

In the Matter of
PACIFIC YEW PRODUCTS, LLC & JOHN STEENSLAND,

Case No. 46-05

Final Order of Commissioner Dan Gardner

Issued August 3, 2007

SYNOPSIS

The Agency's Order of Determination alleged that Respondents owed unpaid, due and owing wages to 14 wage claimants. The Commissioner held that Respondent Steensland employed 12 of the wage claimants and dismissed all claims against Respondent Pacific Yew Products, LLC, on the grounds that the Agency did not establish that it employed any of the claimants. The Commissioner awarded unpaid wages and penalty wages to nine claimants and found that three claimants were employed by Respondent Steensland, but there was no reliable evidence to establish the amount and extent of their work and the amount of wages they were owed, if any. The Commissioner held that there was no reliable evidence to establish that the remaining two claimants were employed by Respondent Steensland. In total, the Commissioner awarded \$4,217.30 in unpaid wages and \$14,904 in penalty wages. ORS 652.140(2), ORS 652.150.

The above-entitled case came on regularly for hearing before Alan McCullough, 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 24 and 25, 2007, at the offices of the Oregon Employment Dept, located at 119 N. Oakdale Avenue, Medford, OR 97501.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Jeffrey C. Burgess, a case presenter employed by the Agency. Claimants Jose V. Leobardo, Juan Carlos Cordoba, Jose T. Cordoba, Raymundo Rodriguez, Ruben Hernandez, and Rene Hernandez testified in person or by phone and were not represented by counsel. Respondents did not appear at hearing and were held in

default. Also present throughout the hearing was Karina Scott, an interpreter in Spanish, who translated the proceedings in their entirety.

The Agency called as witnesses: Jose V. Leobardo, Juan Carlos Cordoba, Jose T. Cordoba, Raymundo Rodriguez-Flores (telephonic), Ruben Hernandez (telephonic), Rene Hernandez (telephonic), wage claimants; Randy Nice, OR-OSHA safety consultant (telephonic); and Raul Ramirez, former Wage and Hour Division compliance specialist.

The forum received into evidence:

- a) Administrative exhibits X-1 through X-7 (submitted or generated prior to hearing);
- b) Agency exhibits A-1 through A-32 (submitted prior to hearing), and A-33 through A-41 (submitted at hearing).

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 July 25, 2003, Claimant Jose L. Valle filed a wage claim with the Agency alleging that Respondent John Steensland (“Respondent Steensland”) had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent Steensland.

2) On July 26, 2003, Jose Valles filed a wage claim with the Agency alleging that Respondent Steensland had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner

of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent Steensland.

3) On July 29, 2003, Claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, and Fidel Perez filed wage claims with the Agency alleging that Respondent Steensland had employed them and failed to pay wages earned and due to them. At the time they filed their wage claims, Claimants assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimants, all wages due from Respondent Steensland.

4) On July 30, 2003, Claimant Serafin R. Garduno filed a wage claim with the Agency alleging that Respondent Steensland had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent Steensland.

5) On August 1, 2003, Claimant Heladio R. Soto filed a wage claim with the Agency alleging that Respondent Steensland had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent Steensland.

6) On August 1, 2003, Claimant Santana R. Soto filed a wage claim with the Agency alleging that Respondent Steensland had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent Steensland. However, Soto did not sign his wage claim and assignment of wages. On September 16, 2003, he filed a second wage claim covering the same work that included a signed wage claim and assignment of wages.

7) On October 2, 2003, Claimants Jose Toledo Cordoba and Raymundo Rodriguez-Flores filed wage claims with the Agency alleging that Respondent Steensland and Sergio Sanchez had employed them and failed to pay wages earned and due to them. At the time they filed their wage claims, Claimants assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimants, all wages due from Respondent Steensland.

8) On October 2, 2003, Claimant Juan Carlos Cordoba filed a wage claim with the Agency alleging that Sergio Sanchez had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due. At hearing, Juan Carlos Cordoba testified that his father, Jose Toledo Cordoba, had signed his wage claim and assignment of wages. The ALJ allowed Juan Carlos Cordoba to amend his wage claim and assignment of wages by signing and dating copies of the original documents and admitted those amended documents.

9) On October 27, 2003, Claimant Gilberto R. Soto filed a wage claim with the Agency alleging that Respondent Pacific Yew Products ("Respondent PYP") had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent PYP.

10) On March 12, 2004, Claimant Alberto E. Ruiz filed a wage claim with the Agency alleging that Respondent Pacific Yew Products LLC had employed him and failed to pay wages earned and due to him. At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent PYP.

11) Claimants brought their wage claims within the statute of limitations.

12) On July 1, 2004, the Agency issued Order of Determination No. 03-2609 based upon the wage claims filed by the aforementioned 14 wage claimants. The Order of Determination alleged that the wage claimants had been employed in Oregon by Pacific Yew Products, LLC and John Steensland on specific dates in 2003, that they performed work, labor, and services, and that they were paid all wages due and owing to them except the sum of \$9,778.77. The Order also alleged that Respondents willfully failed to pay that those wages, that more than 30 days had elapsed since the wages became due and owing, that the wage claimants' daily rate of pay was \$55.20 per day (based on an hourly rate of \$6.90 per hour), and that Respondents owed the wage claimants \$23,184 in penalty wages. Finally, the Agency alleged that that Respondents paid the wage claimants less than the wages to which they were entitled under ORS 653.010 to 653.261 and that Respondents were liable to the wage claimants for civil penalties pursuant to the provisions of ORS 653.055(1)(b) in the amount of \$23,184. The Order of Determination required that, within 20 days, Respondents either pay these sums in trust to the Agency, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law.

13) The Order of Determination sought the following specific amounts of unpaid wages for each claimant for the dates listed below:

- a) Joel Hernandez: \$605.01 (7/08/03 to 7/25/03);
- b) Ruben Hernandez: \$824.71 (7/08/03 to 7/25/03);
- c) Rene V. Hernandez: \$824.71 (7/08/03 to 7/25/03);
- d) Fidel Perez: \$158.10 (7/24/03 to 7/25/03);
- e) Jose Valles: \$605.16 (7/20/03 to 7/25/03);
- f) Jose V. Leobardo: \$605.16 (7/20/03 to 7/25/03);
- g) Serafin R. Garduno: \$141.00 (7/08/03 to 7/25/03);
- h) Heladio R. Soto: \$960.15 (7/06/03 to 7/29/03);
- i) Santana R. Soto: \$960.15 (7/06/03 to 7/29/03);

- j) Jose Toledo Cordoba: \$1,009.37 (7/08/03 to 7/29/03);
- k) Raymundo Rodriguez-Flores: \$543.31 (7/08/03 to 7/25/03);
- l) Juan Carlos Cordoba: \$465.12 (7/08/03 to 7/25/03);
- m) Gilberto R. Soto: \$1,129.29 (7/06/03 to 7/29/03);
- n) Alberto E. Ruiz: \$947.53 (5/26/03 to 7/06/03).

14) On August 18, 2004, Respondent Steensland filed a request for hearing.

On August 23, 2004, the Agency sent him a notice stating that his answer was insufficient because it did not include “an admission or denial of each fact alleged in the [Notice or Order] and a statement of each relevant defense to the allegations.” In response, Respondent Steensland filed an answer on September 30, 2004.

Summarized, his answer included the following defenses:

- a) Steensland denied responsibility for the wages allegedly owed to the wage claimants.
- b) His crews did not begin working on location until June 3, 2004.
- c) Steensland did everything possible to help to get everyone paid when there was payment.
- d) Loyd Mixion also ran a crew, but bailed out and turned the crew over to Sergio. Steensland paid Sergio 25 cents a pound and Sergio paid his workers 20 cents a pound.
- e) On August 1, Steensland paid Sergio \$6,000 and paid all his crews some money.
- f) Steensland paid his crew that did not file wage claims and trusted they would be paid.
- g) On September 1, Steensland paid Raul [Ramirez] \$25,000 in wages owed and also paid Sergio \$5,000.
- h) On September 18, Steensland paid Sergio in full. Steensland and Sergio had a meeting with the Labor Board and were told that everyone who filed a claim would be paid through the state. When Steensland received money, he paid the Labor Board.
- i) Steensland thinks Sergio took the money and left town.
- j) Steensland should not be held responsible for money that he has already paid out.

15) On July 27, 2004, Respondent PYP, through attorney Dan Clark, filed an answer and request for hearing. In the answer, Respondent PYP raised the following defenses:

a) The wage claimants were not employed by PYP during the alleged wage claim periods.

b) BOLI incorrectly determined that PYP willfully failed to pay the unpaid wages alleged in the Order of Determination.

c) BOLI incorrectly determined that PYP paid the wage claimants less than wages to which they were entitled under "ORS 653.0102" and 653.261.

d) The wage claimants were not the employees of PYP. PYP contracted with Respondent Steensland to harvest yew bark; Steensland had complete control over hiring and firing his harvest crew; PYP did not interview or select any of Steensland's crew; and PYP had no authority to terminate any of Steensland's crew.

e) PYP had no control over how Steensland conducted the yew harvest.

f) PYP paid Steensland according to the contract, and Steensland was responsible for paying his harvest crew. PYP paid Steensland \$220,686.15 by making periodic transfers to Steensland's account at Klamath First Federal Bank and only Steensland issued checks to or paid any wages to the harvest crew.

16) On March 20, 2007, the Agency filed a "BOLI Request for Hearing" with the forum.

