

In the Matter of

JORGE E. LOPEZ dba

Mi Ranchito Restaurant and

La Sierra Nevada Family Restaurant

Case No. 73-05

Final Order of Commissioner Dan Gardner

Issued September 26, 2006

SYNOPSIS

The Agency established by a preponderance of evidence that one wage claimant worked at Mi Ranchito Restaurant and two wage claimants worked at La Sierra Nevada Family Restaurant and were not paid their full wages when their employment ceased. The Agency failed to show that Respondent was liable for the unpaid wages. Instead, the Agency introduced evidence that Mi Ranchito Restaurant was owned by Respondent's corporation at times material and that La Sierra Nevada Family Restaurant was owned by someone other than Respondent. The Commissioner concluded Respondent did not employ Claimants and dismissed the wage claims and the Agency's Orders of Determination. ORS 652.140; ORS 652.150; ORS 653.055; OAR 839-020-0030.

The above-entitled case came on regularly for hearing before Linda A. Lohr, designated as Administrative Law Judge ("ALJ") by Dan Gardner, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on April 11, 2006, in the W.W. Gregg Hearing Room of the Bureau of Labor and Industries, located at 800 NE Oregon Street, Portland, Oregon.

Jeffrey C. Burgess, an Agency employee, represented the Bureau of Labor and Industries ("BOLI" or "the Agency"). Lucia Vargas Jacinto ("Claimant Jacinto") was present throughout the hearing and was not represented by counsel. Dora Alicia Quijada Herrera ("Claimant Quijada") and Esmeralda Angelina Ruiz Olmedo ("Claimant Ruiz") were not present at the hearing but testified individually by telephone. Jorge Lopez ("Respondent") failed to appear for hearing in person or through counsel. Terry

Rogers, a certified Spanish interpreter, was present throughout the hearing and interpreted the entire proceeding for the benefit of Claimant Jacinto and interpreted all three Claimants' testimony during the hearing.

The Agency called Claimants and BOLI Wage and Hour Division compliance specialist Stan Wojtyla as witnesses.

The forum received as evidence:

- a) Administrative exhibits X-1 through X-6;
- b) Agency exhibits A-1 through A-21 (filed with the Agency's case summary).

Having fully considered the entire record in this matter, I, Dan Gardner, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On August 19, 2003, Claimant Quijada filed a wage claim form in which she stated that Respondent had employed her from May 1 to December 31, 2002, and failed to pay her wages for hours she worked from November 1 to November 15, 2002, and from December 15 to December 30, 2002.

2) At the time she filed her wage claim, Claimant Quijada assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

3) On August 12, 2004, Claimant Jacinto filed a wage claim form in which she stated that Respondent had employed her from March 11 to May 21, 2004, and failed to pay her for the hours she worked during that period.

4) At the time she filed her wage claim, Claimant Jacinto assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

5) On September 8, 2004, Claimant Ruiz filed a wage claim form in which she stated that Respondent had employed her from May 29 to July 11, 2004, and failed to pay her for the hours she worked in that period.

6) At the time she filed her wage claim, Claimant Ruiz assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

7) On December 13, 2004, the Agency issued Order of Determination No. 03-2780. In the Order, the Agency alleged Respondent had employed Claimant Quijada during the period November 1 through December 30, 2002, failed to pay her for all hours worked in that period, and was liable to her for \$718.25 in unpaid wages, plus interest. The Agency also alleged that Respondent's failure to pay all of Claimant Quijada's wages when due was willful and he was liable to her for \$1,560 as penalty wages, plus interest. In addition to the penalty wages, the Agency alleged Respondent paid Claimant Quijada less than the wages to which she was entitled under ORS 653.010 to 653.261 and was therefore liable to her for \$1,560 as civil penalties pursuant to ORS 653.055(1)(b), plus interest. The Order gave Respondent 20 days to pay the sums, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law. The Order was issued to "Jorge E. Lopez, P&P Performance."

