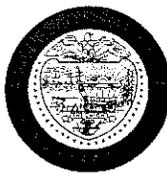


BRAD AVAKIAN
COMMISSIONER



CHRISTIE HAMMOND
DEPUTY COMMISSIONER

BUREAU OF LABOR AND INDUSTRIES

BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

In the Matter of:

PORTLAND FLAGGING, LLC; A D
TRAFFIC CONTROL SERVICES,
LLC; TRI-STAR FLAGGING, LLC;
PORTLAND SAFETY EQUIPMENT,
LLC; PHOENIX CONSTRUCTION
GROUP, INC.; SBG
CONSTRUCTION SERVICES LLC;
GNC CONSTRUCTION SERVICES
LLC; EVAN WILLIAMS AND
KENYA SMITH AKA KENYA
SMITH-WILLIAMS,

Respondents.

Case No. 37-13

FINDINGS OF FACT
ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

Respondents Portland Flagging, LLC ("Portland Flagging") and A D Traffic Control Services, LLC ("A D Traffic") failed to pay the prevailing wage rate to 13 workers on public works projects when they did not make timely deposits to the workers' fringe benefit accounts. Civil penalties of \$9,491.34 are imposed on Portland Flagging and A D Traffic for failing to pay the prevailing wage rate. Additionally, civil penalties of \$16,000 are assessed against Portland Flagging and A D Traffic for filing 16 inaccurate certified payroll reports. Portland Flagging and A D Traffic are placed on the list of ineligible to receive public contracts for a period of three years because they intentionally falsified information in the certified payroll statements. As the corporate officer responsible for the intentional falsification, Respondent Evan Williams is placed on the list of ineligible to receive public contracts for a three year period.

1 The above-entitled case came on regularly for hearing before Kari Furnanz,
2 designated as Administrative Law Judge ("ALJ") by Brad Avakian, Commissioner of the
3 Bureau of Labor and Industries for the State of Oregon. The hearing was held in the W.
4 W. Gregg Hearing Room of the Oregon Bureau of Labor and Industries, located at 800
5 NE Oregon Street, Suite 1045, Portland, Oregon on April 22, 2015.

6 The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by
7 Administrative Prosecutor Adriana Ortega, an employee of the Agency. Evan Williams
8 was the authorized representative for Portland Flagging, A D Traffic, Tri-Star, LLC,
9 Portland Safety Equipment, LLC, Phoenix Construction Group, Inc., SBG Construction
10 Services LLC, and GNC Construction Services LLC, and presented the case on behalf
11 of those Respondents and himself. Respondent Kenya Smith was also present at the
12 hearing.

13
14 The Agency called Prevailing Wage Rate Compliance Specialist Hannah Wood
15 as a witness. Respondents submitted an offer of proof as to the testimony of Alene
16 Watkins and Kenya Smith as witnesses.

17 The forum received into evidence:

- 18 a) Administrative exhibits X1 through X34;
19 b) Agency exhibits A2 through A10, and A15 through A29.
20 c) No exhibits were offered or received on behalf of Respondents.

21 Having fully considered the entire record in this matter, I Christine N. Hammond,
22 Deputy Commissioner of the Bureau of Labor and Industries, hereby make the following
23 Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions
24
25

1 of Law, Opinion, and Order.¹

2 **FINDINGS OF FACT – PROCEDURAL**

3 1) On November 5, 2014, the Agency issued a Notice of Intent (NOI) to
4 Portland Flagging, LLC, A D Traffic, Tri-Star Flagging, LLC and Portland Safety
5 Equipment, LLC. The NOI alleged that A D Traffic failed to timely pay all prevailing
6 wage rate wages owed to its employees, and requested civil penalties of \$13,000 for
7 those alleged violations. The NOI also alleged that Respondents submitted inaccurate
8 certified payroll statements, and sought civil penalties in the amount of \$16,000 for
9 those violations. Finally, the NOI asserted that Respondents should be placed on the
10 list of those ineligible to receive public works contracts for intentionally falsifying
11 information on certified payroll statements. (Ex. X1a)

12 2) An answer and request for hearing from the attorney representing
13 Portland Flagging, LLC, A D Traffic, Tri-Star Flagging, LLC and Portland Safety
14 Equipment, LLC was received by BOLI's Wage and Hour Division on November 25,
15 2014. In the answer, the Agency's allegations were denied. (Ex. X1b)

16 3) On November 26, 2014, the forum issued a Notice of Hearing to
17 Respondents A D Traffic, Tri-Star and Portland Flagging, and the Agency setting the
18 time and place of hearing for 9:00 a.m. on February 10, 2015, at BOLI's Portland office.
19 Together with the Notice of Hearing, the forum sent a copy of the Notice of Intent, a
20 multi-language warning notice, a document entitled "Summary of Contested Case
21 Rights and Procedures" containing the information required by ORS 183.413, a
22 document entitled "Servicemembers Civil Relief Act (SCRA) Notification, and a copy of
23
24

25 ¹ The Ultimate Findings of Fact required by OAR 839-050-0370(1)(b)(B) are subsumed within the Findings of Fact – The Merits.

1 the forum's contested case hearings rules, OAR 839-050-000 to 839-050-0445. (Exs.
2 X2, X2a-X2e)

3 4) On December 23, 2014, the ALJ issued an Interim Order seeking
4 clarification as to whether Respondents were represented by the attorney who filed its
5 answer and instructed the attorney to file a notice of withdrawal, if he intended to resign,
6 so that the record was clear on this matter. The Interim Order further stated:

7 "Furthermore, assuming [Respondents' attorney] does withdraw as
8 counsel, other counsel or an authorized representative must appear on behalf of
9 each Respondent as they are all limited liability companies. Limited liability
10 companies are unincorporated associations. ORS 63.001(17). OAR 839-050-
11 0110(1) requires that unincorporated associations must be represented at all
12 stages of the proceeding either by counsel or by an authorized representative.
13 An authorized representative includes an "authorized officer or regular employee"
14 of the limited liability company. OAR 839-050-0110(2). **Before a person may
15 appear as an authorized representative, the limited liability corporation that
16 is a party to the contested case proceeding must file a letter specifically
17 authorizing the person to appear on behalf of the party.** OAR 839-050-
18 0110(3)."

