



**Pineros y Campesinos Unidos del Noroeste**  
*Northwest Treeplanters and Farmworkers United*

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**PCUN Testimony supporting SB 573**-Establishes right of employee for civil action based on unpaid wages. Authorizes creation of lien on employer's real and personal property for unpaid wages under certain circumstances. Establishes priority of lien for amounts of unpaid wages up to specified amount. Creates exception. This bill will reduce wage theft and provide means to collect wages owed, to the **Senate Committee General Government, Consumer and Small Business Protection**

**April 5, 2013**

Submitted by Ramon Ramirez, President.

PCUN, Oregon's Farmworker Union strongly supports passage of **SB 573**. This bill will reduce wage theft and provide means to collect wages owed.

Farmworkers are more than ever being recruited by labor contractors to work in the construction, painting and building cleaning industries.

We have seen an increase of violations of labor laws, minimum wage and wage fraud. Wage theft is the underpayment or non-payment of the wages workers have earned for their labor. It occurs when workers do not receive minimum wage or the agreed rate or overtime, when they are paid under the table or in cash, when they are not paid tips, and too often not paid at all.

When we try to identify the employer, it became very difficult to pinpoint who was the contractor or sub-contractor. Once the employer was identified we were told that the sub-contractor has been paid and they wash their hands of all responsibilities even though the worker who complete the work never got paid.

If approved this bill will help in the effort to recover the hard earned wages owed to workers.

Wage theft occurs in most industries and affects all people. But it affects the low-wage workers whose wages are stolen the most. These workers are left without money to pay for food, shelter, and provide for their children.

Wage theft also harms all workers, honest employers, our communities, and the local economy as well as revenues for the State of Oregon.

We strongly encourage the passage of **SB 573**

BEFORE THE BUREAU OF LABOR AND INDUSTRIES  
OF THE STATE OF OREGON

In the Wage Claim Matter of:  
OREGON BUREAU OF LABOR AND  
INDUSTRIES as assignee of  
Jose Madrigal-Arias et al,  
Wage Claimants,

v.

Jose Rubio de la Cruz,  
Employer

ORDER OF DETERMINATION

FILE #: 11-2749

**I. Jurisdiction**

This Order of Determination ("Order") is prepared pursuant to ORS 652.310 to 652.405. The Bureau of Labor and Industries ("Bureau") has jurisdiction over this matter pursuant to ORS 652.330.

**II. Employer Liability for Unpaid Wages**

This Order is based upon the assigned wage claims filed by those wage claimants whose information is set out in Exhibit A, attached hereto and incorporated herein by this reference. During the periods set out in Exhibit A, the wage claimants performed work, labor and services for Jose Rubio de la Cruz ("employer"). The employer was required by the provisions of ORS 653.025 to compensate some of the wage claimants at the rate not less than \$8.50 per hour for each hour worked. The employer was also required by the provisions of OAR 839-020-0030 to compensate some of the wage claimants at one and one-half times the regular rate of pay for each hour worked over forty in a given work week. The wage claimants worked a total of 1,439 hours and are entitled to \$14,033.75 in wages, \$3,345.00 of which has been paid, leaving a balance due and owing of \$10,688.75 in unpaid wages. The Wage and Hour Division of the Bureau ("Agency") has determined that the employer owes the wage claimants \$10,688.75, together with the interest thereon as set out in Exhibit A.

**III. Penalty Wages and Civil Penalties**

**Penalty Wages:** The Agency has determined that more than thirty days have elapsed since the wages became due and owing and since a written notice was sent to the employer pursuant to

ORS 652.140 and ORS 652.150. The employer has willfully failed to pay the wages referred to in Paragraph II and set forth in Exhibit A, entitling the wage claimants to \$15,240.00 in penalty wages under ORS 652.150 based on the claimants' hourly wage rates as set out in Exhibit B, with the interest thereon at the legal rate per annum as set out in Exhibit B, until paid. OAR 839-001-0470.

**Civil Penalties:** The Agency has also determined that the employer paid some of the wage claimants less than the wages to which the wage claimants were entitled under ORS 653.010 to 653.261 and is therefore liable to the wage claimants for civil penalties pursuant to the provisions of ORS 653.055(1)(b) in the amount of \$13,080.00, with the interest thereon at the legal rate per annum as set out in Exhibit B, until paid. OAR 839-001-0470(4); OAR 839-001-0496

#### **IV. Right to a Contested Case Proceeding or Court Trial**

The employer is entitled to a contested case hearing or a trial in a court of law in connection with this Order and may be represented by counsel at either proceeding.