8) On December 13, 2004, the Agency issued Order of Determination No. 04-3008. In the Order, the Agency alleged Respondent had employed Claimant Jacinto during the period March 11 to May 21, 2004, failed to pay her for all hours worked during that period, and was liable to her for \$3,020.95 in unpaid wages, plus interest. The Agency also alleged that Respondent's failure to pay all of her wages when due was willful and he was liable to Claimant Jacinto for \$1,692 as penalty wages, plus

interest. In addition to the penalty wages, the Agency alleged Respondent paid Claimant Jacinto less than the wages to which she was entitled under ORS 653.010 to 653.261 and was therefore liable to her for \$1,692 as civil penalties pursuant to ORS 653.055(1)(b), plus interest. The Agency further alleged Respondent had employed Claimant Ruiz during the period May 29 to July 11, 2004, failed to pay her for all hours worked during that period, and was liable to her for \$680.32 in unpaid wages, plus interest. The Agency also alleged that Respondent's failure to pay all of her wages when due was willful and he was liable to Claimant Ruiz for \$1,692 as penalty wages, plus interest. In addition to the penalty wages, the Agency alleged Respondent paid Claimant Ruiz less than the wages to which she was entitled under ORS 653.010 to 653.261 and was therefore liable to her for \$1,692 as civil penalties pursuant to ORS 653.055(1)(b), plus interest. The Order gave Respondent 20 days to pay the sums, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law. The Order was issued to "Jorge E. Lopez, P&P Performance."

9) On January 25, 2005, the Agency issued a Notice of Intent to Issue Final Order by Default to "Jorge E. Lopez, P&P Performance." The Agency advised Respondent that if he did not file an "Answer or Request for Hearing or Court Trial" in response to Order of Determination No. 03-2780 by February 4, 2005, the Agency would issue a final order by default. Also, on January 25, 2005, the Agency issued a second Notice of Intent to Issue Final Order by Default to "Jorge E. Lopez, P&P Performance." The Agency advised Respondent that if he did not file an "Answer or Request for Hearing or Court Trial" in response to Order of Determination No. 03-3008 by February 4, 2005, the Agency would issue a final order by default. On February 7, 2005, Respondent filed an answer and request for hearing by facsimile transmission that stated, in pertinent part:

“Regarding case number: 043008

“ * * * * *

“The purpose of this letter is to petition for a hearing due to the following reasons:

“I only owe \$450.00 to Esmeralda not the amount that she is requesting.

“Lucia Vargas was paid in full. I have witnesses that can testify that she was paid in full. Also her husband tried to blackmail me and I didn’t succumbed [sic] because as I previously stated, I paid her in full, on the contrary, Lucia took jewelry that belonged to my mother and has not returned it. I also have witnesses that can attest to this.

“Also, I don’t understand why P & P Performance is being charged because La Sierra Nevada does not have anything to do with P&P performance.

“Regarding case number: 032780

“This claim is regarding Dora Quijada. I would like to petition for a hearing because I do not owe the amount being requested. I only owe Dora \$150.00 dollars and can also provide witnesses that can attest to this.

“Please let me know if there is anything else I need to do in order to facilitate my petition for a hearing. I really appreciate your help in resolving this issue.”

10) On March 2, 2006, the Agency requested a hearing on Order of Determination 03-2780. On the same date, by separate request, the Agency requested a hearing on Order of Determination 04-3008. On March 6, 2006, the Hearings Unit issued a Notice of Hearing stating the hearing would commence at 9 a.m. on April 11, 2006. With the Notice of Hearing, the forum included copies of the Orders of Determination, a language notice, a Servicemembers Civil Relief Act notification, and copies of the Summary of Contested Case Rights and Procedures and the Contested Case Hearing Rules, OAR 839-050-0000 to 839-050-0440.

11) On March 9, 2006, the forum issued an interim order addressing fax filings, timelines for filing responses to motions, and service of documents.

