

In the Matter of

TROY MELQUIST dba RedCellIX, Inc.

Case No. 68-05

Final Order of Commissioner Dan Gardner

Issued February 14, 2006

SYNOPSIS

Respondent failed to pay four wage claimants all wages earned and unpaid at the time they quit their employment with Respondent, in violation of ORS 652.140(1) and 652.140(2). The forum ordered Respondent to pay the wages owed plus penalty wages, pursuant to ORS 652.150, plus interest on the wages owed and penalty amounts. ORS 652.140(1); ORS 652.140(2); ORS 652.150.

The above-entitled case came on regularly for hearing before Linda A. Lohr, designated as Administrative Law Judge (“ALJ”) by Dan Gardner, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on June 7, 2005, in the W.W. Gregg Hearing Room of the Bureau of Labor and Industries, located at 800 NE Oregon Street, Portland, Oregon.

Cynthia L. Domas, an Agency employee, represented the Bureau of Labor and Industries (“BOLI” or “the Agency”). Mary Ann Burke, Michael Polehn, Scott L. Hickey, and Nilanthren Vadival Naidoo (“Claimants”) were present throughout the hearing and were not represented by counsel. Troy Melquist (“Respondent”) failed to appear for hearing in person or through counsel.

The Agency called the following witnesses: Mary Burke, Scott Hickey (telephonic), Nilanthren Naidoo (telephonic), and Michael Polehn, wage claimants; and Stan Wojtyla, Wage and Hour Division compliance specialist.

The forum received as evidence:

- a) Administrative exhibits X-1 through X-6;

b) Agency exhibits A-1 through A-38 (filed with the Agency's case summary).

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

FINDINGS OF FACT – PROCEDURAL

1) On November 21, 2003, Claimant Burke filed a wage claim form on which she stated that Respondent had employed her from September 8 to October 21, 2003, and failed to pay her any wages for the hours she worked for that time period.

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

3) On October 28, 2003, Claimant Hickey filed a wage claim form on which he stated that Respondent had employed him from September 19 to October 14, 2003, and failed to pay him any wages for the hours he worked for that time period.

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

5) On September 24, 2003, Claimant Naidoo filed a wage claim form on which he stated that Respondent had employed him from March 25 to August 22, 2003, and failed to pay him any wages for the hours he worked for that time period.

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

7) On November 13, 2003, Claimant Polehn filed a wage claim form on which he stated that Respondent had employed him from April 14 to September 22,

2003, and failed to pay him any wages for the hours he worked from September 1 to September 19, 2003.

8) At the time he filed his wage claim, Claimant Polehn assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

9) On January 1, 2004, the Agency issued Order of Determination No. 03-3183. The Agency alleged Respondent had employed Claimant Burke during the period September 8 to October 21, 2003, at the rate of \$36.92 per hour; Claimant Hickey during the period September 19 to October 14, 2003, at the rate of \$10.42 per hour; Claimant Naidoo during the period August 1 to August 22, 2003, at the rate of \$36.05 per hour; and Claimant Polehn during the period September 1 to September 29, 2003, at the rate of \$21.62 per hour. Additionally, the Agency alleged Respondent willfully failed to pay Claimants any of the wages they were owed for the hours they worked during those periods and more than thirty days have elapsed since the wages became due and owing pursuant to ORS 652.140, therefore Respondent owed Claimants the earned and unpaid wages, along with penalty wages of \$8,860.80 (Burke); \$2,500.80 (Hickey); \$8,652 (Naidoo); and \$5,191.20 (Polehn), plus interest on the unpaid wage and penalty amounts. The Order of Determination gave Respondent 20 days to pay the sums, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law.

10) On February 17, 2004, the Agency issued a Notice of Intent to Issue Final Order by Default to Respondent. The Agency advised Respondent that if it did not file an "Answer or Request for Hearing or Court Trial" by February 27, 2004, the Agency would issue a final order by default. Respondent timely filed an answer and request for hearing and contested the wage claims filed by Claimants Hickey and Naidoo.