19 (Ex. X3)

20 5) On December 24, 2014, Respondents' attorney filed a motion to withdraw
21 as counsel. The motion was granted in an Interim Order issued by the ALJ on January
22 9, 2015. (Exs. X4, X6)

23 6) On January 7, 2015, a letter was submitted to the ALJ from Evan Williams,
24 stating that he was the authorized representative and "acting as President" for A D
25 Traffic, Tri-Star, Portland Flagging and Portland Safety Equipment. (Ex. X5)

7) On January 12, 2015, the ALJ issued an Interim Order explaining the
requirements for filing motions and other documents, which notified the parties that all
documents needed to be submitted in writing to BOLI's Contested Case Coordinator.
The ALJ also issued an Interim Order requiring the parties to file case summaries which

1 identified witnesses and exhibits two weeks in advance of the date set for hearing.
2 (Exs. X7, X8)

3 8) A prehearing conference was held on January 16, 2015, to discuss this
4 case and two other cases involving Respondents which were set for hearing February
5 10, 2015. The primary topic of discussion concerned whether the three cases should
6 be consolidated for hearing. Neither the Agency nor Respondents had submitted a
7 motion to consolidate the cases. The ALJ issued an Interim Order stating that there
8 was insufficient information to conclude that the cases involve common questions of law
9 or fact pursuant to OAR 839-050-0190 and determined that there would be a separate
10 hearing for each of the three cases. The ALJ further ruled that, at the conclusion of the
11 hearing in Case No. 28-15, a prehearing conference would be held in Case Nos. 37-13
12 and 14-14 to discuss the timeline for ruling on the motions for summary judgment and
13 hearing dates. The deadline for filing case summaries and exhibits was postponed and
14 was to be rescheduled at a later date. (Ex. X10)

15
16 9) The Agency filed a motion for partial summary judgment on January 20,
17 2015, asserting that there is no genuine issue of material fact regarding the claims
18 alleged in the NOI. On January 21, 2015, the ALJ issued an Interim Order requiring
19 Respondents to file a written response to the motion. Respondents' authorized
20 representative Evan Williams filed a response to the motion on January 27, 2015. (Exs.
21 X9, X10 - X11)

22 10) Respondents submitted a case summary on January 27, 2015, which
23 identified three exhibits, but did not list the names of any witnesses who would testify at
24 hearing. (Ex. X13)
25

1 11) On February 2, 2015, the ALJ issued an Interim Order granting the
2 Agency's unopposed motion to postpone the hearing so that the Agency could have
3 additional time to review documents recently produced by Respondents. The ALJ set a
4 new hearing date of April 7, 2015. (Ex. X34)

5 12) The ALJ issued interim orders regarding the Agency's motions to compel
6 discovery, which are summarized in the Findings of Fact - Procedural in the Final Order
7 for Case No. 28-15. (*In the Matter of Portland Flagging, LLC, #28-15*, 34 BOLI 244, 246
8 (2016))

9 13) The Agency filed a second motion for summary judgment on February 19,
10 2015, asserting that there is no genuine issue of material fact regarding Respondents'
11 intentional filing of falsified certified statements. On February 23, 2015, the ALJ issued
12 an Interim Order requiring Respondents to file a written response to the motion.
13 Respondents' authorized representative Evan Williams filed a response to the motion
14 on February 27, 2015. (Exs. X14, X15, X17)

15 14) On February 25, 2015, the ALJ issued an interim order reminding the
16 Agency that during the Prehearing Conference held on January 16, 2015, the Agency
17 stated that it intended to amend the Notice of Intent in this matter to include the missing
18 "Exhibit A" and that the potential amendment was also referenced in the ALJ's interim
19 order of January 21, 2015. As of February 25, 2015, an "Exhibit A" was not attached to
20 the NOI and the NOI did not include the names of the employees whom Respondents
21 allegedly failed to pay the prevailing wage rate.
22

23 The interim order of February 25, 2015, also stated that if the Agency did not file
24 an amended NOI which included the missing information by February 27, 2015, the ALJ
25

1 would rule on the pending summary judgment motions based on the allegations in the
2 NOI dated November 5, 2014. The Agency did not file an amended NOI by February
3 27, 2015. On March 2, 2015, the Agency filed a motion for extension of time to amend
4 the NOI, asserting that the Agency just noticed the deadline that day and was unable to
5 amend the document by February 27, 2015. The Agency further stated that "several
6 amendments will need to be made to the" NOI. (Ex. X16, X18)

7 15) On March 2, 2015, the ALJ issued an interim order denying the Agency's
8 motions for summary judgment. The pertinent portion of the ALJ's interim order is
9 reprinted below:

10 "In its motions, the Agency argues that Respondents violated ORS
11 279C.800, 279C.840(1), OAR 839-025-0043(1) and OAR 839-025-0040 by
12 withholding fringe benefit amounts from the paychecks of 36 workers and then
13 failing to deposit the withdrawn amounts into a fringe benefit plan. The Agency
14 also asserts that Respondents violated ORS 279C.845(3) and OAR 839-025-
15 0010(1) by inaccurately certifying that the all workers were paid full wages and
16 benefits. The Agency further requests that Respondents be placed on the list of
17 ineligible for falsifying information in certified statements, in violation of ORS
18 279C860(1)(d) and OAR 839-025-0010(1)(d). It is the Agency's burden to prove
19 that an employer did not pay all deducted fringe benefits into the employer's
20 fringe benefit plan. *In the Matter of Green Thumb Landscape and Maintenance,*
21 *Inc.*, 32 BOLI 185, 198 (2013).

22 "All of the arguments in the Agency's motions are based on the allegation
23 that Respondents withdrew fringe benefit amounts from the paychecks of
24 'workers,' but failed to deposit those amounts into a fringe benefit plan.
25 However, the NOI does not identify the names of the 'workers' or the amounts
that were allegedly withheld and not deposited into a fringe benefit plan. The
forum has previously dismissed allegations when the Agency failed to correctly
identify the issues in its NOI. *See Green Thumb*, 32 BOLI at 197 (dismissing
allegations of unpaid overtime when the Agency failed to identify the violations
correctly or move to amend the NOI at hearing to conform to the evidence).
Similarly in this matter, even if some violations could be inferred from the
Agency's evidence submitted in support of its motions for summary judgment, the
Agency cannot prevail at this time because the violations are not identified in the
NOI. *Id.* Accordingly, the Agency has failed to sustain its burden in proving a
violation and the motion for summary judgment is **DENIED**.

