I. INTRODUCTION.

There are approximately 160,000 garment workers in California, over three fourths of whom work in Los Angeles. Less than a year ago, the United States Department of Labor determined that two thirds of garment employers in Los Angeles violate minimum wage and overtime laws. As a result, these employers illegally withhold from garment workers approximately $73,000,000 per year. With the approval in 1999 of Assembly Bill 633, both garment workers and others concerned with widespread violations of wage and hour laws in the garment industry expected significant improvements in the enforcement of these laws. The centerpiece of the legislation was a mechanism for identifying and holding financially accountable as "guarantors" those businesses that may benefit indirectly when garment workers are paid less than the law requires by the contractors who directly employ the great majority of workers in the industry. The law took effect on January 1, 2000. On July 17, 2001, the Department released proposed regulations to implement the law, regulations that will be the subject of further hearings in coming months.

With a grant from the University of California Institute for Labor and Employment, a team of five law students and faculty at the UCLA Law School Program in Public Interest Law and Policy is conducting a study of the implementation of the provisions of Assembly Bill 633. We have thus far interviewed more than two dozen people involved in varying stages of a garment worker wage claim, analyzed statistical information regarding all AB633 claims filed in the Southern California DLSE office in the first 15 months of the implementation of A633, and examined redacted copies of documents in the case files regarding a random sample of those claims. Although our conclusions and analysis are at this point only tentative, we believe the information we have collected to date is sufficiently complete to raise issues and concerns that merit further inquiry by DLSE and others.

We are most grateful for the cooperation that DLSE staff has extended to us in our research. Our impression is that DLSE is staffed by many dedicated, effective, hardworking individuals. Although we focus in this report on concerns raised by our research, we recognize that in implementing AB663, the staff of DLSE has provided substantial benefits to many garment workers. Prior to releasing our final report, we expect to make a draft of the report available to DLSE staff for comment. Because of the press of time connected with these hearings, however, we have not had an opportunity to share these preliminary findings with DLSE staff and management. Accordingly, this brief report should be viewed as preliminary, and as suggesting areas for further investigation and inquiry, rather than as reaching conclusive findings of fact.

Most of the findings here are drawn from our analysis of two sources of information about AB633 cases provided to us by DLSE. First, we obtained the summary information sheets on all AB633 cases filed between January 1, 2000 and March 25, 2001, in the Southern California DLSE office, sheets that are maintained by DLSE as part of its normal case management system. These records reflected
382 claims made by workers pursuant to the new legislation. Second, because significant categories of data were omitted from these summary sheets, we obtained from DLSE the relevant documents from the underlying case file for a random sample of 19% of these claims, with privileged information redacted. Our analysis of these statistical data is informed by insights developed through interviews with 28 individuals, including DLSE staff, contractors, garment workers, and other knowledgeable persons.

In the sections that follow, we highlight what seem to us preliminary findings that may be significant to policymakers. In each section, we present our preliminary factual findings, and then discuss briefly some of the issues and concerns they may raise for DLSE, policymakers and concerned citizens. Where our preliminary findings suggest ways in which the effectiveness of the enforcement system might be improved, we offer our suggestions.

We begin in Table I with a statistical overview of the implementation of AB633 based on DLSE data on claims processed through March 25, 2001. The implications, and limitations, of these data are discussed below.
II. NUMBERS OF CLAIMS RECEIVED

One of the more striking numbers we encountered was the total number of claims received by DLSE under AB633. Given the best data on the number of garment workers covered by the bill and federal data regarding the prevalence of wage and hour violations in the industry in Los Angeles, the 382 workers who filed claims likely represent well under one percent of those who have potential claims. When claims are filed, the median amount claimed (in our sample) was $966. This amount might seem to some people too small to pursue, but for garment workers this amount is a significant fraction of their annual income. It is thus surprising to see so low a number of filings.

Given the kinds of problems that arise with any new law or program, we might expect low numbers in the first months of the program. But even after a full year had passed, DLSE was processing less than two claims per working day. Some of these claims were filed by groups of workers against the same contractor at about the same time. Taking these situations, as well as individual filings against contractors, as "episodes" of alleged wage and hour violations, after a year of operations, DLSE was receiving claims representing only about 0.7 "episodes" per working day.