11) On April 25, 2005, the Agency requested a hearing. On April 26, 2005, the Hearings Unit issued a Notice of Hearing stating the hearing would commence at 10 a.m. on June 7, 2005. With the Notice of Hearing, the forum included a copy of the Order of Determination, a language notice, a Servicemembers Civil Relief Act notification, and copies of the Summary of Contested Case Rights and Procedures and the Contested Case Hearing Rules, OAR 839-050-0000 to 839-050-0440.

12) On April 29, 2005, Respondent was personally served with the Notice of Hearing and attachments at 15823 SW Village Circle, Beaverton, Oregon. The service report states that attempts to serve Respondent were made on April 27 and 28, but there was "no answer, no car in garage, appears occupied."

13) On May 23, 2005, the ALJ ordered the Agency and Respondent each to submit a case summary that included: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; a statement of any agreed or stipulated facts; and a brief statement of the elements of the claim and any wage and penalty calculations (for the Agency only). The ALJ ordered the participants to submit their case summaries by June 1, 2005, and notified them of the possible sanctions for failure to comply with the case summary order.

14) On May 26, 2005, the Agency timely filed its case summary. Respondent did not file a case summary.

15) Respondent did not appear at the time and place set for hearing and no one appeared on his behalf or advised the ALJ of any reason for his failure to appear. The ALJ ruled that Respondent was in default, having been properly served with the Notice of Hearing and having failed to appear at the hearing.

16) The Agency waived the ALJ's recitation of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

17) The ALJ issued a proposed order on December 5, 2005, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. Neither Respondent nor the Agency filed exceptions.

FINDINGS OF FACT – THE MERITS

1) At times material, Respondent was an individual conducting business in Oregon as a hardware and software systems developer using the name of “RedCellX, Inc.” and employed one or more persons in Oregon.

2) Respondent’s business was developing hardware and software for embedded products contained within hand held devices such as personal data systems, cell phones, e-books, and electronic books. Respondent’s workforce was involved with software and hardware programming associated with creating those devices.

3) Previously, Respondent was the president of RedCellX, Inc., a corporation that owned the business until it was administratively dissolved on September 5, 2003. Respondent continued to use the name RedCellX, Inc. while conducting his business.

4) On or about September 8, 2003, Respondent hired Claimant Burke as a software programmer to analyze code and algorithms for compressing music and data for embedded products. Claimant Burke held a Bachelor’s and an advanced degree in Math. Respondent hired her because of her background in the aerospace industry with satellite data compression. Respondent assigned her to investigate, design and develop algorithms needed to perform specific tasks. He asked her to look at existing music compression algorithms from another person’s project and do “a proof concept coding and compression of test data to do standard algorithm programming.”

5) Respondent agreed to pay Claimant Burke \$6400 per month for a minimum 40 hour work week. She usually worked between 8 a.m. and 6 p.m., five days per week, Monday through Friday. She worked with Jerry Wheeler, Stan Nichols, Scott Hickey, and Mike Polehn.

6) Respondent managed the daily business affairs and handled the clients and financial matters. Respondent usually came in to work at 11 a.m. and stayed well beyond Claimant Burke's workday.

7) Beginning around October 7, 2003, Claimant Burke sent Respondent numerous e-mails requesting her September paycheck. Each time Respondent replied to one of her e-mails, he acknowledged that the payroll was due, but repeatedly stated that "funds are not yet available from the deposits. I have a check ready for you awaiting clearing deposits." Finally, on October 22, 2003, Claimant Burke sent Respondent an e-mail that stated in pertinent part:

"I haven't heard from you regarding back wages owed for September, 2003. This has left me no alternative but to follow what Nilan has done. I am filing a wage claim form with BOLI for the September wages. In addition, you have not provided any indication of work assignments, nor plans for further work. In addition, I am filing an unemployment claim with the State of Oregon. I formally request that you do not contest the claim, as you have left me no other option. I was recruited from Novellus to RedCellX, giving up a solid job with benefits, to be left in the dark."

