



Pineros y Campesinos Unidos del Noroeste
Northwest Treeplanters and Farmworkers United

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TESTIMONY TO THE SENATE WORKFORCE COMMITTEE IN SUPPORT
OF THE FAIR WAGE RECOVERY ACT, SENATE BILL 718
BY RAMON RAMIREZ, PRESIDENT OF PCUN, OREGON'S FARMWORKER
UNION

MARCH 9, 2015

On behalf of the 6500 members of PCUN, I wish to express our full support for Senate Bill 718, The Fair Wage Recovery Act.

Wage theft is a reality in our community. Violation of minimum wage of laws in agriculture is also reality. Over the past several years PCUN has documented hundreds of cases of wage fraud were workers were not paid at all.

In my packet I have included a BOLI determination letter of a case were 16 workers were not paid for two month's of work. These workers were owed thousands of dollars and simply not paid at all.

Not only did this employer cheat workers but also the community and the state of Oregon. He never paid taxes and continue to operate.

Senate Bill 718 would give workers tools to expose employer who rip off workers and help to recover wage that are owed. We not only have the legal obligation to correct or improves laws to stop wage theft, we have the moral obligation to stop the injustices of workers and their families.

PCUN urges this committee to pass SB 718

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

WH-61 (Rev. 10/11)

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

\$1,138.50
\$300.00
\$838.50

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

\$1,255.50
\$300.00
\$955.50

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

\$4,385.25
\$1,350.00
\$3,035.25

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:	<u>\$13,080.00</u>

TOTAL:	<u>\$28,320.00</u>
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