17) On March 21, 2007, the Hearings Unit issued a Notice of Hearing to Respondents, the Agency, and the Claimants stating the time and place of the hearing as April 24, 2007, at the office of the Oregon Employment Dept, 119 N. Oakdale Avenue, Medford, Oregon. Together with the Notice of Hearing, the forum sent a copy of the Order of Determination, a document entitled "Summary of Contested Case Rights and Procedures" containing the information required by ORS 183.413, a document entitled "Servicemembers Civil Relief Act (SCRA) Notification, and a copy of the forum's contested case hearings rules, OAR 839-050-000 to 839-050-0440.

18) On April 17, 2007, Dan Clark, the attorney who filed an answer and request for hearing on Respondent PYP's behalf, sent a letter to the Commissioner in which he stated that he "is no longer registered agent for Pacific Yew Products, LLC as of April 3, 2007." Clark enclosed the copy of the Agency's case summary that the agency case presenter had mailed to him on April 13, 2007.

19) At the time set for hearing, neither Respondent had appeared and had not previously announced that they would not appear. Pursuant to OAR 839-050-0330(2), the ALJ waited 30 minutes before commencing the hearing. When Respondents did not appear or contact the hearings unit by telephone during that time, the ALJ declared both Respondents in default at 9:30 a.m. and commenced the hearing. Statement of ALJ)

20) At the outset of the hearing, the ALJ explained the issues involved in the hearing, the matters to be proved, and the procedures governing the conduct of the hearing.

21) At the end of the hearing, the Agency moved to dismiss the charges in the Order of Determination that sought civil penalties for the 14 claimants. The ALJ granted the motion.

22) The ALJ issued a proposed order on June 20, 2007, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. No exceptions were filed.

FINDINGS OF FACT – THE MERITS

1) On November 1, 2002, the Swanson Group, Inc. granted a "Specialized Forest Products Permit" to "Pacific Yew Products." The permit gave Pacific Yew Products ("Permittee") the "non-exclusive right, license and permission to enter and be upon Swanson Group Lands * * * for the purpose of collecting and removing Pacific yew limbs and needles (Yew Pruning) for Taxol extraction." The Permit contained the following terms and provisions:

“1. Terms

“Permittee may begin product removal by November 1, 2002 and shall complete product removal by October 31, 2003.

“2. Consideration

“Consideration shall be 2.5 cents per pound (green) of Pacific yew removed from the permitted premises. Permittee shall submit copies of trip tickets on a monthly basis to the Landowner. Payment shall be due within 15 days of submission of the trip tickets.

“3. Harvest Provisions

- a) Permittee shall notify landowner at the onset and completion of activity in each area.
- b) No Yew harvest within 60’ of either side of riparian management areas or stream zones as defined by the Oregon Department of Forestry [sic].
- c) Permittee shall be responsible for any taxes due and payable as a result of the yew harvest activity.
- d) Comply with all Oregon Department of Forestry Fire regulations. In addition, no smoking will be permitted inside forested areas.
- e) Maintain or repair all damage to roads caused by Permittee’s actions and shall confine the use of all-terrain vehicles to existing roads or skid trails.
- f) Shall not damage reproduction including but not limited to seedlings and poles, during harvest or haul of yew products.
- g) Shall not harvest Yew trees limbs greater the [sic] ½ inch in diameter and shall leave at least 50% of the crown unpruned.
- h) Permittee shall identify those areas harvested on the provided permit maps.
- i) Permittee shall mark all material removed from grantor’s property with a unique tag or marker and submit a summary of daily production by unit at the end of each month.

“4. Assignment

“This Permit and performance required of Permittee hereunder are personal in nature and may not be assigned or sublet by it without written consent of landowner, and any violation or attempted violation shall constitute a material breach of the permit.

“5. Fire Liability

“Permittee shall, at it’s [sic] expense, exercise the highest degree of care to prevent fires from originating upon, spreading from and coming upon said premises from other premises. Permittee or [sic] shall, at it’s [sic] expense, use every effort at it’s [sic] command to suppress, control and prevent fires arising upon said premises, spreading from said premises and spreading to said premises from other premises.

“Permittee shall immediately report to Landowner any such fire.

“Permittee shall do all things required by law and the rules and regulations of any federal, state, county or other governing body or bureau or department thereof which are required to be done for the suppression, control and prevention of any such fire. Permittee shall immediately, upon request by Landowner, furnish necessary men and equipment to suppress or prevent fires endangering lands under Landowner control. Permittee will be reimbursed by state or Landowner using rates for labor and equipment as established by State Board of Forestry. Permittee shall provide and maintain, in good order, sufficient fire fighting tools, pumps and other fire fighting equipment at it’s [sic] place of operations hereunder at all times.

“6. Indemnity and Insurance

“Permittee shall indemnify and hold Landowner harmless from and against all of the following arising or originating during the course of or on account of any of Permittee’s operations hereunder:

- a) All losses, costs, liabilities, obligations, damages, debts, liens and claims whatsoever (including but not limited to the expense of suppression or control of any fire); and
- b) All liability to third persons (including but not limited to Landowner’s employees) for all personal injury and death; and
- c) All loss or damage of property of Landowner’s as well as third persons.

“Before commencing operations under this Permit, Permittee [sic] at his own expense and cost, shall procure such policies in a company satisfactory to Landowner, indemnifying and insuring Permittee against liabilities enumerated and particularly:

- a) For personal injuries to or death of any one person for not less than \$1,000,000.00, and for personal injuries to or death of more than one person for not less than \$1,000,000.00 arising out of each occurrence, whether such person or persons is or are employees of Landowner or other third persons; and
- b) For injury to or destruction of property of others, including Landowner and other third persons, for not less than

\$1,000,000.00 each occurrence in respect to claims arising out of occurrences other than automobile hazards; and

- c) For injury to or destruction of property of others, including Landowner and other third persons, for not less than \$1,000,000.00 each occurrence in respect to claims arising from ownership, maintenance, operation or use of automobiles; and
- d) Such policies shall contain provisions for **thirty day written notice** to each Landowner and Permittee of cancellation, termination or any reduction in coverage.

“The coverage, of all said insurance obtained by Contractor shall be written on a Loggers Broad Form Comprehensive Liability* policy, including automobile and all of Permittee’s operations other than automobile including coverage for Loggers Broad Form Comprehensive Liability, Products and Completed Operations. Landowner shall be named as additionally insured on such policies. Landowner shall at all times during the term of the contract maintain such policy(s) in force.

“7. Remedy and Right for Default or Breach

“In the event of any default by Permittee, if such default is not fully repaired and remedied, and no other default exists, within ten days after mailing of written notice from Landowner to Permittee, this contract, at Landowner’s option, may be canceled, without waiver of damages for any defaults preceding the effective date of cancellation. In addition, Landowner shall be entitled to every other right and remedy in law, equity, or otherwise, and no specified or exercised right or remedy shall be exclusive, but rather cumulative.

“Time is of the essence of this agreement and strict performance by Permittee of every term, condition and stipulation is expressly declared to be required under this agreement.

“8. Suspension of Operations

“Despite anything in this Permit to the contrary, Landowner may at any time or times during the life of this agreement, direct Permittee to cease all or any part of its operations hereunder.

“Permittee agrees to follow such instructions implicitly and to discontinue all of such part of its operations in accordance with Landowner’s instructions and to resume such operations at the time and in the manner as may be instructed by Landowner.

“9. Miscellaneous Provisions

“Reference to Company herein includes its successors and assigns.

“In the event of any suit, action or other proceeding between the parties hereto on account of any term or provision hereof or anything arising

hereunder, it is understood and agreed that Landowner shall be entitled to such sum as and for attorney fees as the Court shall deem reasonable, in addition to costs and disbursements provided by statute. The same shall also apply to any appeal.

“Permittee agrees to insure that all aspects of operations covered by this agreement comply with the most current OSHA regulations and that employee safety is the primary concern.”

2) Around the same time the Specialized Forest Products Permit was granted to Pacific Yew, Ed Reed contacted Respondent Steensland to see if he would “run some crews for him harvesting yew boughs and later bark.”

3) Ed Reed and Respondent Steensland had previously done business together from May 1996 through May 1998 under the assumed business name of Reed Secondary Forest Products. When registering with the Oregon Corporations Division, Reed Secondary Forest Products named “Harold Reed” as its authorized representative. “Ed Reed,” “Harold Reed,” and “Harold E. Reed,” referred to in this Order are the same person.

4) On May 4, 1998, Reed Secondary Forest Products, Inc., registered with the Corporations Division as a domestic corporation, with Harold Reed listed as its registered agent. On July 1, 1999, it was involuntarily dissolved.

5) On May 23, 2003, Harold E. Reed signed a “Supplemental Agreement” on behalf of Pacific Yew Products that modified the Specialized Forest Products Permit. It contained the following terms and provisions:

“1. **WORK TO BE PERFORMED**

“In Addition to yew bark and limbs Permittee may also harvest bark from Pacific yew trees. Permittee shall submit copies of trip tickets for both Bark harvest and Limb and Needle harvest removed from permitted area as detailed in the attached exhibit.

“2. **CONSIDERARION** [sic]

“\$.25 per pound (green) of Pacific yew bark. Needles and limbs may be removed at **no cost** to the Permittee. Trip or load tickets shall be submitted on a monthly basis to the landowner. Payment shall be due within 15 days of submission of the trip tickets.

“3) HARVEST PROVISIONS

“Permittee shall not harvest yew trees smaller than [sic] 5” or larger [sic] than [sic] 20” inches or harvest within 100’ of either side of a riparian management area or stream zone as defined by the Oregon Department of Forestry.”