12) On March 20, 2006, the ALJ ordered the Agency and Respondent each to submit a case summary that included: a list of all persons to be called as witnesses;

identification and copies of all documents to be offered into evidence; and, for the Agency only, a brief statement of the elements of the claim and any wage and penalty calculations. The ALJ ordered the participants to submit their case summaries by March 31, 2006, and notified them of the possible sanctions for failure to comply with the case summary order.

13) On March 14, 2006, the Agency timely filed a case summary. Respondent did not file a case summary.

14) Respondent did not appear at the time and place set for hearing and no one appeared on his behalf. The ALJ found Respondent to be in default, and commenced the hearing.

15) At the start of hearing, the ALJ swore in the interpreter and afterward the Agency waived the ALJ's recitation of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

16) At the start of hearing, the ALJ, on her own motion, consolidated the cases (Orders of Determination 03-2780 and 04-3008) for the purpose of hearing based on the common Respondent and the efficacy of hearing both cases at once.

17) At the start of hearing, the Agency moved to amend Order of Determination No. 04-3008 to correct a typographical error by interlineation to change Claimant Ruiz's rate of pay from \$7.50 per hour as stated in the Order to \$7.05 per hour in accordance with the minimum wage at that time. The ALJ granted the motion and the Order was amended to reflect the corrected pay rate.

18) The ALJ issued a proposed order on June 2, 2006, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. The Agency timely filed exceptions which are addressed in the Opinion section of this Final Order.

FINDINGS OF FACT – THE MERITS

1) At times material until on or about May 17, 2003, P&P Performance, Inc. was an Oregon corporation conducting business at 523 S. Baker Street in McMinnville, Oregon, under the assumed business name of Mi Ranchito Restaurant. Respondent was P&P Performance, Inc.'s president and registered agent until the corporation was administratively dissolved on December 26, 2003. Respondent was registered with the Oregon Corporations Division as Mi Ranchito Restaurant's authorized representative.

2) At times material, La Sierra Nevada Family Restaurant was the duly registered assumed business name of Maria Magdalena Bermudez whose principal place of business was located at 553 N. Front Street, Woodburn, Oregon. Bermudez was registered with the Oregon Corporations Division as La Sierra Nevada Family Restaurant's authorized representative.

3) At times material until in or around May 2003, Respondent managed Mi Ranchito Restaurant located at 523 S. Baker Street in McMinnville, Oregon. At times material until in or around June 2004, Respondent managed La Sierra Nevada Family Restaurant at 553 N. Front Street, Woodburn, Oregon.

4) On or about May 1, 2002, Respondent hired Claimant Quijada to work as a cook at Mi Ranchito Restaurant. On her wage claim form she stated that Respondent agreed to pay her \$6.50 per hour. Respondent appeared to her as the "one in charge" and told her that Paulino (phonetic), the other cook, was his partner.

5) Respondent paid Claimant Quijada in cash every two weeks. For the two week period beginning November 1 through November 15, 2002, Quijada worked 63.25 hours and was not paid for her work. She also received no pay for the 50.25 hours she worked during the period beginning December 16 through December 30, 2002. Before she quit her employment, Quijada asked Respondent to pay her several times without

success. Respondent gave Quijada a money order in the amount of \$280 after she filed a wage claim with BOLI.

6) Based on Claimant Quijada's representations, the Agency determined that Quijada worked approximately 110.5 hours and earned approximately \$718.25 at the \$6.50 per hour minimum wage rate between November 1 and December 30, 2002. She received \$280 and is still owed \$438.25.

7) On or about March 11, 2004, Respondent hired Claimant Jacinto as a cook for La Sierra Nevada Family Restaurant. Jacinto also worked as a cashier and waitress when business was slow. On her wage claim form, Jacinto stated that Respondent agreed to pay her \$450 every two weeks and \$7 per hour for every "extra hour" she worked. She was scheduled to work eight hours per day, but often worked more hours.