Respondent immediately replied by e-mail and stated in pertinent part:

"I had asked to have a meeting with you today via the e-mail I forwarded. I am still waiting to have checks clear to pay for your wages. I did not want to ask you to work if you were not yet paid for last month. That seems fair right? I told you I would not contest any unemployment. You are left in the dark, I am sorry for that, I am trying to bring light to your situation ASAP. I have much regrets concerning the situation right now."

8) Claimant Burke performed work for Respondent from September 8 through October 3, 2003, and earned gross wages of \$6,400. She quit her employment because she was not receiving any pay for the work she performed.

9) At the time of hearing, Respondent owed Claimant Burke \$6,400 in unpaid wages.

10) Claimant Burke's penalty wages, computed in accordance with ORS 652.150, total \$8,861 (\$36.92 per hour x 8 hours per day x 30 days).ⁱ

11) On or about September 19, 2003, Respondent hired Claimant Hickey as a project manager through the “SBA Career Services Business Internship Program” at Portland State University’s School of Business Administration (“PSU”). Claimant Hickey had recently graduated from PSU with double degrees in general management and information systems. Respondent had announced the 12-month internship opportunity through SBA Career Services on September 3, 2003, and stated that “the intern, who will report directly to the CEO, will take projects from their conception and work through the product’s life cycle. Products can be hardware, software, or a combination of both. Project managers work directly with RedcellX clients.” The announcement also stated that the internship included compensation of \$20,000 for 30 to 40 hour workweeks for the 12-month duration.

12) During his internship, Claimant Hickey worked with Respondent, clients, and hardware and software engineers. He was responsible for coordinating the work and making sure staff met the timelines. Additionally, he did the “dirty work” as Respondent’s administrative assistant. He answered the phone and handled creditors, people complaining about projects that were not being delivered, and people complaining that they were not paid. Claimant Hickey observed checks ranging from \$14,000 to \$20,000 coming in to the business. Respondent deposited the checks and told his staff that he would issue paychecks when the checks cleared at the bank.

13) Respondent agreed to pay Claimant Hickey \$20,000 for the 12-month internship for a 30 to 40 hour work week. Claimant Hickey worked between 8 a.m. and 5 p.m., Monday through Friday. He was told that payday was monthly at the end of each month. He never received any wages for the work he performed for Respondent.

14) Claimant Hickey performed work for Respondent from September 9 through October 14, 2003, and earned gross wages of \$1,479.64. He quit his employment because he was not receiving any pay for the work he performed.

15) At the time of hearing, Respondent owed Claimant Hickey \$1,479.64 in unpaid wages.

16) Claimant Hickey's penalty wages, computed in accordance with ORS 652.150, are \$2,309 (\$9.62 per hour x 8 hours per day x 30 days).ⁱⁱ

17) On or about March 3, 2003, Respondent hired Claimant Naidoo as a software engineer to write software for embedded devices. Claimant Naidoo has electrical engineering and computer science degrees and was earning \$100,000 annually before he came to Oregon.

18) Respondent agreed to pay Claimant Naidoo \$75,000 annually for a minimum of 40 hours per week after a three-month trial period. By July 1, 2003, Claimant Naidoo was earning the agreed upon salary.

19) Claimant Naidoo worked from 8:30 a.m. to 6 p.m., Monday through Friday. During his employment, two or three of his paychecks bounced, but Respondent eventually covered the checks and Claimant Naidoo was paid for his work through July 31, 2003.

20) In or around early August 2003, Claimant Naidoo gave Respondent notice that he had accepted a job at Intel. He worked until August 17, 2003, and used paid time off to take a vacation between August 18 and August 22, 2003.

21) Respondent's employee handbook states that salaried employees regularly scheduled to work 30 or more hours per week are entitled to participate in the "company's PTO [paid time off] program." Hours are accrued as each year progresses and are based on years of service. The hours are available in the year they accrue, but

are subtracted from the paid time off hours available for the next year. Paid time off does not start to accrue until after the first 90 days of employment. The employee handbook does not state that "vacation time is not paid upon quitting and or termination." Claimant Naidoo was eligible for 4.5 paid days off in August 2003.

