

In the Matter of
MANUEL GALAN, JR., dba Timber
Rock Reforestation and Janette
Galan, an undisclosed partner,
Respondents.

Case Number 20-97
Final Order of the Commissioner
Jack Roberts
Issued August 31, 1998

SYNOPSIS

Where Respondent labor contractor performed activities that were defined as forestation activities and required a farm labor license with forestation indorsement, the Commissioner found that Respondent had acted as a forest labor contractor without a license, failed to provide workers' compensation, and failed to disclose his spouse as his business partner. The Commissioner also found that Respondent was not operating as a sham or subterfuge for a previously debarred contractor, did not fail to disclose others with financial interest in his business, and did not employ a debarred contractor. ORS 658.405(1); 658.407 (3); 658.410(1) and (2)(a) and (b); 658.415(1)(a), (b) and (d), (2), (3) and (18); 658.417(1), (2) and (4); 658.420 (1) and (2); 658.453(1)(e); 658.501; OAR 839-015-0004(5)(a) and (8)(c); 839-015-0142(1), (2)(a), (b), (c), (d), (e), (f) and (3); 839-015-0145(6), (8) and (13); 839-015-0520(3)(a) and (h), 839- 050-0140(2).¹

The above-entitled matter came on for hearing before Warner W. Gregg, designated as Administrative Law Judge (ALJ) by Jack Roberts, Commissioner of the

Bureau of Labor and Industries of the State of Oregon. The hearing was conducted on February 25, 26, 27, and 28, 1997, in the Project Development Building Conference Room, State of Oregon Department of Transportation, Highway Division, at 63034 O. B. Riley Road, Bend, Oregon. Linda Lohr, Case Presenter with the Bureau of Labor and Industries (BOLI or the Agency) represented the Agency. Manuel Galan, Jr., (Respondent²) was present throughout the hearing. Present representing Respondent on February 25 was Anthony Albertazzi, attorney at law, Bend, who did not appear thereafter. On February 27 and thereafter, at her request and at that of Respondent, Janette (Jan) Galan, as a partner in Timber Rock Reforestation, assisted Respondent with examination of Agency witnesses, with presentation of Respondent's witnesses, and with argument of the facts.

The ALJ admitted into evidence Administrative Exhibits X-1 through X-28, Agency Exhibits A-1 through A-4, A-7 through A-25, A-27 through A-30, A-33 through A-42, A-45, A-50, A-51, A-56 and A-57, and Respondent's Exhibits R-1, R-2, R-4 through R-9, R-29 through R-70, and R-74 through R-79. The ALJ did not admit Agency Exhibits A-5 and A-6, which are in the record as offers of proof, but not as substantive evidence.

The Agency called the following witnesses: Agency farm/forest labor unit (FFLU) manager Nedra Cunningham, Respondent's father Manual Galan, Sr., Respondent, Barrett Business Services (BBS) manager Dan Hatfield, forestation worker Debbie Martinez, Agency Administrator's assistant Carol Parsons (by telephone), Agency FFLU Compliance Specialist Raul Ramirez, Agency FFLU licensing clerk Julye Robertson (in person and by telephone), Agency FFLU administrative specialist Dorothy Williams, and Contractor's Bonding and Insurance Company (CBIC) agent Jane Thorsen (by telephone).

Respondent called the following witnesses: Respondent's mother Erlinda Galan, Respondent's wife Janette (Jan) Galan, Respondent, Respondent's father Manuel Galan, Sr., Respondent's brother Marcos Galan, and Respondent's acquaintance and guarantor Larry Syring (by telephone).

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, 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 9, 1996, the Agency issued a "Notice Of Proposed Denial Of A Farm/Forest Labor Contractor License and Of Intent To Assess Civil Penalties" (Notice of Proposed Denial) to Respondent.³ The Notice of Proposed Denial informed Respondent that the Commissioner intended to deny a farm/forest license to Respondent effective 60 days from Respondent's receipt of the Notice of Proposed Denial and that the Commissioner intended to assess civil penalties against Respondent in the amount of \$4,000 pursuant to ORS 658.453. As the basis for these actions, the Agency alleged substantially as follows:

1. Respondent Is A Sham Or Subterfuge For Staff, Inc., Manuel Galan And Erlinda Galan, Debarred Farm/Forest Labor Contractors. OAR 839-15-142(2) & (3). On July 10, 1996, A Final Order issued from the Oregon Bureau of Labor and Industries ("Agency") barring Staff, Inc., and Manuel and Erlinda Galan, officers and principles of Staff, Inc., from obtaining a farm/forest labor contractor's license for a period of three years from the date of their breach of a Consent Order entered into March 11, 1994. On August 9, 1996, [Respondent] made application for a farm/forest labor contractor's license while at all times material herein Respondent was a blood relative of Manuel and Erlinda Galan. Less than one year has elapsed between the Agency's denial and Respondent's application for a farm/forest labor contractor license.⁴ OAR 839-015-0142(2) & (3).

2. Acting As A Farm/Forest Labor Contractor Without A Valid License Or Indorsement Issued By The Commissioner. (One Violation) From on or about July 8, 1996, and continuing, Respondent, for an agreed upon

remuneration, recruited, solicited, supplied, or employed workers to perform labor on Respondent's forestation or reforestation contract on the Umpqua National Forest at Roseburg, Oregon, USFS Contract No. 53-04T1-6-27. At all times material herein, Respondent did not possess a valid farm/forest labor contractor license, in violation of ORS 658.410, 658.415 and 658.417. Respondent's violation of said statutes demonstrates that Respondent's character, competence and reliability make Respondent unfit to act as a farm/forest labor contractor under OAR 839-015-0520(3)(a). Civil Penalty Assessed: \$2,000.00.

3. Making A Willful Concealment In The Application For A License. (One Violation) On August 9, 1996, Respondent made application for a farm/forest labor contractor license and willfully concealed the identities of all persons financially interested in the Respondent's proposed operations as a farm/forest labor contractor, and, specifically, the identity of Respondent's co-signer on CBIC Farm Labor Contractor Bond No. PA 2142, in violation of ORS 658.415 and OAR 839-015-0145(13). Respondent's violation of said statute demonstrates that Respondent's character, competence and reliability make Respondent unfit to act as a farm/forest labor contractor under OAR 839-015-0520 (3)(a) & (h). Civil Penalty Assessed: \$2,000.00.

As the basis for enhanced penalties, the Agency alleged the magnitude and seriousness of the violations and Respondent's knowledge of the licensing requirement for the activities Respondent is engaged in.

The Notice of Proposed Denial was served on Respondent personally on August 9, 1996.

2) On September 17, 1996, Respondent through counsel timely requested a contested case hearing and filed an answer to the Notice of Proposed Denial wherein:

1. Respondent denied being a sham or subterfuge for Staff, Inc., Manuel Galan and Erlinda Galan, denied having knowledge or information regarding the Final Order of July 10, 1996, and its contents and therefore denied that allegation, admitted that he made application for a farm/forest labor contractor's license on August 9, 1996, and that he is a blood relative of Manuel and Erlinda Galan, admitted that less than a year elapsed between his application and the Agency's Notice of Proposed Denial,⁵ and denied any remaining allegations of paragraph 1. of the Notice of Proposed Denial.

2. Respondent alleged that prior to July 8, 1996, he contracted with the US Forest Service to perform work on the Umpqua National Forest and substantially completed the work under the contract, admitted that he did not possess a farm/forest contractor license, denied that he violated ORS 658.410, 658.415 and 658.417, denied that his character,

competence and reliability make him unfit to act as a farm/forest labor contractor, and denied any remaining allegations of paragraph 2. of the Notice of Proposed Denial.

3. Respondent denied that he made any willful concealment in the application for a license, that he willfully concealed the identities of all persons financially interest in his operations as a farm/forest labor contractor, denied that he willfully concealed the identity of his co-signator on the bond, denied that his character, competence and reliability make him unfit to act as a farm/forest labor contractor, and denied any remaining allegations of paragraph 3. of the Notice of Proposed Denial.

4. Respondent denied any and all remaining allegations in the Notice of Proposed Denial not expressly admitted.

And, as affirmative defenses, Respondent's answer alleged:

5. That the Agency exceeded the scope of its statutory authority in promulgating one or more of the rules upon which its action was based, including OAR 839-015-0142.

6. That the Agency's failure to follow rulemaking procedures, including proper notice, bars the Agency from enforcing one or more rules upon which its action was based.

7. That the decision to deny a farm/forest labor contractor license and to assess civil penalties was based on bias and prejudice of issues.

8. That the Agency exceeded the scope of its authority in denying a license to Respondent based on grounds not provided for by the relevant statutes and /or regulations.

9. That the Agency exceeded the scope of its authority in assessing civil penalties against Respondent based on grounds not provided for by the relevant statutes and/or regulations.

10. That the Agency abused its discretion in denying a farm/forest labor contractor license to Respondent.

11. That the Agency abused its discretion in assessing civil penalties against Respondent.

12. That the Agency's denial of a farm/forest labor contractor license constituted a deprivation of a liberty or property interest in violation of constitutional due process.

13. That the Agency is estopped from denying a farm/forest labor contractor license to Respondent and assessing civil penalties against Respondent.

14. That the Agency lacks jurisdiction over federal contracts concerning federal lands.

15. That federal law preempts the Agency's interference with federal contracts to perform work concerning federal lands.

16. That one or more of the statutes relied upon by the Agency in denying a farm/forest labor contractor license and/or assessing civil penalties is void for vagueness.