8) Respondent paid Claimant Jacinto \$325 in cash as wages for her first two weeks of employment. She received no wages for the hours she worked thereafter in March, April and May 2002. She continued working during that period because Respondent promised that she would eventually receive the wages. Jacinto documented her hours in a "little notebook" that she used when she filled out the Agency's wage claim calendar. She had heard of Maria Magdalena Bermudez but had never met her.

9) On or about April 12, 2004, Respondent prepared and signed a letter on letterhead that stated in pertinent part:

"To Whom It May Concern:

"This letter is to certify that Lucia Vargas [Jacinto] is currently working for La Sierra Restaurant. Her employment began on March 12, 2004. She works five days per week from 10:30 am – 2:30 pm and 4:30 pm – 7:00 pm. The days of the week can be varied but the hours remain the same. Her salary is \$900.00 per month and she is paid twice a month. If you

have any further questions, please feel free to contact me at the number listed above or at my cell phone (971)237-9642.

“Sincerely,

“Jorge Lopez, Manager”

Although the letterhead uses the name “La Sierra Mexican Restaurant,” the address underneath the name is “553 N. Front St., Woodburn, OR 97071,” which is the same address that Mary Magdalena Bermudez listed as her principal place of business when she registered her business name, “La Sierra Nevada Family Restaurant,” with the Secretary of State. The Agency sent the notices of Claimants’ wage claims to the business name and address registered by Bermudez and issued a subsequent Order of Determination asserting that Respondent was a sole proprietor “dba La Sierra Nevada Family Restaurant.” Claimant Jacinto’s wage claim form does not show an address for her employer, but Claimant Ruiz’s wage claim form has “Calle Front” written in the space marked “DIRECCION DEL NEGOCIO” and “Woodburn, OR 97071” written in the spaces designated “Ciudad,” “Estado,” and “Codigo postal.”

10) Claimant Jacinto’s wage claim calendar shows she worked 486.5 hours, including overtime hours between March 11 and May 21, 2004. Calculated at \$7.05 per hour, Jacinto earned \$3,660.71. Respondent paid Jacinto \$325, leaving a total of \$3,335.71 still owing in unpaid wages, including overtime.

11) On or about May 29, 2004, Respondent hired Claimant Ruiz as a cashier and waitress for La Sierra Nevada Family Restaurant. On the wage claim form, Ruiz stated that Respondent agreed to pay her \$40 per day.

12) Claimant Ruiz’s wage claim calendar shows she worked 106.5 hours between May 29 and July 11, 2004. Calculated at \$7.05 per hour, Ruiz earned wages totaling \$750.83. Ruiz was paid nothing for the hours she worked and is still owed \$750.83 in unpaid wages.

13) On August 27, 2003, the Agency sent a “Notice of Wage Claim” to “Mi Ranchito Restaurant” alleging unpaid wages on Claimant Quijada’s behalf. On September 12, 2004, Agency compliance specialist Wojtyla sent a demand letter to P&P Performance, Inc. dba Mi Ranchito Restaurant, “Attn: Jorge Lopez,” stating that penalties on the unpaid wage amounts had accrued and that unless the wages were paid by September 26, 2003, the Agency planned to pursue the matter by issuing an Order of Determination. Wojtyla contacted Respondent by telephone three times in February 2004. At that time, Respondent acknowledged he had hired Quijada and agreed to pay the unpaid wages in installments. Other than making a \$280 payment to Quijada, Respondent did not follow through with the agreement and Quijada received nothing on the remaining amount owing.

14) On August 16, 2004, the Agency sent a “Notice of Wage Claim” to “La Sierra Nevada Family Restaurant” alleging unpaid wages on Claimant Jacinto’s behalf. On September 14, 2004, the Agency sent a “Notice of Wage Claim” to “La Sierra Nevada Family Restaurant” alleging unpaid wages on Claimant Ruiz’s behalf. Neither notice mentioned Respondent’s name. Wojtyla did not contact Respondent in any manner after Claimants Jacinto and Ruiz filed their wage claims.