#### **V. Wages and Penalties Must Be Paid or a Hearing or Court Trial Requested**

Pursuant to ORS 652.332, within 20 days of receipt of this Order, the employer must pay the full amount of the wage claims described in Paragraph II and the penalty wages and civil penalties described in Paragraph III or present a written request for a contested case hearing or trial in a court of law to the Commissioner. A request for a contested case hearing must also include an "Answer" as described in Paragraph VIII. If the employer does not pay the amounts described in this Order as owed by the employer or request a contested case hearing or a trial in a court of law within 20 days of receipt of this Order, this Order shall become final against the employer.

#### **VI. Where to File Request for Hearing and Answer**

The employer's written request for a contested case hearing or court trial must be submitted to the Agency at the address shown on the last page of this order.

#### **VII. Representation of Employer**

Contested case hearings will be conducted in accordance with ORS 652.310 to ORS 652.405, ORS chapter 183, and the Bureau's administrative rules regarding such hearings. The employer and the wage claimants may each be represented by counsel. All partnerships, corporations, unincorporated associations, including limited liability companies, and government agencies MUST be represented either by an attorney or by an "authorized representative" AT ALL STAGES OF THE HEARING, including the filing of a written request for hearing and Answer. OAR 839-050-0110. Before appearing in the case, an authorized representative must provide

written authorization to appear on behalf of the party. This authorization must be provided no later than the time that a request for hearing and Answer is filed. Other employers, including individuals, may choose whether or not to be represented by an attorney. Any attorney appearing on your behalf must be a member in good standing with the Oregon State Bar, or a member in good standing of the bar of another state or United States court who is permitted to appear in this proceeding by order of the administrative law judge. OAR 839-050-0020(10).

#### **VIII. Requirements for Answer**

The employer's request for a contested case hearing must include a written "Answer" to the factual determinations contained in Paragraphs II and III. The Answer must include an admission or denial of each factual determination set out in those paragraphs. The Answer must also affirmatively allege a short and plain statement of each affirmative defense which the employer will assert at the contested case hearing, including financial inability to pay the wages or compensation at the time they accrued.

#### **IX. Consequence of Failure to Deny Factual Determinations or to Plead Affirmative Defenses in Answer**

Except for good cause, the factual determinations set out in Paragraphs II and III that are not denied in the Answer shall be deemed admitted. Failure to raise an affirmative defense in the Answer is a waiver of that defense. Any new facts or defenses alleged in the Answer will be deemed denied by the Agency and wage claimants.

#### **X. Notice of Hearing**

If the employer who files a written request for hearing and an Answer, the employer will be served with a Notice of Hearing that states the time and place of the hearing and the name of the administrative law judge designated by the Commissioner to preside at the hearing.

#### **XI. Consequence of Failure to Request Hearing and File Answer or Request Court Trial; Agency File as Record of the Case**

- If the employer does not submit either (1) a written request for a contested case hearing that includes an Answer or (2) a written demand for a trial in a court of law within 20 days from the receipt of this Order, such failure shall constitute a waiver of the employer's right to a contested case hearing or a jury trial and this Order shall become final.
- If the employer fails to file an Answer and request for hearing within the time specified, or if the employer makes a timely request for hearing but later withdraws that request, the record of the

proceeding to date, including information in the Agency file or files on the subject of the contested case, will automatically become part of the contested case record upon default against the employer for the purpose of proving a prima facie case. The Agency's file will be designated as the record of the case; this Order shall become final as to the employer; and no hearing will be held for the employer.

**XII. Failure to Appear at Hearing**

If the employer files a request for hearing and an Answer, but later notifies the Agency or the Hearings Unit that the employer will not appear at the time and place specified for hearing, or without such notification, fails to appear at hearing, the Agency's file will automatically become part of the contested case record for the purpose of proving a prima facie case against the employer.

DATED this \_\_\_\_\_ day of July, 2012.

