

1 **ADMINISTRATIVE CITATION APPEAL HEARING**

2 **OFFICE OF THE CONTROLLER**

3 **CITY AND COUNTY OF SAN FRANCISCO**

4 **IN THE MATTER OF** )

5 )  
6 **THE APPEAL OF NEO ROMAX, FROM THE** )  
7 **CITY AND COUNTY OF SAN FRANCISCO** )  
8 **OFFICE OF LABOR STANDARDS ENFORCEMENT,** )  
9 **MAY 28, 2015 DETERMINATION OF VIOLATION** )  
10 **OF THE SAN FRANCISCO HEALTH CARE** )  
11 **SECURITY ORDINANCE, CASE NO. HCSO-551** )  
12 **[SF ADMINISTRATIVE CODE CHAPTER 14** )  
13 **AND THE OLSE REGULATIONS IMPLEMENTING** )  
14 **THE EMPLOYER SPENDING REQUIREMENT]** )

**Case No. HCSO-551**

**DECISION AND STATEMENT  
OF FINDINGS OF HEARING  
OFFICER**

**HEARINGS: September 11, 2015 &  
November 13, 2015**

15 **INTRODUCTION**

16 Neo Romax, Inc. appeals from the decision of the Office of Labor Standards Enforcement that  
17 it was in violation of the HCSO during the period July 1, 2011 thru June 30, 2014.

18 The San Francisco Health Care Security Ordinance (HCSO) was enacted in 2006. Under the  
19 HCSO all “covered employers” must meet the following obligations: (1) Satisfy the Employer  
20 Spending Requirement by making required health care expenditures on behalf of all “covered  
21 employees” (those employed 90 days who regularly work at least 8 hours per week in San Francisco);  
22 (2) Maintain records sufficient to establish compliance with the employer spending requirement; (3)  
23 Post an HCSO Notice in all workplaces with covered employees; (4) Submit an Annual Reporting  
24 Form to the OLSE by April 30<sup>th</sup> of each year. Medium size “Covered Employers” are employers  
25 with 20-99 employees and they must comply with that spending requirement. Said expenditure is  
26 determined by multiplying the Health Care Expenditure Rate by the number of hours paid to an  
27 employee per calendar quarter.

28 Employers may satisfy the Employer Spending Requirement by 1) paying for health, dental, or  
vision insurance; 2) paying into the City Option, administered by the San Francisco Department of  
Public Health, or 3) contributing to programs that reimburse employees for out-of-pocket health care

1 costs, subject to limitations found in the agency’s administrative guidelines.

2 This case involves **Neo Romax, Inc.** (hereinafter Neo Romax) and the employer spending  
3 requirement under the HCSO. The hourly Health Care Expenditure Rates in effect from 2011-2014  
4 for a medium size covered employer were- \$1.37 in 2011; \$1.46 in 2012; \$1.55 in 2013 and \$1.63 in  
5 2014. On October 6, 2014 the OLSE sent a Notice of Potential Violation letter to Neo Romax in Case  
6 No. HCSO-551. Said letter requested written responses to questions regarding the time period July 1,  
7 2011 thru June 30, 2014 including information as to other companies in which it had an ownership  
8 interest, employee personal information, hours paid information and health care expenditures made.

9 The OLSE performed an audit of Neo Romax for the time period July 1, 2011 thru June 30,  
10 2014. It also requested information on all employees that Neo Romax believed to be exempt from the  
11 law. On May 28, 2015, after lengthy investigation involving numerous witnesses throughout  
12 California, the United States and internationally, the OLSE issued its Determination of Violation  
13 (DOV) in Case No. HCSO-551 stating that employer Neo Romax employed sixty-nine employees in  
14 San Francisco during the subject audit period and failed to make all required Health Care Expenditures  
15 of \$62,337.51 to 27 current and former employees for the period July 1, 2011 to June 30, 2014  
16 (“Audit Period”). The DOV further set forth specific corrective action and penalties requiring Neo  
17 Romax to pay \$5,261.13 in penalties for failure to make the required health care expenditures and for  
18 failure to submit the mandatory 2013 Annual Reporting Form. On June 11, 2015, Neo Romax sent its  
19 appeal of the Determination of Violation on the basis that it is not a “Covered Employer” as defined  
20 by the HCSO. In its letter appealing the decision it included payment of the \$5,261.13 in penalties.

21 On June 30, 2015, San Francisco Controller Ben Rosenfield appointed the undersigned  
22 attorney to act as Hearing Officer to conduct the administrative appeal hearing. The hearing was then  
23 set for **September 11, 2015**.