22) Claimant Naidoo performed work for Respondent and used 4.5 days of paid vacation time from August 1 through August 22, 2003, and earned gross wages of \$4,326.90. Respondent did not pay the wages when due and on August 30, 2003, Claimant Naidoo asked for his August paycheck. After numerous e-mail exchanges, Respondent sent Claimant Naidoo an e-mail on September 15, 2003, stating:

"The major issue we have at this time is as follows"

"1. SEI has not paid;

"2. Yaacov has not paid;

"a. I had to cover all outstanding Payroll checks and your amount. I am waiting for clearance of check since wires can only be for cash. I have deposits in the bank and you [are] next on the wire transfer amount. Last Friday the checks did not post yet.

"b. The payoff balance goes:

"i. Nilan

"ii. Alex

"iii. Aaron

"That is the order."

Finally, on September 18, 2003, Respondent informed Claimant Naidoo by e-mail that when he received funds promised to him by another company: "I will send them over to you ASAP." Claimant Naidoo never received any wages for August 2003.

23) At the time of hearing, Respondent owed Claimant Naidoo \$4,326.90 in unpaid wages.

24) Claimant Naidoo's penalty wages, computed in accordance with ORS 652.150, are \$8,652 (\$36.05 per hour x 8 hours per day x 30 days).

25) On or about April 14, 2003, Respondent hired Claimant Polehn as a computer hardware development engineer. He primarily worked on one project that involved designing hardware for a customer's media center with MP3 player. He also did circuit design and drafted proposals.

26) Respondent agreed to pay Claimant Polehn \$45,000 annually to work 40 hours per week. At first, Respondent paid Claimant Polehn by check, but when the checks began to bounce, they mutually agreed upon electronic deposit for future wage payments.

27) On or about September 22, 2003, Respondent told Claimant Polehn that the company was moving to Hillsboro and that Polehn was temporarily laid off. Respondent did not pay Polehn for the work he performed from September 2 through September 22, and on October 21, 2003, Polehn e-mailed Respondent a demand for his wages. Polehn advised Respondent that if the wages were not deposited in his account, he planned to file a wage claim with BOLI. Thereafter, they exchanged several e-mails and Respondent acknowledged the unpaid wages, but made excuses for the delay paying the amount owed. Despite his repeated requests, Polehn never received his wages for September 2003.

28) At the time of hearing, Respondent owed Claimant Polehn \$2,596.14 in unpaid wages.

29) Claimant Polehn's penalty wages, computed in accordance with ORS 652.150, are \$5,191 ($\21.63 per hour x 8 hours per day x 30 days).

30) While employed by Respondent, each claimant kept a spreadsheet or other contemporaneous record of their work hours.

ULTIMATE FINDINGS OF FACT

- 1) At times material herein, Respondent conducted business in Oregon under the name of a defunct corporation, RedcellX, Inc., and employed one or more persons in the operation of that business.
- 2) Respondent employed Claimant Burke from September 8 through October 21, 2003.
- 3) Respondent agreed to pay Claimant Burke \$6,400 per month.
- 4) Claimant Burke quit her employment with Respondent on October 21, 2003.
- 5) From September 8 through October 21, 2003, Claimant Burke earned \$6,400 and was not paid any wages for her services.
- 7) Respondent owes Claimant Burke \$6,400 in due and unpaid wages.
- 8) Respondent willfully failed to pay Claimant Burke the \$6,400 in earned, due and payable wages. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.
- 9) Penalty wages for Burke, computed pursuant to ORS 652.150, equal \$8,861.
- 10) Respondent employed Claimant Hickey from September 19 through October 14, 2003.
- 11) Respondent agreed to pay Claimant Hickey \$20,000 for a 12-month internship.
- 12) Claimant Hickey quit his employment with Respondent on October 14, 2003.
- 13) From September 19 through October 14, 2003, Claimant Hickey earned \$1,479.64 and was not paid any wages for his services.
- 14) Respondent owes Claimant Hickey \$1,479.64 in due and unpaid wages.