Brad Avakian, Commissioner  
Bureau of Labor and Industries

*Christine N Hammond*

CHRISTINE N HAMMOND, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

ALL PAYMENTS, REQUESTS FOR ADMINISTRATIVE HEARING, DEMANDS FOR TRIAL  
IN A COURT OF LAW OR INQUIRIES SHOULD BE MADE TO:

Mark Lundsten, Order Processor  
Bureau of Labor and Industries  
Wage and Hour Division  
800 NE Oregon Street, Suite 1045  
Portland, Oregon 97232-2180  
Phone: 971-673-0848

EXHIBIT A

Jesus Madrigal Arias  
11-2749

Period of Employment:  
August 30, 2011 to September 27, 2011  
Rate: \$12.00/hr for 165 hours and  
\$18.00/hr for 8 overtime hours

Earned: \$2,130.00  
Paid: \$0.00  
Balance Due: \$2,130.00  
With interest thereon at the legal rate per  
annum from November 1, 2011, until paid.

Edgar Vazquez-Garcia  
12-0210

Period of Employment:  
September 26, 2011 to October 8, 2011  
Rate: \$9.00/hr for 85 hours

Earned: \$765.00  
Paid: \$195.00  
Balance Due: \$570.00  
With interest thereon at the legal rate per  
annum from November 1, 2011, until paid.

Esteban Gomez-Zarate  
12-0211

Period of Employment:  
July 21, 2011 to July 27, 2011  
Rate: \$8.50/hr for 56 hours

Earned: \$476.00  
Paid: \$0.00  
Balance Due: \$476.00  
With interest thereon at the legal rate per  
annum from September 1, 2011, until paid.

Rafael Soto Regalado  
12-0452

Period of Employment:  
October 18, 2011 to January 5, 2012  
Rate: \$9.00/hr for 374.50 hours and  
\$13.50/hr for 38 OT overtime hours

Earned: \$3,883.50  
Paid: \$1,200.00  
Balance Due: \$2,683.50  
With interest thereon at the legal rate per  
annum from February 1, 2012, until paid.

Mario Gomez-Miranda  
12-0470

Period of Employment:  
December 2, 2011 to January 9, 2012  
Rate: \$9.00/hr for 116 hours and  
\$13.50/hr for 7 overtime hours

Earned:

\$1,138.50

Paid:

\$300.00

Balance Due:

\$838.50

With interest thereon at the legal rate per  
annum from February 1, 2012, until paid.

Nicolas Lucas-Aguilar  
12-0471

Period of Employment:  
March 11, 2011 to March 30, 2011  
Rate: \$9.00/hr for 127.50 hours and  
\$13.50/hr for 8 overtime hours

Earned:

\$1,255.50

Paid:

\$300.00

Balance Due:

\$955.50

With interest thereon at the legal rate per  
annum from May 1, 2011, until paid.

Gustavo Ordonez-Gomez  
12-0472

Period of Employment:  
October 18, 2011 to January 5, 2012  
Rate: \$9.00/hr for 387.50 hours and  
\$13.50/hr for 66.5 overtime hours

Earned:

\$4,385.25

Paid:

\$1,350.00

Balance Due:

\$3,035.25

With interest thereon at the legal rate per  
annum from February 1, 2012, until paid.

**TOTAL WAGES DUE:**

\$10,688.75

EXHIBIT B

Jesus Madrigal-Arias Termination Date: September 27, 2011  
Hourly Rate: \$12.00  
8 Hours of Pay: \$96.00  
Penalty wages at the rate of \$96.00 for 30 days: \$2,880.00  
Additional penalty wages due pursuant to ORS 653.055: \$2,880.00  
Plus interest at the legal rate per annum from December 1, 2011, until paid.

Jesus Madrigal-Arias Termination Date: October 8, 2011  
Hourly Rate: \$9.00  
8 Hours of Pay: \$72.00  
Penalty wages at the rate of \$72.00 for 30 days: \$2,160.00  
Plus interest at the legal rate per annum from December 1, 2011, until paid.

Esteban Gomez-Zarate Termination Date: July 25, 2011  
Hourly Rate: \$8.50  
8 Hours of Pay: \$68.00  
Penalty wages at the rate of \$68.00 for 30 days: \$2,040.00  
Additional penalty wages due pursuant to ORS 653.055: \$2,040.00  
Plus interest at the legal rate per annum from October 1, 2011, until paid.