24 By letter from the Office of the Controller dated July 27, 2015, Neo Romax and OLSE were  
25 advised that pursuant to HCSO Regulation 10.1E they shall serve on the Hearing Officer their Pre-  
26 Hearing Statements, no later than **August 28, 2015**, with simultaneous exchange of those statements.  
27 That statement shall include the following– A detailed Statement of Issues to be determined by the  
28

1 Hearing Officer; a statement of the evidence to be presented at the hearing and a statement of the  
2 witnesses to be presented at the hearing.

3 Counsel for OLSE served its Pre-Hearing Statement by mail on August 28, 2015. Neo Romax  
4 did not file or serve a Pre-Hearing Statement at any time in this case. The hearing commenced on  
5 September 11, 2015 in City Hall, Room 305. The hearing was not completed on September 11 and  
6 was re-scheduled to continue on September 25. A further extension was granted to Neo Romax after it  
7 advised that it wanted legal counsel to attend the second day of the hearing. The extension was  
8 allowed and the case continued to November 13, 2015.

9 On November 13, 2015 the hearing reconvened in City Hall, Room 479. Neo Romax again  
10 attended without legal counsel. The record closed at the adjournment of the November 13, 2015  
11 hearing.

12 The case took two complete days of hearings. At both hearings Deputy City Attorney Cecilia  
13 T. Mangoba appeared on behalf of the Office of Labor Standards Enforcement. The employer Neo  
14 Romax appeared in pro per by its CEO/CFO Jennifer Lee (hereinafter LEE) (also known by her  
15 Korean name Jin Joo Lee). Neo Romax is owned 100% by LEE and her husband Charlie Kim ( also  
16 known by his Korean name Nam Chul Kim). Mr. Kim did not attend either hearing.

17 The employer's opening statement was made by CPA Jeff Ahn (also known by his Korean  
18 name Liyong Ahn). Ahn stated that he represented Neo Romax, however, it subsequently appeared  
19 that his representation was for the limited purpose of making the opening statement. He later testified  
20 as a witness.

21 In attendance for the Office of Labor Standards Enforcement were Donna Levitt, Division  
22 Manager of the Office of Labor Standards Enforcement, Donna Mandel, Acting Supervising  
23 Compliance Officer at the OLSE, Bernice Casey, Compliance Officer at the OLSE. Seema Patel,  
24 Deputy Director at the OLSE.

25 Chongkuk Daniel Kim was sworn under oath as the interpreter (Korean/English) for the  
26 employer Neo Romax.

27 The parties had full opportunity to present relevant evidence and argument at the hearings and  
28

1 those who did testify did so under oath. Neo Romax Exhibits A-G were entered into the record as  
2 were OLSE Exhibits 1 through 24.

### 3 **BURDEN OF PROOF**

4 Pursuant to Regulations Implementing the Employer Spending Requirement of the San  
5 Francisco Health Care Security Ordinance – Regulation 10.2 **Burden of Proof** – the appellant shall  
6 have the burden of proving that the basis for the Determination of Violation is incorrect.

### 7 **FINDINGS OF FACT**

8 Neo Romax is a hospitality, travel and tourism business that owned San Francisco International  
9 Hostel, Yosemite Hostel, SF Backpacker Center and Hosteltimes.com. The San Francisco Hostel had  
10 approximately 125 beds, 90 rooms and could accommodate up to 300 guests, the Yosemite Hostel had  
11 approximately 42 beds. Hosteltimes.com is an online hostel booking website.

12 Hostels are typically open 24 hours a day, 7 days a week. (24-7). Neo Romax is 100% solely  
13 owned by JIN JOO LEE & NAM CHUL KIM. (OLSE Exhibit 17). They are husband and wife and  
14 also go by the names Jennifer Lee and Charlie Kim.

15 Jennifer Lee was also an owner of corporate stock in the corporation DK Prime, Inc. which  
16 owned Hollywood Hostel. Hollywood Hostel could host 150 guests.

17 The October 6, 2014 OLSE Notice of Potential Violation letter to Neo Romax asked several  
18 questions including –

- 19 1. Please provide the name and address of each company in which you  
20 have had an ownership share within the past four years.
- 21 2. Provide the name of each shareholder for each company listed in your  
22 answer to question #1 and, for each shareholder, indicate the percentage  
23 of the company owned by the shareholder.

24 Neo Romax provided a spread sheet (OLSE EXHIBIT 17) which listed the aforementioned  
25 companies and stated in pertinent part – “JIN JOO LEE & NAM CHUL KIM (**HUSBAND AND**  
26 **WIFE 100% FOR BOTH NEO ROMAX INC AND DK PRIME INC.**”

27 At trial LEE produced records and testified that she was not an owner of more than 50% of the  
28 shares of DK Prime from November 6, 2009 until November 20, 2013.