“All other terms of this Permit shall remain enforce [sic].”

6) Effective May 12, 2003, Respondent Steensland purchased a Loggers Broad Form liability insurance policy with Hometown Insurance Center for the following coverage:

Each occurrence: \$1,000,000
Damage to rented premises (each occurrence): \$200,000
Med Exp (Any one person): \$10,000
Personal & Adv Injury: \$1,000,000
General Aggregate: \$2,000,000
Products – Comp/Op Agg: \$2,000,000

The policy was in effect until May 12, 2004, and the certificate holder was Swanson Group, Inc.

7) On May 15, 2003, Respondent Steensland and Ed Reed, acting on behalf of Pacific Yew Products, LLC, signed a contract that contained the following terms:

“This agreement is entered into between Pacific Yew Products, LLC (hereafter “Owner”) and John Steenslandⁱ (hereafter “Contractor”).

“Owner and Contractor have agreed that Contractor shall harvest bark, limbs and needles from Pacific yew trees for Owner subject to the harvest conditions attached hereto. Owner agrees to pay Contractor .90 bark/.27 boughs – boughs shall be no larger than 1/4” in dia. per pound of yew biomass collected and delivered to Owner.

“Contractor shall confine its harvest operation to the following areas: See attached.

“Contractor shall furnish all labor, materials, equipment, tools, and incidentals that are necessary for proper performance of the harvest operation. Contractor will be responsible for the means and methods used for the harvest operation. Contractor shall provide and supervise qualified workers.

“Contractor shall take reasonable precautions to prevent injury to persons and damage to property that may result from Contractor’s harvest operations and comply with the Fire Supervision conditions attached

hereto. Contractor shall insure that all aspects of its harvest operations comply with the most current OSHA regulations.

“Before commencing operations under this agreement, Contractor at his own expense shall have the following insurance in place and provide Owner with copies of policies showing the following minimum coverage:

“a. For personal injuries to or death of any one person for not less than \$1,000,000 and for personal injuries to or death of more than one person for not less than \$1,000,000 arising out of each occurrence, whether such person or persons is or are employees of Contractor or other third persons; and

“b. For injury to or destruction of property of others for not less than \$1,000,000 each occurrence;

“c. Such policies shall contain provisions for at least [sic] ten (10) days written notice to Owner of cancellation, termination or any reduction in coverage.

“The coverage of all insurance obtained by Contractor shall be written on a Loggers Broad Form Comprehensive Liability policy, including automobiles. Owner shall be named as additionally insured on such policies. Contractor shall at all times during the term of this contract maintain such policy(s) in force.

“Owner will not withhold any employer or employee taxes whatsoever from any payment made under this agreement. Contractor is solely responsible for paying all payroll taxes subject to withholding under state or federal regulations.

“Contractor agrees to defend and indemnify Owners from any claims arising from Contractor’s performance of the services hereunder including claims arising from injury to any person or damage to property. Contractor will not be responsible for claims resulting solely from the negligence of the Owner.

“Contractor may be a ‘subject employer’ for purposes of maintaining worker’s compensation coverage. It is Contractor’s responsibility, not Owner’s, to determine the need for and provide worker’s compensation coverage. If Contractor fails to provide worker’s compensation insurance, Contractor shall defend[,] indemnify[,] and hold harmless the Owner from any claims, actions, damages, and costs arising out of injuries suffered by Contractor or Contractor’s employees that would have been abrogated by the worker’s compensation provisions of Oregon law.

“In the event of any default by Contractor, if such default is not fully repaired and remedied and no other default exists, within ten days after mailing of written notice from Owner to Contractor, this contract, at Owners [sic] option, may be canceled, without waiver of damages for any defaults preceding the effective date of cancellation. In addition, Owner shall be entitled to every other right and remedy in law, equity, or

otherwise and no specified or exercised right or remedy shall be exclusive, but rather cumulative. Strict performance by Contractor of every term, condition and stipulation is expressly declared to be required under this agreement. Despite anything in this contract to the contrary, if the Owner is directed by the Landowner to cease or suspend harvest operations, then in that event, the Owner will direct Contractor to cease and suspend all or any part of its operations hereunder.

“In the event of any suit, action or other proceeding between the parties hereto on account of any term or provision hereof or anything arising hereunder, it is understood and agreed that the prevailing party shall be entitled to recover those attorney fees the Court may deem reasonable, in addition to costs and disbursements provided by statute. The same shall also apply to any appeal.”

The contract contained three attachments, two related to “Harvest Conditions,” “Fire Suppression,” and the third a chart providing the legal description for the area in which yew was to be harvested. Printed on the chart were the words “Permittee: Reed Secondary Forest Products.”

8) On June 30, 2003, Pacific Yew Products, LLC, registered as a limited liability company with the Corporations Division.

9) Workers began harvesting yew products on the property that was the subject of the permit issued by Swanson (the “yew harvest”) as early as June 3, 2003. The workers worked in groups. Most of the workers harvested the yew branches and bark, then bundled and sacked it. The remaining workers transported the harvested product to electronic scales to be weighed and loaded into a truck.

10) Workers who harvested the yew branches and bark were told they would be paid either \$.20 per pound or \$.25 per pound. Workers who transported the harvested product were told they would be paid \$75 per day and \$.05 per pound.

11) A worker named Sergio Sanchez who spoke English and Spanish acted as an interpreter for Respondent Steensland and the workers. Sergio's primary job was transporting the harvested product. Sergio also maintained a tally sheet book in which he wrote the number of pounds harvested, by date and group, for the workers.

12) The number of workers on the job varied daily and some of the worker groups had different members on different days, depending on who showed up for work. Some workers showed up to work after being told about the yew harvest by their friends and did not know for whom they were working.

13) Respondent Steensland was an independent contractor who operated his own business during the yew harvest in June and July 2003. During the yew harvest, he had the ultimate responsibility for directing and controlling the workers, including the wage claimants. He had the responsibility and authority to hire and fire the workers. He told the workers that they worked for him and the workers understood that he was the boss. He provided the workers with equipment, including some hardhats, electronic scales for weighing the bark, shovels, fire extinguishers, earplugs, chaps, chain saws, and fuel, and vehicles for obtaining the yew bark and transferring it to trailers.

14) During the yew harvest, PYP held the harvest permit and contracted with Respondent Steensland, in his capacity as an independent contractor, to harvest the bark. Reed also provided some earplugs and hardhats to workers, as well as two portable toilets on the jobsite. He purchased bags for storing yew bark and gave them to Steensland. He also contracted with Ashland Towing to haul refrigerated trailers loaded with yew product to Portland.

15) During the yew harvest, PYP made payments to Respondent Steensland, who then wrote checks to the workers on his personal account.

16) Some workers were paid at first on a daily basis, then a weekly basis, then not paid at all. Some workers were never paid anything while they worked on the yew harvest. Some workers were unable to cash their paychecks.

17) Some of the paychecks written by Respondent Steensland were made out to one person, who was supposed to cash it and distribute the money. For example,

Respondent Steensland made out one check for \$5,000 to Sergio Sanchez. Others only had an amount written in, but the name of the person was left blank. No deductions were taken from the checks.

18) Neither Steensland nor Reed carried workers' compensation insurance during the yew harvest.

19) Joel Hernandez was hired to harvest yew needles and bark at the piece rate of \$.20 per pound. He worked July 8-11, 14-16, and 23-25, 2003, and harvested a total of 4969 pounds, earning gross wages of \$993.80. He worked in a group that included Ruben and Rene Hernandez and they all worked the same dates and hours. He was paid \$150 while he worked on the yew harvest, leaving \$843.80 in wages due and owing when he stopped working on the yew harvest.

20) Ruben Hernandez was hired to harvest yew needles and bark at the piece rate of \$.20 per pound. He worked the same dates and in the same group as Joel Hernandez, harvested 4969 pounds, and earned gross wages of \$993.80.ⁱⁱ He was paid \$317.00 while he worked on the yew harvest, leaving \$676.80 in wages due and owing when he stopped working on the yew harvest.

21) Rene Hernandez was hired to harvest yew needles and bark at the piece rate of \$.20 per pound. He worked the same dates and in the same group as Joel and Ruben Hernandez, harvested 4969 pounds, and earned gross wages of \$993.80.ⁱⁱⁱ He was paid \$317.00 while he worked on the yew harvest, leaving \$676.80 in wages due and owing when he stopped working on the yew harvest.

22) Fidel Perez was hired to harvest yew needles and bark at the piece rate of \$.20 per pound. He worked July 24-25, 2003, in the same group as Joel, Ruben, and Rene Hernandez, and harvested a total of 882 pounds, earning gross wages of

\$176.40.^{iv} He was not paid any wages prior to filing his wage claim, leaving \$176.40 in wages due and owing when he stopped working on the yew harvest.

23) Jose Valles was hired to harvest yew needles and bark at the piece rate of \$.20 per pound. He worked in a group with and worked the same hours as Jose V. Leobardo, his cousin, from July 20 to July 25, 2003, and harvested a total of 4220 pounds, earning gross wages of \$844.00. He was not paid any wages while he worked on the yew harvest, leaving \$844.00 in wages due and owing when he stopped working on the yew harvest.

24) Jose V. Leobardo was hired by Respondent Steensland to harvest yew needles and bark at the piece rate of \$.20 per pound. He was told he would be paid every two weeks. He worked in a group with and worked the same hours as Jose Valles, his cousin, from July 20 to July 25, 2003, and harvested a total of 4220 pounds, earning gross wages of \$844.00. He was supervised by Sergio and was told that everything picked by the group would be divided equally. He was not paid any wages while he worked on the yew harvest, leaving \$844.00 in wages due and owing when he stopped working on the yew harvest.