Our interviews have suggested several reasons for the low numbers of claims. First, few workers are aware of the law, including the potential to recover from guarantors when contractors disappear or go out of business. For those who are aware of the potential, the "front end" of the claims process poses obstacles. The telephone information system is unusually complex and difficult to follow, and on several occasions on which we tested it, it was not functioning because available storage had been exhausted. Although some of the forms and informational materials are available in Spanish, they are not available in Chinese or Thai. Some of the claim forms and materials appear to exist only in English.
Moreover, to the best of our knowledge, there is very little information distributed in the community about the availability of the remedies under AB633. Our interviews suggest that DLSE, in collaboration with community groups and those able to render assistance to workers filing claims, could increase the awareness of AB633 and make the filing of claims easier. For example, in addition to existing posters of wage laws in different languages, DLSE might prepare posters describing the provisions of AB633 in all the languages commonly spoken in the garment industry. These might be distributed in conjunction with community organizations in areas with concentrations of garment workers. In collaboration with advocacy organizations, DLSE could facilitate the preparation of instructional materials that would inform workers of the kinds of records and information they should try to maintain, both for their own benefit and to promote the efficiency of DLSE investigations. Whether done by DLSE alone or through community organizations, all of these kinds of educational efforts may require additional resources.

III. IDENTIFICATION OF GUARANTORS

Perhaps the centerpiece of AB633 was the imposition of liability for payment of minimum wage and overtime compensation on "guarantors": persons "engaged in garment manufacturing" who contract for "garment manufacturing operations."[13] The legislation defines both of these terms extremely broadly. Certainly, from the perspective of garment workers who have been deprived of the fruits of their labor, one could argue that this was by far the most important part of the legislation: it promised that even if a contractor disappeared or filed for bankruptcy, at least some of the other participants in the manufacturing process who obtained the benefits of that labor would be held accountable to pay for it. And, given the structure of the garment industry and broad definitions in the legislation, one could expect that for virtually every worker employed by a contractor, there should be at least one guarantor.

It appears that these expectations have not been born out. In the period between January 1, 2000 and March 25, 2001, there were 382 claims filed against 189 defendants. In 112 (29%) of those cases a guarantor was identified. But these numbers do not capture the fact that in many of the situations in which a guarantor was identified, there were many claims against the same defendant arising out of the same episode. When we examine these "episodes" -- of multiple claims against the same defendant during the same time period -- we find that there were 30 contractors for whom at least one guarantor was identified of the 189 contractors in these cases -- a rate of only 15.9 per cent.[14] The numbers of guarantors was lower during the first six months of implementation, as one might expect. If we limit the issue to cases filed after July 1, 2000, Table II sets out the numbers of cases, defendants, and guarantors identified.

Table II

Identification of Guarantors

<table>
<thead>
<tr>
<th></th>
<th>3rd Quarter, 2000</th>
<th>4th Quarter, 2000</th>
<th>1st Quarter, 2001 (partial)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims</td>
<td>118</td>
<td>83</td>
<td>93</td>
</tr>
<tr>
<td>Defendants</td>
<td>53</td>
<td>53</td>
<td>36</td>
</tr>
<tr>
<td>Guarantors Identified</td>
<td>16</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>Guarantors/Defendant</td>
<td>.30</td>
<td>.25</td>
<td>.17[16]</td>
</tr>
</tbody>
</table>
One explanation for the relatively small percentage of instances in which guarantors are identified might be that cases are being settled (with the contractor) before the issue of a guarantor comes up or is resolved. This appears, however, not to be the case. In the full dataset of 382 cases, of those 67 cases reflected as "settled," guarantors had been identified in 19 (28%) of the cases. Of the 285 that were marked as neither settled nor dismissed, 92 (32%) had guarantors. Thus, it appears that the low number of guarantors being identified may reflect other problems with the way in which the AB633 is being implemented and the possible need for supplemental legislation.

There are basically three ways in which the identity of a guarantor can be established during the course of an AB633 claim. First, the claimants themselves may have information, gleaned from labels and registration ("RN") tags on garments, as to those who are "upstream" in the garment manufacturing process. Second, DLSE investigators may determine the identity of guarantors through investigation. The files we examined included a substantial number of cases in which DLSE investigators identified guarantors through sound investigative work, especially through interviews and observations at the work site. Finally, one of the provisions of AB633 mandates the Labor Commissioner to issue a subpoena duces tecum requiring the contractor to provide books and records to permit, inter alia, the identification of guarantors.

We suspect that the primary problem lies in the lack of enforcement of subpoenas -- and the lack of an alternative means of identifying the contractual partners of garment contractors. Plainly, contractors have a powerful incentive not to disclose to enforcement authorities the identities of those for whom they work. Those who do may quickly acquire a reputation within the industry as being excessively compliant with DLSE enforcement procedures (or, colloquially, as "squealers"), and lose future business to those at risk of being named as guarantors. There is no positive incentive to reveal the identity of guarantors, because disclosure does not relieve the contractor of direct liability. The question becomes, then, what happens when a contractor simply ignores a subpoena, as happened in a great many of the cases we reviewed. In theory, a subpoena can be enforced as are other administrative subpoenas, through the Superior Court. In addition, DLSE can commence proceedings to revoke the license of the contractor, pursuant to AB633 itself. But both of these processes are time-consuming, cumbersome, and resource-intensive.