17. That one or more of the regulations relied upon by the Agency in denying a farm/forest labor contractor license and/or assessing civil penalties is void for vagueness.

3) The Agency requested a hearing date and on October 18, 1996, the Hearings Unit issued to Respondent and the Agency a Notice of Hearing setting forth the time and place of hearing and the designated ALJ, together with the following: a) a Notice of Contested Case Rights and Procedures containing the information required by ORS 183.413, and b) a complete copy of the Agency's administrative rules regarding the contested case process — OAR 839-050-0000 through 839-050-0420.

4) On October 18, 1996, the Agency filed a motion to amend the final sentence of paragraph 1 of the Notice of Proposed Denial. On October 30, 1996, the ALJ granted the amendment,⁶ and ordered that the participants submit case summaries in accordance with OAR 839-050-0210.

5) On November 7, 1996, Respondent through counsel moved to postpone the hearing date and case summaries for the reasons that Respondent was moving from Estacada, Oregon to Joseph, Oregon, and was without ready access to all of his business records and also because Respondent needed time to seek new counsel. The motion was accompanied by a notice of withdrawal of counsel which included Respondent's Joseph address and the request that further correspondence and communications be sent there for Respondent .

6) Also on November 7, the forum received the formal appearance of a Eugene attorney as Respondent's counsel, also urging a postponement. On November 14, 1996, the ALJ issued an order setting January 28, 1997, as the hearing date and

Salem, Oregon, as the location, and changing the due date for case summaries. On December 6, 1996, Respondent's Eugene attorney notified the forum of the withdrawal of counsel and the request that further correspondence and communications be sent directly to Respondent at the Joseph address. On January 9 and 16, 1997, respectively, the Agency requested a change of hearing location to Portland and a change of hearing date to February 6, 1996. Respondent did not object. On January 17, the ALJ acknowledged the withdrawal of Eugene counsel and ordered that the case be heard in Portland on February 6. Copies of that order were served on Respondent at the Joseph address and on the Eugene attorney.

7) On January 23, 1997, the forum received Respondent's discovery information and request for a change of location for the hearing to Bend, Oregon, where he was currently living. The Agency did not object. Respondent supplied a return address on his cover letter of "Timber Rock Reforestation, c/o 61419 S Hwy 97 Suite F1 Bend, OR 97702" and on the envelope of "Timber Rock 815 NW 9th Redmond OR. 97756." On January 23, the ALJ changed the hearing location to Bend and again changed the hearing date to February 25, 1997. That order was sent to Respondent at the Timber Rock addresses supplied as well as to the Estacada address. On February 12, the ALJ reset the due date of the case summaries to February 18, 1997. The Agency timely filed a case summary pursuant to that order.

8) On January 24, 1997, the Forum received a copy of a letter from Respondent's former Eugene attorney to Anthony Albertazzi, Attorney at Law, Bend, reciting that the Eugene attorney had forwarded the entire contents of Respondent's file to Albertazzi on January 8, 1997, at Respondent's request, and was forwarding a copy of the ALJ's January 17 order.

9) Prior to the commencement of the hearing on February 25, 1997, and off the record, Respondent requested permission to videotape the hearing by means of a stationary video camera. The Agency objected. Determining that the proceedings were open to public view, the ALJ allowed the request, provided that the official sound recording of the hearing remain the official record and provided that the taping not become disruptive to the orderly progress of the hearing.

10) At the commencement of the hearing, Mr. Albertazzi was present and confirmed that he represented Respondent. Counsel stated that Respondent had received the Notice of Contested Case Rights and Procedures and had no questions about it. Counsel stated further that the answer filed by Respondent's first attorney would serve as Respondent's answer for purposes of hearing.

11) At the commencement of the hearing, pursuant to ORS 183.415(7), the Hearings Referee orally advised the participants of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

12) On February 26, the Agency on the record renewed its objection to the video taping by Respondent, citing that the viewing of the completed tapes by potential witnesses of Respondent was a circumvention of the forum's ruling excluding witnesses. Respondent offered to deposit completed tapes with the ALJ until the close of the hearing, and offered to supply the Agency with a copy of each tape within a week of the close of the hearing. The ALJ approved that arrangement, assumed custody of each videotape as it was completed, and gave the completed tapes to Respondent at the close of the hearing.

13) During the course of the hearing, the Agency sought to admit Exhibits A-5 and A-6, which were respectively a letter dated September 23, 1996, to Respondent's then counsel, and an attached questionnaire seeking information regarding the form of

Respondent's business, the identity of persons interested therein, Respondent's recent residences, capitalization, contracts worked and employees and equipment used, and other related information. The ALJ ruled that the proffered exhibits formed a settlement offer and were inadmissible. They were accepted as an offer of proof and were not used as substantive evidence in regard to the Findings of Fact On the Merits herein.

14) During the hearing, witness Manuel Galan, Sr., requested an interpreter to translate English to Spanish and Spanish to English. The forum had received no prior notice of the alleged need for an interpreter. OAR 839-050-0300 provides that "a person who cannot speak or understand the English language * * * is entitled to a qualified interpreter." The witness, who speaks and understands English, insisted on communicating in Spanish. In the interest of expediency, the ALJ allowed Erlinda Galan, under proper affirmation, to act as translator.

15) During the hearing, on the morning of February 27, Respondent and his wife, Janette (Jan) Galan requested that she be able to assist Respondent with the presentation of the case on the basis that she was and had been a partner in Timber Rock. The ALJ allowed her to participate as requested.

16) The proposed order, containing an exceptions notice, was issued February 27, 1998.⁷ Exceptions were due March 9, 1998. Under timely requests for extension of time, both the Agency and Respondents timely filed exceptions received by the forum on April 1, 1998. Both sets of exceptions are dealt with in the Opinion section of this Final Order.

RULINGS ON MOTIONS

At the commencement of the hearing, Respondent's counsel proposed that Respondent's case should be presented first since OAR 839-015-0142 (3) provided that it was "the burden of the applicant to provide evidence to the Bureau clearly indicating

that such business form is not sham or subterfuge." The ALJ ruled that, in accordance with the cited rule, Respondent's stated burden would arise only if the Agency established that one or more of the factors enumerated in OAR 839-015-0142(2) were present. In other words, it was necessary that the Agency establish a prima facie case of sham or subterfuge as described by the rule before Respondent had any obligation to provide evidence clearly indicating to the contrary. That ruling is confirmed.

On February 28, 1997, at the close of testimony, both the Agency and Respondent having rested, the Agency moved to amend its Notice of Proposed Denial to conform to the evidence pursuant to OAR 839-50-140 (2)(a). Respondent timely objected to the proposed amendments. The ALJ found that when evidence was presented on the additional allegations, Respondent either did not object to all of the evidence or did not do so timely, and that the participants addressed the issues involved in the proposed amendments. Accordingly, the ALJ allowed the amendments, pointing out that whether the additional charges would be upheld was a matter for the Proposed Order. At Respondent's request, the ALJ ruled further that Respondent's counsel, who was not present and had not been present since early in the hearing, could argue the propriety of the amendments, but only in the form of exceptions to the Proposed Order in the event that the amendments were upheld in the Proposed Order.

On March 5, 1997, the ALJ issued a written order confirming the amendments allowed at the close of the hearing. That order, after reciting the circumstances outlined above, provided further:

"The Notice [of Proposed Denial] was amended as follows (the term 'Respondent' singly refers to Manuel Galan, Jr.):

"a) Janette (Jan) Galan was added as a party respondent herein as a partner to Respondent Manuel Galan, Jr., in the business of Timber Rock Reforestation. OAR 839-050-0140 (2), 839-050-0170(2).

"b) As to Count 3, the Agency added that Respondent willfully concealed the existence of a partner, Jan Galan, on his application, in violation of ORS 658.410(2)(c) [*sic*],⁸ making two violations reflecting on his character, competence and reliability under OAR 839-015-0520(a) and (h). Additional penalty \$2,000.

"c) As a new Count 4, the Agency added the charge of Respondent's willful concealment of all addresses, temporary and permanent, on his application in violation of ORS 658.415(1)(a) and OAR 839-015-0145(13), which affects his character, competence and reliability. Civil penalty \$2,000.

"d) As a new Count 5, the Agency added the charge that in connection with the Umpqua National Forest USFS Contract number 53-04T1-6-27, between July 15, 1996 and July 28, 1996, Respondent failed to provide workers compensation coverage for all workers employed on said contract, in violation of ORS 658.417(4) and OAR 839-015-0145(6), which affects his character, competence and reliability. Civil penalty \$2,000.

"e) As a new Count 6, the Agency added the charge that in connection with the Stanislaus National Forest in 1995, Respondent employed as an agent a person who had a farm labor contractor license revoked, in violation of OAR 839-015-0145(8), which affects his character, competence and reliability. No civil penalty sought.

"Respondent, without the presence of his counsel, argued the facts of the case in his closing statement. The above amendments are listed as a courtesy to counsel; the ALJ has made no final determination as to whether these allegations, the original allegations, or any defenses have been established. That determination will be addressed in the Proposed Order."

A copy of the order of March 5, 1997, was transmitted to the Agency Case Presenter, to Respondents Manuel Galan, Jr. and Jan Galan, Timber Rock Reforestation, Estacada, and to Anthony Albertazzi, Attorney at Law, Bend. As to the amendment of the original charge 3 and the inclusion of additional charges 4, 5, and 6, the ruling of February 28 as memorialized in the written order of March 5 is hereby confirmed.