1 MEDIUM SIZE COVERED EMPLOYER

2 Under the HCSO a medium size covered employer has 20-99 employees. All of said  
3 employees do not have to be employed and working in the City of San Francisco. HCSO guidelines  
4 state-

5 A: An employer is covered by the HCSO for any calendar quarter if it  
6 meets the following three conditions: employs one or more workers  
7 within the geographic boundaries of the City and County of San  
8 Francisco; is required to obtain a valid San Francisco business  
9 registration certificate pursuant to Article 12 of the Business and Tax  
10 Regulations Code, and is a for-profit business with 20 or more persons  
11 performing work or a nonprofit organization with 50 or more persons  
12 performing work. **This includes all persons working for the entity,  
13 regardless of whether they are located in San Francisco or outside  
14 of the city.** (emphasis added)

15 COVERED EMPLOYERS AND COVERED EMPLOYEES - "GUEST-EMPLOYEES"

16 Covered employers with 20 or more employees are subject to the health care expenditure  
17 requirements of the HCSO. Neo Romax had salaried employees and "Guest-Employees" who  
18 performed work in exchange for living accommodations and sometimes cash.

19 A "covered employee" is defined in the HCSO as "any person who works in the City where  
20 such person qualifies as an employee entitled to payment of a minimum wage from an Employer under  
21 the Minimum Wage Ordinance."

22 California Industrial Welfare Commission Wage Order No. 5 states "(m)eals or lodging may  
23 not be credited against the minimum wage without a voluntary written agreement between the  
24 employer and the employee." Employers must pay minimum wages to individuals who perform work,  
25 even if they receive meals or lodging in exchange for the work. There was no evidence of any such  
26 written agreement. Hostel Guest-Employees who performed work in exchange for lodging are  
27 therefore due the San Francisco minimum wage and also should receive Health Care Expenditures.  
28 Therefore Guest-Employees should also be counted when calculating a business work force to  
determine if it is a medium size covered employer.

NEO ROMAX QUARTERLY EMPLOYEE NUMBERS

The OLSE audit covered 12 business quarters between July 1, 2011 and June 30, 2014. At trial  
Neo Romax submitted and entered in evidence **Exhibit A**. That document is titled "QUARTERLY

1 EMPLOYEE NUMBERS.” That document was not provided to OLSE prior to trial. It covers the 12  
2 business quarters found in the OLSE audit. It provides Neo Romax’s count of employees for the audit  
3 period.

4 Appellant’s Exhibit A was prepared by CPA Ahn with information provided by LEE. Ahn was  
5 retained in May, 2015 to assist Neo Romax with this appeal and he had no prior knowledge of that  
6 company. He testified that there are no exact record of Guest Employees. Absent that information he  
7 extrapolated a “weighted average” to account for Guest Employees. There was no evidence that he  
8 interviewed any former managers or employees to assist in calculating said weighted average.

9 LEE testified that until July, 2014 she did not know much about Neo Romax. She further  
10 testified that she had no knowledge of the number of employees for the period 2011-2014. She stated  
11 that she has not made any health care expenditures for any employee during the audit period and her  
12 first payment was not until the first quarter of 2015. Appellant’s Exhibit C were payroll records and  
13 never provided to OLSE prior to trial.

14 Appellant’s Exhibit A agrees that it was a medium size covered employer for the first and  
15 second quarters of 2014.

#### 16 NEO ROMAX COVERED EMPLOYEE VERIFICATION DATA

17 OLSE Exhibit 22 is a spread sheet titled “Neo Romax Covered Employee Verification Data”.  
18 It is a quarterly breakdown (of the periods covered by the subject audit) of employees for the Neo  
19 Romax and DK Prime businesses.

20 In none of the 12 quarters of the audit are there listed less than 35 employees for Neo Romax  
21 and DK Prime. In no quarter were there more than 6 employees listed for Hollywood Hostel (DK  
22 Prime), so even deducting all employees for DK Prime for those 12 quarters, Neo Romax would still  
23 be above the 20 employees needed to be considered a medium size employer per the OLSE audit.

#### 24 WITNESS TESTIMONY

25 **John McDonald** appeared at the hearing and testified that he worked on the front desk of San  
26 Francisco Hostel from March 2011 to December, 2013. He stated that during that period there  
27 typically were 8 people working on the front desk, 5 in housekeeping, 1 maintenance and 1 manager.