ULTIMATE FINDINGS OF FACT

1) Respondent was the president and registered agent of P&P Performance, Inc., an Oregon corporation that conducted business in McMinnville, Oregon, from in or around May 2001 until in or around May 2003, under the assumed business name of Mi Ranchito Restaurant.

2) As P&P Performance, Inc.’s agent, Respondent hired Claimant Quijada to perform work at Mi Ranchito Restaurant between May 1 and December 31, 2002.

3) The state minimum wage during 2002 was \$6.50 per hour.

4) Claimant Quijada was not paid for all of the hours she worked and is owed \$438.25.

5) At times material, Mary Magdalena Bermudez conducted business under the assumed business name of La Sierra Nevada Family Restaurant located at 553 N. Front Street, Woodburn, Oregon.

6) Respondent was a manager when he hired Claimants Jacinto and Ruiz to perform work at La Sierra Nevada Restaurant.

7) The state minimum wage during 2004 was \$7.05 per hour.

8) Claimant Jacinto was not paid for all of the work she performed between March 11 and May 21, 2004, and is owed \$3,335.71.

9) Claimant Ruiz was not paid for all of the work she performed between May 29 and July 11, 2004, and is owed \$750.83.

10) Respondent is not responsible for the wages owed to Claimants Quijada, Jacinto, and Ruiz.

CONCLUSIONS OF LAW

1) At times material, Respondent was not Claimants' employer for the purposes of ORS 652.110 to 652.200 and 652.310 to 652.405, and did not employ Claimants for the purposes of ORS 653.055, and therefore is not liable for Claimants' unpaid wages.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondent herein. ORS 652.310 to 652.414.

3) Under the facts and circumstances of this record, and according to the applicable law, the Commissioner of the Bureau of Labor and Industries has the authority to dismiss the Claimants' wage claims and the Agency's Orders of Determination.

OPINION

Respondent failed to appear at hearing and the forum found Respondent in default pursuant to OAR 839-050-0330. Consequently, the Agency was required to establish a prima facie case on the record to support the allegations in its charging documents. *In the Matter of Barbara Blair*, 24 BOLI 89, 96 (2002).

WAGE CLAIMS

The Agency's prima facie case must include credible evidence of the following elements: 1) Respondent employed Claimants during the wage claim periods claimed; 2) the pay rate upon which Respondent and Claimants agreed, if it exceeded the minimum wage; 3) Claimants performed work for which they were not properly compensated; and 4) the amount and extent of work Claimants performed for Respondent. *In the Matter of Troy Melquist*, 27 BOLI 171, 180 (2006). There is credible evidence to show Claimants performed work for which they were not properly compensated and the amount and extent of the work they performed. The evidence was not refuted. Additionally, the amounts alleged in the Orders of Determination were based on the applicable minimum wage rate and not on a wage agreement between Respondent and Claimants. The only issue is whether Respondent employed Claimants and therefore is liable for the unpaid wages owed to each of them. Although Claimants perceived that Respondent was their employer based on their dealings with him, the Agency presented evidence that shows otherwise.

MI RANCHITO RESTAURANT – CLAIMANT QUIJADA

Undisputed evidence in the form of a Corporations Division document shows that P&P Performance, Inc., a duly registered Oregon corporation, was conducting business under the assumed business name of Mi Ranchito Restaurant during the time Claimant Quijada worked at the restaurant. The document also shows Respondent was the

president and registered agent of P&P Performance, Inc. Evidence also shows the Agency sent a demand letter on Claimant Quijada's behalf to P&P Performance, Inc. dba Mi Ranchito Restaurant, "Attn: Jorge Lopez" and then, inexplicably, issued Order of Determination No. 03-2780 that named Respondent, individually, as a sole proprietor, and alleged Respondent was Quijada's employer during the wage claim period.

