penalty of \$3,900 that Mr Wang said would be proportionate to appropriately reflect his involvement as a person involved in the breaches, in accordance with s 142W of the Act.

[72] Since finding about the breaches Mr Wang has rectified the mistakes, acknowledged wrongdoing, shown remorse, and sought forgiveness from the employees involved.

[73] The Authority has prepared penalty tables as Appendix 1 and Appendix 2 to this determination. These reflect the penalties calculations for Sail City and Mr Wang. Total penalties of \$99,225 have been imposed on both respondents.

[74] After considering all relevant factors and undertaking the four step *Preet* penalty assessment process the Authority has concluded that Sail City should pay total penalties of \$66,150 and Mr Wang should pay total penalties of \$33,075.

[75] The penalty imposed on Mr Wang may be paid by instalments of \$300 per month, until he obtains employment or an income whether here in New Zealand or overseas. Once Mr Wang obtains employment or is in receipt of an income he then has a further 12 months from the date he starts employment, or begins to receive an income, within which to pay the outstanding balance of the total penalty imposed on him.

[76] Mr Wang's first penalty instalment will be due 30 days from the date of this determination.

Rachel Larmer
Member of the Employment Relations Authority

APPENDIX 1 – SAIL CITY – PENALTY ANALYSIS

Step One – Nature and Number of Breaches – Potential Maximum Penalties (globalised)

Failure to Pay Minimum Wage	3 x \$20,000	\$60,000
Failure to pay Holiday Pay	7 x \$20,000	\$140,000
Unlawful Deduction	1 x \$20,000	\$20,000
Failure to Maintain Records	10 x \$20,000	\$200,000
	<i>Subtotal</i>	<i>\$420,000</i>

Step Two (A) – Aggravating Factors as a Proportion of Maxima in Step One

Failure to Pay Minimum Wage	50%	\$30,000
Failure to pay Holiday Pay	50%	\$70,000
Unlawful Deduction	50%	\$10,000
Failure to Maintain Records	50%	\$100,000
	<i>Subtotal</i>	<i>\$210,000</i>

Step Two (B) – Ameliorating Factors (Reducing Aggravating Factors) to establish provisional starting point subtotal subtotal

Less 50% of above subtotal	<i>Subtotal</i>	<i>\$105,000</i>
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Step Three – Sail City's Ability to Pay a Penalty

Less 30% of above subtotal (\$31,500)	<i>Subtotal</i>	<i>\$73,500</i>
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Step Four – Proportionality

Reduce by 10% - \$7,350	TOTAL	\$66,150
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APPENDIX 2 – XIANG CHEN WANG – PENALTY ANALYSIS**Step One – Nature and Number of Breaches – Potential Maximum Penalties (globalised)**

Failure to Pay Minimum Wage	3 x \$10,000	\$30,000
Failure to pay Holiday Pay	7 x \$10,000	\$70,000
Unlawful Deduction	1 x \$10,000	\$10,000
Failure to Maintain Records	10 x \$10,000	\$100,000
	<i>Subtotal</i>	\$210,000

Step Two – Aggravating Factors as a Proportion of Maxima in Step One

Failure to Pay Minimum Wage	50%	\$15,000
Failure to pay Holiday Pay	50%	\$35,000
Unlawful Deduction	50%	\$5,000
Failure to Maintain Records	50%	\$50,000
	<i>Subtotal</i>	\$105,000

Step Two – Ameliorating Factors (Reducing Aggravating Factors) to establish provisional starting point subtotal

Less 50% of above subtotal	<i>Subtotal</i>	\$52,500
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Step Three – Mr Wang’s Ability to Pay a Penalty

Less 30% of above subtotal (\$15,750)	<i>Subtotal</i>	\$36,750
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Step Four – Proportionality

Reduce by 10% - \$3,675	TOTAL	\$33,075
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