

VAL HOYLE
COMMISSIONER



DUKE SHEPARD
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:

R. B. Development Corporation
Inc,

Respondent.

Case No. 07-19

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

SYNOPSIS

Respondent failed to pay all prevailing wage rate wages and prevailing wage rate overtime wages to seven workers on two public works projects. On behalf of the workers, the Commissioner ordered Respondent to pay liquidated damages in the total amount of \$32,473.88, plus interest.

The above-entitled case was assigned to Kari Furnanz, designated as Administrative Law Judge ("ALJ") by Val Hoyle, Commissioner of the Bureau of Labor and Industries for the State of Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Administrative Prosecutor Adam Jeffries, an employee of the Agency. Respondent was represented by its authorized representative, Norman James Starr.

1 After the Agency issued an Order of Determination ("OOD") and an Amended
2 OOD, the Agency moved for and was granted summary judgment.

3 Having fully considered the entire record in this matter, I, Val Hoyle,
4 Commissioner of the Bureau of Labor and Industries, hereby make the following
5 Findings of Fact (Procedural and on the Merits), Conclusions of Law, Opinion, and
6 Order.¹

7 **FINDINGS OF FACT – PROCEDURAL**

8 1) On or before the following dates, the individuals listed below filed wage
9 claims and assignments of wages with the Agency:

<u>Name</u>	<u>Filed on or before²</u>
Francisco Alejandro	August 4, 2017
Filemon Flores	August 11, 2017
Rosalio Jimenez Oliveros	August 4, 2017
Jesus Rodriguez-Abriga	June 12, 2017
Daniel Rodriguez-Solano	August 11, 2017
Omar Rodriguez-Palos	June 12, 2017
Roger Valladares-Ramos	June 26, 2017

10
11
12
13
14
15
16
17
18
19 (Exs. X6a, X6b, A23)

20 2) On June 8, 2018, the Agency issued an Order of Determination ("OOD")
21 which alleged that Respondent owed a total of \$31,627.28 in liquidated damages to the
22

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

25 ² The assignment of wages for Flores and Rodriguez-Solano did not include date stamps indicating when the assignments were received by the Wage and Hour Division. Accordingly, the forum infers that the assignments was received prior to August 11, 2017, the date on which the Investigator sent a letter to Respondent mentioning unpaid wages of Flores and Rodriguez-Solano.

1 wage claimants, plus interest, for failing to pay the applicable prevailing wage rates,
2 pursuant to ORS 279C.855(1) and OAR 839-025-0080(2). The OOD further stated that
3 Respondent owed a total of \$995.36 in liquidated damages to the wage claimants, plus
4 interest, for failing to pay the applicable prevailing wage overtime rates, pursuant to
5 ORS 279C.540(1), ORS 279C.855(1) and OAR 839-025-0080(3). The OOD also
6 asserted that Respondent was liable for a civil penalty of \$3,651.72 for issuing a
7 dishonored check, pursuant to OAR 839-001-0300(1)-(7) and ORS 652.195(1)-(5). (Ex.
8 X2d)

9 3) On June 8, 2018, the OOD was served upon Respondent by certified
10 mail.³ (Exs. X2e, X2f)

11 4) Respondent filed an answer and request for hearing on April 13, 2018.
12 Respondent also submitted a signed form which stated that Norman J. Starr was its
13 Authorized Representative. (Exs. X2b, X2c)

14 5) On August 23, 2018, the forum issued a Notice of Hearing to Respondent,
15 the Agency, and Claimants setting the time and place of hearing for October 23, 2018,
16 at 9:00 a.m. at BOLI's Portland office. Together with the Notice of Hearing, the forum
17 sent a copy of the Order of Determination, a multi-language warning notice, a document
18 entitled "Summary of Contested Case Rights and Procedures" containing the
19

20 _____
21 ³ The forum file includes copies of the USPS return receipt postcards (PS Form 3811) for Respondent, as
22 is required to demonstrate service by certified mail. See *In the Matter of Soapy's, Inc.*, 14 BOLI 86, 87-88
23 (1995) (referencing a certified mail return receipt labeled as "PS Form 3811"). The postcards for the
24 mailings sent to R.B. Development Corporation, Inc. and Norman James Starr were returned unsigned.
25 However, they were sent to the same address that is on Respondent's Answer and Request for Hearing.
As well, documents in the record from Respondent identify that same address as the address for
Respondent. Accordingly, the forum concludes that the OOD was served on the "correct address" of
Respondent. "[S]ervice is not dependent on whether a [r]espondent choose[s] to pick up his certified
mail from his correct address." *In the Matter of Lioness Holdings, LLC*, 36 BOLI 227, 232 (2018) (citing
Stroh v. State Acc. Ins. Fund, 261 Or. 117, 119 (1972) and *El Rio Nilo, LLC v. Oregon Liquor Control
Commission*, 240 Or. App. 362 (2011)). The fact that the postcards were returned unsigned does not
negate the fact that Respondent was served by certified mail.

1 information required by ORS 183.413, a document entitled "Servicemembers Civil Relief
2 Act (SCRA) Notification, and a copy of the forum's contested case hearings rules, OAR
3 839-050-0000 to 839-050-0445. (Exs. X2, X2a-X2j)

4 6) On September 26, 2018, the ALJ issued an interim order which stated, in
5 part:

6 **"HOW TO FILE A DOCUMENT"**

7 "You may file a motion or other document by mailing it or hand delivering it
8 to BOLI's Contested Case Coordinator at the following address:

9 **"Oregon Bureau of Labor and Industries
10 ATTN: Contested Case Coordinator
11 1045 State Office Building
12 800 NE Oregon Street
13 Portland, Oregon 97232-2180"**

14 "Motions or other documents are considered 'filed' on the date they are
15 postmarked with a date on a correctly addressed envelope or on the date of their
16 receipt by BOLI's Contested Case Coordinator, whichever occurs first. OAR
17 839-050-0040."