Following the hearing, the Agency moved for an order compelling Respondent to provide a copy of the videotapes made during the hearing. On May 2, 1997, the ALJ ordered that Respondent supply a copy of each videotape made of the hearing to the

Agency, as promised during the hearing, by May 12, 1997. A copy of that order was served on each Respondent and on Respondents' attorney. The tape copies were not supplied. A discussion of sanction for this non-compliance is contained in the Opinion section below.

FINDINGS OF FACT — THE MERITS

1) Respondent Manuel Galan, Jr., social security number 540-82-7267, born July 17, 1973, is the son of Manuel Galan, Sr., social security number 456-11-6680, born June 17, 1949.

2) On July 10, 1996, the Commissioner issued a final order in In the Matter of Manuel Galan, Erlinda Galan, and Staff, Inc., Respondents, Case number 07-96.⁹ Included among the provisions of that order was one barring and prohibiting any application for a forest/farm labor contractor license by any of those respondents for a period of three years from April 18, 1994.

3) At times material, Nedra Cunningham was manager of the FFLU of the Agency. She supervised the FFLU investigators, the FFLU licensing unit, and was Agency liaison with federal forestation agencies.

4) At times material, Carol Parsons was administrative assistant to the Agency's Wage and Hour Division Administrator. Among her duties were the recording and preserving of the records of Agency administrative rules promulgation, amendment, and hearings.

5) On January 24, 1995, Respondent met with the Agency's FFLU licensing clerk, Juley Robertson, at the Agency's Portland office to inquire about obtaining a farm/forest labor contractor's license. He was accompanied by his wife Janette Galan, his brother Marcos Galan, and his parents Manuel Galan, Sr. and Erlinda Galan.

Marcos Galan was also interested in being licensed. Respondent and Marcos Galan brought in partly completed license applications.

6) Manuel Galan, Sr. told Robertson that Respondent and Marcos Galan were setting up separate companies. Robertson explained the licensing procedure after noting that the application of Marcos Galan did not include the required bond, a certificate of insurance for vehicles to be used, or the required workers' compensation insurance certificate. She explained that when the paperwork including the application, the necessary bond and certificates was complete, a temporary 60-day permit could be issued and an appointment made for the applicant to take the required written examination. Manuel Galan, Sr. stated that he thought they could submit the applications, obtain the 60-day permit, and then obtain the rest of the paperwork. Robertson asked that they take each incomplete application, complete it and send it in with the proper bond and certificate.

7) Manuel Galan, Sr. did most of the talking on January 24, speaking in collective terms such as "we could bring in the applications and get a temporary permit." He stated that they would send in the applications the following week. Respondent and Marcos Galan spoke only when Robertson directed a question to them.

8) On February 8, 1995, Respondent brought a farm/forest labor contractor application to Robertson in Portland. He was accompanied by Marcos Galan, Manuel Galan, Sr. and an unidentified male. Robertson noted that the bond submitted was limited as to time and was for \$10,000. She explained that the amount would only cover a work force of up to 20 workers and that his application stated he would employ 21 to 50, which would require a \$30,000 bond. Respondent stated that 21 to 50 was a mistake and changed the application to reflect 0 to 20 employees. Robertson questioned the wording of the bond and explained to Respondent that he would need to

have the bonding company file a rider rewording the effective date of the bond. She noted that Respondent had supplied evidence of auto and workers' compensation insurance coverage, and accepted a check for the license fee conditioned on receiving a third photograph (Respondent had supplied only two) and the rider for the bond. Manuel Galan, Sr. repeated back to Robertson what she had told Respondent.

9) When Robertson asked Marcos Galan on February 8 if he also had an application, he stated that he was still trying to get a bond. She asked both Respondent and Marcos Galan if their respective companies were registered with the corporation section. Both answered that they had not done so because each was an individual proprietorship.

10) On February 10, 1995, after further examining Respondent's February 8 application, Robertson wrote to Respondent to advise him that the February 8 application was incomplete and that it could not be processed. The application was returned with a list of items needed for completion. These included a Farm Labor Contractor Surety Bond (the one submitted had been a Construction Contractors Board Surety Bond), vehicle insurance certificate in accordance with Agency rules, workers' compensation insurance certificate providing coverage for each worker employed (the Barrett Business Service coverage notice submitted covered only "temporary" workers), a federal tax ID number, list of all vehicles to be used to transport workers, with serial numbers, proof of assumed business name registration, and an additional photograph.

11) On February 15, 1995, the Oregon Secretary of State, Corporation Division recorded an assumed business name of Timber Rock Construction for Manuel Galan, Jr. at 62162 Hamby Road, Bend, Oregon, listing Respondent as authorized representative.

12) On February 27, 1995, the Oregon Secretary of State, Corporation Division recorded an assumed business name of Timber Rock Reforestation for Manuel Galan, Jr. at 62162 Hamby Road, Bend, Oregon, listing Respondent as authorized representative.

13) On March 13, 1995, the Agency, after consultation with the Oregon Workers' Compensation Division and Barrett Business Services, confirmed its position that an agreement by a worker leasing company to supply and insure temporary workers to a farm/forest labor contractor would not comply with ORS 658.417(4), which requires that every worker be covered, unless the contractor had workers' compensation coverage for workers not obtained from the leasing company.

14) On March 20, 1995, Robertson received a telephone call from Respondent's wife, Jan Galan, stating that they were having trouble obtaining the required bond, partly because they didn't own real property. Jan Galan stated that Respondent would probably apply again later in 1995 or early in 1996. She asked that the fee be refunded.

15) On April 17, 1995, Respondent established a checking account as "Timber Rock Reforestation" with the First Interstate Bank, Bend. Authorized signatures on the account were Manuel Galan Jr. and Janette R. Galan. Thereafter, deposits were made periodically to that account by Offord Finance, Medford, which factored payments for Respondent's work on various US Forest Service contracts for application of big game repellent, pesticide and herbicide and eradication of rodents in the forest. Checks were drawn against the account by both signators for business expenses of Timber Rock and for personal expenses of Respondent and Jan Galan.

16) In May of 1995 Respondent submitted information to the US Department of Agriculture, Forest Service (USFS) in connection with bid solicitation number IFB R5-

16-95-38, USFS Stanislaus National Forest, Sonora, California. He represented that he owned Timber Rock Reforestation as a sole proprietor, and that he planned to use Manuel Galan, Sr. as his foreman. He gave his business address as 62162 Hamby Rd., Bend, and acknowledged his firm's experience as 1/2 year and that of his foreman as 5 years in pesticide/herbicide application.

17) In a letter verifying his bid on IFB R5-16-95-38, which called for the application of herbicide to approximately 426 acres in the Stanislaus National Forest, Respondent stated that he had worked as a foremen in reforestation for Staff, Inc., for four years and in 1993 gained specific herbicide experience in the Groveland Ranger District and the Sierra National Forest. He acknowledged that he did not have a California applicators license, but was obtaining one and had meanwhile assigned Manuel Galan, Sr., a certified applicator, to perform the contract.

18) On June 26, 1995, USFS Stanislaus awarded contract 53- 9A55-5-1s035 (Stanislaus 1s035) to Respondent based on his bid on solicitation IFB R5-16-95-38. Work was to begin July 1, 1995, and was to be completed in 16 calendar days. In a prework meeting on June 30, Respondent designated Manuel Galan, Sr. as Respondent's contractor representative, with authority to attend prework meeting, sign prework forms, do on ground administration and sign work orders, suspend and resume work orders, change orders, partial payment invoices, final payment invoice and contract release.

19) At the time Stanislaus 1s035 was awarded, Respondent did not have a California pesticide applicator license or a California agricultural business license. Manuel Galan, Sr. had an applicator license and Respondent proposed to operate on that.

20) Respondent's work on Stanislaus 1s035 began on July 12, 1995, when Respondent had obtained required California licenses and permits and all of Respondent's equipment had been brought up to standard and inspected. USFS had initially insisted that Respondent obtain California workers' compensation insurance; Respondent's workers were from Oregon and were already covered through interstate agreement. Seventy-five per cent of the allowable contract time had expired, and one item was deleted from the contract because the plants involved had matured during the delay.

21) Both Respondent and Manuel Galan, Sr. were involved in obtaining the necessary California documents; at times, Manuel Galan, Sr. took the lead role. USFS Contracting Officer (CO) Borge-Dorffi and Contracting Officer Representatives (CORs) were of the opinion that Respondent should have dealt with the documentation issues, crew training, and vehicle and equipment maintenance between the award date and the prework conference. The CO and the CORs noted that much of the spray work was unsatisfactory and that Respondent's crew was inexperienced, careless, and operated unsafely.

22) The USFS CO determined on or about July 17 or 18, 1995, that Respondent was considered in default on Stanislaus 1s035 and allowed no further work toward completion of the contract after Respondent failed to establish his ability to do so timely.

23) On or about July 18, 1995, Manuel Galan, Sr. addressed a Freedom of Information act request to USFS COR Lynn Webb asking for documentation concerning a 1993 contractor whom Webb had mentioned and requesting the name of the contractor who was mentioned in the prework meeting as ready to perform contract 1s035 in the event of Respondent's default.

24) On July 28, 1995, Respondent submitted contract costs to date on Stanislaus 1s035 to the USFS CO, requesting payment. On August 17, 1995, Manuel Galan, Sr. wrote to the US Department of Labor (USDOL) regarding its request that USFS withhold payment to Respondent to assure payment of workers. In that letter, Manuel Galan, Sr. questioned USDOL's position on worker travel and explained Respondent's difficulties with contract 1s035 as being due to animus toward Manuel Galan, Sr. (and, thus, toward Respondent) of CO Borge-Dorffi and of BOLI's FFLU manager.