25) Serafin R. Garduno stated on his wage claim form that he worked for Respondent Steensland from 8 a.m. to 6 p.m. on July 14-16, 2003, at the piece rate of \$.20 per hour, and that he was paid nothing. Because there is no evidence in the record to show the number of pounds he picked during his employment,^v the Agency sought unpaid wages for 28.5 hours of work, calculated at the applicable minimum wage of \$6.90 per hour.^{vi} He did not testify at hearing and no other witnesses testified concerning the specifics of his employment. The only evidence in the record supporting his wage claim is the unsworn written statements he submitted as part of his claim.

26) Heladio R. Soto stated on his wage claim form and accompanying calendar that he worked for Respondent Steensland on July 6-8, 13-15, 17-19, 21, 23-26, and 29, 2003, at the piece rate of \$.20 per pound. Based on tally sheets and H. Soto's calendar, the Agency calculated that he harvested a total of 6695.5 pounds and earned \$1,339.10. H. Soto stated on his wage claim form that he had been paid nothing. He did not testify at hearing and no other witnesses testified concerning the specifics of his employment. The only evidence in the record supporting his wage claim is the unsworn written statements he submitted as part of his claim, and 12 tally sheets. H. Soto's name is written on all 12 tally sheets and is the only name written on them. Three of those tally sheets contains the notation "2 men."

27) Santana R. Soto stated on his wage claim form and accompanying calendar that he worked for Respondent Steensland on July 6-7, 9-10, 13-15, 17-19, 21, 23-26, and 29, 2003, at the piece rate of \$.20 per pound. Based on tally sheets and S. Soto's calendar, the Agency calculated that he harvested a total of 6695.5 pounds and earned \$1,339.10. S. Soto stated on his wage claim form that he had been paid nothing. He did not testify at hearing and no other witnesses testified concerning the specifics of his employment. The only evidence in the record supporting his wage claim is the unsworn written statements he submitted as part of his claim, and eight tally sheets. S. Soto's name is written on seven of those tally sheets and is the only name written on them. One of those tally sheets contains the notation "2 men."

28) Gilberto R. Soto stated on his wage claim form and accompanying calendar that he worked for Respondent PYP on July 6-7, 9-10, 13-15, 17-19, 21, 23-26, and 29, 2003, at a per pound piece rate, and harvested a total of 7876.5 pounds. Based on G. Soto's calendar and a \$.20 per pound piece rate, the Agency calculated that he harvested a total of 7876.5 pounds and earned \$1,575.30. G. Soto stated on his

wage claim form that he had been paid nothing. He did not testify at hearing and no other witnesses testified concerning the specifics of his employment. His name does not appear on any tally sheets in evidence, and the only evidence in the record supporting his wage claim is the unsworn written statements he submitted as part of his claim.

29) Jose Toledo Cordoba was hired to transport harvested yew needles and bark from the harvest site to Respondent's weigh station at the rate of \$75 per day and \$.05 per pound. He worked for Respondent Steensland in a group that included his son, Juan Carlos Cordoba, Raymundo Rodriguez-Flores, and Sergio Sanchez, the individual mentioned in Finding of Fact 11 – The Merits. His son worked the same hours and days as himself. He worked July 8-19, 21, and 23-25, 2003, earning gross wages of \$2,645.25 ($\$75 \times 14\frac{1}{2} \text{ days} = \$1,087.50$; $31,115 \text{ pounds} \times \$.05 = \$1,557.75$; $\$1,087.50 + \$1,557.75 = \$2,645.25$). He worked approximately 6 a.m. to 6 p.m. each day. He was paid \$1,350 while he worked for Respondent, leaving \$1,295.25 in wages due and owing when he stopped working on the yew harvest.

30) Juan Carlos Cordoba was hired to transport harvested yew branches and bark from the harvest site to Respondent's weigh station and to load trucks with the harvested product. He got the job through friends who were already working at the harvest site. He reported to Respondent Steensland, who told him he would be paid \$75 per day and \$.05 per pound for all harvested product that he transported to the weigh station. He worked on a team with his father, Jose Cordoba, Raymundo Rodriguez-Flores, and Sergio Sanchez. He worked July 8-19, 21, and 23-25, 2003, earning gross wages of \$2,645.25 ($\$75 \times 14\frac{1}{2} \text{ days} = \$1,087.50$; $31,115 \text{ pounds} \times \$.05 = \$1,557.75$; $\$1,087.50 + \$1,557.75 = \$2,645.25$). He worked approximately 6 a.m. to 6 p.m. each day. He worked from approximately 6 a.m. to 6 p.m. each day. He was paid

\$2,150.00 while he worked for Respondent, leaving \$495.25 in wages due and owing when he stopped working on the yew harvest.

31) Raymundo Rodriguez-Flores was hired to transport harvested yew needles and bark from the harvest site to Respondent's weigh station at the rate of \$75 per day and \$.05 per pound. He worked for Respondent Steensland. He worked in a group that included the Cordobas and Sergio Sanchez, and they all worked the same hours each day that they worked together. He worked July 8-19, 21, and 23-25, 2003, earning gross wages of \$2,645.25 ($\$75 \times 14\frac{1}{2} \text{ days} = \$1,087.50$; $31,115 \text{ pounds} \times \$0.05 = \$1,557.75$; $\$1,087.50 + \$1,557.75 = \$2,645.25$). He worked approximately 6 a.m. to 6 p.m. each day. He worked from approximately 6 a.m. to 6 p.m. each day. He was paid \$2,000.00 while he worked for Respondent, leaving \$645.25 in wages due and owing when he stopped working on the yew harvest.

32) Alberto E. Ruiz stated on his wage claim form and accompanying calendar that he worked for Respondent PYP on May 26-31, June 2-7, 9-14, 16-21, 23-28, 30, and July 1-6, 2003, at a \$.25 per pound piece rate, and that he was paid \$300.00 for his work. He did not specify the number of pounds he harvested, but claimed to have worked a total of 235 hours on the different dates of his employment, working from 5-8 hours per day. Based on Ruiz's calendar showing his hours worked, the Agency calculated that Ruiz had earned \$1,621.50 ($235 \text{ hours} \times \6.90 per hour). Ruiz did not testify at hearing and no other witnesses testified concerning the specifics of his employment. His name did not appear on any tally sheets in evidence, and the only evidence in the record supporting his wage claim is the unsworn written statements he submitted as part of his claim.

33) On July 25, 2003, workers employed on the yew harvest began filing wage claims with BOLI in which they alleged they had not paid them as agreed.

34) Raul Ramirez, a bilingual (English/Spanish) compliance specialist employed by BOLI in its Medford office, was assigned to conduct an investigation of the wage claims. Ramirez decided the best course of action was to conduct an onsite inspection.

35) Ramirez followed some of the claimants out to the yew harvest worksite because they could not give him good directions. When he arrived, he heard chain saws running and observed a large number of workers. He talked to workers as they came out of the woods in groups of three to six and observed the yew harvest being weighed. He saw that workers were receiving one tally sheet for each group of workers to show what they had harvested, that each tally sheet usually had the full name of one worker and the first names of the others in the group, and that workers were given carbon copies of the tally sheets. While at the worksite, Ramirez handed out wage claim forms to workers who had not filed wage claims.

36) While at the worksite on July 25, 2003, Ramirez interviewed Ed Reed and some workers. Reed acknowledged that the workers were due money and that he and Steensland currently had a cash flow problem, but expected to pay the workers by August 1, 2003. Reed acknowledged that the workers were paid on a piece rate basis and told Raul Ramirez that he “pays Steensland and Steensland pay[s] the workers.”

37) While at the worksite on July 25, 2003, Ramirez observed health and safety problems. Based on his observations, he called OR-OSHA to report possible OSHA violations.

38) As a result of Ramirez’s complaint, OR-OSHA safety compliance officers, including Randy Nice, visited the Respondent’s worksite on several occasions between July 29 and September 5, 2003. While there, they interviewed Ed Reed, John Steensland, and several workers. On September 23, 2003, OR-OSHA issued a written

citation and fines totaling \$760 to John Steensland for five serious violations related to health and safety.

39) On July 30, 2003, Ramirez met with Respondent Steensland, who acknowledged that wages were owed to workers. Steensland stated that the workers hadn't been paid because a buyer from Czechoslovakia had backed out on the deal and "they" were trying to sell the harvest to someone in China. Steensland said that he and Reed would pay the wages due once they sold the product. Steensland claimed that Reed was the actual employer and he was just an employee, and told Ramirez that Reed "pays [him] with a personal check and [he] pays the workers."

40) Eventually, 41 workers filed wage claims. As more wage claims were filed, Ramirez calculated the wages due by correlating the information on the wage claims with the tally sheets he had received from the claimants.

41) On August 26, 2003, Ramirez mailed a "Notice of Wage Claims" that was addressed to "HAROLD REED, ED REED AND JOHN STEENSLAND, REED SECONDARY FOREST PRODUCTS, 190 MICHEAL RANCH LN, DAYS CREEK, OR 97429." In pertinent part, the notice read:

"NOTICE OF WAGE CLAIM"

"You are hereby notified that GERALDO MANZANO, ET AL have filed wage claims with the Bureau of Labor and Industries alleging:

"SEE ATTACHED

"IF THE CLAIMS ARE CORRECT, you are required to IMMEDIATELY make negotiable checks or money orders payable to the claimants for the amounts of wages claimed, less deductions required by law, and send the payments to the Bureau of Labor and Industries at the above address.