15) Respondent willfully failed to pay Claimant Hickey \$1,479.64 in earned, due and payable wages. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.

16) Penalty wages for Hickey, computed pursuant to ORS 652.150, equal \$2,309.

17) Respondent employed Claimant Naidoo from March 3 through August 22, 2003.

18) Respondent agreed to pay Claimant Naidoo \$75,000 annually.

19) Claimant Naidoo quit his employment with Respondent effective August 22, 2003.ⁱⁱⁱ

20) From August 1 through August 22, 2003, Claimant Naidoo earned \$4,326.90 and was not paid any wages for his services.

21) Respondent owes Claimant Naidoo \$4,326.90 in due and unpaid wages.

22) Respondent willfully failed to pay Claimant Naidoo \$4,326.90 in earned, due and payable wages. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.

23) Penalty wages for Naidoo, computed pursuant to ORS 652.150, equal \$8,652.

24) Respondent employed Claimant Polehn from September 1 through September 19, 2003.

25) Respondent agreed to pay Claimant Polehn \$45,000 annually.

26) Claimant Polehn was laid off on September 19, 2003.

27) From September 1 through September 19, 2003, Claimant Polehn performed work for Respondent and earned \$2,596.14 and was not paid anything for those services.

- 28) Respondent owes Claimant Polehn \$2,596.14 in due and unpaid wages.
- 29) Respondent willfully failed to pay Claimant Polehn \$2,596.14 in earned, due and payable wages. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.
- 30) Penalty wages for Polehn, computed pursuant to ORS 652.150, equal \$5,191.

CONCLUSIONS OF LAW

- 1) At all times material herein, Respondent was an employer and Claimants were employees subject to the provisions of ORS 652.110 to 652.200 and 652.310 to 652.405.
- 2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondent herein. ORS 652.310 to 652.414.
- 3) Respondent violated ORS 652.140(1) by failing to pay Claimant Polehn all wages earned and unpaid at the time Respondent terminated Polehn's employment. Respondent violated ORS 652.140(2) by failing to pay Claimants Burke, Hickey, and Naidoo all wages earned and unpaid after they quit Respondent's employment.
- 4) Respondent is liable for penalty wages under ORS 652.150 for willfully failing to pay all wages or compensation earned and due to Claimants Burke, Hickey, Naidoo, and Polehn when their employment terminated, as provided in ORS 652.140(1) and 652.140(2).
- 5) Under the facts and circumstances of this record, and according to the applicable law, the Commissioner of the Bureau of Labor and Industries has the authority to order Respondent to pay Claimants their earned, unpaid, due and payable wages and the civil penalty wages, plus interest on both sums until paid. ORS 652.332.

OPINION

Respondent failed to appear at hearing and the forum found him in default pursuant to OAR 839-050-0330. The Agency, therefore, was required to establish a prima facie case on the record to support the allegations in its charging document. *In the Matter of Barbara Blair*, 24 BOLI 89, 96 (2002). The forum may consider unsworn assertions contained in a defaulting respondent's answer when making factual findings, but those assertions are overcome whenever controverted by other credible evidence. *Id.*

Additionally, pursuant to OAR 839-050-130(2), "factual matters alleged in the charging document and not denied in the answer will be deemed admitted by the party." In his answer, Respondent did not deny employing Claimants Burke, Naidoo, and Polehn during the time alleged or deny that he owed Claimants Burke and Polehn the amounts they claim he owed when they quit their employment and the forum deems those matters admitted. However, Respondent contended in his answer that Claimant Hickey was engaged as an unpaid intern for 30 days and "requested halfway through his internship to be paid \$2,000 for his time." He further contended that Claimant Naidoo's wage claim includes "vacation time which he had not accumulated and attempted to take after leaving the company" and fails to "reflect any deductions for health care" that Claimant Naidoo allegedly owed when he quit his employment. Those contentions are overcome by credible evidence in the record.