18 (Ex. X4)

19 7) On October 2, 2018, the Agency issued an Amended OOD "to correct and
20 add various citations; to clarify that the amount of liquidated damages sought includes
21 both prevailing wages and overtime untimely paid; to remove the claim for penalties for
22 issuance of a dishonored check for wages and to reduce the total amount of liquidated
23 damages sought." (Ex. X5)

24 8) On October 2, 2018, the Agency filed a motion for summary judgment,
25 contending it was entitled to judgment as a matter of law. On October 5, 2018, the ALJ
issued an interim order notifying Respondent of the response deadline of October 9,
2018, and stating:

1 "If Respondent fails to file a written response, the forum will grant the Agency's
2 motion if the pleadings and all documents filed in support of the motion show that
there is no genuine issue as to any material fact and that the Agency is entitled to
judgment as a matter of law."

3 At the request of the ALJ, the Agency filed a supplemental declaration and
4 exhibits⁴ on October 9, 2018. On October 11, 2018, the ALJ issued an interim order
5 notifying Respondent that the deadline to file a response to the Agency's supplemental
6 filing was October 16, 2018. Respondent did not file a response to the Agency's motion
7 or to its supplemental declaration and exhibits. (Exs. X6, X7, X8, X12)
8

9 9) The forum held a telephone prehearing conference on October 16, 2018.
10 Administrative Prosecutor Adam Jeffries appeared on behalf of the Agency. Norman
11 Starr, Respondent's authorized representative, participated on behalf of Respondent.
12 The parties discussed the current case deadlines and hearing date. Mr. Jeffries notified
13 the forum of the need for a Spanish interpreter and stated that he would provide
14 additional information by email to the forum. Mr. Starr asked if the forum can require
15 witnesses to appear to testify at hearing; he was instructed to file a motion requesting
16 that the forum issue subpoenas on his behalf. If the motion was granted, the forum
17 would prepare subpoenas and provide them to Respondent, who would then be
18 responsible for serving the subpoenas and for paying any applicable witness fees. OAR
19 839-050-0200(10).
20

21 The following case deadlines and dates were revised as follows:

22 Deadline for Respondent	October 17, 2018 at 4:00 p.m.
23 to file a response to the	
24 Agency's Supplement to	

25 ⁴ Both the Agency's motion and the supplement included exhibits numbered 1-8. To avoid confusion, Exhibits 1-8 that were submitted with the supplement will be identified as Exhibits 1A-8A in this interim order.

1 **the Motion for Summary
Judgment**

2 **New Hearing Date**

December 11, 2018

3 (Ex. X13)

4 On November 27, 2018, the ALJ sent an email to the parties which stated as
5 follows:

6 "Mr. Jeffries and Mr. Starr:

7
8 "I am in the process of preparing the interim order ruling on the Agency's motion
9 for summary judgment. However, due to obligations in other cases and the
10 amount of detail and time needed to calculate potential unpaid wages, the interim
11 order ruling on the motion would not likely be ready until very close to the start of
12 the scheduled hearing date of December 11, 2018. In order to avoid the
potential of the parties unnecessarily preparing for issues at hearing that may be
decided by motion, I am proposing that the hearing be postponed until after a
ruling is issued on the summary judgment motion. If any issues remain
undecided, I would then contact the parties to arrange for a new hearing date.

13 If any of the parties would like to discuss this proposal further, please respond by
14 email and I will arrange for a prehearing telephone conference. If I receive no
15 requests for a conference by 4:00 p.m. tomorrow, Wednesday, November 28,
2018, I will issue an interim order postponing the hearing date indefinitely."

16 On November 28, 2018, the forum issued an interim order which stated:

17 "None of the parties responded to the email or otherwise requested a
18 prehearing conference. Accordingly, the hearing in this matter is postponed and
19 the hearing date of December 11, 2018, is canceled. If there are any issues that
remain after the ruling on the Agency's motion for summary judgment is issued,
the ALJ will contact the parties to set a new hearing date."

20 (Ex. X16)

21 10) On December 21, 2018, the ALJ issued an interim order granting the
22 Agency's motion for summary judgment, in part. The pertinent portion of the ALJ's
23 interim order is reprinted below:

24 ///
25

1 **Summary Judgment Standard**

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

5 ‘ * * * No genuine issue as to a material fact exists if, based upon
6 the record before the court viewed in a manner most favorable to
7 the adverse party, no objectively reasonable juror could return a
8 verdict for the adverse party on the matter that is the subject of the
9 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].’

10 ORCP 47C.

11 “The record considered by the forum in deciding this motion consists of:
12 (1) the Agency's OOD, the Amended OOD, the Agency's argument made in
13 support of its motion, and the exhibits submitted with the Agency's motion and
the supplemental declarations and exhibits; and (2) Respondent's Answer.

14 **ANALYSIS**

15 “The Agency asserts that Respondent owes the seven wage claimants a
16 total of \$31,627.28 pursuant to ORS 279C.840(1), ORS 279C.855(1) and OAR
17 839-025-0080(1)(3). A ‘subcontractor . . . that violates the provisions of ORS
18 279C.840 is liable to the workers affected . . . in an additional amount equal to
the unpaid wages as liquidated damages.’ ORS 279C.855(1). Accordingly, to
determinate if liquidated damages are owed, the forum must first determine
whether there are any unpaid wages and, if so, the amount of those wages.

19 “ORS 279C.840(1) requires all contractors and subcontractors ‘upon all public
20 works’ to pay ‘not less than the prevailing rate of wage for an hour's work in the
21 same trade or occupation in the locality where the labor is performed.’ The wages
must be paid on the subcontractors ‘regular pay day.’ *Id.*

22 “The elements of the Agency's prima facie case are: 1) Respondent
23 employed claimants; 2) The pay rate(s) that claimants were entitled to be paid; 3)
24 The amount and extent of work claimants performed for respondent; 4)
Claimants performed work for which they were not properly compensated; (5)
25 Claimants performed work on a public works project for which they were not fully

1 paid.⁵ *In the Matter of Brown's Architectural Sheetmetal, Inc. and Brun Metals*
2 *Company, LLC*, 35 BOLI 68, 126 (2016).