"IF YOU DISPUTE THE CLAIMS, complete the enclosed "Employer Response" form and return it together with the documentation which supports your position, as well as payment of any amounts which you concede are owed the claimants to the BUREAU OF LABOR AND INDUSTRIES within ten (10) days of the date of this Notice.

“If your response to the claims are [sic] not received on or Before SEPTEMBER 5, 2003, the Bureau may initiate action to collect these wages in addition to penalty wages, plus costs and attorney fees.”

The attachment to the Notice listed 41 wage claimants, including the following:

“Joel Hernandez claims unpaid wages of \$800.00 at the rate of .25 cents per pound for all pounds picked during the time period of July 8, 2003 to July 25, 2003.

“Ruben Hernandez claims unpaid wages of \$610.00 at the rate of .25 cents per pound for all pounds picked during the time period of July 8, 2003 to July 25, 2003.

“Rene V. Hernandez claims unpaid wages of \$800.00 at the rate of .25 cents per pound for all pounds picked during the time period of July 8, 2003 to July 25, 2003.

“Fidel Perez claims unpaid wages of \$200.00 at the rate of .25 cents per pound for all pounds picked during the time period of July 24, 2003 to July 25, 2003.

“Jose Valles claims unpaid wages of \$1,055.00 at the rate of .25 cents per pound for all pounds picked during the time period of July 20, 2003 to July 25, 2003.

“Jose V. Leobardo claims unpaid wages of \$1,055.00 at the rate of .25 cents per pound for all pounds picked during the time period of July 20, 2003 to July 25, 2003.

42) On August 29, 2003, Dan W. Clark, Respondent PYP’s attorney, sent a letter to Raul Ramirez in which he stated, in pertinent part:

“Neither Pacific Yew Products nor Mr. Reed hired any of the individuals listed in the Geraldo Manzano, et al wage claims nor did they direct or control their work at the job sites. John Steensland directed the work of the people listed in the Wage Claim Notice and provided tools and materials to complete the job. Mr. Steensland exercised the power to hire and fire workers to complete his obligation under the contract with Pacific Yew Products. Mr. Reed and Mr. Steensland did not undertake the project on the Superior Group property or Davenhauer property as partners. Mr. Reed and Mr. Steensland have not been partners since 1997.”

43) On or about September 18, 2003, Steensland provided 77 pages of records to Raul Ramirez that reflected the harvest of yew product by wage claimants and wage payments made. The earliest records were for June 28 and the latest for July 25, 2003. The records were primarily kept by group – each group was denoted by a

color – and many did not state the name of any individual. The records were vague and incomplete and Ramirez was unable to determine, from those records alone, the amount of wages paid to any specific worker or the number of pounds picked by any specific worker. Several randomly selected examples that follow are illustrative of the records provided. Each example contains the information handwritten on the record:

“9-1-03. Sergio Sanchez. Check 1190 – payment for Sergio’s crew - \$500.00”

“Orange crew. 8-22-03. Check #. Pay for 7/9-7/10-7/11-7/12-7/14. 11,113 lbs x .25 of boughs and bark. \$2,778.25. Javier Suarez.”

“7-11-03. Yellow Dot. 4 Men. Bows [sic]. 55-48-45-59-63-62-32-37-39-35-34-34-47-35-10-29-56-31-32-40-25-40-30-20-31-21. Total lbs = 980. 1st trailer left 7-11-03 8. Bark 37-39-42=118. 4th trailer left 7-12-03. Total lbs = 1098. 68.62 each. \$274.50.”

“11 truck. 7-16-03. Red & White. Bows [sic] 15 22 22 19 44 48 52 46. 305. Bark 44. Total 349. \$87.25.”

The records provided by Steensland did not show the hours and dates worked by individual workers, the number of pounds of yew products harvested by individual workers, or the amount of wages, if any, that had been paid to individual workers.

44) Based on all the information Ramirez was able to gather from his interviews with the workers, inspection of documents that he received from Steensland, and information contained in the actual wage claims, he calculated the approximate wages due to each employee based on the number of pounds of yew product harvested and, in the case of workers who were paid \$75 per day, the number of days worked. Alberto Ruiz was the only exception, and Ramirez calculated Ruiz’s wages based on the minimum wage because he had a record of the hours Ruiz claimed to have worked, but no record of the total pounds harvested by Ruiz.

45) On September 18, 2003, Steensland wrote a check out to BOLI for unpaid wages in the amount of \$25,000. From this sum, Ramirez caused full payment to be made to 27 wage claimants who had earned \$.25 per pound. On March 24, 2004, he

caused prorated, partial payments to be made from the remainder to the 14 wage claimants who are the subjects of this proceeding. Checks were issued to those claimants in the following amounts:

Joel Hernandez:	\$238.79
Ruben Hernandez:	\$325.49
Rene Hernandez:	\$325.49
Fidel Perez:	\$62.40
Jose Valles:	\$238.84
Jose V. Leobardo:	\$238.84
Serafin R. Garduno:	\$55.65
Heladio R. Soto:	\$378.95
Santana R. Soto:	\$378.95
Jose T. Cordoba:	\$398.38
Raymundo Rodriguez-Flores:	\$214.44
Juan Carlos Cordoba:	\$183.58
Gilberto R. Soto:	\$445.71
Alberto E. Ruiz:	\$373.97

46) After those payments, nine of the wage claimants^{vii} were owed the following amounts:

Joel Hernandez:	\$605.01
Ruben Hernandez:	\$351.31
Rene Hernandez:	\$351.31
Fidel Perez:	\$114.00
Jose Valles:	\$605.16
Jose V. Leobardo:	\$605.16
Jose T. Cordoba:	\$896.87
Raymundo Rodriguez-Flores:	\$430.81
Juan Carlos Cordoba:	\$311.67

47) On October 10, 2003, Ramirez sent a letter to Steensland, in which he requested additional records of the hours worked by claimants and the wages paid.

48) On October 29, 2003, Steensland visited Raul Ramirez with copies of returned personal checks from his personal Klamath First bank account #257004970 that were related to the yew harvest. In all, there were checks made out to Sergio for \$21,233.50, \$23,880 in checks made out to several workers, and the \$25,000 check

made out to BOLI. Steensland and Roxanne Malone's names were printed on each check and Steensland signed them all.

49) Jose V. Leobardo and Rene Hernandez were credible witnesses and the forum has credited all their testimony.

50) Juan Carlos Cordoba was only partly credible. On his wage claim he stated that he was paid \$2,150. He initially testified that he was only paid the amount that he received from Raul Ramirez and denied he had been paid the \$2,150. His earnings were credible, corroborated by his father and Raymundo Rodriguez-Flores, his co-workers, and tally sheets. The forum credited his testimony regarding his total earnings, but disbelieved his testimony that he had not been paid the \$2,150 because it conflicted with the contemporaneous statement made on his wage claim. Accordingly, the forum has subtracted \$2,150 from his earnings.

51) Jose Cordoba was only partly credible. On his wage claim he stated that he was paid \$1,250. When he testified, he twice denied that he had received any wages from Respondent Steensland. He testified he had received a check for less than \$300 from Raul Ramirez and BOLI, but the letter Raul Ramirez sent to him with that check shows it was for \$398.38. He also testified that he had forgotten some things related to his employment during the yew harvest and his wage claim, which is not surprising since that employment took place four years before the hearing. The forum finds that the contemporaneous written statements he made on his wage claim are more reliable and concludes that his earnings were credible, and that he was paid \$1,250 and has subtracted that amount from his earnings.

52) Raymundo Rodriguez-Flores, who testified by telephone from Mexico, was only partly credible. On his wage claim he stated that he was paid \$2,000. Like the Cordobas, he testified that he had not received any wages from Respondent

Steensland and had only received the money that Raul Ramirez sent to him. Other than that, his testimony was credible and consistent with the hours and pounds reported by the Cordobas, his immediate co-workers. There was no evidence and no basis from which to infer that he and the Cordobas had conspired to testify that they had not received any pay from Respondent Steensland. The forum concludes that his earnings claimed are credible, and that he was paid \$2,000 and has subtracted that amount from his earnings.

53) Ruben Hernandez seemed confused during his testimony. At first, he was uncertain about why he was being asked to testify before the Agency case presenter reminded him of his wage claim. He did not recall receiving the \$325.49 that BOLI mailed to him in 2004. However, his claim for earnings was consistent with the claims made by Joel Hernandez, his son, and Rene Hernandez, his nephew, and he acknowledged being paid \$300 while on the job, which was the approximate amount he wrote on his wage claim form.^{viii} The forum has credited his testimony regarding his earnings and the amount that Respondent Steensland paid him, but disbelieved his testimony that he did not receive any money from BOLI.

54) Raul Ramirez was an experienced bilingual compliance officer who credibly described the somewhat complex methodology he was forced to use for computing wages due to the 41 workers owed wages for their work on the yew harvest, due to Respondent's failure to maintain individual records for each worker. His computations were based on contemporaneous records available at the jobsite, contemporaneous interviews, the tally sheet showing the dates and pounds harvested that was kept by Sergio Sanchez, and records provided by Respondent Steensland. These records were the most reliable evidence available and considerably more reliable than the wage claimants' four year old recollections. Due to Respondent Steensland's

poor record keeping and practice of maintaining “group” tally sheets, it became obvious to the forum that some of the wage claimants had no way to calculate the wages due to them without Ramirez’s assistance. In the extreme case, Ruben Hernandez’s testimony established that he would not even have known who his employer was without Ramirez’s assistance. The forum has relied on Ramirez’s expertise and calculations for all of the wage claims except when the wrong factor was used in his mathematical computations or, in the case of Serafin Garduno, Alberto Ruiz, and the three Sotos, the absence of reliable evidence to support the hours or pounds claimed in their wage claims that Ramirez used in his calculations.