1 “The Agency has indicated that ‘several amendments will need to be
2 made to the’ NOI. In light of that fact, the requirements set forth in my Interim
3 Order of February 25, 2015, are rescinded and the Agency’s Motion for
4 Extension filed today is, therefore, moot. This case remains set for hearing on
5 April 7, 2015.”

6 (Ex. X19)

7 16) On March 9, 2015, an interim order was issued resetting the hearing date
8 to April 9, 2015, and setting a new case summary deadline of March 26, 2015. (Ex.
9 X20)

10 17) On March 11, 2015, the Agency filed an Amended NOI which added
11 Phoenix Construction Group, Inc., SBG Construction Services, LLC, GNC Construction
12 Services LLC, Evan Williams and Kenya Smith aka Kenya Smith-Williams as
13 Respondents. The Amended NOI also asserted joint and several liability allegations
14 against all Respondents and contended that Williams was directly liable because the
15 corporate veil was pierced. (Ex. X21)

16 18) The Agency filed a third motion for summary judgment on March 19, 2015,
17 asserting that there is no genuine issue of material fact regarding Respondents’ liability
18 for the allegations in this matter. On April 1, 2015, after conferring with the parties by e-
19 mail, the ALJ issued Interim Orders requiring Respondents to file a written response to
20 the motion by April 6, 2015, and postponing the hearing until April 21, 2015, to allow
21 sufficient time for the ALJ to rule on the motion. Respondents’ response deadline was
22 later extended until April 14, 2015. Respondents’ authorized representative Evan
23 Williams filed a response to the motion on April 14, 2015. (Exs. X22, X24, X27, X28)

24 19) The Agency filed a case summary on March 25, 2015, and an Amended
25 Case Summary on April 17, 2015. (Exs. X23, X29)

1 20) On April 6, 2015, the Agency filed a letter with notice that it was arranging
2 for security to be present at the hearing due to safety concerns in Case No. 28-15. An
3 Oregon State Police Trooper was present during the hearing for this case (No. 37-13)
4 because it involved the same Respondents as in Case No. 28-15. (*In the Matter of*
5 *Portland Flagging, LLC, #28-15, 34 BOLI 244, 258 (2016)*;² Hearing Record)

6 21) On April 7, 2015, Respondents filed a motion requesting additional time to
7 submit their case summary, and for a postponement of the hearing for one week to
8 provide Respondents with sufficient time to prepare for the hearing. After a discussion
9 on the record following the hearing in a companion case, the ALJ issued an interim
10 order on April 10, 2015, setting a new hearing date of April 21, 2015, and extending the
11 case summary deadline until April 14, 2015. The interim order of April 10, 2015, also
12 noted that Respondents filed a document titled Motion to Remove Entities on April 7,
13 2015 and that the ALJ was considering Respondents' motion as a motion for summary
14 judgment pursuant to OAR 839-050-0150(4). The motion was denied because it was
15 untimely filed, pursuant to OAR 839-050-0150(4)(c). (Exs. X26, X27) The ALJ's ruling
16 on Respondents' motion is hereby CONFIRMED.

17
18 22) On April 10, 2015, the issue of the liability of the remainder of the
19 Respondents was bifurcated from the claims against Portland Flagging, and then
20 consolidated with Case Nos. 28-15, 37-13 and 14-14. The hearing for those
21 consolidated matters was postponed until pending default issues were fully resolved in
22 related cases involving all Respondents, and those will be addressed in a separate
23

24
25 ² The Commissioner previously issued two Final Orders involving Portland Flagging in 2015 and 2016. The citation for the second Final Order issued in 2016 includes Case No. 28-15 to assist in differentiating between the two Final Orders.

1 Final Order. (*In the Matter of Portland Flagging, LLC*, 34 BOLI 208, 213 (2015))

2 23) On April 21, 2015, the ALJ issued an interim order ruling on the Agency's
3 motion for summary judgment that was filed on March 19, 2015. The ALJ's interim
4 order is reprinted below in its entirety:

5 "On March 11, 2015, the Agency issued an Amended Notice of Intent
6 ("ANOI") to Place on List of Ineligibles and Notice of Intent to Assess Civil
7 Penalties in this matter against the above-referenced Respondents. The
8 allegations in the ANOI are based upon the alleged failure to timely pay
9 prevailing wages.

10 "The Agency filed a motion for summary judgment on March 19, 2015,
11 asserting that there is no genuine issue of material fact regarding Respondents'
12 failure to pay unpaid wages, assessment of civil penalties and placement on the
13 list of ineligibles. Respondents timely filed a response to the motion on April 14,
14 2015, after receiving an extension of time to file their response.

15 **"Summary Judgment Standard**

16 "A motion for summary judgment may be granted where no genuine issue
17 as to any material fact exists and a participant is entitled to a judgment as a
18 matter of law, as to all or any part of the proceedings. OAR 839-050-0150(4)(B).
19 The standard for determining if a genuine issue of material fact exists and the
20 evidentiary burden on the participants is as follows:

21 " * * * No genuine issue as to a material fact exists if, based upon
22 the record before the court viewed in a manner most favorable to
23 the adverse party, no objectively reasonable juror could return a
24 verdict for the adverse party on the matter that is the subject of the
25 motion for summary judgment. The adverse party has the burden
of producing evidence on any issue raised in the motion as to which
the adverse party would have the burden of persuasion at
[hearing]."

"ORCP 47C.

"The record considered by the forum in deciding this motion consists of:
(1) the Agency's ANOI, the Agency's argument made in support of its motions,
and the exhibits submitted with the Agency's motions; and (2) Respondents'
Answer, Respondents' argument opposing the Agency's motions, and the
exhibits submitted in Respondents' response to the Agency's motions.

1 **“ANALYSIS**

2 “In its motion, the Agency argues that Respondents violated ORS
3 279C.840 by withholding fringe benefit amounts from the paychecks of the wage
4 claimants listed in Exhibit A to the ANOI and then failing to deposit the withdrawn
5 amounts into a fringe benefit plan as required by ORS 279C.800(1)(a). It is the
6 Agency's burden to prove that an employer did not pay all deducted fringe
7 benefits into the employer's fringe benefit plan. *In the Matter of Green Thumb
8 Landscape and Maintenance, Inc.*, 32 BOLI 185, 198 (2013).