1 A total of 15 employees per day. In addition there was a night club at night which had 1-3 employees  
2 while open.

3 **Jeremy Swerdlow** appeared and testified that he moved to the San Francisco Hostel in August,  
4 2011 as a guest and was hired about a week thereafter as the maintenance man for the property. He  
5 worked at the position until September, 2013. He was never paid during that time and received  
6 lodging in exchange for his work. Swerdlow performed all kinds of tasks including electrical,  
7 plumbing, carpentry. He produced detailed records regarding his repairs including photos, work  
8 orders. He testified that the front desk could have as many as 8 employees during peak hours. He  
9 stated that the hostel was almost always full during the time that he lived there. There were many  
10 people doing housekeeping but that number fluctuated and he did not wish to give an estimate. There  
11 were also Korean workers who he thought Charlie Kim brought to the property to do work. They did  
12 not speak English. There were 4-10 and they would stay on a particular job up to several months. The  
13 night club had from 1-2 employees. The club was open the entire time he worked there.

14 **Elias Megherbi** appeared and testified. He was employed with Hollywood Hostel from  
15 October 2008 to July 2010. It had 20-30 rooms. There were 6-8 employees at Hollywood Hostel at  
16 the time he left. He worked front desk at San Francisco Hostel and also as a housekeeper and general  
17 handyman. There were 4-6 housekeepers, 2-3 per shift and one at night. He believes that the  
18 Yosemite International Hostel had 2-3 employees since he knew some of the workers at that location.  
19 He testified that the SF Backpacker Center had a minimum of 2 to 3 employees. Upon completion of  
20 his testimony he was excused.

21 **Masaaki Furuki** appeared and testified. He worked in March, 2014 for Hosteltimes.com. At  
22 that time there were 8 employees and Charlie Kim working for that company.

23 **Melissa Easter** appeared and testified. She was employed from February, 2012 thru  
24 December, 2012. She was a receptionist at the San Francisco International Hostel. There were on  
25 average per day, 8 people at the front desk, 4 housekeepers, 1 kitchen, 1-2 people downstairs and 1-2  
26 maintenance/repairmen. She received no sick leave or overtime. She worked mostly 16 hour shifts  
27 from 7 AM to 11 PM. The San Francisco Hostel night club operated every night between 10 PM and  
28

1 1 AM.

2 **Billie Spain** appeared and testified. She worked at the San Francisco Hostel from the summer  
3 of 2012 to 2014. There were 8 employees on front desk, 3-5 in housekeeping, 1-2 on downstairs night  
4 club, 3 people at the SF Backpack Center. Fifteen employees per week on average. There were an  
5 average of at least 3-5 people working next door. She has been to the Hollywood Hostel, to the San  
6 Francisco Backpacker Center, to the Yosemite Hostel and to the San Bruno location of  
7 Hosteltimes.com. "David" told her 3 people worked at the Yosemite Hostel. While she worked at the  
8 San Francisco Hostel she interacted with at least 4 different people at the Hollywood Hostel.

9 **Christopher Hulan** testified by phone. He was employed at the Hollywood Hostel and San  
10 Francisco Hostel from April, 2010 thru November 1, 2014. He was the manager of the Hollywood  
11 Hostel from April to August 2010. That location could accommodate up to 150 guests. There were 15  
12 employees, including Guest-Employees. From September, 2010 to December, 2010 he worked at the  
13 San Francisco Hostel as acting manager until they hired Eric Park as full time manager. That location  
14 could accommodate up to 300 guests. There were 8-10 employees and 4-6 Guest-Employees. In  
15 April, 2011 he became manager of the Hollywood Hostel. There were 15 employees. He worked there  
16 until July 2011.

17 In August 2012 he worked at Hosteltimes online booking company in San Bruno. There were  
18 4 employees. He left in December, 2012 since he was not getting paid. From April 2013 to July 2013  
19 he worked as the manager of the Hollywood Hostel. There were 20 employees including Guest-  
20 Employees. From April, 2014 to November, 2014 he was Operations Manager of the SF Backpacker  
21 Center. There were 3 other employees. That company did luggage storage and bike rentals. He then  
22 returned to Los Angeles in November, 2014. He never had medical insurance or medical  
23 reimbursement. He didn't believe that anyone received any medical benefits. He worked 80-90 hours  
24 per week as manager.

25 **Eric Park** testified by Declaration under penalty of perjury dated September 10, 2015. He was  
26 General Manager of the San Francisco International Hostel from April, 2010 to April, 2014. He  
27 received no medical benefits, no sick leave, meal breaks or overtime. His "...duties included  
28

1 managing the day-to-day activities of the hostel; all hiring and management of staff, and run the SF  
2 Backpacker Center on an as needed basis in 2013. There were three separate groups of employees. I  
3 routinely hired 8-12 employees who were staying at the hostel. In exchange for a free bed, these  
4 employees did work at the hostel. There were also 8-12 employees who were paid in cash (“off the  
5 books”) and 8-12 employees who were on the payroll.” He frequently saw employees from Korea  
6 that were hired to perform maintenance, construction, front desk duties, housekeeping and computer  
7 work. They stayed at the hostel.