3 "Element 1: Respondent Employed Claimants.

4 "In its answer, Respondent⁶ does not dispute that it employed the seven
5 wage claimants.

6 "Elements 2 - 5: Pay Rates, Hours Worked and Unpaid Amounts for
7 *Public Works Project*.

8 "Upon review of the Agency's calculations and methodology in Ex. 1A,
9 together with the supplemental declarations and exhibits, the forum concludes
10 that the following tables represent the pay rates, hours worked and amounts paid
11 to Complainants:

12 **"MAPLE PROJECT**

13 "Respondent had a subcontract with Baldwin General Contracting Inc. to
14 furnish labor for the construction of a public school classroom addition in
15 Springfield, Oregon, in Lane County (the 'Maple Project'). Exs. 5A, 7. In the
16 Amended OOD, the Agency asserts that the Maple Project was a 'public works'
17 as defined in ORS 279C.800(6) and OAR 839-025-0004(20). Respondent did
18 not deny this allegation in its Answer. Accordingly, the forum deems this
19 allegation to be admitted under OAR 839-050-0130(3).

20 "Claimant Francisco Alejandro

21 "The Agency asserts that Respondent did not submit timely payment to
22 Claimant Alejandro for prevailing wage rate wages and overtime worked on
23 during Maple project during the weeks ending: 10/24/15, 10/31/15, 11/14/15,
24 11/28/15, 12/12/15, 12/19/15, 12/26/15, 1/2/16, 1/9/16, 1/16/16, 1/30/16,
25 3/26/16, 4/16/16 and 4/23/16. The following chart includes the forum's
calculations of unpaid⁷ wages during those weeks for the Maple project:

23 ⁵ The *Brown's* Final Order included an additional element (willfulness) that would be pertinent if penalty
wages were requested, but that is not at issue in this case.

24 ⁶ Respondent filed an answer to the original OOD, but did not file an answer to the Amended OOD.
Pursuant to OAR 839-050-0140(2)(b), Respondent's answer to the original OOD will be deemed its
answer to the Amended OOD.

25 ⁷ The references to "unpaid wages" include wages that were ultimately paid to workers by the prime
contractor.

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
10/24/15	Drywall Installer	\$48.77 ⁸	15 (Maple)	\$731.55	\$0.00	\$731.55
10/31/15	Drywall Installer	\$48.77	8 (Maple)	\$390.16	\$0.00	\$390.16
11/14/15	Drywall Installer	\$48.77	16 (Maple)	\$780.32	\$0.00	\$780.32
11/21/15	Drywall Installer	\$48.77 \$17.12 ⁹	36 (Maple) 1 (OT Maple)	\$1,755.72 + \$17.12 \$1,772.84	\$0.00	\$1,772.84
11/28/15	Drywall Installer	\$48.77 \$30.00 \$17.12	28 (Maple) 21 (Other) 16.5 (OT Maple)	\$1,365.56 \$630.00 + \$282.48 \$2,278.04	\$2,228.74	\$49.30
12/12/15	Drywall Installer	\$48.77	13 (Maple)	\$634.01	\$0.00	\$634.01
12/19/15	Drywall taper	\$46.57 ¹⁰	8 (Maple)	\$372.56	\$0.00	\$372.56
12/26/15	Drywall Installer	\$48.77	8 (Maple)	\$390.16	\$0.00	\$390.16
1/2/16	Drywall Installer	\$48.77 \$30.00	8 (Maple) 30 (regular)	\$390.16 + \$720.00 \$1,110.16	\$1,099.36	\$10.80
1/9/16	Drywall Installer	\$48.77 \$30.00 \$49.60 \$17.12	16 (Maple) 8 (regular) 16 (PWR other) 8 (OT Maple)	\$780.32 \$240.00 \$793.60 + \$136.96 \$1,950.88	\$1,737.60	\$213.28
1/16/16	Drywall Installer	\$48.77 \$49.60 \$17.12	9 (Maple) 24 (PWR other) 1 (OT Maple)	\$438.93 \$1,190.40 + \$17.12 \$1,646.45	\$0.00	\$1,646.45
1/23/16	Drywall Installer	\$48.77 \$30.00	7 (Maple) 25 (regular)	\$341.39 + \$750.00 \$1,091.39	\$0.00	\$1,091.39
1/30/16	Drywall Installer	\$48.77	17 (Maple)	\$829.09	\$0.00	\$829.09
3/26/16	Drywall Installer	\$48.77 \$47.42 \$17.12 ¹¹	16 (Maple) 26 (PWR other) 2 (OT PWR other)	\$780.32 \$1,232.92 + \$34.23 \$2,047.47	\$2,004.24	\$43.23
4/16/16	Drywall Installer	\$48.77 \$49.60 ¹² \$47.42	8 (Maple) 14 (OPS) 8 (PWR other)	\$390.16 \$694.40 + \$379.36 \$1,463.92	\$1,422.60	\$41.32 (div. by 2): \$20.66 ¹³

⁸ The prevailing wage rate for a drywall installer in Lane County at the time the Maple project was advertised for bid was \$34.23 (basic hourly rate) plus \$14.54 (fringe benefit rate), for a total of \$48.77 per hour. (Ex. 7A)

⁹ This amount represents the additional amount owing for overtime hours worked. The prevailing wage rate for overtime work is one and one-half times the hourly rate, excluding the fringe benefit amount. ORS 279C.540(1); OAR 839-025-0050(2). Accordingly, the additional amount due per hour is \$17.12, representing one-half of the basic hourly rate of \$34.23.

¹⁰ The prevailing wage rate for a drywall taper in Lane County at the time the Maple project was advertised for bid was \$32.93 (basic hourly rate) plus \$13.64 (fringe benefit rate), for a total of \$46.57 per hour. (Ex. 7A)

¹¹ In the Agency's overtime calculation on page 17 of Ex. 1A, it appeared to use \$47.42 as the base rate, but that figure included fringe instead of just the base rate. Accordingly, the additional overtime amount is multiplied by \$17.12 (one-half of \$34.23).