9 1. Liability of Respondent A D Traffic Control Services LLC for Unpaid
10 Wages

11 “The Agency asserts that Respondents withdrew fringe benefit funds from
12 the wage claimants' paychecks without depositing those amounts into a fringe
13 benefit plan in the time required by law. Respondents do not dispute that A D
14 Traffic Control Services, LLC employed the wage claimants or that fringe benefit
15 funds were withdrawn from the wage claimants' paychecks. Respondents further
16 do not dispute that the deposits into the fringe benefit accounts of twelve workers
17 listed in Exhibit A to the ANOI for the second quarter of 2012 (April, May and
18 June) were not made until October 1, 2012.

19 “Prevailing wage payments must be made to employees ‘in cash [or] by
20 the making of contributions of a type referred to in ORS 279C.800(1)(a).’ ORS
21 279C.840(1). ORS 279C.800(1)(a) defines prevailing wage fringe benefit
22 payments as the ‘rate of contribution a contractor or subcontractor makes
23 irrevocably to a trustee or to a third person under a plan, fund or program.’ It is
24 clear that any timely (i.e. ‘not less often than quarterly’) contributions made to
25 The Contractors' Plan would be valid. OAR 839-025-0043(1).

26 “However, to make late contributions, employers must follow a specific set
27 of steps, which includes notice and potential repayment of investment losses, in
28 order to validly contribute to a retirement plan. See, e.g., 29 CFR § 2510.3-
29 102(d); 67 Fed. Reg. 15,051, 15,062 (March 28, 2002). There is no evidence in
30 this case that the late contributions made to the accounts of the twelve workers
31 listed in Exhibit A for the second quarter of 2012 followed an appropriate
32 delinquent contribution payback method. Rather, it appears that only the
33 amounts deducted from the wage claimants' paychecks in April, May and June of
34 2012 were deposited into The Contractor's Plan several months later in October
35 2012. Accordingly, I find that the contributions Respondents made on October
36 1, 2012, do not satisfy the requirements of ORS 279C.840(1) and ORS
37 279C.800(1)(a), and the Agency's motion on this issue is **GRANTED**.

38 “The Agency also contends that the Respondents did not timely submit the
39 fourth quarter 2011 contribution for Claimant Leo Montgomery. Respondents
40 argue that the contribution made on January 31, 2012, was made on a regular
41 basis on a date established by the contractor. For summary judgment purposes

1 when viewing the evidence in the light most favorable to Respondents, I find that
2 there is an issue of fact as to whether this contribution was timely and the
Agency's motion on this issue is **DENIED**.

3 **2. Amount of Civil Penalties**

4 "Civil penalties may be imposed against employers who do not comply
5 with Oregon's prevailing wage statutes. ORS 279C.865; OAR 839-025-
6 0530(3)(a). The Agency may assess a civil penalty in the amount of the unpaid
7 wages or \$1000, whichever is lesser. OAR 839-025-0540. In this case, the
8 Agency seeks civil penalties of \$1000 for each late contribution on behalf of a
9 wage claimant. Respondents argue that this amount is "excessive and egregious
10 due to the fact that all wages were paid." Viewing the evidence in the light most
11 favorable to Respondents, it appears that Respondents have addressed at least
12 some of the mitigating circumstances set forth in OAR 839-025-0520 which may
13 warrant a reduction of the amount of civil penalty. Accordingly, the Agency's
14 motion on this issue is **DENIED**.

15 **3. Placement on the List of Ineligibles**

16 "The Agency argues, pursuant to ORS 279C.860 and OAR 839-025-0010,
17 that Respondents should be placed on the list of ineligibles because Evan
18 Williams directed his staff to sign false statements certifying that employees' full
19 wages were paid. Respondents argue that it was Mr. Williams's intent to make
20 the quarterly fringe benefit deposits when the weekly certified statements were
21 completed. Therefore, Respondents contend that the Agency did not establish
22 the element of 'intent' which is necessary to place Respondents on the list of
23 ineligibles. Although the evidence submitted by Respondents as to a 'good faith'
24 intention to submit fringe benefit contributions is weak, when viewing it in the light
25 most favorable to Respondents, I am unable to grant the Agency's motion on this
issue and thus the motion is **DENIED**.

Summary of Rulings

"I have granted the Agency's motion for summary judgment on the
following issues and, therefore, facts regarding these matters do not need to be
presented at the upcoming hearing:

- The wage claimants listed in Exhibit A to the ANOI were employed by Respondent AD Traffic Control Services, LLC.
- The fringe benefit contributions Respondents made on October 1, 2012, on behalf of the wage claimants list in Exhibit A to the ANOI were not timely made, and do not satisfy the requirements of ORS 279C.840(1) and ORS 279C.800(1)(a)."

1 "I have denied the Agency's motion for summary judgment on the
2 following issues and, therefore, facts regarding these matters are at issue at the
3 upcoming hearing:

- 4 • Whether the January 31, 2012, contribution made on behalf of
5 Claimant Montgomery was timely.
- 6 • The amount of civil penalties that should be awarded based on the
7 mitigating factors outlined in OAR 839-025-0520(1).
- 8 • Whether Respondents should be placed on the list of ineligible.

9 **IT IS SO ORDERED"**

10 (Ex. X30) The ALJ's ruling on the Agency's motion for summary judgment is hereby
11 CONFIRMED.

12 24) On April 20, 2015, the Agency filed a motion for postponement. The
13 Agency notified the ALJ and Respondents by email on April 20, 2015, that it was
14 requesting to postpone the hearing by one day. On April 21, 2015, the ALJ issued an
15 order postponing the hearing by one day and setting a new hearing date of April 22,
16 2015. (Exs. X31, X32)

17 25) On April 21, 2015, the ALJ issued an interim order supplementing its ruling
18 on the Agency's motion for summary judgment that was filed on March 19, 2015. The
19 ALJ's supplemental interim order is reprinted below in its entirety:

20 "In response to a question from the Agency about the summary judgment
21 ruling issued today, I hereby issue the following supplemental order.

22 "Because the fringe benefit contributions made on October 1, 2012, for the
23 second quarter of 2012, on behalf of the wage claimants listed in Exhibit A to the
24 Amended Notice of Intent were not in compliance with the law, it follows that the
25 certified payroll statements associated with the second quarter of 2012 were in
violation of ORS 279C.845 and OAR 839-025-0010. However, as stated in the
summary judgment ruling of this date, there is a question of fact as to whether
the violations were "intentional" and, thus, whether Respondents should be
placed on the list of ineligible.