8 **Jie Song** testified by Declaration under penalty of perjury dated September 11, 2015. She  
9 worked at the San Francisco International Hostel from August, 2013 to October, 2013. She was  
10 always paid in cash. “...there were more than 20 employees that also worked at the Hostel, as well as  
11 at other Neo Romax locations like the San Francisco Backpack Center.” She never received any  
12 health care benefits, reimbursement for medical expenses, paid sick leave, meal breaks or overtime.

13 **Donna Mandel** appeared and testified. Mandel is the acting Supervising Compliance Officer  
14 of OLSE since January, 2015. She provided testimony on the Health Care Security Ordinance  
15 (HCSO) and specifically on how to determine “covered employees” and “covered employers.” She  
16 also provided the health care expenditure rate for the years 2011-2014. Employers are required to  
17 keep employee hours, start and finish dates of employment and personal information such as the  
18 employee’s addresses. The OLSE determines if restitution is appropriate and the amount of restitution  
19 for failing to comply with the HCSO. OLSE Exhibit 17 was received by OLSE from Neo Romax and  
20 shows ownership interest of that company.

21 **Bernice Casey** appeared and testified. Casey is a Compliance Officer with OLSE. She  
22 received the complaint regarding Neo Romax in the summer of 2014. In September, 2014 she  
23 commenced her investigation. She spoke to Charlie Kim and requested information regarding the  
24 number of employees at San Francisco International Hostel, Yosemite Hostel and Hosteltimes. Kim  
25 stated that there were only 10-11 at San Francisco Hostel, 1 at Yosemite Hostel, 3 at Hosteltimes and  
26 4-6 at Hollywood Hostel. Based on those answers and the size of the subject hostels she believed that  
27 Neo Romax might be in violation of the HCSO. On October 6, 2014 she issued a Notice of Potential  
28

1 Violation (OLSE Exhibit 10). Over the course of the next few months she continued her investigation  
2 and her communications with Jennifer Lee in which she requested additional information to assist with  
3 her investigation. Lee retained counsel in February, 2015. She produced emails between herself and  
4 Lee. Casey interviewed 30 employees around California, the United States and former employees  
5 now residing outside the U.S.

6 She testified that she cross-checked all her employee counts to prevent double counting of  
7 employees and that her numbers were extremely conservative. An audit was performed for the period  
8 July 1, 2011 and June 30, 2014. Based on that audit and investigation a Determination of Violation  
9 (DOV) was sent by Bernice Casey to Neo Romax on May 28, 2015. (OLSE Exhibit 13)

10 The May 28, 2015 DOV states, in pertinent part, commencing on page 2:

## 11 II. OLSE INVESTIGATION AND ENFORCEMENT

12 OLSE has the authority to conduct investigations and shall enforce the  
13 obligation of covered employers to satisfy the HCSO's health expenditure  
14 requirements. All covered employers shall cooperate fully with OLSE in  
15 connection with any investigation of an alleged violation of this Ordinance or  
16 with any audit or inspection conducted by OLSE.

17 On October 6, 2014, OLSE sent a Notice of Potential Violation  
18 notifying Neo Romax that it may have violated the HCSO during the Audit  
19 Period. The Notice required Neo Romax to submit written responses to specific  
20 questions by October 27, 2014, and further provided Neo Romax an  
21 opportunity to demonstrate its compliance with the HCSO. You provided a  
22 timely, but incomplete response on October 27, 2014. You provided timely  
23 response to my follow-up inquiries on October 28, 2014 and November 5,  
24 2014. On March 1, 2015, OLSE submitted the provisional calculations for  
25 your review. Based on employee interviews and changes Neo Romax  
26 provided, the OLSE submitted amended provisional calculations on May 1,  
27 2015 and again on May 21, 2015.

## 28 III. OLSE FINDINGS

Based on the information provided to OLSE by Neo Romax, OLSE makes the following findings with respect to the audit period:

An average of 20 to 99 persons per week performed work for compensation for Neo Romax's four businesses for the twelve (12) calendar quarters within the Audit Period.

Neo Romax engaged in business within the City of San Francisco and was required to obtain a valid San Francisco business registration certificate. As such, Neo Romax was "covered" as a "medium-sized business" under the HCSO.

As a medium-sized, covered employer, Neo Romax has been subject to the following hourly Health Care Expenditure rates: \$1.37 in 2011, \$1.46 in 2012, \$1.55 in 2013 and \$1.63 in 2014.

1 Neo Romax failed to submit the mandatory 2013 HCSO Annual Reporting  
2 Form by the April 30, 2014 due date.

3 Neo Romax employed sixty-nine (69) people in San Francisco during the Audit  
4 Period. Based on the hours they worked in San Francisco, twenty-seven (27) of  
5 these employees were entitled to \$62,337.51 in required health care  
6 expenditures by Neo Romax.