25) In July 28, 1995, Manuel Galan, Sr. wrote to CO Borge-Dorffi reviewing his prior experience with the Stanislaus National Forest as a principle of Staff, Inc., and accusing the CO of retaliation against Respondent as Manuel Galan, Sr.'s son. The letter outlined the problems with Respondent's Stanislaus 1s035 contract in Manuel Galan, Sr.'s view and stated that the CO intended from the beginning that Respondent default. Manuel Galan, Sr.'s letter was endorsed by Respondent as well as his two foremen and herbicide mixer, and copies were directed to two congressmen, the Small Business Administration, the agricultural commissioners of two California counties, California pesticide licensing, and the USDOL.

26) In September 1995, CO Borge-Dorffi responded to congressional inquiry with her view of the facts surrounding Respondent's Stanislaus 1s035 contract, and sometime in October, the Secretary of Agriculture responded to Congressman Radanovich of California to the effect that the CO had acted properly based on the short season and Respondent's "difficulties in meeting material and equipment safety requirements, and the unsatisfactory work accomplishment."

27) Pursuant to Oregon statute, the Commissioner of the Bureau of Labor and Industries has adopted Oregon Administrative Rules (OAR) 839- 15-000 to 839-15-

610 (now renumbered 839-015-0000 to 839-015-0610) regulating farm and forest labor contractors. Prior to July 1, 1996, the activities of forest fire suppression by contract crew, application of big game repellent by contract crew, herbicide or pesticide application in the forest by contract crew, gopher baiting, and gopher trapping were among activities that were exempted from the definition of forestation and reforestation activities requiring a farm/forest labor contractor license.

28) At times material, OAR 839-15-004(8)(c) (now renumbered to 839-015-0004 (8)(c)) defined in part the activities constituting the "Forestation or Reforestation of Lands." Pursuant to statute, the Agency gave notice of rules hearings to be held in March 1996 regarding a proposed rule change intended to add activities related to the forestation or reforestation of lands with the result that persons engaged in such activities would become subject to the requirements of the Oregon farm/forest labor contracting law. In a summary of proposed changes published in March 1996 and distributed at each rules hearing, the Agency gave notice that the change to the rules was a major substantive change which, if adopted, might result in licensing requirements for persons not currently licensed. This notice included gopher baiting as a proposed licensable activity. It did not include gopher trapping.

29) The summary of proposed rule changes was available at rules hearings held in Bend on March 26, 1996, and in Salem on March 28, 1996. Respondent attended both hearings. Persons attending rules hearings were notified of the final Agency action regarding the rules involved. On or about May 30, 1996, the Agency transmitted a memorandum notice to "Interested Parties" regarding the adoption of rules relating to farm and forest labor contractors which contained the following, in pertinent part:

"Effective July 1, 1996, administrative rules relating to farm and forest labor contractors will be amended as follows:

" * * * * *

"The following activities by a contractor have been added to the definition of activities relating to the forestation and reforestation of lands. Contractors performing these activities will be required to obtain a farm/forest labor contractor's license as of July 1, 1996:

Forest fire `suppression by contract crew

Application of big game repellent by contract crew

Herbicide and pesticide application by contract crew

Gopher baiting and gopher trapping

" * * * * *

"Copies of the amended rules may be obtained by calling (503) 731-4742." (Emphasis in original.)

Respondent was among those persons to whom this memorandum notice was mailed.

30) Cunningham met with individuals from other regulatory agencies, including the USFS, during the time the new rules were being considered and adopted. Since it was the activity that was to be regulated, rather than the contracts, BOLI considered the described forest activity subject to the rules as of the effective date. At no time did Cunningham say that previously exempt forestation activity would remain exempt under any contract awarded or started prior to July 1, 1996, the effective date of the rules.

31) On April 10, 1996, USFS Umpqua National Forest, Roseburg, Oregon, awarded contract 53-04T1-6-27 (Umpqua 6-27) to Respondent based on his bid dated March 5, 1996. Umpqua 6-27 called for gopher trapping in the Diamond Lake Ranger District. The Umpqua CO issued a notice to proceed on Umpqua 6-27 on July 8, 1996. Respondent and his crew engaged in gopher trapping on Umpqua 6-27 on July 9, 10, 11, 20, 26, and 28, 1996.

32) Manuel Galan, Sr. was listed as a foreman on Respondent's experience questionnaire submitted in March 1996 in connection with Respondent's bid on Umpqua 6-27. His name did not appear on Respondent's available pay records for Umpqua 6-

27. The Umpqua COR's daily diaries for July 9 to August 16, 1996 did not mention Manual Galan, Sr.

33) A 1989 Ford F-35 pickup, Oregon license PQQ 645, vin¹⁰ 03265, was one of the vehicles used by Respondent on Stanislaus 1s035 in July 1995. This vehicle was formerly registered to Staff, Inc., 815 NW 9th, Redmond. It was financed by Western Bank, Beaverton, for Dolores and Genaro Loreda, Metolius, Oregon, in March 1995. Dolores Loreda is Respondent's sister, from whom Respondent borrowed the vehicle. This vehicle was used by Manuel Galan, Sr. (as Campesino #95¹¹) on USFS contract 53-9A55-6-1s030 (Stanislaus 6-1s030) in the Groveland Ranger District, Sonora, California, July 3 through 5, 1996. This vehicle was inspected for Timber Rock Reforestation, PO Box 7065, Bend, by Midas Muffler, Bend, on July 8, 1995, for purposes of compliance with USDOL regulations.

34) A 1988 Ford van, Oregon license SYV 552, vin 73495, was one of the vehicles used by Respondent on Stanislaus 1s035 in July 1995. This vehicle was registered to Staff, Inc., Madras, until September 15, 1995, when Marcos Galan, 915 NW 9th, Redmond applied for title. Marcos Galan is Respondent's brother, from whom Respondent borrowed the vehicle. This vehicle was inspected for Timber Rock Reforestation, PO Box 7065, Bend, by Midas Muffler, Bend, on July 3, 1995, for purposes of compliance with USDOL regulations.

35) A 1989 Ford pickup, Oregon license PUY 359, vin 09304, was one of the vehicles used by Respondent on Stanislaus 1s035 in July 1995. This vehicle was registered to Staff, Inc., Redmond, until July 17, 1995 when it was transferred to Marcos A. Galan, Hard Rock Reforestation, 815 NW 9th, Redmond. In April 1996, title and registration were changed to Campesino 95, 815 NW 9th, Redmond, and in July 1996, it was again titled to Hard Rock Reforestation. New Oregon plates, 382 AKQ, were

issued at that time. This vehicle was used by Manuel Galan, Sr. on Stanislaus 6-1s030 in the Groveland Ranger District, Sonora, California, July 3 through 5, 1996. This vehicle was inspected for Timber Rock Reforestation, PO Box 7065, Bend, by Midas Muffler, Bend, on July 8, 1995, for purposes of compliance with USDOL regulations. In November 1996, this vehicle was sold by Marcos Galan to Hector Galan, 23 NW Depot, Madras.

36) Respondent's farm/forest labor contractor application submitted August 9, 1996, listed a 1984 Ford Crew cab pickup, Oregon temporary license, vin 07792. This vehicle was specifically covered on the certificate of auto insurance accompanying the application. There was no evidence regarding prior ownership.

37) Five Oregon workers employed by Manuel Galan, Sr. on Stanislaus 6-1s030 from July 3 to July 5, 1996, were employed by Respondent on Umpqua 6-27 between July 15 and July 28, 1996: Javier Cruz, Mario Cruz, Antonio Lopez, Rafael Quintana, and Mario Zamora.

38) In July 1996, Respondent submitted to USFS a notice of Oregon workers' compensation coverage from BBS under a temporary worker agreement, effective April 25, 1995. Under such an agreement, workers supplied by BBS were covered, but workers hired by Respondent had to be covered by Respondent's own workers' compensation insurance policy; he had none. With the application received by the Agency on August 9, 1996, Respondent submitted a joint employer lease coverage notice from BBS, effective August 6, 1996. Under such an agreement, workers hired by Respondent as well as any supplied by BBS were covered.

39) Respondent obtained a \$10,000 farm labor contractor bond from Contractors Bonding and Insurance Company as corporate surety effective July 26, 1996, in connection with his August 9, 1996, license application. His bond application to

Contractors Bonding was accompanied by a completed co-indemnitor (co-signer) application. The bond was issued based on the co-signer. Contractors Bonding received inquiry from the Agency regarding the identity of the co-signer, but would not disclose that without "a court order."

40) At times material, Larry Syring was owner of Mountain View Sanitary Service, Inc., Gresham. He was acquainted with Respondent and Jan Galan from his church, where Jan Galan's father was pastor. Syring had a bond for his own business with CBIC. He knew that Respondent did forestation work and when Respondent needed a bond for a contract, he co-signed for Respondent, who stated he would get his own bond after successful completion of the contract. Syring had no interest in Respondent's business and derived no income from Respondent's contract. He did not know Manuel Galan, Sr., or Erlinda Galan, other than possibly meeting them when Jan and Manuel, Jr., were married. He recalled that Manuel Galan, Sr. had once been in the restaurant business.