"Because there is a question of fact as to whether the January 31, 2012,
contribution made on behalf of Claimant Montgomery was timely, there is also a

1 question of fact as to whether there was a violation for submitting inaccurate
2 certified payroll statements.

3 **IT IS SO ORDERED"**

4 (Ex. X33) The ALJ's supplemental ruling on the Agency's motion for summary
5 judgment is hereby CONFIRMED.

6 26) The hearing convened on April 22, 2015, and went into recess that
7 afternoon. (Hearing Record)

8 27) Respondents were permitted to make an offer of proof regarding the
9 testimony of witnesses who were not permitted to testify because they were not listed
10 as witnesses on Respondents' Case Summary. (Hearing Record)

11 28) On February 10, 2016, a document signed by Commissioner Brad
12 Avakian titled Notice to the Forum was filed. The Notice stated that the Commissioner
13 designated and authorized Deputy Commissioner Christine N. Hammond to issue any
14 and all Final Orders in this case. The Contested Case Coordinator served all of the
15 parties with a copy of the Notice.

16 29) The ALJ issued a proposed order on February 12, 2016, that notified the
17 participants they were entitled to file exceptions to the proposed order within ten days of
18 its issuance. The Agency timely filed exceptions on February 22, 2016. No exceptions
19 were filed by Respondents. The Agency's exceptions are addressed following the
20 Opinion section of this Final Order.

21 **FINDINGS OF FACT – THE MERITS**

22 1) Portland Flagging and A D Traffic Control jointly employed workers as
23 flaggers on a public works road construction project in 2011 and 2012. (Exs. A6, A9;
24 Testimony of Wood)
25

1 2) The funds Portland Flagging and A D Traffic withheld from the paychecks
 2 of 12 workers from April 1 to June 30, 2012, for fringe benefits were not deposited into
 3 the workers' fringe benefit accounts until October 1, 2012. The dates of the fringe
 4 benefit deductions and the amounts deducted were as follows:

<u>Worker</u>	<u>April 2012</u>	<u>May 2012</u>	<u>June 2012</u>	<u>Total</u>
Brown	\$68.10	\$834.23	\$68.10	\$970.43
Dishman	\$266.73	\$1310.93	\$102.15	\$1,679.81
Ford	\$0.00	\$246.86	\$0.00	\$246.86
Ford III	\$0.00	\$246.86	\$102.15	\$349.01
Harrison	\$649.79	\$942.05	\$73.78	\$1,665.62
Kelley	\$1,001.64	\$666.81	\$102.15	\$1,770.60
Lewis	\$312.13	\$0.00	\$0.00	\$312.13
Lockhart	\$0.00	\$289.43	\$102.15	\$391.58
Peek	\$0.00	\$119.18	\$102.15	\$221.33
Stumpf	\$527.78	\$618.58	\$107.83	\$1,254.19
Trent	\$720.73	\$743.43	\$102.15	\$1,566.31
Triplett	\$442.65	\$817.20	\$102.15	\$1,362.00

18
 19 (Exs. A12, A13)

20 3) Deductions in the amount of \$1,623.45 were taken from the paychecks of
 21 Leo Montgomery during the fourth quarter (October, November and December) of 2011.
 22 The withheld funds were deposited into a fringe benefit account on his behalf on
 23 January 31, 2012. (Ex. A7, p. 5)

24 4) Respondents provided the Compliance Specialist with WH-38 certified
 25 payroll statements for weeks ending as follows: 9/24/11, 10/8/2011, 10/15/2011,

1 10/22/11, 10/29/11, 11/5/11, 12/3/11, 4/7/12, 4/14/12, 4/21/12, 4/28/12, 5/5/12, 5/12/12,
2 5/19/12, 5/26/12 and 6/2/12. Each of those statements was signed by "Alene Watkins,
3 Payroll," and was certified to be accurate. The statements identified amounts withheld
4 for fringe benefits on behalf of the workers and included the following statement:

5 "Where fringe benefits are paid to approved plans, funds, or programs[,] *
6 ** in addition to the basic hourly rates paid to each laborer or mechanic listed in
7 the above referenced payroll, *payments of fringe benefits as listed in the contract*
8 *have been or will be made to the appropriate programs for the benefit of such*
9 *employee."*

10 (Ex. A9, emphasis added)

11 5) BOLI's Compliance Specialist previously investigated complaints from four
12 other workers who worked on the same project. Although the Agency may assess civil
13 penalties for first time violations, the Agency did not do so with respect to those initial
14 four complaints because it is the Agency's practice to first attempt to bring employers
15 into compliance before assessing civil penalties. The Compliance Specialist met with
16 Evan Williams and another employee in 2011 or early 2012 at Williams' office for at
17 least two hours to discuss the four wage claims. The fringe benefit contribution for at
18 least one of those workers was made after the Compliance Specialist sent her demand
19 letter. The contribution was about 14 months after the worker earned the wages. In the
20 interactions the Compliance Specialist had with Williams and his employees, sometimes
21 they were cooperative with her requests and sometimes they were not. Sometimes
22 requested records were received from Respondents, and sometimes the records were
23 not provided. (Testimony of Wood)

24 6) By the time, the Agency received a claim from Leo Montgomery in June of
25 2012, the decision was made to seek civil penalties because the Agency had already

1 investigated other claims and had previously attempted to bring A D Traffic into
2 compliance. The Agency considered the Montgomery claim to be a second violation.

3 (Testimony of Wood)

4 7) Subcontractors have the ability to amend certified payroll statements and
5 have a responsibility to do so. Respondents did not amend their inaccurate statements.
6 When the Compliance Specialist received certified payroll statements regarding Leo
7 Montgomery, the statements led her to believe that the fringe benefits had been paid as
8 represented on the statements. When the Compliance Specialist was making inquiries
9 about the payment of fringe benefits, she was not told that they had not been paid.

10 (Exs. A9, A10, Testimony of Wood)

11 8) On September 28, 2012, the Compliance Specialist sent a letter
12 addressed to Evan Williams at A D Traffic Control, which informed him that in order to
13 close the file, evidence must be provided to show "that fringe benefits earned in the 2nd
14 quarter of 2012 by workers employed on this project have been paid." The letter further
15 stated that if the evidence of fringe benefit payments was not provided by October 12,
16 2012, then action would be taken to collect the fringe benefit wages from the primary
17 contractor's payment bond. Subsequently, a copy of a check stub dated October 1,
18 2012, issued from A D Traffic's general account was provided to BOLI showing a
19 payment to The Contractor's Plan fringe benefit plan on behalf of the 2012 Workers.