WAGE CLAIMS

The Agency's prima facie case consists of credible evidence showing: 1) Respondent employed Claimants; 2) Respondent paid or agreed to pay Claimants a fixed rate; 3) Claimants performed work for which they were not properly compensated; and 4) the amount and extent of work Claimants performed for Respondent. *In the Matter of Barbara Coleman*, 19 BOLI 230, 262-63 (2000). Based on Respondent's

answer and credible evidence in the record, there is no dispute that Respondent employed Claimants Burke, Naidoo, and Polehn and that he paid or agreed to pay the fixed amount they claim they were either promised or paid. Moreover, evidence shows and Respondent does not dispute that all of the Claimants, including Hickey,^{iv} performed work for which they were not properly compensated. Respondent did not contest and the forum therefore deems admitted the amount and extent of work Claimants Burke, Polehn, and Hickey performed for Respondent. The only issues, therefore, are whether Respondent agreed to pay Claimant Hickey a fixed wage rate and whether Claimant Naidoo's vacation time was properly included as compensation that he was entitled to receive when he quit his employment.

A. Respondent agreed to pay Claimant Hickey \$20,000 for a one year internship.

Credible evidence controverts Respondent's claim that Claimant Hickey was an unpaid intern who "failed to turn in proper legal documents to establish his internship." Hickey's credible testimony that Respondent hired him as a project manager for 12 months and agreed to pay him \$20,000 for 30 to 40 hour workweeks is corroborated by Respondent's announcement, placed through SBA's Career Services Business Internship Program, recruiting business students for an "internship opportunity [for] Fall 2003." The announcement clearly states the conditions and terms of the internship opportunity and is consistent with Hickey's account of how and under what circumstances he was hired by Respondent. Respondent's admission that Hickey performed three weeks of "internship work," Hickey's testimony, and the recruitment announcement establish that Hickey's agreed upon rate of pay was \$20,000 for 12 months of service, which the Agency, by amendment, pro-rated at \$9.62 hourly.

B. Claimant Naidoo earned paid vacation hours for which he was not properly compensated.

Claimant Naidoo's claim includes paid vacation days that he used during the last week that he was employed. Credible evidence, including an excerpt from Respondent's company policy, shows Naidoo was eligible for paid time off and was not restricted from using it during the time period he claimed. In fact, the company policy states: "You are allowed to manage your paid time off to best accommodate your personal needs." When he left Respondent's employment, Claimant Naidoo had earned four and one half paid vacation days and had the discretion to use those days to suit his personal needs.

ORS 652.210(3) defines "wages" as "all compensation for performance of service by an employee for an employer whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash." The forum finds that paid time off, when used in accordance with company policy, is compensation for services performed by an employee for an employer and constitutes "wages" as defined by statute. In this case, Claimant Naidoo's compensation package included paid time off which he used in accordance with company policy. The Agency determined that he was entitled to use those vacation days and appropriately included that amount when computing Claimant Naidoo's unpaid wages.

Based on the credible evidence herein, the forum finds that the Agency established a prima facie case and Respondent owes Claimants unpaid wages for the time period alleged and in the amounts established in the record.

PENALTY WAGES

The forum may award penalty wages when it determines that a respondent's failure to pay wages was willful. Willfulness does not imply or require blame, malice, or moral delinquency. A respondent commits an act or omission "willfully" if the

respondent acts or fails to act intentionally, as a free agent, and with knowledge of what is being done or not done. *Sabin v. Willamette Western Corp.*, 276 Or 1083, 557 P2d 1344 (1976).