4/23/16	Drywall Installer	\$49.60 \$48.77 \$17.53 \$17.38	35 (OPS) 16 (Maple) 7 (OT OPS) 5 (OT weighted ¹⁴)	\$1,736.00 \$780.32 \$122.71 + 86.81 \$2,725.85	\$2,394.71	\$331.13 (div. by 2): \$165.57
					Total unpaid wages	\$9,141.37

"Claimant Filemon Flores

"The Agency asserts that Respondent did not submit timely payment to Claimant Flores for prevailing wage rate wages and overtime worked on during Maple project during the week ending 4/23/16. The following chart includes the forum's calculations of unpaid wages during that week for the Maple project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
4/23/16	Drywall Taper	\$46.57 ¹⁵	7 (Maple)	\$325.99	\$0.00	\$325.99

"Claimant Rosalio Jimenez Oliveros

"The Agency asserts that Respondent did not submit timely payment to Claimant Oliveros for prevailing wage rate wages and overtime worked on during Maple project during the weeks ending: 3/26/16, 4/16/16 and 4/23/16. The following chart includes the forum's calculations of unpaid wages during those weeks for the Maple project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
3/26/16	Drywall Installer	\$47.42 \$48.77 \$17.72	29.5 (Other) 7 (Maple) 2 (OT Supp)	\$1,398.89 \$341.39 + \$34.23 \$1,774.51	\$1,332.83	\$441.68

¹² The prevailing wage rate for a drywall installer in Linn County at the time the OPS project was advertised for bid was \$35.05 (basic hourly rate) plus \$14.55 (fringe benefit rate), for a total of \$49.60 per hour. (Ex. 8A)

¹³ In the Agency's calculations, when a workweek with an underpayment involved work on both the Maple and OSP projects, the Agency divided the amount due evenly between the two projects. (See Ex. 1A, pp. 13, 17) The forum adopts the Agency's approach.

¹⁴ Since the worker performed work with different base wage rates in a single day on 4/19/16 and also performed overtime work on that day, the worker's overtime rate is calculated by using a weighted average drawn from the different base wage rates. See *Green Thumb Maintenance & Landscape, Inc.*, 25 BOLI 178, 214 (2017); OAR 839-025-0050(2)(b). For example, on 4/19/16, Alejandro's overtime rate of \$17.38 was calculated as follows: 7 hours x \$35.05 = \$245.35; 6 hours x \$34.23 = \$206.58; \$245.35 + \$206.58 = \$451.93; \$451.93 ÷ 13 hours = \$34.76; \$34.76 x .5 = \$17.38.

¹⁵ The prevailing wage rate for a drywall taper in Lane County at the time the Maple project was advertised for bid was \$32.93 (basic hourly rate) plus \$13.64 (fringe benefit rate), for a total of \$46.57 per hour. (Ex. 7A)

4/23/16	Drywall taper	\$47.42 ¹⁶ \$46.57 \$20.00 \$16.83 \$16.47 \$16.67	15 (OPS) 24 (Maple) 3 (Other) 5 (OT OPS) 1 (OT Maple) 2 (OT weighted) ¹⁷	\$711.30 \$1,117.68 \$60.00 \$84.15 \$16.47 + \$33.33 \$2,022.93	\$1,861.96	\$160.97 (div. by 2): \$80.49
4/30/16	Drywall taper	\$47.42 \$6.57 \$47.42 \$20.00	15.5 (OPS) 8 (Maple) 6 (Other PWR) 9.5 (Other)	\$735.01 \$372.56 \$284.52 + \$190.00 \$1,582.09	\$1,541.47	\$40.62 (div. by 2): \$20.31
					Total unpaid wages	\$542.48

"Claimant Roger Orlando Valladares-Ramos

"The Agency asserts that Respondent did not submit timely payment to Claimant Valladares-Ramos for prevailing wage rate wages and overtime worked on during Maple project during the weeks ending: 11/21/15, 1/2/16, 1/9/16, 2/6/16, 3/5/16, 3/26/16, 4/16/16 and 4/23/16. The following chart includes the forum's calculations of unpaid wages during those weeks for the Maple project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
11/21/15	Drywall Taper	\$46.57	39.5 (Maple)	\$1,839.52	\$1,873.09	\$0.00
1/2/16	Drywall Taper	\$47.42 \$47.42	11 (Maple) 14 (PWR Other)	\$521.62 + \$663.88 \$1,185.50	\$1,185.50 ¹⁸	\$0.00
1/9/16	Drywall Taper	\$46.57 \$47.42 \$16.47	14 (Maple) 16 (PWR Other) 6 (OT Maple)	\$651.98 \$758.72 + \$98.22 \$1,508.92	\$1,422.60	\$86.32
2/6/16	Drywall Taper	\$46.57 \$16.47	18 (Maple) 2 (OT Maple)	\$838.26 + \$32.93 \$871.19	Unable to determine ¹⁹	Unable to determine
3/5/16	Drywall Taper	\$46.57	28 (Maple)	\$1,303.96	\$0.00	\$1,303.96

¹⁶ The prevailing wage rate for a drywall taper in Linn County at the time the OPS project was advertised for bid was \$33.66 (basic hourly rate) plus \$13.76 (fringe benefit rate), for a total of \$47.42 per hour. (Ex. 8A)

¹⁷ See footnote 10 for explanation of weighted average calculation method for overtime hours worked 4/19/16.

¹⁸ See Ex. 10, p. 8.

¹⁹ The forum is unable to reach a conclusion as to the amount paid for this week as there are two checks that may be attributable to this pay period. See Ex. 10, p. 24 (Check # 1409 dated 2/16/16 in the amount of \$1640.00) compared to Ex. 10, p. 22 (Check # 1400 in the amount of \$1843.00 that may be for this pay period).