20 (Exs. A11, A12; Testimony of Wood)

21 9) The sole witness, Compliance Specialist Hannah Wood, was credible.

22 (Hearing Record)

CONCLUSIONS OF LAW

1
2 1) The Commissioner of the Bureau of Labor and Industries has jurisdiction
3 over the subject matter and Respondents herein. ORS 279C.860; ORS 279C.865.

4 2) Portland Flagging and AD Traffic are joint employers who employed
5 workers Charles Brown, Kimberly Dishman, Mitchell Ford, Mitchell Ford III, Darcy
6 Harrison, Cherilee Kelley, Chauncey Lewis, Ginai Lockhart, Shannon Peek, Teresa
7 Stumpf, Martin Trent, and Leslie Triplett during the second quarter of 2012 ("2012
8 Workers", and Leo Montgomery during the fourth quarter of 2011. (Exs. A6; A7, A13; *In*
9 *the Matter of Portland Flagging, LLC, #28-15, 34 BOLI 244, 265 (2016)*)

10 3) Portland Flagging and A D Traffic violated Oregon's prevailing wage rate
11 law when they withheld fringe benefit wages from the paychecks of the 2012 Workers
12 for nine weekly pay periods during the second quarter of 2012, but did not deposit those
13 funds into their fringe benefit accounts by July 15, 2012.

14 4) Portland Flagging and A D Traffic violated Oregon's prevailing wage rate
15 law when they withheld fringe benefit wages from the paychecks of Montgomery for
16 seven weekly pay periods during the 4th quarter of 2011, but did not deposit those
17 funds into his fringe benefit account by January 15, 2012.

18 5) Portland Flagging and A D Traffic submitted 16 certified payroll reports for
19 work performed on public works projects that inaccurately stated that all prevailing wage
20 payments had been made, committing 16 violations of ORS 279C.845 and OAR 839-
21 025-0010.
22

23 6) The Commissioner has the authority to assess civil penalties for violations
24 of ORS 279C.845, OAR 839-025-0010, ORS 279C.840(1), OAR 839-025-0035(1), and
25

1 ORS 279C.540. The imposition of \$9,491.34 in civil penalties for failing to pay the
2 prevailing wage rate and \$16,000 in civil penalties for submitting inaccurate certified
3 payroll statements is an appropriate exercise of the Commissioner's authority. ORS
4 279C.865, OAR 839-025-0530, and OAR 839-025-0540.

5 7) The filing of 16 inaccurate certified payroll statements was intentional.
6 Portland Flagging and A D Traffic are placed on the list of those contractors and
7 subcontractors ineligible to receive any contract or subcontract for public works for a
8 period of three years from the date on which their names are published on the list. ORS
9 279C.860, OAR 839-025-0085.

10 8) Williams was the corporate officer responsible for the intentional failure to
11 pay the prevailing wage rate and, thus, is placed on the list of those contractors and
12 subcontractors ineligible to receive any contract or subcontract for public works for a
13 period of three years from the date on which their names are published on the list.
14

15 OPINION

16 This is a proceeding brought under Oregon's prevailing wage rate laws in which
17 the Agency seeks civil penalties against Respondents and also seeks to place
18 Respondents on the List of Ineligibles³ to receive any contract for public works projects
19 for a period of three years after first publication on that list. ORS 279C.860.

20 A. Failure to Pay the Prevailing Wage Rate

21 1. Violation

22 It is the Agency's burden to prove that an employer did not pay all deducted
23 fringe benefits into the employer's fringe benefit plan. *In the Matter of Green Thumb*
24

25 ³ In this Final Order, the term "debar" may alternatively be used in place of the phrase "placement on the List of Ineligibles."

1 *Landscape and Maintenance, Inc.*, 32 BOLI 185, 198 (2013). Contributions to fringe
2 benefit plans must be made on a regular basis and not less often than quarterly. OAR
3 839-025-0043(1). Prevailing wage payments must be made to employees "in cash [or]
4 by the making of contributions of a type referred to in ORS 279C.800(1)(a)." ORS
5 279C.840(1). ORS 279C.800(1)(a) defines prevailing wage fringe benefit payments as
6 the "rate of contribution a contractor or subcontractor makes irrevocably to a trustee or
7 to a third person under a plan, fund or program." Payments must be made on the 15th
8 day following the end of a calendar quarter. (*In the Matter of Portland Flagging, LLC,*
9 *#28-15*, 34 BOLI 244, 260 (2016)).

10 The ALJ issued the following ruling on the Agency's motion for summary
11 judgment: "The fringe benefit contributions Respondents made on October 1, 2012, on
12 behalf of the [2012 Workers] were not timely made." As previously stated, that ruling
13 has been confirmed.

14 At hearing, the Agency presented undisputed evidence that wages deducted
15 from the paycheck of Leo Montgomery in the fourth quarter of 2011 were not deposited
16 into his fringe benefit until January 31, 2012, which was 16 days after the due date of
17 January 15, 2012.

18 Thus, the Agency sustained its burden of proof in demonstrating that the untimely
19 deposit of funds into the fringe benefit accounts of 13 workers violated the requirement
20 to pay the prevailing wage rate.

21 2. Civil Penalties

22 The Agency seeks civil penalties of \$1,000 for each of the 13 late fringe benefit
23 contribution made on behalf the workers. Civil penalties may be imposed against
24
25

1 employers who do not comply with Oregon's prevailing wage statutes. ORS 279C.865;
 2 OAR 839-025-0530(3)(a). The Agency may assess a civil penalty in the amount of the
 3 unpaid wages or \$1,000, whichever is lesser. OAR 839-025-0540. The criteria used to
 4 determine the amount of penalties are "the actions of the employer in responding to
 5 previous violations, prior violations, opportunity and degree of difficulty to comply,
 6 magnitude and seriousness of the violation, and whether the employer knew or should
 7 have known of the violation." *In the Matter of Hard Rock Concrete, Inc. and Rocky*
 8 *Evans*, 33 BOLI 77, 103 (2014), *appeal pending*; OAR 839-025-0520. When
 9 determining the appropriate amount of civil penalties, the existence of intent is
 10 irrelevant. *In the Matter of Diamond Concrete, Inc. and Eric James O'Malley and*
 11 *Marnie Leanne O'Malley*, 33 BOLI 68, 73 (2014).