The record is replete with evidence that shows Respondent knew he owed Claimants wages and engaged in a pattern of conduct designed to avoid paying the wages. Respondent acted voluntarily and as a free agent when he failed to pay all of the wages they were owed when they quit their employment. Respondent's failure to pay was willful and Respondent is liable to each Claimant for penalty wages under ORS 652.150(1) (providing that "as a penalty for such [willful] nonpayment, the wages or compensation of such employee shall continue from the due date thereof at the same hourly rate for eight hours per day until paid or until action therefor is commenced. However, in no case shall such wages or compensation continue for more than 30 days from the due date"). In accordance with ORS 652.150(1), the forum has determined that Claimant Burke's penalty wages total \$8,861 (computed by multiplying her hourly rate of \$36.92 per hour by 8 hours per day multiplied by 30 days); Claimant Hickey's penalty wages total \$2,309 (computed by multiplying his hourly rate of \$9.62 per hour by 8 hours per day multiplied by 30 days); Claimant Naidoo's penalty wages total \$8,652 (computed by multiplying his hourly rate of \$36.05 per hour by 8 hours per day multiplied by 30 days); and Claimant Polehn's penalty wages total \$5,191 (computed by multiplying his hourly rate of \$21.63 per hour by 8 hours per day multiplied by 30 days).

ORDER

NOW, THEREFORE, as authorized by ORS 652.332, and as payment of the unpaid wages, Respondent **Troy Melquist** is hereby ordered to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2180, the following:

A certified check payable to the Bureau of Labor and Industries, in trust for Claimant Mary Ann Burke, in the amount of FIFTEEN THOUSAND TWO HUNDRED SIXTY ONE DOLLARS (\$15,261), less appropriate lawful deductions, representing \$6,400 in gross earned, unpaid, due and payable wages and \$8,861 in penalty wages, plus interest at the legal rate on the sum of \$6,400 from December 1, 2003, until paid and interest at the legal rate on the sum of \$8,861 from January 1, 2004, until paid.

A certified check payable to the Bureau of Labor and Industries, in trust for Claimant Scott L. Hickey, in the amount of THREE THOUSAND SEVEN HUNDRED EIGHTY EIGHT DOLLARS AND SIXTY FOUR CENTS (\$3,788.64), less appropriate lawful deductions, representing \$1,479.64 in gross earned, unpaid, due and payable wages and \$2,309 in penalty wages, plus interest at the legal rate on the sum of \$1,479.64 from November 1, 2003, until paid and interest at the legal rate on the sum of \$2,309 from December 1, 2003, until paid.

A certified check payable to the Bureau of Labor and Industries, in trust for Claimant Nilanthren V. Naidoo, in the amount of TWELVE THOUSAND NINE HUNDRED SEVENTY EIGHT DOLLARS AND NINETY CENTS (\$12,978.90), less appropriate lawful deductions, representing \$4,326.90 in gross earned, unpaid, due and payable wages and \$8,652 in penalty wages, plus interest at the legal rate on the sum of \$4,326.90 from October 1, 2003, until paid and interest at the legal rate on the sum of \$8,652 from November 1, 2003, until paid.

A certified check payable to the Bureau of Labor and Industries, in trust for Claimant Michael A. Polehn, in the amount of SEVEN THOUSAND SEVEN HUNDRED EIGHTY SEVEN DOLLARS AND THIRTY FOUR CENTS (\$7,787.14), less appropriate lawful deductions, representing \$2,596.14 in gross earned, unpaid, due and payable wages and \$5,191 in penalty wages, plus interest at the legal rate on the sum of \$2,596.14 from November 1, 2003, until paid and interest at the legal rate on the sum of \$5,191 from December 1, 2003, until paid.

ⁱ Burke's hourly rate equals her monthly salary multiplied by 12 months, divided by 52 weeks, and divided by 40 hours per week.

ⁱⁱ Pursuant to Agency policy, penalty wages are rounded off to the nearest dollar.

ⁱⁱⁱ See Finding of Fact – The Merits 20.

^{iv} On the one hand, Respondent claimed in his answer that Hickey was an unpaid intern, but then apparently abandoned that argument by stating that Hickey "failed to turn in proper legal documents to establish his internship." Respondent then admitted that Hickey was not paid for "[three] weeks of internship work" because he "failed to supply the proper required information for hours worked" and "failed to fill out proper tax forms for any payment or 1099 payment." The forum has deemed the latter statement an admission that Hickey performed work for which he was not properly compensated.