55) Respondent Steensland willfully failed to pay wage claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores all earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after they left Respondent’s employment and more than 30 days have elapsed from the date their wages were due.

56) Penalty wages are computed for claimants, in accordance with ORS 652.150, by multiplying the minimum wage in effect in 2003 x 8 hours x 30 days ($\$6.90 \times 8 \times 30 = \$1,656.00$).

ULTIMATE FINDINGS OF FACT

1) At all times material herein, Respondent John Steensland did business in Oregon and engaged the personal services of one or more employees.

2) In November 2002, the Swanson Group, Inc., granted a permit to Pacific Yew Products to harvest Pacific yew limbs and needles for taxol extraction. In May, 2003, the permit was modified through an agreement signed by Ed Reed on behalf of Pacific Yew Products.

3) On May 15, 2003, Respondent Steensland entered into a contract with Respondent Pacific Yew Products, LLC to provide labor, materials, equipment, and tools for the harvesting yew bark and branches.

4) Respondent Pacific Yew Products, LLC did not employ any of the wage claimants.

5) Joel Hernandez was employed by Respondent Steensland to harvest yew bark and branches at the piece rate of \$.20 per pound. He worked July 8-11, 14-16, and 23-25, 2003, and harvested a total of 4969 pounds, earning gross wages of \$993.80. He was paid \$150 during his employment and \$238.79 after his employment ended, leaving a total of \$605.01 in unpaid wages due and owing to him. Respondent Steensland willfully failed to pay him his earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after he left Respondent Steensland's employment and more than 30 days have elapsed since his wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

6) Ruben Hernandez and Rene Hernandez were employed by Respondent Steensland to harvest yew bark and branches at the piece rate of \$.20 per pound. Both worked July 8-11, 14-16, and 23-25, 2003, and both harvested a total of 4969 pounds, each earning gross wages of \$993.80. Both were paid \$317.00 during their employment and \$325.49 after their employment ended, leaving a total of \$351.31 in unpaid wages due and owing to each of them. Respondent Steensland willfully failed to pay them their earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after they left Respondent Steensland's employment and more than 30 days have elapsed since their wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

7) Fidel Perez was employed by Respondent Steensland to harvest yew bark and branches at the piece rate of \$.20 per pound. He worked July 24-25, 2003, and harvested a total of 882 pounds, earning gross wages of \$176.40. He was paid nothing during his employment and \$62.40 after his employment ended, leaving a total of \$114.00 in unpaid wages due and owing to him. Respondent Steensland willfully failed to pay him his earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after he left Respondent Steensland's employment and more than 30 days have elapsed since his wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

8) Jose Valles and Jose V. Leobardo were both employed by Respondent Steensland to harvest yew needles and bark at the piece rate of \$.20 per pound. Both worked from July 20 to July 25, 2003, and both harvested a total of 4220 pounds, earning gross wages of \$844.00 each. Both were paid nothing during their employment and \$238.84 each after their employment ended, leaving \$605.16 in unpaid wages due and owing to each. Respondent Steensland willfully failed to pay them their earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after they left Respondent Steensland's employment and more than 30 days have elapsed since their wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

9) Jose Toledo Cordoba was employed by Respondent Steensland transport harvested yew needles and bark from the harvest site to Respondent's weigh station at the rate of \$75 per day and \$.05 per pound. He worked July 8-19, 21, and 23-25, 2003, earning gross wages of \$2,645.25. He was paid \$1,350 while he worked for Respondent and \$398.38 after his employment ended, leaving \$896.87 in unpaid wages due and owing to him. Respondent Steensland willfully failed to pay him his earned,

due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after he left Respondent Steensland's employment and more than 30 days have elapsed since his wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

10) Juan Carlos Cordoba was employed by Respondent Steensland transport harvested yew needles and bark from the harvest site to Respondent's weigh station at the rate of \$75 per day and \$.05 per pound. He worked July 8-19, 21, and 23-25, 2003, earning gross wages of \$2,645.25. He was paid \$2,150.00 while he worked for Respondent and \$183.58 after his employment ended, leaving \$311.67 in wages due and owing to him. Respondent Steensland willfully failed to pay him his earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after he left Respondent Steensland's employment and more than 30 days have elapsed since his wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

11) Raymundo Rodriguez-Flores was employed by Respondent Steensland transport harvested yew needles and bark from the harvest site to Respondent's weigh station at the rate of \$75 per day and \$.05 per pound. He worked July 8-19, 21, and 23-25, 2003, earning gross wages of \$2,645.25. He was paid \$2,000.00 while he worked for Respondent and \$214.44 after his employment ended, leaving \$430.81 in wages due and owing to him. Respondent Steensland willfully failed to pay him his earned, due, and payable wages within five business days, excluding Saturdays, Sundays, and holidays, after he left Respondent Steensland's employment and more than 30 days have elapsed since his wages were due. Penalty wages, computed in accordance with ORS 652.150, equal \$1,656.00.

12) There was insufficient reliable evidence to establish that Respondent Steensland employed Serafin R. Garduno, Gilberto R. Soto, or Alberto E. Ruiz.

13) Heladio R. Soto and Santana R. Soto were employed by Respondent Steensland. However, there is insufficient reliable evidence in the record to establish their dates and hours of work or number of pounds harvested.

14) On August 14, 2004, Respondent Steensland was personally served with the Agency's Order of Determination that included a written notice of nonpayment of all the wages sought by the Agency on behalf of the wage claimants. Respondent Steensland has not paid the full amount of the wages owed to wage claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores.

CONCLUSIONS OF LAW

1) During all times material herein, Respondent John Steensland was an employer and Claimants were employees subject to the provisions of ORS 652.110 to 652.200, 652.310 to 652.405, and 653.010 to 653.261. During all times material, Respondent employed wage claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondents herein. ORS 652.310 to 652.414, ORS 653.040, ORS 653.256, ORS 653.261.

3) Respondent Pacific Yew Products, LLC did not employ claimants and the charges against Respondent Pacific Yew Products, LLC are hereby dismissed

4) Respondent Steensland violated ORS 652.140(2) by failing to pay claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo

Rodriguez-Flores all wages earned and unpaid within five days after they left Respondent's employment, excluding Saturdays, Sundays and holidays. Respondent owes these claimants a total of \$4,217.30 in unpaid, due and owing wages.

5) Respondent Steensland is liable for \$1,656 in penalty wages each to claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores, for a total of \$14,904. ORS 652.150.

6) Under the facts and circumstances of this record, and according to the law applicable to this matter, the Commissioner of the Bureau of Labor and Industries has the authority to order Respondent to pay Claimants their earned, unpaid, due and payable wages, and the penalty wages, plus interest on both sums until paid. ORS 652.332.

OPINION

INTRODUCTION

Both Respondents defaulted when they did not show up at the hearing. When a respondent defaults, the Agency needs only present a prima facie case on the record to support the allegations of its charging document in order to prevail. *In the Matter of Okechi Village & Health Center*, 27 BOLI 156, 161 (2006). The Agency's prima facie case consists of credible evidence showing: 1) Respondents employed Claimants; 2) The pay rate upon which Respondents 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 Respondents. *In the Matter of Barbara Coleman*, 19 BOLI 230, 262-63 (2000).

RESPONDENT STEENSLAND WAS CLAIMANTS' EMPLOYER

In its Order of Determination, the Agency named John Steensland and Pacific Yew Products, LLC as employers. At hearing, the Agency argued that Steensland and PYP had entered into a *de facto* partnership for purposes of the yew harvest and should be held jointly liable as employers.

In response, in their respective answers and unsworn statements accompanying those answers, PYP claimed that Steensland was the employer and Steensland claimed that he was not the employer. When a respondent fails to appear at hearing and its only contribution to the record is a request for hearing and an answer that contains only unsworn and unsubstantiated assertions, those assertions are overcome whenever they are contradicted by other credible evidence in the record. *In the Matter of Landco Enterprises, Inc.*, 22 BOLI 62, 67 (2001).

In a claim for wages based on ORS 652.140, an "employer" is "any person who in this state, directly or through an agent, engages personal services of one or more employees * * * so far as such employer has not paid employees in full." ORS 652.310; *In the Matter of Kilmore Enterprises*, 26 BOLI 111, 119 (2004). The Agency has the burden of proving that a respondent was the employer. *Id.*

Through credible sworn testimony, the Agency established the following pertinent facts related to Respondent Steensland's alleged status as the claimants' employer:

- He was an independent contractor who operated his own business during the yew harvest in June and July 2003.
- He contracted with PYP on May 15, 2003, to provide labor, material, equipment, and tools for the yew harvest, to be responsible for the means and methods used for the harvest operation, and to provide and supervise the workers.
- During the yew harvest, PYP paid Steensland pursuant to the May 15, 2003, contract and Steensland wrote checks on his personal account to pay wages to the workers on the yew harvest.

- During the yew harvest, he had the ultimate responsibility for directing and controlling the workers, including the wage claimants.
- He had the responsibility and authority to hire and fire the workers.
- He told the workers that they worked for him and the workers understood that he was the boss.
- He provided the workers with equipment, including some hardhats, electronic scales for weighing the bark, shovels, fire extinguishers, earplugs, chaps, chain saws, and fuel, and vehicles for obtaining the yew bark and transferring it to trailers.