3/26/16	Drywall Installer	\$48.77	7 (Maple)	\$341.39	\$0.00	\$341.39
4/16/16	Drywall Taper	\$47.42 \$46.57 \$20.00 \$16.67	16 (OPS) 11 (Maple) 14 (Other) 2 (OT weighted)	\$758.72 \$512.27 \$180.00 + \$33.33 \$1,517.98	\$1,252.11 ²⁰	\$265.87 (div. by 2): \$132.94
4/23/16	Drywall Taper	\$47.42 \$46.57 \$16.83	7 (OPS) 7 (Maple) 2 (OT OPS)	\$331.94 \$331.94 + \$33.66 \$697.54	\$426.78 ²¹	\$270.76 (div. by 2): \$135.38
					Total unpaid wages	\$1,999.99

"OPS PROJECT

"Respondent had a subcontract with Baldwin General Contracting Inc. to furnish labor for the construction of the OPS Crew Quarters in Albany, Oregon, in Linn County. Exs. 6A, 8. In the Amended OOD, the Agency asserts that the OPS Project was a 'public works' as defined in ORS 279C.800(6) and OAR 839-025-0004(20). Respondent did not deny this allegation in its Answer. Accordingly, the forum deems this allegation to be admitted under OAR 839-050-0130(3).

"Claimant Francisco Alejandro

"The Agency asserts that Respondent did not submit timely payment to Claimant Alejandro for prevailing wage rate wages and overtime worked on during OPS project during the weeks ending: 4/2/16, 4/9/16, 4/23/16, 4/30/16, 5/6/16, 5/14/16 and 5/28/16. The following chart includes the forum's calculations of unpaid wages during those weeks for the OPS project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
4/2/16	Drywall Installer	\$49.60 \$47.42 \$30.00 \$17.12	8 (OPS) 20 (PWR Other) 14 (Other) 2 (OT PWR Other)	\$396.80 \$948.40 \$420.00 + \$34.24 \$1,799.44	\$1,747.76	\$51.68
4/9/16	Drywall Installer	\$49.60 \$47.42 \$30.00	33 (OPS) 3 (PWR Other) 4 (Other)	\$1,636.80 \$142.26 + \$120.00 \$1,899.06	\$1,400.34	\$498.72

²⁰ See Ex. 10, p. 37.

²¹ See Ex. 10, p. 37.

1	4/16/16	Drywall Installer	\$48.77 \$49.60 ²² \$47.42	8 (Maple) 14 (OPS) 8 (PWR other)	\$390.16 \$694.40 <u>+ \$379.36</u> \$1,463.92	\$1,422.60	\$41.32 (div. by 2): \$20.66
2	4/23/16	Drywall Installer	\$49.60 \$48.77 \$17.53 \$17.38	35 (OPS) 16 (Maple) 7 (OT OPS) 5 (OT weighted)	\$1,736.00 \$780.32 \$122.71 <u>+ 86.81</u> \$2,725.85	\$2,394.71	\$331.13 (div. by 2): \$165.57
3	4/30/16	Drywall Installer	\$49.60 \$30.00	32 (OPS) 8 (Other)	\$1,587.20 <u>+ \$240.00</u> \$1,827.50	\$1,757.44	\$69.76
4	5/7/16	Drywall Taper	\$47.42 \$47.42 \$30.00	12 (OPS) 20 (Other PWR) 8 (Other)	\$569.04 \$948.40 <u>+ 240.00</u> \$1,757.44	\$1,757.44	\$0.00
5	5/14/16	Drywall Taper	\$47.42 \$47.42	32 (OPS) 8 (Other PWR)	\$1,517.44 <u>+ \$379.36</u> \$1,896.80	\$1,896.80	\$0.00
6	5/28/16	Drywall Installer	\$49.60	24 (OPS)	\$1,190.00	\$0.00	\$1,190.00
7						Total unpaid wages	\$1,996.39

12 *Claimant Filemon Flores*

13 "The Agency asserts that Respondent did not submit timely payment to
14 Claimant Flores for prevailing wage rate wages and overtime worked on during
15 OPS project during the week ending 4/23/16. The following chart includes the
forum's calculations of unpaid wages during those weeks for the OPS project:

16	Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
17	4/23/16	Drywall Taper	\$47.42 \$16.83	20.5 (OPS) 4.5 (OPS OT)	\$972.11 <u>+ \$75.74</u> \$1,047.85	\$0.00	\$1,047.85

19 *"Claimant Rosalio Jimenez Oliveros*

20 "The Agency asserts that Respondent did not submit timely payment to
21 Claimant Oliveros for prevailing wage rate wages and overtime worked on during
22 OPS project during the weeks ending: 4/16/16, 4/23/16 and 4/30/16. The
23 following chart includes the forum's calculations of unpaid wages during those
24 weeks for the OPS project:

25 ²² The prevailing wage rate for a drywall installer in Linn County at the time the OPS project was advertised for bid was \$35.05 (basic hourly rate) plus \$14.55 (fringe benefit rate), for a total of \$49.60 per hour. (Ex. 8A)

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
4/16/16	Drywall Taper	\$47.42 \$20.00 \$10.00	8 (OPS) 40 (Other) 8 (OT Other)	\$379.36 \$800.00 + \$80.00 \$1,259.36	\$1,252.11 ²³	\$7.25
4/23/16	Drywall Taper	\$47.42 ²⁴ \$46.57 \$20.00 \$16.83 \$16.47 \$16.67	15 (OPS) 24 (Maple) 3 (Other) 5 (OT OPS) 1 (OT Maple) 2 (OT weighted) ²⁵	\$711.30 \$1,117.68 \$60.00 \$84.15 \$16.47 + \$33.33 \$2,022.93	\$1,861.96	\$160.97 (div. by 2): \$80.49
4/30/16	Drywall Taper	\$47.42 \$6.57 \$47.42 \$20.00	15.5 (OPS) 8 (Maple) 6 (Other PWR) 9.5 (Other)	\$735.01 \$372.56 \$284.52 + \$190.00 \$1,582.09	\$1,541.47	\$40.62 (div. by 2): \$20.31
					Total unpaid wages	\$108.05