Rafael Soto-Regalado Termination Date: January 5, 2012  
Hourly Rate: \$9.00  
8 Hours of Pay: \$72.00  
Penalty wages at the rate of \$72.00 for 30 days: \$2,040.00  
Additional penalty wages due pursuant to ORS 653.055: \$2,040.00  
Plus interest at the legal rate per annum from March 1, 2012, until paid.



Mario Gomez-Miranda Termination Date: January 9, 2012  
Hourly Rate: \$9.00  
8 Hours of Pay: \$72.00  
Penalty wages at the rate of \$72.00 for 30 days: \$2,040.00  
Additional penalty wages due pursuant to ORS 653.055: \$2,040.00  
Plus interest at the legal rate per annum from March 1, 2012, until paid.

Nicolas Lucas-Aguilar Termination Date: November 30, 2011  
Hourly Rate: \$9.00  
8 Hours of Pay: \$72.00  
Penalty wages at the rate of \$72.00 for 30 days: \$2,040.00  
Additional penalty wages due pursuant to ORS 653.055: \$2,040.00  
Plus interest at the legal rate per annum from February 1, 2012, until paid.

Gustavo Ordonez-Gomez Termination Date: January 05, 2012  
Hourly Rate: \$9.00  
8 Hours of Pay: \$72.00  
Penalty wages at the rate of \$72.00 for 30 days: \$2,040.00  
Additional penalty wages due pursuant to ORS 653.055: \$2,040.00  
Plus interest at the legal rate per annum from December 1, 2011, until paid.

TOTAL PENALTY WAGES PER ORS 652.150: \$15,240.00  
TOTAL PENALTY WAGES PER ORS 653.055: \$13,080.00

TOTAL: \$28,320.00



# Oregon Bureau of Labor and Industries

## Wage and Hour Division

### Memo

DATE: 07-18-12	
TO: Mark O. Lundsten, Judgment Unit	
FROM: Stan Wojtyla	
CASE NAME: Jose Rubio de la Cruz	
MAIN FILE #: 11-2749	
REGARDING: (SELECT ONE)	<input checked="" type="checkbox"/> ORDER OF DETERMINATION <input type="checkbox"/> NOTICE OF INTENT <input type="checkbox"/> SUBPOENA
SERVE: Jose Rubio de la Cruz as an individual	ADDRESS TYPE: SERVICE TYPE:
	HOME <input checked="" type="checkbox"/> SHERIFF
	BUSINESS <input type="checkbox"/> TRANSERV
	<input checked="" type="checkbox"/> BOTH CERTIFIED MAIL
	UNKNOWN <input type="checkbox"/> OTHER - SEE ADD'L ACTIONS
COUNTY: Marion	
ALTERNATIVE ADDRESS:	
SERVE:	ADDRESS TYPE: SERVICE TYPE:
	HOME <input type="checkbox"/> SHERIFF
	BUSINESS <input type="checkbox"/> TRANSERV
	BOTH <input type="checkbox"/> REGULAR & CERTIFIED MAIL
	UNKNOWN <input type="checkbox"/> OTHER - SEE ADD'L ACTIONS
COUNTY:	
ALTERNATIVE ADDRESS:	
SERVE:	ADDRESS TYPE: SERVICE TYPE:
	HOME <input type="checkbox"/> SHERIFF
	BUSINESS <input type="checkbox"/> TRANSERV
	BOTH <input type="checkbox"/> REGULAR & CERTIFIED MAIL
	UNKNOWN <input type="checkbox"/> OTHER - SEE ADD'L ACTIONS
COUNTY:	
ALTERNATIVE ADDRESS:	
SERVE:	ADDRESS TYPE: SERVICE TYPE:
	HOME <input type="checkbox"/> SHERIFF
	BUSINESS <input type="checkbox"/> TRANSERV
	BOTH <input type="checkbox"/> REGULAR & CERTIFIED MAIL
	UNKNOWN <input type="checkbox"/> OTHER - SEE ADD'L ACTIONS
COUNTY:	
ALTERNATIVE ADDRESS:	
COUNTIES TO RECORD JUDGMENT: (In Oregon) Marion	
FOREIGN JUDGMENT: NO	COUNTY:
ADDITIONAL ACTION: If necessary, please effect a substitute service, Mrs. Rubio or adult children	