Based on these facts, the forum concludes that Respondent Steensland was an employer of the wage claimants.

In contrast, the evidence established that PYP's primary role was as the legal entity that held the permit to harvest the yew on Swanson's property. Once PYP obtained the permit, it contracted with Respondent Steensland to provide the labor, material, equipment, and tools necessary to conduct the harvest and to provide the insurance coverage required in the permit issued to PYP by Swanson. PYP paid Steensland for yew that was harvested, and Steensland in turn wrote personal checks to the workers. PYP did provide portable toilets and a limited amount of equipment to workers, as well as refrigerated trailers to store the harvested yew bark and branches in and a means of transporting the trailers elsewhere. These actions are not indicative, by themselves, of an employment relationship, but tend to show that a business relationship existed between PYP and Respondent Steensland that was akin to a general contractor/subcontractor relationship.^{ix} Finally, there was no evidence that PYP directly paid the workers or controlled their work in any way. These facts support PYP's argument that it did not employ the wage claimants, but was merely the holder of the permit that made the yew harvest possible.

The Agency argues that PYP was the wage claimants' employer because it was a *de facto* partner with Respondent Steensland during the yew harvest. In Oregon, a partnership is "an association of two or more persons to carry on as co-owners a

business for profit created under ORS 67.055 * * *.” ORS 67.005(7). A partnership may be created whether or not the persons intend to create a partnership. ORS 67.055(1). A partnership is never presumed and the Agency bears the burden of proof to show that co-named respondents are partners. *In the Matter of Stan Lynch*, 23 BOLI 34, 43 (2002). ORS 67.055(4) includes the following relevant rules for determining whether a partnership has been created:

- “(a) Factors indicating that persons have created a partnership include:
 - “(A) Their receipt of or right to receive a share of profits of the business;
 - “(B) Their expression of an intent to be partners in the business;
 - “(C) Their participation or right to participate in control of the business;
 - “(D) Their sharing or agreeing to share losses of the business or liability for claims by third parties against the business; and
 - “(E) Their contributing or agreeing to contribute money or property to the business.”

In this case, the Agency presented evidence that Ed Reed and Respondent Steensland had operated as a partnership in the late 1990s in the same type of business operation. Because of that fact and their shared interest in connection with the yew harvest, the Agency asked the forum to find that a partnership existed between PYP and Respondent Steensland. If so, that would create joint and several liability for payment of the wages and penalty wages. ORS 67.105; *In the Matter of Sylvia Montes*, 11 BOLI 268, 275 (1993).

The forum finds that none of the criteria in ORS 67.055(4) are satisfied by evidence in the record. First, there is no evidence that PYP and Respondent Steensland received or had a right to share in any profits. Rather, the evidence shows they were separate businesses that contracted with one another to perform different parts of the yew harvest. Any compensation Respondent Steensland received from PYP was contractually based solely on the amount of yew harvested by his employees, he had no opportunity to earn a greater profit, and there is no evidence that the two

Respondents agreed to share the profits. Second, there is no evidence of any expression of intent to form a partnership. The fact that a partnership may have existed in the past to conduct the same business is not an expression of intent. Third, the evidence indicates that PYP and Respondent Steensland each controlled the parts of the yew harvest that they were contractually responsible for, but there is no evidence to show that either had the right to control aspects of the other's business. Fourth, there is no evidence of any agreement to share losses or liability for claims by third parties. Finally, there is no evidence that PYP or Respondent Steensland contributed or agreed to invest money or property in each other's business, other than Reed's contribution of some earplugs and hardhats to some workers and provision of two portable toilets. The forum concludes that PYP and Respondent Steensland were not partners in the yew harvest venture.^x

CLAIMANTS JOEL HERNANDEZ, RUBEN HERNANDEZ, RENE HERNANDEZ, FIDEL PEREZ, JOSE VALLES, JOSE V. LEOBARDO, JOSE T. CORDOBA, JUAN CARLOS CORDOBA, AND RAYMUNDO RODRIGUEZ-FLORES WERE EMPLOYED BY RESPONDENT STEENSLAND

Ruben Hernandez, Rene Hernandez, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores all testified credibly that they were employed by Respondent Steensland on the yew harvest and that one or more of them worked with Joel Hernandez, Fidel Perez, and Jose Valles.

CLAIMANTS JOEL HERNANDEZ, RUBEN HERNANDEZ, RENE HERNANDEZ, FIDEL PEREZ, JOSE VALLES, JOSE V. LEOBARDO, JOSE T. CORDOBA, JUAN CARLOS CORDOBA, AND RAYMUNDO RODRIGUEZ-FLORES WERE PAID AT A PIECE RATE

The claimants credibly testified that they were hired to work at \$.20 per pound of yew product harvested or \$75 per day plus \$.05 per pound harvested, depending on the type of work they performed. This evidence was undisputed and the forum concludes that Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles,

Jose V. Leobardo were entitled to be paid at the rate of \$.20 per pound of yew product harvested, and Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores were entitled to be paid at the rate of \$75 per day plus \$.05 per pound harvested.

CLAIMANTS JOEL HERNANDEZ, RUBEN HERNANDEZ, RENE HERNANDEZ, FIDEL PEREZ, JOSE VALLES, JOSE V. LEOBARDO, JOSE T. CORDOBA, JUAN CARLOS CORDOBA, AND RAYMUNDO RODRIGUEZ-FLORES PERFORMED WORK FOR WHICH THEY WERE NOT PROPERLY COMPENSATED

The Agency presented credible testimonial and documentary evidence that established the amount of yew product harvested by each of the claimants and the number of days worked by the Cordobas and Rodriguez-Flores, the three workers who worked at the agreed rate of \$75 per day and \$.05 per pound. The Agency also proved, through documentary evidence and the credible testimony of Raul Ramirez, Ruben Hernandez, Rene Hernandez, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores that Fidel Perez, Jose Valles, and Jose V. Leobardo were paid nothing for their work and that the other claimants were not fully paid.

THE AMOUNT AND EXTENT OF WORK CLAIMANTS JOEL HERNANDEZ, RUBEN HERNANDEZ, RENE HERNANDEZ, FIDEL PEREZ, JOSE VALLES, JOSE V. LEOBARDO, JOSE T. CORDOBA, JUAN CARLOS CORDOBA, AND RAYMUNDO RODRIGUEZ-FLORES PERFORMED FOR RESPONDENT.

The final element of the agency's prima facie case requires proof of the amount and extent of work performed by claimant. The agency's burden of proof can be met by producing sufficient evidence from which a just and reasonable inference may be drawn. A claimant's credible testimony may be sufficient evidence. *In the Matter of Ilya Simchuk*, 22 BOLI 186, 196 (2001). When the forum concludes that an employee was employed and improperly compensated, the burden shifts to the employer to produce evidence of the precise amount of work performed or with evidence to negative the

reasonableness of the inference to be drawn from the employee's evidence. *In the Matter of David Creager*, 17 BOLI 102, 109 (1998). In this case, the forum has concluded that nine employees were employed by Respondent Steensland and improperly compensated, and the tally sheets produced by Respondent Steensland do not show the precise amount of work performed by individual claimants or the amount that was been paid to them.^{xi}

This is an unusual case for several reasons. First, the employment setting was chaotic. It involved a yew harvest in the mountains of southern Oregon with continually expanding and contracting work groups of Spanish-speaking workers who learned of the job from friends who were already employed and who typically just showed up and started working. Second, the employer apparently spoke only English and used one of his workers as an interpreter. Third, many of the workers were itinerant laborers. Fourth, the work took place four years prior to the hearing. Fifth, Respondent Steensland's "group" method of recording the number of pounds harvested by his workers was extremely vague and would have left the forum with an impossible task of trying to calculate wages due to the claimants if the Agency, through Raul Ramirez, had not intervened when the claims were first filed and done the work necessary to determine the approximate amount owed to each claimant. Sixth, Respondent Steensland wrote paychecks for large sums to several different individuals instead of issuing individual paychecks, expecting those few individuals to cash their checks and fairly divide it among the workers. As a result, there is no documentary evidence of how much each claimant was paid, and the forum has been forced to rely on the testimony of claimants and Ramirez.

For all the reasons stated above and further explained in Finding of Fact 54 – The Merits, the forum has relied on the calculations that Ramirez made, except when

the wrong factor was used in his mathematical calculations, to determine the approximate amount of work performed and amount of wages earned by claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores, and the amount of wages still due and owing to them.^{xii} The amount of work performed and wages earned by each is set out in Findings of Fact 19-24, 29-31 – The Merits. The wages still due and owing to them are set out in Finding of Fact 46 – The Merits.

CLAIMANTS ALBERTO RUIZ, SANTANA R. SOTO, GILBERTO R. SOTO, HELADIO R. SOTO, AND SERAFIN R. GARDUNO ARE NOT ENTITLED TO ANY UNPAID WAGES

The forum has historically rejected wage claims in cases when claimants do not testify at hearing and no witnesses testify to support their claims of employment and unpaid wages.^{xiii} In this case, the five workers listed above did not testify at hearing. The forum has concluded that Santana R. Soto and Heladio R. Soto were employed by Respondent Steensland because their names appear on tally sheets provided by Steensland. However, because no one testified that they observed the Sotos at the yew harvest, the only evidence as to the amount and extent of work they performed were their own unsworn calendars and incomplete tally sheets. Although Ramirez undoubtedly exercised his best effort at making a contemporary calculation of the amount and extent of the Soto's work, the Agency's unfortunate inability to provide complete production records for the Sotos and the absence of any witnesses to corroborate their production record dooms their wage claims to failure. The forum has been unable to conclude that Alberto Ruiz, Gilberto R. Soto, and Serafin R. Garduno were even employed by Respondent Steensland because their names do not appear on any tally sheets and there was no witness testimony corroborating their presence at the yew harvest. Ruiz's claim is particularly suspect because he claimed to have started work on May 26, 2003, a full month before any of the other claimants.