The Agency did not allege and there is no evidence in the record that shows Respondent was a successor to the corporation. Rather, in its closing argument, the Agency maintained that Respondent is personally liable for the corporate obligation because he did not observe the "appropriate corporate formalities." The Agency, however, did not allege and did not seek to amend its pleading to include that particular theory of recovery. Moreover, Oregon courts have consistently held that disregarding a legally established corporate entity is an extraordinary measure subject to specific conditions and limitations, including proof that a shareholder acted improperly and that the improper conduct caused the corporation to fail in its obligation to creditors. See *Amfac Foods, Inc. v. International Systems & Controls Corporation*, 294 Or 94, 108-09, 654 P2d 1092, 1101-02 (1982) ("We state the exception to the rule [of shareholder immunity] as follows: When a plaintiff seeks to collect a corporate debt from a shareholder by virtue of the shareholder's control over the debtor corporation rather than on some other theory, the plaintiff must allege and prove not only that the debtor corporation was under the actual control of the shareholder but also that the plaintiff's inability to collect from the corporation resulted from some form of improper conductⁱ on the part of the shareholder").

In this case, the Agency did not allege that P&P Performance, Inc. was under Respondent's actual control or that Claimant's inability to recover wages from the corporation resulted from improper conduct on Respondent's part. Instead, the Agency

alleged only that Respondent was doing business under the assumed business name of Mi Ranchito Restaurant and was solely liable for Claimant Quijada's unpaid wages. Curiously, in this default case, the Agency introduced the evidence that established P&P Performance, Inc.'s culpability in connection with the wage claim. While there may be some merit to the Agency's claim that Respondent ignored "corporate formalities," the Agency was required to "keep the theories of recovery scrupulously segregated" in its pleading and set forth the facts pertaining to Respondent's conduct that purportedly resulted in his loss of shareholder immunity. *Id.* at 104, 1098. The Agency did not plead facts or put on any evidence pertaining to Respondent's misconduct or the corporation's failure to observe corporate formalities. Consequently, in light of evidence showing that Respondent was acting as an agent for the corporation during times material to Claimant Quijada's wage claim and not as a sole proprietor, and in the absence of evidence that would relieve Respondent of his shareholder immunity, the forum finds the Agency failed to establish that Respondent employed Claimant Quijada. The forum concludes therefore that Respondent is not individually liable for Claimant Quijada's unpaid wages.

LA SIERRA NEVADA FAMILY RESTAURANT – CLAIMANTS JACINTO AND RUIZ

In this case, the Agency introduced a Corporations Division document that showed Maria Magdalena Bermudez was conducting business under the assumed business name of La Sierra Nevada Family Restaurant at the same address and during the same period Claimants Jacinto and Ruiz performed work for which they were not paid.ⁱⁱ Moreover, the Agency introduced additional evidence of a letter Respondent prepared on the restaurant's letterhead, apparently on Claimant Jacinto's behalf, in which Respondent identified himself as the restaurant's manager.ⁱⁱⁱ Despite this evidence, the Agency alleged Respondent was a sole proprietor doing business under

the assumed business name of La Sierra Nevada Family Restaurant. The Agency offered no other evidence or rationale for naming Respondent other than Claimants' testimony that they believed Respondent owned the restaurant. However, Claimants' subjective belief is not determinative in this case.

The Oregon Supreme Court has held that the purpose of ORS chapter 648 (the statutes governing assumed business names) is to protect the public by requiring "disclosure by registration of names and locations of persons doing business under an assumed name in order that members of the public may know the identity of those with whom they do business." *Photo & Sound Company v. Corvallis*, 291 Or 105, 108-109, 628 P2d 733, 735 (1981). In a footnote, the Court added that "It has generally been held that the object of assumed name registration is to give the public information about the persons with whom they deal and to afford protection against fraud and deceit." *Id.* at 109, 735. Here, the identity of the restaurant owner was disclosed in accordance with statutory registration requirements and, for the purpose of this case, is determinative.

In light of the evidence that Bermudez was the registered owner of the restaurant during all times material, the forum finds the Agency failed to establish that Respondent employed Claimants Jacinto and Ruiz and therefore concludes Respondent is not liable for Claimants' unpaid wages.