41) At the time of his 1995 application, Respondent gave his address as 62162 Hamby Road, Bend, Oregon, 97701. Documents in this record indicate he used that address throughout 1995, occasionally using PO Box 7065, Bend, Oregon, 97708, as a mailing address. In 1996, in his correspondence and later application, he gave his address as 38197 SE Coupland Rd., Estacada, Oregon, 97023, and used PO Box 1368, Estacada, Oregon, 97023, as a mailing address. From time to time, he stayed at 915 NW 9th, Redmond, his parent's address. In late 1996, while pursuing a restaurant venture, he received mail in Joseph, Oregon. At the time of hearing, his residence was in Estacada.

42) Respondent had been awarded USFS Malheur National Forest gopher baiting contract number 43-04KK-6- 2031 (Malheur 2031) on June 17, 1996. On August

22, 1996, he wrote to USFS Malheur giving his version of his licensing situation and withdrawing his bid.

43) On October 30, 1996, in connection with Stanislaus 1s035, the Board of Contract Appeals of the United States Department of Agriculture, finding that contract time dating from the notice to proceed should have allowed five additional days for performance and that the CO caused Respondent to unnecessarily spend seven days seeking local workers' compensation insurance coverage, ultimately found that the government had breached its duty of cooperation and breached its duty not to hinder or delay a contractor's performance, and ruled "that the default is not justified and that the default termination shall be changed to termination for convenience."¹²

44) Respondent testified that Janette Galan was his business partner as well as his domestic partner. Jan Galan acknowledged her interest in Timber Rock Reforestation and subjected herself to the forum's jurisdiction as a party; she examined and cross-examined witnesses and argued the merits of the Notice of Proposed Denial.

45) Respondent testified that he was told by Paul Tiffany of BOLI that contracts involving the newly regulated activities which predated the effective date of the new rules could be completed without farm/forest labor licensing, but that any new contracts for those activities after the effective date would require a farm/forest labor license. The Umpqua CO received information through another USFS employee that Cunningham had said that contracts awarded and started prior to the effective date of the rule change would not require a farm/forest labor license. Respondent stated that he did not see the Agency's May 30 memorandum notice of the effective date of the rules change until some time after it was issued. He did not deny that it was received. The suggestion in his testimony that he was unaware that gopher trapping was included

in the list of regulated activities, or that he was told the rule applied only to contracts let after July 1, 1996, was self-serving, largely unsupported, and not relevant.

ULTIMATE FINDINGS OF FACT

1) Respondent Manuel Galan, Jr. is the son of Manual Galan, Sr. and Erlinda Galan. Janette Galan is the wife of Respondent Manuel Galan, Jr. and is a partner in his forestation and pesticide business registered in his name as Timber Rock Reforestation.

2) The Commissioner of the Bureau of Labor and Industries (BOLI) is charged with the regulation and licensing of farm/forest labor contractors (FFLC) in Oregon.

3) Manual Galan, Sr. and Erlinda Galan, together with their corporation Staff, Inc., were former FFLC licensees who were debarred by order of the Commissioner for a period of three years from April 1994.

4) Respondent submitted an incomplete application for a FFLC license in early 1995. The application did not have an acceptable bond, auto liability coverage or workers' compensation insurance coverage.

5) Respondent did not pursue the 1995 application because of difficulty in obtaining a bond and because the work he was doing, herbicide, pesticide and gopher baiting and trapping, did not require a FFLC license.

6) In February 1995, Respondent registered the assumed business name of Timber Rock Reforestation as a sole proprietorship.

7) In May 1995, Respondent bid on a herbicide contract in USFS Stanislaus National Forest in Northern California. As part of his documentation, he listed Manuel Galan, Sr. as the licensed applicator required by the bid solicitation. Respondent himself did not have an applicator license at the time.

8) Respondent was awarded the contract (Stanislaus 1s035) in late June 1995, with work to begin on July 1, 1995, and to be completed in 16 calendar days. He designated Galan, Sr. as his contract representative with full authority to deal with all aspects of Stanislaus 1s035.

9) Work on Stanislaus 1s035 was delayed by USFS insistence that Respondent have an applicator license, have equipment meeting USFS inspection, and have California workers' compensation insurance coverage. Galan, Sr. took a lead role in obtaining the necessary documentation and permits for Stanislaus 1s035 as well as in directing the work when USFS allowed Respondent to proceed.

10) USFS declared Respondent in default on Stanislaus 1s035 in mid-July, 1995. Thereafter, Galan, Sr. took a lead role in obtaining information, in protesting the withholding of payment, in complaining to the USDOL and in complaining to Congress. On October 30, 1996, the US Department of Agriculture Board of Contract Appeals ruled that the default was not justified.

11) Effective July 1, 1996, by administrative rule, the Commissioner redefined forestation and reforestation activities subject to FFLC licensing to include the previously exempt activities of application of big game repellent, herbicide or pesticide by contract crew, gopher baiting and gopher trapping. Respondent attended rules hearings regarding the amendments and was among the persons receiving notice that the rule redefining forestation and reforestation activities requiring a FFLC license would be effective for all such activities beginning July 1, 1996.

12) Respondent was awarded a gopher trapping contract by USFS Umpqua National Forest (Umpqua 6-27) on April 10, 1996. Respondent and his crew engaged in gopher trapping on Umpqua 6-27 throughout the month of July 1996. Respondent did not have a FFLC license in July 1996.

13) Manuel Galan, Sr. did not participate as Respondent's employee or representative on Umpqua 6-27 in July 1996.

14) Respondent used some of the same vehicles in working on Umpqua 6-27 in July 1996 that Galan, Sr. had used on a USFS contract in California earlier in July 1996. Respondent used some of the same workers in working on Umpqua 6-27 in July 1996 that Galan, Sr. had used on a USFS contract in California earlier in July 1996.

15) Respondent did not have workers' compensation insurance coverage for all workers employed on Umpqua 6-27 in July 1996.

16) On July 29, 1996, Respondent submitted an application for a FFLC license, together with a licensing fee. The application was incomplete and on August 9, 1996, Respondent submitted documents completing the application. On August 9, 1996, the Agency served Respondent with a "Notice Of Proposed Denial Of A Farm/Forest Labor Contractor License and Of Intent To Assess Civil Penalties."

17) On his applications of 1995 and 1996, Respondent reported his correct address at the time.

18) On his applications of 1995 and 1996, Respondent failed to include the name of Janette Galan as having a partnership interest in his business.

19) On his applications of 1995 and 1996, Respondent did not include the name of Larry Syring, co-signer on Respondent's FFLC bond which accompanied his August 9, 1996, application as having an interest in his business. Syring had no financial interest in Respondent's business and derived no income from Respondent's contracts.

20) On his applications of 1995 and 1996, Respondent did not include the name of Galan, Sr. as having an interest in his business. There was no evidence that Galan, Sr. had a financial interest in Respondent's business in 1996.

21) On August 22, 1996 Respondent withdrew his successful bid on a gopher baiting contract with USFS Malheur because of his licensing situation.

CONCLUSIONS OF LAW

- 1) At times material herein, ORS 658.407 provided, in part:
"The Commissioner of the Bureau of Labor and Industries shall administer and enforce ORS 658.405 to 658.503 and 658.830, and in so doing shall:

" * * *

"(3) Adopt appropriate rules to administer ORS 658.405 to 658.503 and 658.830."

At times material herein, ORS 658.501 provided:

"ORS 658.405 to 658.503 and 658.830 apply to all transactions, acts and omissions of farm labor contractors and users of farm labor contractors that are within the constitutional power of the state to regulate, and not preempted by federal law, including but not limited to the recruitment of workers in this state to perform work outside this state, the recruitment of workers outside of this state to perform work in whole or in part within this state, the housing of workers in this state for work in another state, the housing of workers from another state in connection with work to be performed in this state, the transportation of workers through this state and the payment, terms and conditions, disclosure and record keeping required with respect to work performed outside this state by workers recruited in this state."

At times material herein, ORS 658.405 provided in part:

"As used in ORS 658.405 to 658.503 and 658.830 and 658.991 (2) and (3), unless the context requires otherwise:

"(1) 'Farm labor contractor' means any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another to work in forestation or reforestation of lands, * * * or who enters into a subcontract with another for any of those activities."

At times material herein, OAR 839-015-0004 provided:

"As used in these rules, unless the context requires otherwise:

" * * * * *

"(5) 'Forest Labor Contractor' means:

"(a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the forestation or reforestation of lands[.]"

At times material herein, ORS 658.410 provided, in pertinent part:

"(1) * * * No person shall act as a farm labor contractor with regard to the forestation or reforestation of lands unless the person possesses a valid farm labor contractor's license with the indorsement required by ORS 658.417(1). * * *

"(2) Farm labor contractor licenses may be issued by the commissioner only as follows:

"(a) To a natural person operating as a sole proprietor under the person's own name or under an assumed business name registered with the Office of Secretary of State.

"(b) To two or more natural persons operating as a partnership under their own names or under an assumed business name registered with the Office of Secretary of State."

The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondents herein, including provisions of Oregon law regarding licensing of farm and forest labor contractors and pertaining to payment, terms, conditions, disclosure and record keeping and related matters.

2) As persons acting as farm labor contractors in the State of Oregon with regard to the forestation or reforestation of lands, Respondents M. Galan, Jr. and Janette Galan were subject to the provisions of ORS 658.405 to 658.503 and 658.830 on and after July 1, 1996.

3) At times material herein, ORS 658.415 provided, in pertinent part:

"(1) No person shall act as a farm labor contractor unless the person has first been licensed by the Commissioner of the Bureau of Labor and Industries pursuant to ORS 658.405 to 658.503 and 658.830. Any person may file an application for a license to act as a farm labor contractor at any office of the Bureau of Labor and Industries. The application shall be sworn to by the applicant and shall be written on a form prescribed by the commissioner. The form shall include, but not be limited to, questions asking:

"(a) The applicant's name, Oregon address and all other temporary and permanent addresses the applicant uses or knows will be used in the future.