PENALTY WAGES

An employer is liable for penalty wages when it willfully fails to pay any wages or compensation of any employee whose employment ceases. Willfulness does not imply or require blame, malice, wrong, perversion, or moral delinquency, but only requires that that which is done or omitted is intentionally done with knowledge of what is being done and that the actor or omittor be a free agent. *In the Matter of Carl Odoms*, 27 BOLI 232, 240-41 (2006).

In this case, Respondent Steensland stated in his answer he paid the workers by writing checks to Sergio, a worker whom he used as an interpreter, trusting that Sergio would pay the workers, and that he also paid workers when he was paid. It was Respondent Steensland's responsibility to make sure that accurate records were kept of each worker's earnings and to see that each worker was individually paid. His abdication of that responsibility to a bilingual worker was a voluntary decision, made as a free agent, and Sergio's alleged failure to pay the workers is not a defense to the Agency's charge that Respondent Steensland willfully failed to pay the wages to the wage claimants.^{xiv}

By serving the Order of Determination, the Agency also gave written notice to Respondent Steensland of all the wage claims in this proceeding and Respondent Steensland did not pay any additional wages after receiving that notice. Therefore, penalty wages are not limited to 100% of each wage claimants' unpaid wages.

ORS 652.150(1) provides that penalty wages are to be calculated based on an employee's hourly wage or rate of compensation. In this case, all the employees were paid, at least in part, by piece rate and there is no way of calculating their average hourly rate of pay because no accurate record of hours worked exists for any of the wage claimants. Because of this, the Agency has asked that penalty wages be

calculated based on the Oregon's 2003 minimum wage of \$6.90 per hour. Under the circumstances, the forum agrees that this is an appropriate way to calculate penalty wages. It eliminates the need for any speculation on the forum's part and it is an hourly wage that Respondent Steensland was legally required to pay, no matter what his agreement may have been with the wage claimants. ORS 653.025.

The forum calculates penalty wages for claimants Joel Hernandez, Ruben Hernandez, Rene Hernandez, Fidel Perez, Jose Valles, Jose V. Leobardo, Jose T. Cordoba, Juan Carlos Cordoba, and Raymundo Rodriguez-Flores in the following manner: \$6.90 per hour x 8 hours x 30 days = \$1,656.00 due and owing to each claimant as penalty wages.

ORDER

NOW, THEREFORE, as authorized by ORS 652.332 and as payment of the unpaid wages and penalty wages he owes as a result of his violations of ORS 652.140(2), the Commissioner of the Bureau of Labor and Industries hereby orders **John Steensland** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

(1) A certified check payable to the Bureau of Labor and Industries in trust for Joel Hernandez in the amount of TWO THOUSAND TWO HUNDRED SIXTY ONE DOLLARS AND ONE CENT (\$2,261.01), less appropriate lawful deductions, representing \$605.01 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$605.01 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(2) A certified check payable to the Bureau of Labor and Industries in trust for Ruben Hernandez in the amount of TWO THOUSAND SEVEN DOLLARS AND THIRTY ONE CENTS (\$2,007.31), less appropriate lawful deductions, representing \$351.31 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$351.31 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(3) A certified check payable to the Bureau of Labor and Industries in trust for Rene Hernandez in the amount of TWO THOUSAND SEVEN

DOLLARS AND THIRTY ONE CENTS (\$2,007.31), less appropriate lawful deductions, representing \$351.31 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$351.31 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(4) A certified check payable to the Bureau of Labor and Industries in trust for Fidel Perez in the amount of ONE THOUSAND SEVEN HUNDRED AND SEVENTY DOLLARS (\$1,770.00), less appropriate lawful deductions, representing \$114.00 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$114.00 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(5) A certified check payable to the Bureau of Labor and Industries in trust for Jose Valles in the amount of TWO THOUSAND SIX HUNDRED SIXTY ONE DOLLARS AND SIXTEEN CENTS (\$2,661.16), less appropriate lawful deductions, representing \$605.16 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$605.16 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(6) A certified check payable to the Bureau of Labor and Industries in trust for Jose V. Leobardo in the amount of TWO THOUSAND SIX HUNDRED SIXTY ONE DOLLARS AND SIXTEEN CENTS (\$2,661.16), less appropriate lawful deductions, representing \$605.16 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$605.16 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(7) A certified check payable to the Bureau of Labor and Industries in trust for Jose T. Cordoba in the amount of TWO THOUSAND FIVE HUNDRED FIFTY TWO DOLLARS AND EIGHT SEVEN CENTS (\$2,552.87), less appropriate lawful deductions, representing \$896.87 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$896.87 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(8) A certified check payable to the Bureau of Labor and Industries in trust for Raymundo Rodriguez-Flores in the amount of TWO THOUSAND EIGHT SIX DOLLARS AND EIGHTY ONE CENTS (\$2,086.81), less appropriate lawful deductions, representing \$896.87 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$896.87 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

(9) A certified check payable to the Bureau of Labor and Industries in trust for Juan Carlos Cordoba in the amount of ONE THOUSAND NINE HUNDRED SIXTY SEVEN DOLLARS AND SIXTY SEVEN CENTS (\$1,967.67), less appropriate lawful deductions, representing \$311.67 in gross earned, unpaid, due, and payable wages and \$1,656 in penalty wages, plus interest at the legal rate on the sum of \$311.67 from September 1, 2003, until paid, and interest at the legal rate on the sum of \$1,656 from October 1, 2003, until paid.

ⁱ Underlined text was handwritten.

ⁱⁱ The Agency calculated his wages earned as \$1,467.20, based on the same number of pounds picked as Joel Hernandez. However, the Agency mistakenly calculated that Ruben Hernandez earned \$844.00 for the 1853 pounds picked during his first week of work. In contrast, the same program correctly calculated that Joel Hernandez earned \$370.60 (1853 pounds x \$.20 = \$370.60).

ⁱⁱⁱ The Agency calculated his wages earned as \$1,467.20, based on the same number of pounds picked as Joel and Ruben Hernandez. However, the Agency mistakenly calculated that Rene Hernandez earned \$844.00 for the 1853 pounds picked during his first week of work, instead of the correct amount of \$370.60 (1853 pounds x \$.20 = \$370.60).

^{iv} The Agency calculated his wages earned as \$220.50, based on harvesting 882 pounds. However, the Agency apparently arrived at this sum by multiplying 882 pounds by \$.25 (882 pounds x \$.25 = \$220.50). The correct calculation is 882 pounds x \$.20 (Perez's agreed piece rate) = \$176.40.

^v He did not state the number of pounds and his name does not appear on any tally sheets in evidence.

^{vi} Oregon's statutory minimum wage in 2003 was \$6.90 per hour. ORS 653.025(1)(d).

^{vii} For reasons stated in the Opinion, the forum has not awarded any unpaid wages to wage claimants Serafin R. Garduno, Heladio R. Soto, Santana R. Soto, Gilberto R. Soto, or Alberto Ruiz.

^{viii} The actual figure that he wrote was \$317.

^{ix} Cf. *In the Matter of Staff, Inc.*, 16 BOLI 97, 114-16 (1997) (when two respondents jointly employed a wage claimant pursuant to an employee leasing agreement between them and each respondent retained sufficient control of the terms and conditions of employment to be considered a joint employer, the commissioner held that each joint employer was required to comply with Oregon's wage and hour laws and each employer was liable, both individually and jointly, for any violation of those laws).

^x Cf. *In the Matter of Barbara and Robert Blair*, 24 BOLI 89, 96 (2002) (in a default case when claimants credibly testified that both respondents owned and operated the business under an assumed business name, that one respondent hired them, and that claimants performed work for the business, and respondents' answer appeared on company letterhead and was signed by both respondents, the forum concluded that respondents were partners and both were claimants' employers.)

^{xi} See Findings of Fact 17, 43, 48 –The Merits.

^{xii} See, e.g., *In the Matter of Debbie Frampton*, 19 BOLI 27, 38-39 (1999) (the forum will rely on a claimant's evidence regarding the number of hours worked even where it is only approximate so as not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work when such inability is based on an employer's failure to keep proper records, in conformity with his statutory duty.)

^{xiii} See *In the Matter of Catalogfinder, Inc.*, 18 BOLI 242, 260-64 (1999) for a detailed discussion of the forum's approach to evaluating the wage claims of claimants who did not appear at hearing to testify.

^{xiv} See, e.g., *In the Matter of TCS Global*, 24 BOLI 246, 260 (2003) (when respondent knew claimant was performing work as a dispatcher and made no apparent effort to confirm whether claimant was recording the time on his time

cards, and the time cards clearly denoted the nature of the work being recorded and respondent knew or should have known claimant was not recording his hours as a dispatcher, the forum inferred respondent voluntarily and as a free agent failed to pay claimant all of the wages he earned as a dispatcher and concluded that respondent acted willfully and was liable for penalty wages); *In the Matter of Usra A. Vargas*, 22 BOLI 212, 222 (2001) (respondent's argument that she intended to pay claimants when her "customer" against whom she had legal action pending paid her was not a defense, but instead showed that she voluntarily and as a free agent failed to pay two claimants all the wages they earned).