12
 13 The Agency presented evidence of Respondents' previous violations of the
 14 prevailing wage statutes, Respondents' knowledge of the violations, and that, at times,
 15 Respondents did not respond to the Agency's requests. These factors weigh in favor of
 16 assessing a civil penalty up to the full amount each underpayment or \$1,000, whichever
 17 is lesser. OAR 839-025-0540; OAR 839-025-0520.

18 Thus, the forum imposes penalties for underpayment, as follows:

<u>Worker</u>	<u>Underpayment Violation</u>	<u>Amount of Civil Penalty</u>
Montgomery	\$1623.45	\$1,000.00
Brown	\$970.43	\$970.43
Dishman	\$1,679.81	\$1,000.00
Ford	\$246.86	\$246.86
Ford III	\$349.01	\$349.01

Harrison	\$1,665.62	\$1,000.00
Kelley	\$1,770.60	\$1,000.00
Lewis	\$312.13	\$312.13
Lockhart	\$391.58	\$391.58
Peek	\$221.33	\$221.33
Stumpf	\$1,254.19	\$1,000.00
Trent	\$1,566.31	\$1,000.00
Triplett	\$1,362.00	\$1,000.00
Total		\$9,491.34⁴

B. Certified Payroll Statements

1. Violation

The Agency alleges that Respondents committed 16 violations of ORS 279C.845 and OAR 839-025-0010(1) by filing "inaccurate and/or incomplete" certified payroll reports for 16 weekly pay periods. ORS 279C.845 provides, in pertinent part:

"(1) * * * every subcontractor * * * shall file certified statements with the public agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying:

* * * * *

"(3) The certified statements shall set out accurately and completely the * * * subcontractor's payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned upon the public works during each week identified in the certified statement."

⁴ In the Amended NOI, the Agency requested civil penalties of \$13,000, representing "Thirteen violations, (\$1,000 per violation)." Amended NOI, p. 7. However, the forum has previously recognized that OAR 839-025-0840 imposes a "floor" for each violation, which "is the lesser of \$1,000 or the amount of the underpayment." *In the Matter of Hard Rock Concrete, Inc. and Rocky Evans*, 33 BOLI at 103, n.15. Thus, if any underpayment was less than \$1,000, then the civil penalty would be the lesser amount of the underpayment.

1 OAR 839-025-0010(1) also imposes these requirements.

2 With respect to all workers except Montgomery, this matter was resolved in the
3 summary judgment ruling. Thus, nine violations were established for the second
4 quarter of 2012. At hearing, the Agency also established that seven certified payroll
5 statements inaccurately stated that work Montgomery had also been paid all prevailing
6 wages due and owing to him. Accordingly, seven violations were established for the
7 fourth quarter of 2011. In total, the Agency sustained its burden in proving 16 violations.
8

9 2. Civil Penalties

10 The Agency asks for the imposition of 16 penalties in the amount of \$1,000 for
11 each violation. ORS 279C.865 also allows imposition of a penalty for each filing of an
12 inaccurate or incomplete payroll record, which are required to be filed by ORS
13 279C.845 and OAR 839-025-0010. The same factors discussed above in Section A.2.
14 are also used to determine the penalties for violations based on the filing of inaccurate
15 certified payroll statements.
16

17 The Agency seeks a \$1,000 penalty for each of the 16 separate violations. The
18 criteria for determining the amount of civil penalties is governed by OAR 839-025-0520.
19 Given the nature of the violations and the criteria of OAR 839-025-0520 previously
20 discussed in Section A.2., a penalty of \$1,000 for each inaccurate WH-38 payroll
21 statement is appropriate, resulting in a total penalty of \$16,000 for these violations.
22

23 3. Placement on the List of Ineligibles

24 The Agency contends that Respondents should be placed on the list of ineligibles
25 because Williams directed his staff to sign false statements certifying that employees'
full wages were paid. OAR 839-025-0085(1)(d) provides that the commissioner may

1 place a subcontractor on the list of those ineligible to receive public contracts when
2 "[t]he contractor or subcontractor has intentionally falsified information in the certified
3 statements the contractor or subcontractor submitted under ORS 279C.845."
4 Respondents contend that they should not be debarred because there was a lack of
5 "intent" to submit false information. Respondents' argument on this matter was set forth
6 by Williams in response to the Agency's motion for summary judgment as follows:

7 "In admitting that fringes were paid late was not an admission to falsifying
8 this report(s). At the time that the reports were signed it was my intent to pay the
9 fringes on a quarterly bases [sic] and I always prepared to do so. However there
10 were at times situation[s] would arise that we would not get paid by contractors
11 and in order to make my weekly payroll I would use whatever funds I had
12 available. Thus making me late in my quarterly fringe payment. When working
13 within the parameters that BOLI has established in allowing employers to make
14 fringe contributions on a quarterly bases [sic], this will always be after the fact of
15 the Certified Payroll Reports, WH-38, being submitted as these must be done on
16 a monthly, and in most cases weekly bases.

17 ***

18 "I was operating in good faith when I elected to pay the fringe on a quarterly
19 bases [sic] as BOLI allows.

20 ****

21 "As to my actions being intentional, I at no time intended not to pay the
22 employees their fringe and I at no time wanted to be late. It was always my
23 intentions to make all payments on time and as I should.

24 "If it was my intentions to not pay my employees I would have kept the money.
25 Why have intentions not to pay them, but pay them.

"I have always acted within what I thought was the law. Was I late, again I say
yes. But was it my intentions, No it was not.

"At the time the WH-38 form was signed I had every intention on submitting those
monies at the end of the [quarterly] period.

"It came down to me making a decision to do what I felt was best at the time."

(Ex. X17)

1 There was no admissible evidence to support Respondents' arguments on this
2 point at hearing. Nevertheless, even if one accepts Respondents' assertion that there is
3 a lack of intent because they intended to make fringe benefit deposits at the time the
4 certified statements were made, it is important to note that *subsequent* acts show a
5 failure to correct the inaccurate information or provide notification that the statements
6 were in error.