AGENCY'S EXCEPTIONS

The Agency objects to the forum's findings and conclusion that Respondent was not the true owner of the restaurants responsible for the Claimants' unpaid wages in this case. The Agency's exceptions ignore the documentary evidence that supports that fact and, instead, raise new issues or simply reiterate the Agency's closing argument at hearing.

First, the Agency's post hearing suggestion that Respondent is an "unscrupulous employer" who created "sham registrations" to avoid paying wages to "deserving employees" is not relevant to this case. The Agency did not allege sham entities in its pleading and, in any event, introduced no evidence to support such a claim. The forum will not consider the Agency's argument on issues not properly raised and proved at hearing.

Second, the Agency's contention that Respondent's name appeared on "the business license" is not supported by documentary evidence in the record. One, the Agency does not state on which business license Respondent's name appears. Two, although they would have been relatively easy to obtain through city, county or state records, the Agency did not introduce the business licenses or restaurant permits for Mi Ranchito Restaurant or La Sierra Nevada Family Restaurant. In fact, the Agency did not introduce any evidence documenting ownership, such as, rent, utilities, or vendor invoices. Other than the Claimants' subjective belief, the Agency had no other basis for alleging Respondent employed Claimants as a sole proprietor.

Third, Respondent's statements that he owed two Claimants some money do not constitute an admission that he was their employer. Managers and corporate officers sometimes speak in first person singular when speaking on an entity's behalf. In light of documentary evidence showing he was acting as an agent for a corporation and another individual, the forum infers that Respondent was acting as such when he acknowledged owing some money to two Claimants. With respect to Claimant Jacinto, evidence shows Respondent identified himself as the manager of the restaurant located at 553 N. Front Street, Woodburn, Oregon, the same restaurant that employed Jacinto.^{iv} Notably, both of the Agency's Orders of Determination were served on P&P

Performance, Inc., “Attn: Jorge Lopez,” the corporate president, even though Lopez was named individually as a sole proprietor in each of the Orders.

Fourth, in its exceptions the Agency infers by the forum’s use of the word “irrefutably” that the forum considers the business registration evidence “conclusive proof of who the employer was.” That was not the forum’s conclusion or intent. The forum concluded that the business registration evidence determined the employment relationships in this case and not Claimants’ subjective belief.^v The Agency produced no evidence that the business registrations were a sham or subterfuge to conceal an unlawful purpose. In the absence of such evidence, the forum will not disregard a duly registered corporation or assumed business name verifying ownership.

The Agency was required in this default case to make a prima facie showing that Respondent employed Claimants. Instead, the record includes evidence that conflicts with the Agency’s contention and was not supplemented with evidence showing why the duly registered owners should be disregarded. Consequently, the Agency did not make the requisite showing that Respondent employed Claimants.

The Agency’s exceptions are **DENIED**.

ORDER

NOW, THEREFORE, as Respondent has been found not liable for Claimants’ wages, the Commissioner of the Bureau of Labor and Industries hereby orders that Order of Determination No. 03-2780 and Order of Determination No. 04-3008 against Jorge Lopez be and is hereby dismissed.

ⁱ In *Amfac*, the Court gave examples of “improper conduct” that included inadequate capitalization, “milking,” and misrepresentation, none of which the Agency alleged in this case.

ⁱⁱ See Finding of Fact – The Merits 2

ⁱⁱⁱ See Finding of Fact – The Merits 9

^{iv} Although the restaurant letterhead showed the name “La Sierra Mexican Restaurant,” and Respondent used the name “La Sierra Restaurant” in the letter’s text, the Corporation Division’s business registration records show that the restaurant registered as “La Sierra Nevada Family Restaurant” is located at the same address shown on the letterhead - 553 N. Front Street, Woodburn, Oregon.

^v To eliminate confusion, the forum has deleted the word “irrefutably” from the sentence referencing Maria Bermudez’s assumed business name registration.