"Claimant Jesus Rodriguez-Abriga

"The Agency asserts that Respondent did not submit timely payment to Claimant Rodriguez-Abriga for prevailing wage rate wages and overtime worked on during OPS project during the weeks ending: 4/9/16, 4/16/16, 5/21/16 and 5/28/16. The following chart includes the forum's calculations of unpaid wages during those weeks for the OPS project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
4/9/16	Drywall Installer	\$49.60	16 (OPS)	\$793.60	Undetermined	Undetermined
4/16/16	Drywall Installer	\$49.60	8 (OPS)	\$396.80	\$0.00	\$396.80
5/21/16	Drywall Installer	\$49.60	16 (OPS)	\$793.60	\$0.00	\$793.60
5/28/16	Drywall Installer	\$49.60	4 (OPS)	\$198.40	\$0.00	\$198.40
					Total unpaid wages	\$1,388.80

///

²³ See Ex. 10, p. 59.

²⁴ The prevailing wage rate for a drywall taper in Linn County at the time the OPS project was advertised for bid was \$33.66 (basic hourly rate) plus \$13.76 (fringe benefit rate), for a total of \$47.42 per hour. (Ex. 8A)

²⁵ See footnote 10 for explanation of weighted average calculation method for overtime hours worked 4/19/16.

1 "Claimant Daniel Rodriguez-Solano

2 "The Agency asserts that Respondent did not submit timely payment to
 3 Claimant Rodriguez-Solano for prevailing wage rate wages and overtime worked
 4 on during OPS project during the weeks ending: 4/2/16, 4/9/16, 5/7/16, 5/14/16,
 5 5/21/16 and 5/28/16. The following chart includes the forum's calculations of
 6 unpaid wages during those weeks for the OPS project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
4/2/16	Drywall installer	\$49.60	8 (OPS)	\$396.80	\$0.00	\$396.80
4/9/16	Drywall installer	\$49.60	16 (OPS)	\$793.60	\$0.00	\$793.60
5/7/16	Drywall installer	\$49.60	28 (OPS)	\$1,388.80	\$0.00	\$1,388.80
5/14/16	Drywall installer	\$49.60	24 (OPS)	\$1,190.40	\$0.00	\$1,190.40
5/21/16	Drywall installer	\$49.60	8 (OPS)	\$396.80	\$0.00	\$396.80
5/28/16	Drywall installer	\$49.60	16 (OPS)	\$793.60	\$0.00	\$793.60
					Total unpaid wages	\$4,960.00

7 "Claimant Omar Rodriguez-Palos

8 "The Agency asserts that Respondent did not submit timely payment to
 9 Claimant Rodriguez-Palos for prevailing wage rate wages and overtime worked
 10 on during OPS project during the weeks ending: 3/19/16, 4/2/16, 4/9/16, 4/16/16,
 11 4/30/16, 5/14/16, 5/21/16 and 5/28/16. The following chart includes the forum's
 12 calculations of unpaid wages during those weeks for the OPS project:

Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
3/19/16	Drywall Installer	\$49.60	1 (OPS)	\$49.60	\$1,203.40 ²⁶	\$191.92
		\$20.00	16 (Other)	\$320.00		
		\$47.42	20 (Other PWR)	\$948.40		
		\$10.00	1 (OT Other)	\$10.00		
		\$16.83	4 (OT PWR Other)	<u>+\$67.32</u>		
				\$1,395.32		
4/2/16	Drywall Installer	\$49.60	16 (OPS)	\$793.60	Undetermined ²⁷	Undetermined
		\$47.42	16 (Other PWR)	\$758.72		
		\$20.00	8 (Other)	<u>+\$160.00</u>		
				\$1,712.32		
4/9/16	Drywall Installer	\$49.60	32 (OPS)	\$1,587.20	\$1,648.40 ²⁸	\$161.06
		\$47.42	3 (Other PWR)	\$142.26		
		\$20.00	4 (Other)	<u>+\$80.00</u>		
				\$1,809.46		

23
 24 ²⁶ See Ex. 10, p. 43.

25 ²⁷ The forum could not determine which check applied to this work period and did not locate a pay stub in the Agency's submission.

26 ²⁸ Ex. 10, p. 67.

1	4/16/16	Drywall Installer	\$49.60 \$47.42 \$20.00	14 (OPS) 16 (Other PWR) 8 (Other)	\$694.40 \$758.72 <u>+ \$160.00</u> \$1,613.12	Undetermined ²⁹	Undetermined
2	4/30/16	Drywall Installer	\$49.60 \$47.42 \$20.00	8 (OPS) 17.5 (Other PWR) 14.5 (Other)	\$396.80 \$829.85 <u>+ 290.00</u> \$1,516.65	\$1,499.21	\$17.44
3	5/14/16	Drywall Installer	\$49.60 \$20.00	32 (OPS) 8 (Other)	\$1,587.20 <u>+ \$160.00</u> \$1,747.20	\$1,677.44	\$69.76
4	5/21/16	Drywall Installer	\$49.60 \$20.00	34 (OPS) 6 (Other)	\$1,686.40 <u>+ \$120.00</u> \$1,806.40	\$0.00	\$1,806.40
5	5/28/16	Drywall Installer	\$49.60 \$20.00	4 (OPS) 36 (Other)	\$198.40 <u>+ \$720.00</u> \$918.40	\$0.00	\$918.40
6						Total unpaid wages	\$3,164.98

10 "Claimant Roger Orlando Valladares-Ramos

11 "The Agency asserts that Respondent did not submit timely payment to
 12 Claimant Valladares-Ramos for prevailing wage rate wages and overtime worked
 13 on during the OPS project during the weeks ending: 4/9/16, 4/16/16, 4/23/16,
 14 4/30/16, 5/7/16 and 5/14/16. The following chart includes the forum's
 calculations of unpaid wages during those weeks for the OPS project:

15	Week ending	Occupation	Pay Rate	Hours Worked	Wages Earned	Amount Paid	Unpaid Wages
16	4/9/16	Drywall Taper	\$47.42 \$47.42 \$20.00 \$17.83	32 (OPS) 2 (Other PWR) 6 (Other) 6 (Weighted OT)	\$1,517.44 \$94.84 \$120.00 <u>+ \$106.98</u> \$1,839.26	\$0.00	\$1,839.26
17	4/16/16	Drywall Taper	\$47.42 \$46.57 \$20.00 \$16.67	16 (OPS) 11 (Maple) 14 (Other) 2 (OT weighted)	\$758.72 \$512.27 \$180.00 <u>+ \$33.33</u> \$1,517.98	\$1,252.11	\$265.87 (div. by 2): \$132.94

25 ²⁹ There is a pay stub for the week ending "4/14/2016" (not 4/16/16) but it did not match the number of hours worked that week. See Ex. 10, p. 70. Accordingly, there is a question of fact as to the amount paid that week.

4/23/16	Drywall Taper	\$47.42 \$46.57 \$16.83	7 (OPS) 7 (Maple) 2 (OT OPS)	\$331.94 \$331.94 + \$33.66 \$697.54	\$426.78	\$270.76 (div. by 2): \$135.38
4/30/16	Drywall Taper	\$47.42	40 (OPS)	\$1,896.80	\$0.00	\$1,896.80
5/7/16	Drywall Taper	\$47.42	40 (OPS)	\$1,896.80	\$0.00	\$1,896.80
5/14/16	Drywall Taper	\$47.42	40 (OPS)	\$1,896.80	\$0.00	\$1,896.80
					Total unpaid wages	\$7,797.98

"LIQUIDATED DAMAGES

"ORS 279C.855 provides: '(1) A * * * subcontractor * * * that violates the provisions of ORS 279C.840 is liable to the workers affected in the amount of the workers' unpaid minimum wages, including all fringe benefits, and in an additional amount equal to the unpaid wages as liquidated damages.' Respondent violated ORS 279.840(1) on the Maple and OPS projects by not paying Claimants the prevailing wage rate for every hour that Claimants performed work in a trade classification. Accordingly, Respondent is responsible for paying liquidated damages to the workers in the amount of the unpaid wages set forth above."

"REMAINING ISSUES

"The vast majority of the issues in the Amended OOD were resolved above. Following is a summary of the issues that remain undecided:

- The amount of wages paid and owed to Claimant Valladares-Ramos for the week ending 2/6/16.
- The amount of wages paid and owed to Claimant Roger Orlando Valladares-Ramos for the week ending 2/6/16.
- The amount of wages paid and owed to Claimant Jesus Rodriguez-Abriga for the week ending 4/9/16.
- The amount of wages paid and owed to Claimant Omar Rodriguez-Palos for the weeks ending 4/2/16 and 4/16/16.

"Given that most of the issues have been resolved in this ruling and the Agency has the burden of proof as to the remaining undecided issues, the forum requests that the Agency notify the ALJ and the parties by email **no later than noon on December 26, 2018**, if the Agency would like the opportunity to proceed to hearing on the unresolved issues. Unless the Agency indicates that it does not intend to proceed to hearing, the ALJ will contact the parties to schedule a new hearing date. If the Agency does not intend to proceed, the hearing will not be rescheduled and the ALJ will prepare a Proposed Order. Both the Agency and Respondent will have the opportunity to file exceptions to the Proposed Order, which would include the ability to object to any rulings made in

1 this interim order (including a ruling that there is a question of fact or unresolved
2 issue).”

3 (Ex. X17) The ALJ's ruling is CONFIRMED.

4 11) On December 21, 2018, Administrative Prosecutor Adam Jeffries sent an
5 email to the ALJ and Respondent, which stated, “The Agency does not intend to
6 proceed to hearing on the unresolved issues.” (Ex. X18)

7 12) On March 11, 2019, the ALJ issued a proposed order that notified the
8 participants they were entitled to file exceptions to the proposed order within ten days of
9 its issuance. On March 20, 2019, the ALJ granted the Agency's motion for an extension
10 of time to file exceptions because the Administrative Prosecutor was serving on jury
11 duty. The Agency timely filed exceptions on March 28, 2019. Respondent did not file
12 any exceptions.

13 FINDINGS OF FACT – THE MERITS

14 1) Respondent had a subcontract with Baldwin General Contracting Inc. to
15 furnish labor for the construction of a public school classroom addition at the Maple
16 School in Springfield, Oregon, in Lane County.

17 2) Respondent had a subcontract with Baldwin General Contracting Inc. to
18 furnish labor for the construction of the OPS Crew Quarters in Albany, Oregon, in Linn
19 County.

20 3) Respondent employed Alejandro, Flores, Oliveros and Valladares-Ramos
21 to perform work on the Maple project.

22 4) Respondent employed Alejandro, Flores, Oliveros, Rodriguez-Abriga,
23 Rodriguez-Solano, Rodriguez-Palos and Valladares-Ramos to perform work on the
24 OPS project.
25

1 5) Alejandre did not receive timely prevailing wage rate wages and prevailing
2 wage rate overtime wages earned on the Maple project in the amount of \$9,141.37.³⁰

3 6) Flores did not receive timely prevailing wage rate wages earned on the
4 Maple project in the amount of \$325.99.

5 7) Oliveros did not receive timely prevailing wage rate wages and prevailing
6 wage rate overtime wages earned on the Maple project in the amount of \$542.48.

7 8) Valladares-Ramos did not receive timely prevailing wage rate wages and
8 prevailing wage rate overtime wages earned on the Maple project in the amount of
9 \$1,999.99.

10 9) Alejandre did not receive timely prevailing wage rate wages and prevailing
11 wage rate overtime wages earned on the OPS project in the amount of \$1,966.39.

12 10) Flores did not receive timely prevailing wage rate wages and prevailing
13 wage rate overtime wages earned on the OPS project in the amount of \$1,047.85.