We were unable to obtain data on how often DLSE goes to Court to enforce subpoenas. Anecdotally, we are informed that this is a rare occurrence. Contractor license revocation by DLSE for noncompliance with the required subpoena for guarantor information is also a cumbersome process, one that typically takes at least four months. Moreover, as best we can determine, as of June, 2000, only 11 initial demand letters in revocation cases have been sent and revocation proceedings actually commenced in only 7 cases -- a small fraction of those instances in which contractors have failed to respond to subpoenas for records from which guarantors might be identified.

Finally, one fairly common response by the contractor to either DLSE investigation or the subpoena is that the contractor has no written contracts and works only pursuant to oral agreements. DLSE investigations at the work site sometimes penetrate this denial -- as, for example in one case file in which the investigator observed the contractor sitting next to a milk carton full of contract files while denying their existence). But such investigative luck is rare. Requiring written contracts or records identifying responsible guarantors would enhance the possibility of enforcing the guarantor provisions of the law.

Certainly, there are many examples in California law in which written contracts are required. For example, an automobile repair establishment cannot perform even $20 worth of repairs without a
providing the details of the transaction in writing.\[19\] Requiring written contracts does not guarantee that they will be available to DLSE, so long as DLSE must rely on subpoenas to obtain them. Given the very limited factual record at issue in cases involving noncompliance with subpoenas, it may be reasonable to expedite the license revocation process in these instances. Another approach would be to require the routine filing of copies of contracts themselves or of prescribed forms identifying business partners, in order to reduce the necessity of issuing subpoenas in the first place. We note that the recently proposed regulations would do this as part of the annual registration process. The effectiveness of such an annual reporting requirement would depend in part on the rate of turnover in contractor/guarantor relationships.

**IV. SETTLEMENTS AND OTHER DISPOSITIONS**

A substantial number of claims filed under AB633 are settled. Of the first 382 cases filed in the period from January 1, 2000 to March 25, 2001 that had been closed by DLSE, well over half had settled. This is, of course, a desirable result -- unless workers are settling for substantially less than the legal minimum and overtime wages they are owed. We have not completed our analysis in this respect, but it does appear that in a substantial number of cases, workers have agreed to settlements that compensated them for only a fraction of the hours they had worked, however determined -- from their initial claim, the DLSE investigator's "Findings and Assessment," or the "Order, Decision or Award" of the Labor Commissioner.

The mean amount of the claim settlements in the settled cases among the 382 was $1,315. The median was $920.\[20\] As a point of reference, the Labor Code requires the employer to pay a sanction called “waiting time penalties” if the employer fails to pay all back wages within one month.\[21\] In the most of the cases we examined, more than a month had passed at the time the claim was filed. The mandatory waiting time penalty equivalent to an 8-hour day worked at minimum wage for 30 days, under the year 2000 California minimum wage of $5.75 per hour, is $1,380. It appears, then, that in many cases garment workers are settling for much less than they would receive if all the provisions of the law -- including both those meant to compensate workers and those intended to deter illegal conduct -- were rigorously enforced.

There remains the question of what happens in those cases that do not settle. Of the 382 cases for which we had data, the Labor Commissioner had issued an Order, Determination and Award (ODA) in 46 (12%) of cases. The mean amount of the award was $7196 (median, $4360). The total amount awarded to all workers during the period was $320,569. Less than one tenth of that amount ($29,584) was awarded against guarantors, in 12 cases.

What ultimately matters to workers and their families, of course, is not what is awarded but what is recovered and paid to them. Here, there are additional reasons for concern. Of the $320,569 awarded, DLSE had actually recovered only $17,274, on behalf of all claimants given awards. Of all the statistics we compiled as part of this study, perhaps the most striking was the number reflecting the amount collected by DLSE from guarantors pursuant to a Labor Commissioner Orders: zero. As of March, 2001, not a single worker had been awarded back wages against a guarantor had collected a penny pursuant to a Commissioner's order issued under AB633.

Some of the reasons for the low rate of recovery are apparent. One of the means by which DLSE is empowered to collect on behalf of workers is through the Franchise Tax Board (FTB). This reliance is, however, severely misplaced, because of the lack of resources and commitment at the Franchise Tax Board. There is only one person at the Franchise Tax Board (sometimes with an
assistant) who is responsible for pursuing these claims -- along with 7000 other DLSE claims from all industries, statewide. Currently, on referral of a matter to the FTB, it takes 13 months for the first demand letter to go out and at least 20 months for a levy, if any, to be issued. Clearly, neither DLSE nor garment workers can now count on the FTB for the help the law promises.