"(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor including license number and state

of licensure, vehicle number and the name and address of the vehicle owner for all vehicles used.

"(c) * * *

"(d) The names and addresses of all persons financially interested, whether as partners, shareholders, associates or profit-sharers, in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 and 658.830 within the preceding three years, or had such a license denied, revoked or suspended within the preceding three years in this or any other jurisdiction.

"(2) Each applicant shall furnish satisfactory proof with the application of the existence of a policy of insurance in an amount adequate under rules issued by the Bureau of Labor and Industries for vehicles to be used to transport workers. * * *

"(3) Each applicant shall submit with the application and shall continually maintain thereafter, until excused, proof of financial ability to promptly pay wages of employees and other obligations specified in this section. The proof required in this subsection shall be in the form of a corporate surety bond of a company licensed to do such business in Oregon * * *. The amount of the bond and the security behind the bond * * * shall be based on the maximum number of employees the contractor employs at any time during the year. * * *

" * * * * *

"(18) A person who cosigns with a farm labor contractor for a bond required by subsection (3) of this section is not personally or jointly and severally liable for unpaid wages above the amount of the bond solely because the person cosigned for the bond."

At times material herein, ORS 658.417 provided, in pertinent part:

"In addition to the regulation imposed upon farm labor contractors pursuant to ORS 658.405 to 658.503 and 658.830, a person who acts as a farm labor contractor with regard to the forestation or reforestation of lands shall:

"(1) Obtain a special indorsement from the Commissioner of the Bureau of Labor and Industries on the license required by ORS 658.410 that authorizes the person to act as a farm labor contractor with regard to the forestation or reforestation of lands.

"(2) Pay a license fee of \$100, * * *

" * * * * *

"(4) Provide workers' compensation insurance for each individual who performs manual labor in forestation or reforestation activities

regardless of the business form of the contractor and regardless of any contractual relationship which may be alleged to exist between the contractor and the workers notwithstanding any provision of ORS chapter 656, unless workers' compensation insurance is otherwise provided."

At times material herein, OAR 839-015-0142 provided in pertinent part:

"(1) The Bureau may refuse to license * * * any person who proposes to use any individual, partnership, association, corporation or other entity as such person's agent for the performance of any activity specified in ORS 658.405(1), when the proposed agent has, within the preceding three years, violated any section of ORS 658.405 to 658.485.

"(2) The Bureau will regard as prima facie evidence of sham or subterfuge mere changes in business form subsequent to denial, suspension, revocation or refusal to renew a license, where a relative by blood or marriage, or a person presently employed in an occupation, other than an occupation with a licensed farm or forest contractor, makes application, including a renewal application, for a license and one or more of the following factors are present:

"(a) A lack of adequate consideration or value given for the former business or its property;

"(b) The use of the same real property, fixtures or equipment or use of a similar business name of the former business;

"(c) The time period elapsed between the Bureau's denial, suspension, revocation or refusal to renew a license and application by the new business for a license is less than one year;

"(d) A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business;

"(e) The amount of capitalization is inadequate to meet current obligations of the new business; or

"(f) The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation.

"(3) When the factors outlined in section (2) of this rule are present, it shall be the burden of the applicant to provide evidence to the Bureau clearly indicating that such business form is not sham or subterfuge.

Respondent, doing business as Timber Rock Reforestation in 1996 was not a sham or subterfuge for Staff, Inc., Manuel Galan, Sr., and Erlinda Galan, debarred farm/forest labor contractors. (Count 1)

- 4) Prior to July 1, 1996, OAR 839-15-004(8) provided in pertinent part:
"Forestation or reforestation of lands' includes, but is not limited to:

" * * * * *

"(c) Other activities related to the forestation or reforestation of lands including, but not limited to, tree shading, pinning, tagging or staking; fire trail construction and maintenance; slash burning and mop up; mulching of tree seedlings; and any activity related to the growth of trees and tree seedlings and the disposal of debris from the land."

Effective July 1, 1996, and thereafter, OAR 839-15-004(8) (now 839-015-0004(8)) provided in pertinent part:

"Forestation or reforestation of lands' includes, but is not limited to:

" * * * * *

"(c) Other activities related to the forestation or reforestation of lands including, but not limited to, tree shading, pinning, tagging or staking; fire trail construction and maintenance; slash burning and mop up; mulching of tree seedlings; *forest fire suppression by contract crew; application of big game repellent by contract crew; herbicide or pesticide application in the forest by contract crew; gopher baiting; gopher trapping* and any activity related to the growth of trees and tree seedlings and the disposal of debris from the land." (Emphasis supplied.)

After July 1, 1996, Respondent engaged in contract gopher trapping in the Umpqua National Forest, was thus engaged in forestation or reforestation activities and acted as a forest labor contractor without a valid license in violation of ORS 658.417(1). (Count 2)

5) At times material herein, OAR 839-015-0520(3) provided, in pertinent part:

"(3) The following actions of a farm or forest labor contractor license applicant or licensee or an agent of the license applicant or licensee demonstrate that the applicant's or licensee's character, reliability, or competence make the applicant or licensee unfit to act as a farm or forest labor contractor:

"(a) Violations of any section of ORS 658.405 to 658.485;

" * * * * *

"(h) Willful misrepresentation, false statement or concealment in the application for a license[.]"

As a person applying for a license as a farm labor contractor in the State of Oregon with indorsement for the forestation or reforestation of lands, Respondent failed to disclose

the interest of Respondent Janette Galan in the business known as Timber Rock Reforestation, violating ORS 658.415 (1)(d) and OAR 839-015-0145(13). (Count 3)

6) In 1996, as a person applying for a license as a farm labor contractor in the State of Oregon with indorsement for the forestation or reforestation of lands, Respondent did not unlawfully fail to disclose the interest of Manuel Galan, Sr., in the business known as Timber Rock Reforestation. (Count 3)

7) In 1996, as a person applying for a license as a farm labor contractor in the State of Oregon with indorsement for the forestation or reforestation of lands, Respondent did not unlawfully fail to disclose the interest of Larry Syring in the business known as Timber Rock Reforestation. (Count 3)

8) At times material, ORS 658.420 provided in pertinent part:

"(1) The Commissioner of the Bureau of Labor and Industries shall conduct an investigation of each applicant's character, competence and reliability, and of any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor.

"(2) The commissioner shall issue a license within 15 days after the day on which the application therefor was received in the office of the commissioner in the commissioner is satisfied as to the applicant's character, competence and reliability."

At times material herein, OAR 839-015-0145 provided in pertinent part:

"The character, competence and reliability contemplated by ORS 658.405 to 658.475 and these rules includes but is not limited to consideration of:

" * * *

"(6) Whether a person has provided workers' compensation coverage for each worker or paid workers' compensation insurance premium payments when due.

" * * * * *

"(8) Whether a person has employed as agent who has had a farm or forest labor contractor license denied, suspended, revoked or nor renewed or who has otherwise violated any provisions of ORS 658.405 to 658.503 or these rules.

" * * * * *

"(13) Whether a person has made a willful misrepresentation, false statement or concealment in the application for a license."

Respondent did not willfully conceal his addresses and did not violate ORS 658.415(1)(a). (Count 4)

9) Respondent failed to provide workers' compensation insurance for each worker employed on Umpqua 6-27 in July 1996, violating ORS 658.417(4) and OAR 839-015-0145(6). (Count 5)

10) When Respondent employed Galan, Sr. as his agent in 1995, he did not violate OAR 839-15-145(8). Respondent did not employ Galan, Sr. as his agent after July 1, 1996, and did not violate OAR 839-015-0145(8). (Count 6)

11) At times material herein, ORS 658.453 provided, in pertinent part:

"(1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$2,000 for each violation by:

"(e) A farm labor contractor who fails to comply with ORS 658.417(1), (3) or (4)."

12) At the time of the hearing, OAR 839-050-0140(2) provided for amendment of the pleadings to conform to the evidence presented and OAR 839-050-0170 provided that upon proper application, a party may be added at any stage of the contested case proceeding. Janette Galan was a business partner of Respondent Manuel Galan, Jr. and requested status as a party. Janette Galan was properly included as a party respondent herein.

OPINION

The Agency proposed to deny the application of Manuel Galan, Jr. for a farm labor contractor license with forestation indorsement. As bases for its action, the Agency alleged that Respondent was a sham or subterfuge for Staff, Inc., Manuel Galan, Sr. and Erlinda Galan, debarred farm/forest labor contractors, that Respondent had acted as a farm/forest labor contractor without a valid license, and that Respondent

had made a willful concealment in his application for a license. After the presentation of evidence at hearing, the Agency sought to include additional charges of failing to disclose on his application that Janette (Jan) Galan was a partner in the business of Timber Rock Reforestation, thus violating ORS 658.410(2)(c), making two violations in Count 3 reflecting on his character, competence and reliability under OAR 839-015-0520(a) and (h) and sought an additional penalty of \$2,000; as a new Count 4, the Agency alleged Respondent's willful concealment of all addresses, temporary and permanent, on his application in violation of ORS 658.415(1)(a), also affecting his character, competence and reliability and sought an additional penalty of \$2,000; as a new Count 5, the Agency added the charge that Respondent failed to provide workers' compensation insurance coverage for all workers employed on Umpqua National Forest USFS Contract number 53-04T1-6-27, between July 15 and July 28, 1996, in violation of ORS 658.417(4) and OAR 839-015-0145 (6), also affecting his character, competence and reliability, and sought an additional penalty of \$2,000; and as a new Count 6, the Agency added the charge that Respondent employed as an agent in connection with the Stanislaus National Forest in 1995, a person who had a farm labor contractor license revoked, in violation of OAR 839-015-0145(8), also affecting Respondent's character, competence and reliability.