7 Neo Romax made no health care expenditures to or on behalf of these  
8 employees.

#### 9 IV. CORRECTIVE ACTION

10 OLSE may order employers who violate this Ordinance to take any  
11 actions it deems necessary to correct the violations(s) committed. In order to  
12 remedy the aforementioned failure to make the required health care  
13 expenditures, OLSE hereby mandates that Neo Romax take the following  
14 corrective actions:

15 **By June 29, 2015**, make \$62,337.51 in payments to the twenty-seven (27)  
16 current and former employees listed in the enclosed Exhibit A. Make these  
17 payments to the individuals in the amounts listed in the "TOTAL DUE"  
18 column of Exhibit A. These are payments for damages stemming from your  
19 failure to make the required health care expenditures.

20 Along with each payment, provide a copy of the enclosed "Notice to Current or  
21 Former Employee."

22 Neo Romax may deliver the checks and notices to current employees in the  
23 same manner that Neo Romax currently issues itemized pay statements.  
24 Otherwise, Neo Romax shall mail the checks and notices to each individual via  
25 first-class mail to the most recent address Neo Romax has maintained in its  
26 records. In either case, Neo Romax shall make a good faith effort to deliver  
27 the checks to the intended recipients (including, but not limited to, re-sending  
28 any checks upon Neo Romax's receipt of updated address information).

Within five (5) days of issuing the checks, mail (via first class mail) or email  
copies of the checks and addresses to my attention.

Neo Romax shall afford the individuals sixty (60) days to cash the checks.  
After this sixty (60) day period, Neo Romax may issue a stop-payment order  
for any un-cashed checks.

Within fifteen (15) days following the sixty (60) day period, mail (via first  
class mail) to my attention:

An accounting, with supporting evidence, of the checks that were cashed and  
un-cashed. Absent clear evidence that checks were cashed, OLSE will presume  
the checks were not cashed.

A check, made payable to the "The City and County of San Francisco" in the  
gross amount of the un-cashed checks. OLSE shall hold the money in escrow  
for claimants whom the Labor Standards Enforcement Office, despite his/her  
best efforts, including any required public notice, cannot locate. Funds so held  
for three years or more shall be dedicated to the enforcement of the Health  
Care Security Ordinance.

**By June 29, 2015**, Neo Romax must establish that it satisfied the health care  
expenditure requirement for the Post-Audit Period (July 1, 2014 – March 31,  
2015), which are the quarters immediately following the investigation period.  
Please mail (via first class mail) or email, to my attention, "records sufficient

1 to establish compliance” with the health care expenditure requirement for these  
2 quarters.

### 3 V. ADMINISTRATIVE PENALTIES AND INTEREST

4 The City shall impose administrative penalties upon covered  
5 employers who fail to make required health care expenditures on behalf of  
6 their employees within five business days of the quarterly due date. The  
7 amount of the penalty may be up to one-and-one-half times the total  
8 expenditures that an employer failed to make, not to exceed \$100.00 per  
9 employee per quarter.

10 **OLSE hereby imposes the following administrative penalties upon  
11 Neo Romax: \$4,761.13 for failure to make the required health care  
12 expenditures. \$500 for failure to submit the mandatory 2013 Annual  
13 Reporting Form. The total penalty due to the City is \$5,261.13.**

14 Payment of this administrative penalty shall be made payable to the  
15 “City and County of San Francisco” and is due by June 29, 2015. Please mail  
16 the check to the Office of Labor Standards Enforcement, Attn: Bernice Casey,  
17 City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA  
18 94102.”

19 Following a hearing on the employer’s appeal, the hearing officer shall  
20 make findings based on the record of the hearing and issue a written decision  
21 based on such findings with 15 days of conclusion of the hearing. The hearing  
22 officer’s decision may: (1) uphold the issuance of the DOV and penalties stated  
23 therein; (2) dismiss the DOV; or (3) uphold the issuance of the DOV but  
24 reduce, waive or conditionally reduce or waive the penalties stated in the DOV  
25 or any late fees assessed if mitigating circumstances are shown and the hearing  
26 office finds specific grounds for reduction or waiver in the evidence presented  
27 at the hearing. (HCSO Regulation 10.3 (B)) The hearing officer may impose  
28 conditions and deadlines for the correction of violations or the payment of  
outstanding civil penalties (HCSO Regulation 10.3 (B))

### 19 CONCLUSIONS OF LAW

20 The following issue must be decided on appeal :

21 **Was Neo Romax a medium size covered employer during the subject audit period and**  
22 **obligated to make Health Care Expenditures to its covered employees?**

23 The OLSE prepared a subject audit which covered 12 quarters for the period July 1, 2011 to  
24 June 30, 2014. Said audit determined that Neo Romax was a medium size employer and subject to the  
25 HCSO health care expenditures requirements for the period of that audit.