14 11) Oliveros did not receive timely prevailing wage rate wages and prevailing
15 wage rate overtime wages earned on the OPS project in the amount of \$108.05.

16 12) Rodriguez-Abriga did not receive timely prevailing wage rate wages
17 earned on the OPS project in the amount of \$1,388.80.

18 13) Rodriguez-Solano did not receive timely prevailing wage rate wages
19 earned on the OPS project in the amount of \$4,960.00.

20 14) Rodriguez-Palos did not receive timely prevailing wage rate wages earned
21 on the OPS project in the amount of \$3,164.98.

22 15) Valladares-Ramos did not receive timely prevailing wage rate wages and
23
24

25 ³⁰ The job titles, dates and hours worked, prevailing wage rates and calculations for all of the claimants are explained in detail in Procedural Finding of Fact #10, and are incorporated herein.

1 prevailing wage rate overtime wages earned on the OPS project in the amount of
2 \$7,797.98.

3 CONCLUSIONS OF LAW

4 1) The Commissioner of the Bureau of Labor and Industries has the authority
5 to order Respondents to pay the wage claimants any unpaid wages and liquidated
6 damages, plus interest, for violations of ORS 279C.840(1) and ORS 279C.540. ORS
7 279C.855(1); ORS 652.332; OAR 839-025-0080.

8 2) The Maple and OPS projects were public works projects as defined in
9 ORS 279C.800(6).

10 3) Respondent was Claimants' employer at the Maple and OPS projects.

11 4) Respondent violated ORS 279C.840(1) and ORS 279C.800(1)(a) by
12 failing to timely pay prevailing wage rate wages and prevailing wage rate overtime
13 wages.

14 5) Since a violation of ORS 279C.840 was established, Respondent is also
15 responsible for a total of \$32,457.98 in liquidated damages in the amount of the unpaid
16 wages. ORS 279C.855(1).

18 OPINION

19 All allegations in the Agency's Amended OOD were resolved in the ALJ's interim
20 order granting the Agency's motion for summary judgment. No further discussion is
21 required as to the merits.

22 AGENCY'S EXCEPTIONS

23 The Agency's six exceptions request that the forum make corrections for
24 punctuation and the calculation for the wage total of Alejandro. The forum concludes
25

1 that the exceptions are well taken and the Exceptions are GRANTED.

2 **ORDER**

3 NOW, THEREFORE as authorized by ORS 279C.840, OAR 839-025-0035, ORS
4 279C.855, ORS 652.140, ORS 652.150, and ORS 652.332, and as payment of
5 liquidated damages, the Commissioner of the Bureau of Labor and Industries hereby
6 orders Respondent **R. B. Development Corporation Inc.**, to deliver to the
7 Administrative Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office
8 Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, the following:

9 (1) A certified check payable to the Bureau of Labor and Industries in trust for
10 Francisco Alejandro in the amount of **ELEVEN THOUSAND ONE HUNDRED**
11 **THIRTY-SEVEN DOLLARS AND SEVENTY-SIX CENTS (\$11,137.76)**, plus
interest at the legal rate on that amount from the date the Final Order is issued
until paid.

12 (2) A certified check payable to the Bureau of Labor and Industries in trust for
13 Filemon Flores in the amount of **ONE THOUSAND THREE HUNDRED**
14 **SEVENTY-THREE DOLLARS AND EIGHTY-FOUR CENTS (\$1,373.84)**, plus
interest at the legal rate on that amount from the date the Final Order is issued
until paid.

15 (3) A certified check payable to the Bureau of Labor and Industries in trust for
16 Rosalio Jimenez Oliveros in the amount of **THREE HUNDRED FIFTY DOLLARS**
17 **AND FIFTY-THREE CENTS (\$650.53)**, plus interest at the legal rate on that
amount from the date the Final Order is issued until paid.

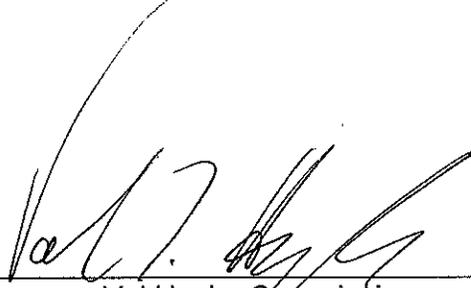
18 (4) A certified check payable to the Bureau of Labor and Industries in trust for
19 Roger Orlando Valladares-Ramos in the amount of **NINE THOUSAND SEVEN**
20 **HUNDRED NINETY-SEVEN DOLLARS AND NINETY-SEVEN CENTS**
(\$9,797.97), plus interest at the legal rate on that amount from the date the Final
Order is issued until paid.

21 (5) A certified check payable to the Bureau of Labor and Industries in trust for
22 Jesus Rodriguez-Abrega in the amount of **ONE THOUSAND THREE HUNDRED,**
23 **EIGHTY-EIGHT DOLLARS EIGHTY CENTS (\$1,388.80)**, plus interest at the
legal rate on that amount from the date the Final Order is issued until paid.

24 (6) A certified check payable to the Bureau of Labor and Industries in trust for
25 Daniel Rodriguez-Solano in the amount of **FOUR THOUSAND NINE HUNDRED**

1 **SIXTY DOLLARS (\$4,960.00)**, plus interest at the legal rate on that amount from
2 the date the Final Order is issued until paid.

3 (7) A certified check payable to the Bureau of Labor and Industries in trust for
4 Omar Rodriguez-Palos in the amount of **THREE THOUSAND ONE HUNDRED**
5 **SIXTY-FOUR DOLLARS AND NINETY-EIGHT CENTS (\$3,164.98)**, plus interest
6 at the legal rate on that amount from the date the Final Order is issued until paid.

7 

8 _____
9 Val Hoyle, Commissioner
10 Bureau of Labor and Industries

11
12
13 ISSUED ON: April 16, 2019
14
15
16
17
18
19
20
21
22
23
24
25