Violations Charged

1. Sham or Subterfuge.

The rule regarding sham or subterfuge, OAR 839-015-0142, quoted in part in Conclusion of Law 3 above, reads:

"(2) The Bureau will regard as prima facie evidence of sham or subterfuge mere changes in business form subsequent to denial, suspension, revocation or refusal to renew a license, where a relative by blood or marriage, or a person presently employed in an occupation, other than an occupation with a licensed farm or forest contractor, makes

application, including a renewal application, for a license and one or more of the following factors are present:****

Webster's Seventh New Collegiate Dictionary defines sham as "to act intentionally so as to give a false impression." Subterfuge is defined as "deception by artifice or stratagem in order to conceal, escape, or evade." Both are premised on deception. The purpose of the inquiry as set out in the rule is to uncover "mere changes in business form..." that would indicate that the entity now making application is really the same entity that had a previously denied, suspended, revoked or refused license, in a different form (hereinafter referred to as "the former business"). The rule further states:

"(3) When the factors outlined in section (2) of this rule are present, it shall be the burden of the applicant to provide evidence to the Bureau clearly indicating that such business form is not sham or subterfuge."

The forum finds that the Agency established two of the six factors of the sham or subterfuge rule and discusses those first:

"(b) The use of the same real property, fixtures or equipment or use of a similar business name of the former business;"

The only property or equipment appearing in evidence were motor vehicles formerly registered to Staff, Inc., and/or to Campesino 95 (Manuel Galan, Sr.) or to Respondent's relatives. Respondent acknowledged they were borrowed, which is not unlawful so long as there is adequate liability insurance. However this established one factor under the rule, even though Respondent did not use the same real property or a similar business name.

"(c) The time period elapsed between the Bureau's denial, suspension, revocation or refusal to renew a license and application by the new business for a license is less than one year;"

The senior Galans and their corporation, Staff, Inc., were prohibited from applying for a FFLC license initially in 1994; that prohibition was extended by order on July 10, 1996. Respondent's application was within one year. This established another factor under the rule. The Agency having presented a prima facie case by establishing one or more

factors of the rule, the Respondents must provide evidence clearly indicating their business form is not a sham or subterfuge. Since the rule itself provides the relevant factors in the inquiry as to whether a business is or is not a sham or subterfuge, following is a discussion of the remaining four factors as applied to the established facts:

"(2)(a) A lack of adequate consideration or value given for the former business or its property;"

The problem in establishing this factor is that there was no evidence that a business actually changed hands. Although the Agency's evidence was designed to infer that Respondent took over his father's business without buying it for value, there is no evidence in the record to suggest that Respondent assumed any of Galan, Sr.'s contracts, debts or obligations. In short, this factor simply could not be established.

"(d) A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business;"

This factor was not established. Several pages of Respondent's check stubs on what he described as his business account were admitted into evidence. The stubs showed mixed business and personal expenditures. Several were to individuals, and noted "paid in full." Respondent stated these were usually loans to the person and the notation meant that Respondent expected the payee to repay him in full. There were occasional payments to Respondent's relatives, including a check to Erlinda Galan. There were checks to Manuel Galan and to Manuel Galan, Jr. Respondent did not recall what every check covered, suggesting usually that they were loans to the recipients of the checks or, in the case of his father-in-law, repayment. Respondent explained that all of the checks payable to Manuel Galan and Manuel Galan, Jr., were wage draws to himself. None of the payments to relatives suggested any ongoing business interest on the part of the various payees. Respondent's checkstubs and

explanations of them established a rather incredible bookkeeping operation, but there was insufficient evidence to establish that either of the senior Galans, or their corporation, had any financial interest in Timber Rock Reforestation. This factor was not established.

"(e) The amount of capitalization is inadequate to meet current obligations of the new business;"

The apparent purpose of this element is to show some dependence or reliance on the former business for capitalization. The Agency suggested that Respondent's business was inadequately capitalized, as evidenced by the need for a co-signer. The need for a surety does not necessarily establish that a business is undercapitalized; it is also possible that the applicant for bonding or credit has no credit history. At any rate, the backup capitalization (co-signer) was unconnected to Manuel Galan, Sr. or his former business. This factor was not established.

"[or] (f) The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation."

The apparent purpose of this element is to establish that although the business seeking the license is a partnership or corporation, the partners or corporate officers do not act or are not treated as such and the defacto leadership emanates from the former business. The record indicates that Timber Rock Reforestation is registered with the Oregon Secretary of State Corporation Division not as a partnership or corporation but as the assumed business name of Manuel Galan, Jr. However both Respondent and Jan Galan testified that she was his business partner. That issue is addressed later in this opinion. But the forum believes as to this factor the more important question is whether Manuel Galan, Sr. or anyone else acting on behalf of the former business was acting as a defacto business partner or corporate officer in Timber Rock. The Agency

did not establish this factor as to Manuel Galan, Sr., Erlinda Galan or anyone else associated with the former business.

Conclusion: Sham or Subterfuge

When Respondent submitted an application in 1996, the Agency was aware that Respondent had employed Manuel Galan, Sr. in the past, that Respondent was a blood relative of Manuel Galan, Sr. and that the application was made within one year of the Bureau's July 1996 order extending the prohibition of Galan, Sr.'s right to apply for a license. This established one of the six factors of sham or subterfuge. Respondent used some of the same equipment as Manuel Galan, Sr. in 1996, establishing a second factor. It also appeared that Galan, Sr. had played a major active role in Respondent's dealings with Stanislaus 1s035 as well as in Respondent's early 1995 attempt to apply. This gave the Agency reason to suspect that Galan, Sr. might be the true proprietor or co-proprietor of Timber Rock. However there was no showing that Galan, Sr. had a financial interest at the time of the application, was a defacto business partner, or that any business or property, other than the borrowed cars, changed hands with or without adequate consideration. The rule requires that if the agency establishes one or more factors of sham or subterfuge, the burden shifts to respondent to refute this inference. Here the agency established two of the factors but the evidence on the whole record did not establish that Timber Rock was a sham or subterfuge.

2. Acting as a farm/forest labor contractor without a valid license.

The Agency was also aware at the time of Respondent's 1996 application that Respondent had worked at least one contract after July 1, 1996, without the required license. Although to an extent mitigated by the fact that licensing for the particular activity was a new requirement, that failure to obtain a license impacted on the Commissioner's view of Respondent's character, competence, and reliability.

3. Making a Willful Concealment in an Application for a License.

The agency alleges Respondent willfully concealed the identities of all persons financially interested in Respondent's proposed operations. There was evidence that Manuel Galan, Sr. acted as if he were the principal in Timber Rock in 1995, but there was no evidence that he shared in the profits or loss of the business at the time of the 1996 application. Respondent had no duty to list Galan, Sr. as a person "financially interested * * * in the applicant's proposed operations as a farm labor contractor."

A bond was provided as a voluntary accommodation by Respondents' friend Larry Syring who, the evidence showed, had no financial interest in Respondents' business. Under such circumstances, Respondent had no duty to list the co-signer of his bond as a person "financially interested * * * in the applicant's proposed operations as a farm labor contractor."

Although her name does not appear in the listing with the Corporations Division, both Respondent and Jan Galan testified that she was his business partner and upon Respondent's request, at hearing both Manual Jr. and Jan Galan examined witnesses and argued the facts. Under the circumstances, she should have been listed on the application, and the forum finds that failure to list her was a willful concealment. The forum does not consider that omission to be as serious as the intentional concealment of a partner ineligible for a license or a person with a financial interest who also provided financial resources, neither of which was proven, and therefore assesses a nominal penalty.

4. Willful concealment of all addresses on an Application for a License.

Respondent's testimony regarding his address at particular times was equivocal; he sometimes used the Redmond address of his parents. However, in written

communication with the Agency and on the applications, he used his true address at the time. Taken as a whole, the evidence does not reveal any willful concealment of his true address.

5. Failure to provide workers compensation coverage for all workers employed.

Evidence at hearing established that Respondent did not have proper workers' compensation insurance coverage on Umpqua 6-27 in July 1996. This means that for a period of time Respondent's workers, whose job it was to perform physical labor, were completely without coverage for any job-related injuries that may have occurred. Although the period of time was brief, around a month, that does not lessen the seriousness with which the Commissioner views this violation. This seriously affected the Commissioner's view of Respondent's character, competence, and reliability.

6. Employing as an agent a person who had a farm labor contractor license revoked.

Manuel Galan, Sr. was barred from obtaining a FFLC license beginning in early 1994. Respondent employed Manuel Galan, Sr. in 1995 as his agent for the performance of what became in 1996 forestation or reforestation activities. At that time, the subject matter of Stanislaus 1s035 was not within the Agency's jurisdiction as a licensable activity. Respondent could not violate Oregon law by employing Manuel Galan, Sr. in a non-forestation activity in 1995.