26 Neo Romax had the burden of proving that the OLSE audit was incorrect in that it did not have  
27 the requisite 20 or more employees to be a medium size employer required to make health care  
28 expenditures on behalf of its covered employees.

1 The City's Office of Labor Standards Enforcement (OLSE) has the authority to enforce the  
2 employer spending requirement under the HCSO and it also has the authority to conduct an  
3 investigation after receiving a complaint alleging a violation of the HCSO. (HCSO Section 14.3(a);  
4 (HCSO Regulations 8.1 & 8.2). In this case the OLSE commenced its investigation in September,  
5 2014 after receiving a complaint in the summer of 2014 that alleged that Neo Romax was not  
6 providing any health care coverage to its employees.

- 7 1. Neo Romax admitted that it was a covered employer for the first two quarters of 2014.
- 8 2. Neo Romax admitted that it made no health care expenditures during the entire period of the  
9 subject audit.
- 10 3. Neo Romax did not present any evidence that the actual calculation of unpaid health care  
11 expenditures for the 27 former or current Neo Romax employees (\$62,337.51) was incorrect if  
12 it were found to be a medium size covered employer.
- 13 4. Neo Romax did not object to the imposed penalty in this case.
- 14 5. At trial two witnesses testified for Neo Romax, CEO/CFO Jennifer Lee and Jeff Ahn. Ahn  
15 testified that he had no personal knowledge of how Neo Romax ran its business. Jennifer Lee  
16 testified that she did not have any knowledge of how Neo Romax ran its business prior to July,  
17 2014.
- 18 6. Jeff Ahn testified that there are no records of part-time employees or "guest-employees."
- 19 7. Neo Romax contends in Exhibit A that for the 10 quarters of the subject audit that are  
20 contested that the San Francisco Hostel had 5 quarters where it employed only 9.8 people and 5  
21 quarters where it employed 12.6 people. (Neo Romax Exhibit A)

22 In that there are no records of "guest-employees" the trier of fact can consider the testimony of  
23 former employees of Neo Romax on that issue.

24 OLSE WITNESSES

- 25 8. Eric Park was the General Manager of the San Francisco Hostel from April 10, 2010 to April,  
26 2014. His Declaration stated that he hired employees for the hostel, that there were three  
27 separate groups of employees that worked at the hostel, guest-employees, employees that were  
28

1 paid cash and employees who were on the payroll. Employees numbered 24-36 in total, only  
2 “8-12 of which were on the payroll.” While he was manager, a club / night club was open  
3 every evening that employed 1-3 Neo Romax employees or guest-employees. Said club gave  
4 away free beer or other alcoholic beverages to hostel guests. The club was open from  
5 approximately 9 PM to 1 AM or when the beverages ran out.

6 9. John McDonald testified that for the period March, 2011 to December, 2013 there were a total  
7 of 15 employees per day.

8 10. Jeremy Swerdlow testified that he worked at the hostel from August, 2011 until September,  
9 2013. He testified that there at times up to 8 people working at the front desk and that there  
10 were many people doing housekeeping. He performed maintenance. He also testified that  
11 there was a night club that had 1-2 employees.

12 11. Melissa Easter testified that she worked at the San Francisco Hostel from February, 2012 thru  
13 December, 2012. She stated that there were 15-17 people employed on a daily basis at the  
14 hostel.

15 12. Billie Spain testified that she worked at the hostel from the summer of 2012 to 2014 and that  
16 there were 12-15 people working at the hostel and 3 persons working at the SF Backpack  
17 Center. Neo Romax Exhibit A lists employees for only 2 quarters at SF Backpacker Center,  
18 one quarter with .92 employee(s) and another quarter with 2.75 employees.

19 13. Christopher Hulan stated that he was the acting manager of the San Francisco Hostel from  
20 September, 2010 to December, 2010. He testified that the San Francisco Hostel could  
21 accommodate up to 300 guests and that there were 12-16 employees and guest-employees. He  
22 was replaced by Eric Park.

23 14. Elias Megherbi testified that the San Francisco Hostel was near bankruptcy when Eric Park  
24 became manager and thereafter the business “took off”.