7 The forum has previously discussed the element of "intent" in a prevailing wage
8 rate case as follows:

9 “To ‘intentionally’ fail to pay the prevailing rate of wage, ‘the employer
10 must either consciously choose not to determine the prevailing wage or know the
11 prevailing wage but consciously choose not to pay it.’ In the Matter of Labor
12 Ready Northwest, Inc., 22 BOLI 245, 287 (2001), rev’d in part, Labor Ready
13 Northwest, Inc. v. Bureau of Labor and Industries, 188 Or App 346, 364, 71 P3d
14 559 (2003), rev den 336 Or 534, 88 P3d 280 (2004). ‘[A] negligent or otherwise
15 inadvertent failure to pay the prevailing wage, while sufficient to require the
16 repayment of the back wages and liquidated damages to the employee and to
17 invoke civil penalties, is not sufficient to impose debarment.’ Id. Rather, a
18 ‘culpable mental state’ must be shown for the forum to conclude that HMPC
19 ‘intentionally’ failed to pay the prevailing wage rate.

20 ****

21 “Based on Cina’s testimony, the forum concludes that Cina’s failure to pay
22 overtime wages to Williamson, Gray, Murphy, and Petersen on the regular
23 payday on which they were due was an oversight based on her inexperience,
24 and she initially did not pay Williamson anything for his work on August 12, 19,
25 and 26, and September 2, 16 and 23, 2011, because he did not tell Cina he had
worked those days. *However, Cina’s continuing failure to pay those wages after
BOLI’s notification that those wages were due and owing, based on her belief
that Williamson did not work those hours, was a deliberate and conscious choice
on her part and converts her inadvertent failure to pay into an intentional failure
to pay.* Based on that intentional failure, the Commissioner is required to place
HMPC and Cina on BOLI’s list of ineligible to receive contracts or subcontracts
for public works for a period of three years.”

26 *High Mountain Plumbing*, 33 BOLI 40, 51-52 (2014) (emphasis added).

1 Similar to the conduct at issue in *High Mountain Plumbing*, in this case there was
2 a “deliberate and conscious choice” to fail to correct the inaccurate certified statements.
3 Notably, the certified statements were not amended after Williams admittedly made a
4 conscious choice to fail to timely fund the fringe benefit accounts. Those inaccurate
5 statements were then sent on to the Compliance Specialist without making her aware
6 that the statements falsely represented that all prevailing wages had been paid. It
7 appears that the deposits were made only after the Compliance Specialist sent a letter
8 to Williams on September 28, 2012, notifying him that the “the Bureau will take action to
9 collect fringe benefit wages from the [primary contractor’s] Payment Bond” if evidence of
10 fringe benefit deposits was not provided by October 12, 2012.

11 Moreover, because no effort was made to correct the false certified statements or
12 inform the Compliance Specialist of the inaccuracies, she was originally led to believe
13 that the deposits had actually been made. Therefore, regardless of what the intent was
14 at the time the weekly certified statements were signed, the actions taken thereafter
15 demonstrate intent to falsify information in the certified statements. Based on that
16 intentional falsification, Portland Flagging and A D Traffic should be placed on BOLI’s
17 list of ineligible to receive contracts or subcontracts for public works for a period of
18 three years.

19 Additionally, Williams has identified himself as the authorized representative and
20 “President” of all the companies who are Respondents in this matter and, thus, is the
21 corporate officer or manager responsible for intentionally falsifying information in the
22 certified statements. Therefore, Williams should also be placed on the list of ineligible
23 for a period of three years. ORS 279C.860(3).
24
25

1 legal rate on that sum between a date ten days after the issuance of the
2 final order and the date **Respondents Portland Flagging, LLC, and A D
Traffic Control Services, LLC**, comply with the Final Order.

3 B. As authorized by ORS 279C.860(1)(a) and OAR 839-025-0085(1)(a), as a
4 result of intentional violations of ORS 279C.840 and OAR 839-025-0035, the
5 Commissioner of the Bureau of Labor and Industries further orders—

6 **Respondents Portland Flagging, LLC, and A D Traffic Control
7 Services, LLC**, shall be placed on the List of Ineligibles, as defined in
8 OAR 839-025-0090, and shall thereafter be ineligible to receive any
9 contract or subcontract for a public works for a period of three years from
10 the date first published there; and

11 **Respondent Evan Williams** shall be placed on the List of Ineligibles, as
12 defined in OAR 839-025-0090, and shall thereafter be ineligible to receive
13 any contract or subcontract for a public works for a period of three years
14 from the date first published there.

15 _____
16 *Christine N. Hammond*

17 Christine N. Hammond, Deputy Commissioner
18 Bureau of Labor and Industries

19 ISSUED ON Friday, February 26, 2016

BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I SERVED A COPY OF THE ATTACHED

FINAL ORDER

In the Matter of:

**PORTLAND FLAGGING, LLC; A D TRAFFIC CONTROL SERVICES, LLC; TRI-STAR
FLAGGING, LLC; PORTLAND SAFETY EQUIPMENT, LLC; PHOENIX CONSTRUCTION
GROUP, INC.; SBG CONSTRUCTION SERVICES LLC; GNC CONSTRUCTION SERVICES,
LLC, EVAN WILLIAMS AND KENYA SMITH AKA KENYA SMITH-WILLIAMS**

Case #37-13

**BY HAND DELIVERING OR PLACING IT IN INTERNAL STATE MAIL SERVICES TO EACH PERSON AT
THE ADDRESS LISTED BELOW:**



Jenn Gaddis, Chief Prosecutor Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232	Adriana Ortega Administrative Prosecutor Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232	Gerhard Taeubel, Administrator Wage and Hour Division Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232
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**AND BY PREPARING AND PLACING IT IN THE OUTGOING BUREAU OF LABOR AND INDUSTRIES
MAIL TO EACH PERSON OR ENTITY AT THE ADDRESSES LISTED BELOW:**

Portland Flagging, LLC dba A D Traffic Control Kenya Smith-Williams, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045	A D Traffic Control Services, LLC Evan Williams, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045	Tri-Star Flagging, LLC Evan Williams, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045
Portland Safety Equipment, LLC Kenya Smith-Williams, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045	Phoenix Construction Group, Inc. Kenya Smith, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045	SBG Construction Services, LLC Kenya Smith-Williams, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045
GNC Construction Services, LLC Kenya Smith, Registered Agent 309 S. McLoughlin Blvd. Oregon City, OR 97045	Evan Williams 309 S. McLoughlin Blvd. Oregon City, OR 97045	Kenya Smith 309 S. McLoughlin Blvd. Oregon City, OR 97045

On Friday, February 26, 2016

Diane M. Anicker

Diane M. Anicker, Contested Case Coordinator, Bureau of Labor and Industries, 971-673-0865