Respondent's Defenses

In finding that the Commissioner has jurisdiction over the parties and subject matter, the forum has necessarily found contrary to those stated "affirmative defenses" which involve exceeding the scope of the Agency's authority. There was no showing that the Agency exceeded the scope of its statutory authority in promulgating one or more of the rules, in failing to follow rulemaking procedures, in denying a license to Respondent based on grounds not provided for by the relevant statutes and /or

regulations, or in assessing civil penalties against Respondent based on grounds not provided for by the relevant statutes and/or regulations. Similarly, no evidence was adduced suggesting that the decision to deny a farm/forest labor contractor license and to assess civil penalties was based on bias and prejudice of issues, or that the Agency abused its discretion in denying a farm/forest labor contractor license to Respondent or in assessing civil penalties against Respondent, or that the Agency lacked jurisdiction over federal contracts concerning federal lands, or that federal law preempted the Agency's interference with federal contracts to perform work concerning federal lands. There was no showing that one or more of the statutes or regulations relied upon by the Agency in denying a farm/forest labor contractor license and/or in assessing civil penalties was void for vagueness. In short, more than mere allegations of the lack of substantive or procedural due process or of constitutional inadequacy are necessary in order to test the sufficiency of these proceedings.

License Denial and Civil Penalties

The agency sought both to assess civil penalties for the violations found, and to deny Respondent's license application. The civil penalties listed below are a proper disposition of the violations found herein. Having found at least two violations that demonstrate that Respondent's character, competence and reliability make him unfit to act as a forest labor contractor, the forum is also denying Respondent's license application for three years effective from the date of denial, which was August 9, 1996. The applicable rule, OAR 839-015-0520 (4), would allow the Commissioner to begin the three year period from the date of this Final Order, and the Commissioner has exercised this authority in the past. However there are mitigating circumstances in this narrow instance to justify beginning the denial period at the earlier date. Respondent's application was denied largely because the agency suspected the Respondent's

business was a sham or subterfuge, which was not established. During the pendency of these proceedings Respondent has already been unable to operate as a licensed contractor for over two years.

Agency Exceptions

The Agency's exceptions to the proposed order focused on the ALJ's "incorrect" application of "both the letter and the spirit OAR 839-015-0142(2) to the facts in the record" by finding that Respondent was not a sham or subterfuge for debarred farm/forest labor contractor Manuel Galan, Sr. As a result, the opinion section has been largely re-written to make the reasoning more clear. The Agency is correct that it should not be required to prove all the factors of OAR 839-015-0142 (2); however there does not exist a preponderance of evidence on the whole record that Respondent was a sham or subterfuge for the former business. The Agency argues competently and eloquently, but its case is built largely on inference and supposition. For instance, Respondent's book of check stubs indicated checks were issued to Manuel Galan, Sr. and Erlinda Galan; however these do not prove these persons had a financial interest. The Agency also argues that the use of the same workers by the two entities also should suggest that Respondent and Galan Sr. are operating as one. The forum rejects that inference, given the transient nature of farm/forest employment.

Respondents' Exceptions

Respondent excepted to the conclusions of the proposed order that Jan Galan was an undisclosed partner in Timber Rock Reforestation, that Respondent violated the law when he performed the gopher trapping contract without a license, and that Respondent violated the law by not having proper worker's compensation coverage on the gopher trapping contract.

As noted earlier, the subject of Jan Galan as a partner came up first in the context of allowing her to participate in the hearing as a party. Respondent himself asked that she be allowed to assist him, as his attorney was not in attendance.

The colloquy on the record in this regard was as follows:

"ALJ: We're back on the record on Thursday morning, February 27th. It is now 9:10 a.m. Mr. Albertazzi is not with us at the present time, is that correct?"

MR. GALAN: That's correct.

ALJ: And he's expected when?

MR. GALAN: 10:00, 10:30.

ALJ: Thank you. And Mrs. Galan, Jan Galan is now seated beside you, *and I understand that she is and has been a partner in Timber Rock, is that correct?*

MR. GALAN: Yes, *she is*.

ALJ: Therefore, she may sit with you as a representative of the respondent."

(Emphasis supplied)

At the time the ALJ ruled that Jan Galan could assist Respondent, the latter was represented by counsel who, so far as the ALJ knew, would be returning or at least consulting with Respondent. If Respondent did not understand that "partner" meant business partner, he could have clarified that at the time.

ORS 68.110(1) defines partnership as "an association of two or more persons to carry on as coowners a business for profit." Partnerships are not assumed. Whether a partnership exists, in the absence of a contract, may be inferred from the conduct of the parties, whether they intended to establish a partnership, and whether each has a right to share in the profits, the liability to share losses, and the right to exert some control over the enterprise. *In the Matter of Diran Barber*, 16 BOLI 190 (1997), citing *Stone-Fox, Inc. v. Vandehey Development Co.*, 290 Or 779, 626 P2d 1365 (1981). That exception is overruled.

Respondent's exceptions suggest that enforcement of the Agency's rule requiring a license, effective as it was on July 1, 1996, after he had been awarded a gopher trapping contract in April, violated Article I, Section 21 of the Oregon Constitution when it was applied to a pre-existing contract. In relevant part, Article I section 21 provides, "No * * * law impairing the obligation of contracts shall ever be passed * * * ." A law violates this provision with respect to preexisting contracts if that law "modif[ies] those obligations"¹³, or changes or eliminates the remedy available for a breach of contract.¹⁴

Application of the July 1, 1996 rule amendments to Respondent's activities on and after July 1, 1996 regarding a federal contract awarded before that date did not impair the obligation of that contract, its terms, or its enforceability. That exception is overruled.

Respondent also excepts to the finding that he failed to provide proper workers compensation coverage. An explanation of that finding is contained in Finding of Fact 38. That exception is overruled.

Videotapes

The forum allowed Respondent to videotape the hearings portion of these proceedings. The forum finds that taping was disruptive and troublesome, and detracted from the orderly progress of the hearing. The forum finds further that it became necessary for the forum to be actively involved in the preservation of the tapes in order to assure the exclusion of witnesses. Finally, it is clear that videotaping by a party is of no value to the forum since the tapes are not and will not be the official record. This was a case of first impression and does not represent a precedent for future hearings. Because the taping was allowed as an accommodation, and will not become a matter of right for future hearings, the forum imposes no specific sanction for

Respondent's deliberate and intentional refusal to comply with his own assurances and the forum 's order.

ORDER

NOW, THEREFORE, as authorized by ORS 658.405 to 658.503, the Commissioner of the Bureau of Labor and Industries hereby denies MANUEL GALAN, JR., dba Timber Rock Reforestation, a license to act as a farm labor contractor, effective from August 9, 1996, and MANUEL GALAN, JR., is prevented from applying for a license for three years from that date in accordance with ORS 658.415(1)(c) and OAR 839-015-0140(3) and 839-015-0520(4);

IT IS FURTHER ORDERED that Respondents MANUEL GALAN, JR. and JANETTE GALAN are hereby ordered to deliver to the:

Bureau of Labor and Industries
Fiscal Services Office Suite 1010
800 NE. Oregon Street # 32
Portland, Oregon 97232-2109

a certified check payable to the Bureau of Labor and Industries in the amount of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200), plus any interest thereon which accrues at the annual rate of nine percent, between a date ten days after the issuance of the Final Order herein and the date Respondents comply therewith. This assessment is made as civil penalty against Respondents as follows:

- for violation of ORS 658.417(1) \$2,000;
- for violation of ORS 658.415(1)(d), \$200;
- for violation of ORS 658.417(4)(g), \$2,000;
- (total \$4,200).

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¹In 1996, the Oregon Secretary of State renumbered all Oregon Administrative Rules (OAR) by adding a digit to the division and rule numbers; thus OAR 839-15-004 became 839-015-0004.

²Despite the addition of Janette Galan as a party respondent, the term "Respondent," singly, refers to Respondent Manuel Galan, Jr., herein.

³The Notice of Proposed Denial refers to "Manual Galan, Jr., dba Timber Rock Reforestation" as "Applicant." In keeping with the forum's custom and rules, he is referred to in this proceeding as "Respondent."

⁴This sentence amended to "Less than one year has elapsed between the issuance of the Agency's Final Order barring Staff, Inc. and Manuel and Linda Galan from obtaining a farm/forest labor contractor's license and Respondent's application for a farm/forest labor contractor license."

⁵See footnote *supra*.

⁶See footnote, *supra*

⁷In the proposed order, following Proposed Finding of Fact 28, Proposed Findings of Fact 29 through 45 were erroneously renumbered 22 through 38. Those Findings are properly numbered in this order.

⁸The proper citation is ORS 658.415(1)(d), as in the original count 3.

⁹15 BOLI 106 (1996), *aff'd without opinion, Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 450, 939 P2d 174 (1997), *rev den*, 326 Or 57, 943 P2d ___ (1997). The Manuel Galan named as a Respondent therein is Manuel Galan, Sr.

¹⁰Vehicle identification number. This is currently a 17 digit number, assigned by the manufacturer under industry standards; for convenience, only the last five digits are used herein.

¹¹The forum officially notes that "Campesino 95" was an assumed business name registered to Manuel Galan, Sr. *In the Matter of Manuel Galan*, 16 BOLI 51 (1997).

¹²"Termination for convenience" is short for "termination for the convenience of the government." Such a termination has no lasting negative connotation. The contractor is eligible thereafter to seek other USFS

contracts. A record of default subjects a contractor-bidder to additional qualifying sanctions or possibly outright disqualification on future bids. (Official Notice)

¹³ *Eckles v. State of Oregon*, 306 Or 380, 760 P3d 846 (1988)

¹⁴ *Towerhill Condo. Assoc v. American Condo Homes*, 66 Or App 342, 675 P2d 1051 (1984)