25 15. Jie Song stated in her Declaration that she worked at the San Francisco Hostel from August,  
26 2013 to October, 2013 and that “...there were more than 20 employees that also worked at the  
27 Hostel...”  
28

- 1 16. Masaaki Furuki testified that in March, 2014, there were 8 employees and Charlie Kim (total of  
2 9) working at Hosteltimes.com.
- 3 17. Bernice Casey was the OLSE Compliance Officer who investigated this matter. She testified  
4 that she used a conservative count when preparing her employee numbers and in fact the actual  
5 employee count was much higher than the count found in OLSE Exhibit 22. (OLSE Neo  
6 Romax Covered Employee Verification Data). In no quarter did she find less than 35 covered  
7 employees for Neo Romax.
- 8 18. DK Prime (Hollywood Hostel) At the commencement of her investigation Bernice Casey  
9 received a document from Jennifer Lee attached to an email dated 10/27/14 (OLSE Exhibit  
10 17) which stated that Lee and her husband Charlie Kim owned 100% of Neo Romax and DK  
11 Prime for the period covered by the subject audit. Lee subsequently recanted that position (as  
12 to DK Prime) for the first time at the September 11, 2015 hearing in this case. She produced  
13 records indicating she owned a majority share interest prior to the audit period but transferred  
14 shares and did not again own a majority of the shares in DK Prime until November, 2013.  
15 Even deducting the Hollywood Hostel employees from the OLSE audit there are still more  
16 than 20 employees for Neo Romax for the subject audit period per that audit.
- 17 19. No former employees appeared and testified on behalf of Neo Romax.
- 18 20. Neo Romax did not present any evidence to specifically contradict the employee count found  
19 in OLSE Exhibit 22, rather it relied on its own employee count found in Neo Romax Exhibit A.  
20 It had no evidence to offer that credibly calculated the guest employee count other than the  
21 “weighted average” formulated by its CPA. This method was not as convincing and credible  
22 to the trier of fact as the actual evidence presented by former Neo Romax employees and  
23 managers.
- 24 21. Hosteltimes.com – Hosteltimes is an internet booking website. As found in Exhibit A, Neo  
25 Romax contended that in only 3 of the 10 contested quarters did Hosteltimes have 3 or more  
26 employees. Exhibit A states that in 5 of those 10 quarters it had 2 or less employees. OLSE  
27 found that in those same 10 quarters, there were at least 4 employees working.  
28

1 22. Neo Romax presented no credible evidence to refute the OLSE audit count of employees for  
2 Hosteltimes.com or Yosemite Hostel.

3 \_\_\_\_\_  
4 The OLSE may order employers who violate the HCSO to take any actions it deems necessary  
5 to correct the violation(s) committed. (HCSO Regulation 9.1). If an employer is found in violation of  
6 the spending requirement, then the employer:

7 The party shall be ordered to make the required health care  
8 expenditures on behalf of each employee or person whose rights  
9 under this Ordinance was violated, and/or to reimburse the  
10 individual for any and all out-of-pocket medical expenses incurred  
11 by that individual for the period during which the employer was in  
12 violation of this Ordinance, up to the amount of the required health  
13 care expenditure. This payment shall be made retroactively, from  
14 the date the expenditure was due, and continuing until the case is  
15 resolved to the satisfaction of the OLSE” (HCSO Regulation 9.2A)

12 Based on all of the evidence, the undersigned Hearing Officer finds that Neo Romax was a  
13 medium size covered employer for the period July 1, 2011 to June 30, 2014. The corrective actions  
14 requiring Neo Romax to pay \$62,337.51 in unmade health care expenditures to those 27 employees is  
15 properly authorized under the law and appropriate under the facts of this case.

16 Finally, there are no mitigating factors in this case to warrant any reduction in the amount the  
17 employer has been ordered to pay its employees.

18 Based on all of the foregoing the undersigned Hearing Officer finds that Neo Romax has failed  
19 to meet its burden of proving that the May 28, 2015 Determination of Violation was issued in error.

20 **ORDER**

21 The appeal of Neo Romax, Inc. is denied and the May 28, 2015 Determination of Violation is  
22 upheld. Neo Romax is hereby ordered to comply with all corrective actions in the May 28, 2015  
23 DOV, which ordered the employer to make the required payments to those 27 employees within 30  
24 days of the issuance of the DOV.

25 As such, Neo Romax shall have until December 23, 2015 to make the required payments and  
26 the employer shall abide by the other timelines set forth in the DOV.

27 This Decision is final and the sole means of review of this Decision shall be made by filing a  
28

1 petition for a writ of mandate under the California Code of Civil Procedure 1094.5 in the San  
2 Francisco Superior Court (HCSO Section 14.4 (a) HCSO Regulation 10.3(D)).

3 A party aggrieved by this Decision must seek judicial review within 90 calendar days of the  
4 date of mailing of this Decision pursuant to Code of Civil Procedure 1094.6.

5  
6 Dated: November 23, 2015

7   
8 Jeffrey A. Rosen  
9 Hearing Officer