Another potential collection device is internal to AB633 itself. Pursuant to Labor Code Section 2675.5(a), as amended by AB633, $75 of each contractor registration fee is to be deposited into a separate fund to be disbursed to garment workers with wage claims who are unable to recover from either their employer or a guarantor. As best we can tell, the regulations necessary to implement the AB633 modifications to the law establishing this fund have not been issued.

V. PRELIMINARY CONCLUSIONS.

We hope the above report of our preliminary findings will help inform the current discussions of how better to insure that workers in the garment industry receive the benefit of those protections the Legislature intended in passing AB633. Some of the implications for policy should not need to await further data or analysis, by us or anyone else, at least in the areas set forth below. In some cases, it appears that all that is needed is administrative action (for example, adoption of regulations, or the development of new forms and informational materials). In other cases, the State will need to provide DLSE with more resources to do a better job. Specifically, we believe our research thus far supports giving serious consideration to the following policy recommendations:

- More should be done, by DLSE itself and in partnership with others in the community, to inform workers of the existence of the legislation, and of how they can best prepare themselves to assist DLSE in pursuing their rights to be paid for their work.
- Language and other barriers to the filing of claims should be removed.
- Methods of identifying guarantors under the law should be improved, by:
  - Improving the methods by which subpoenas issued pursuant to AB633 are enforced, including expediting registration revocation proceedings for contractors who ignore subpoenas.
  - Requiring contractors to maintain (and perhaps file periodically) copies of written contracts or other records identifying those designated by the law as guarantors and
- Procedures for collecting on Labor Commissioner orders (ODA's) should be improved, by:
  - Adopting regulations to implement the fund mandated by AB633;
  - Either requiring the Franchise Tax Board to treat its obligations with regard to the enforcement of these laws as vigorously as it enforces other laws, or abandoning reliance on the Franchise Tax Board; and
  - Using vigorously other remedies legally available to creditors in debt collection matters.
- Finally, DLSE should be mandated to report periodically, to the Legislature and the public, on performance of the system for enforcing wage and hour laws in the garment industry. It should not be difficult for DLSE to modify its current information system to be able to generate performance data of the kind presented in this report. The issues raised in this report, like the problems of labor law enforcement in the garment industry more generally, can only be assessed over the long term on
the basis of accurate, timely empirical information and periodic frank assessments.

[1] In 1999, there were 140,000 garment employees in California. Department of Finance, California Statistical Abstract, 4 (2000).


[6] Labor Code § 2673.1(a)

[7] Although the proposed regulations relate to many of issues raised in this preliminary report, we have not had an opportunity to thoroughly review them and accordingly herein no views on their merits.

[8] The research and investigation summarized here was principally conducted by a team of five UCLA law students working under the supervision of Gary Blasi, Professor of Law, UCLA School of Law, Program in Public Interest Law and Policy. The original research team included: Andrew Elmore, Sarah Netburn, Shirley Sanematsu, Stacy Tolchin, and Alison Yager. This preliminary report has been prepared with the assistance of UCLA law students Vivian Vo and Judith Marblestone and by Jeremy Blasi, Research Assistant at the Henning Center of the Institute of Industrial Relations at U.C. Berkeley.

[9] We are informed that this region processes the vast majority of all claims filed under AB633.

[10] Most of the data here were compiled from the operational case management system of DLSE. To the degree that they report numbers on the flow of cases in a dynamic system, they may not accurately reflect the statistics on final results, once cases have been closed. Where this may be a significant factor, we so indicate in the text.

[11] We counted as “settled” both those cases so marked in the datafile and cases with a recovery but without an indication of the method of recovery.

[12] In 1990, the “average garment worker in Los Angeles made only $7,200, less than three-quarters of the poverty-level income for a family of three that year.” Bonacich and Appelbaum, supra note 2, at 4.


[14] Contrary to some expectations, these numbers are consistent with the contents of the sample of files we reviewed. In that sample, 10 guarantors had been identified for the 39 different contractors against whom complaints were filed. This is a rate of 25.6%.

[15] We use the total ratio of guarantors to contractors for purposes of comparing quarters. This is not the same calculation as the number of contractors for whom guarantors are identified. The difference is accounted for by the weight given to instances in which many claimants file against the same contractor, in which case DLSE is apparently more likely to be able to identify guarantors.

[16] This number may also reflect the fact that these were newer cases in which investigations were continuing and in which guarantors might be identified in the future. Looking at all cases closed by March 25, 2001, however, there were 18 contractors with guarantors identified of a total of 145 contractors -- a guarantor identification rate of 12 per cent.

[17] This number is different than the total settlement numbers in Table I because we assumed there that if there was a recovery but no ODA, the recovery must have come through settlement, even though the documentation did not so indicate.

[18] Labor Code § 2673.1(d)(1)

[19] Business and Professions Code §9884.9

[20] As before, these calculations are based on assuming that recoveries without an indication of the method of recovery were likely settled.