

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: SOLORZANO, LLC, dba Aztek
General Contractors, and LUIS
SOLORZANO, as an Individual,

Appellants.

Citation and Notice of Assessment Nos. W-
629-17 & W-630-17

OAH Docket No. 08-2017-LI-00541

No. 2018-016-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order served on January 29, 2018, having considered the petition for review filed by Solorzano, LLC, and Luis Solorzano (Appellants) and briefing submitted to the Director's Office, and having reviewed the record created at hearing, issues this Director's Order.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on January 29, 2018. The Initial Order affirmed the Department's Citation and Notice of Assessment Nos. W-629-17 and W-630-17.
2. On April 20, 2018, the Appellants timely filed a petition for review with the Director.

3. The Director adopts and incorporates all the Initial Order's findings of facts, including the Initial Order's credibility determinations, which were correctly based on the evidence presented, including the demeanor and motivations of the parties, the reasonableness of the testimony and the totality of the circumstances.
4. The Director adopts and incorporates the Initial Order's "Issue" statement, the "Order Summary," and the "Hearing" summary.
5. The Director adopts and incorporates the Administrative Law Judge's evidentiary rulings, including the determination that Martin Ortiz Jardinez's place of residence was not relevant to the question of whether the Appellants failed to pay him wages owed. At the time of the ruling, the Appellants had not offered any evidence of an agreement to reduce wages in exchange for living accommodations. The ruling did not preclude the Appellants from offering evidence of such an agreement or further testimony on the issue of Mr. Jardinez's residence upon such a showing.

II. CONCLUSIONS OF LAW

1. Based on the Appellants' timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Director adopts and incorporates the Initial Order's Conclusions of Law.
3. The Director considers "the whole record or such portions of it as may be cited by the parties." The Appellants attach a declaration to their petition that was not part of the record at the Office of Administrative Hearings. The Director does not consider this declaration.
4. The Department argues that the Initial Order understates unpaid wages owed by \$1,000 or \$2,000. But the Initial Order's determination of unpaid wages owed reflects the amount in the Department's citation and notice of assessment. The wage claimant agreed to this amount, and the Department did not move to modify the citation. Nor did the Department cross-appeal from the initial order. The Director adopts the Initial Order's determination of unpaid wages owed.

III. DECISION AND ORDER

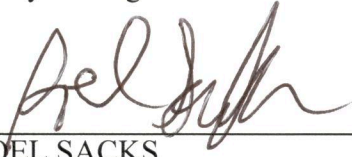
Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment Nos. W-629-17 and W-630-17 are affirmed. The Initial Order of January 29, 2018, is incorporated by reference herein.

1. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of the failure to pay wages and interest. The Appellants are ordered to

pay wages to Gilberto Ochoa for wages owed in the amount of \$6,287.50. The Appellants are ordered to pay wages to Martin Ortiz Jardinez for wages owed in the amount of \$1,193.75. The Appellants are also ordered to pay interest, as specified in the Initial Order, in the amount of one percent per month under RCW 49.48.083(2) for these wages to the date this order is served. The Appellants are ordered to make these payments within thirty days of the date of service of this final Director's Order.

2. Payment of Civil Penalty: The Appellants are ordered to pay the Department a penalty in the amount of \$2,000. *See* Citation and Notice of Assessment for payment information.

DATED at Tumwater, Washington this 22 day of August 2018.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing, or by emailing to DirectorAppeal@LNI.WA.GOV, or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 22 day of August 2018, via U.S. Mail, postage prepaid, to the following:

Solorzano, LLC,
dba Aztek General Contractors
15453 81st Avenue NE
Kenmore, WA 98028

Luis Solorzano
15453 81st Avenue NE
Kenmore, WA 98028


Roger Hillman
Paramount Law Group, PLLC
1000 Second Avenue, Suite 3000
Seattle, WA 98104

Rebecca Echols
Office of the Attorney General
MS: TB-14
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Gilberto Ochoa
25819 26th Place S., Apt B-306
Kent, WA 98032

Martin Ortiz Jardinez
19204 15th Avenue NE
Shoreline, WA 98155

DATED this 22 day of August 2018, at Tumwater, Washington.



Lisa Rodriguez

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Solorzano, LLC dba Aztek General Contractors and Luis Solorzano, as an individual,

Employer/Appellants.

Docket No. 08-2017-LI-00541

INITIAL ORDER

Agency: Labor and Industries
Program: Wage Payments
Agency Nos. W-629-17 and W-630-17

1. ISSUES PRESENTED

- 1.1 Did the Appellant Solorzano LLC dba Aztek General Contractors and Luis Solorzano, as an individual, violate RCW 49.52.050 and RCW 49.48.010, by failing to pay Wage Claimant Gilberto Ochoa for all compensation due for work performed during the period of May 13, 2016 through August 13, 2016, as alleged in the Citation and Notice of Assessment for Wage Payment Violations, W-629-17, issued May 5, 2017?
- 1.2 Did the Solorzano LLC dba Aztek General Contractors and Luis Solorzano, as an individual, violate RCW 49.52.050 and RCW 49.48.050, by failing to pay Wage Claimant Martin Ortiz Jardinez at the agreed rate of pay \$25.00 per hour for regular hours and the agreed rate of pay of \$37.50 per hour for overtime hours for work performed during the period of November 16, 2015 through December 31, 2015, as alleged in the Citation and Notice of Assessment for Wage Payment Violations, W-630-17, issued May 5, 2017?
- 1.3 If these allegations are proven, what is the amount of wages owed to each Wage Claimant and what are the appropriate interest and penalties, if any?

2. ORDER SUMMARY

- 2.1 Solorzano, LLC dba Aztek General Contractors and Luis Solorzano, as an individual, violated RCW 49.52.050 and RCW 49.48.010, by failing to pay Wage Claimant Gilberto Ochoa for all compensation due for work performed during the period of May 13, 2016 through August 13, 2016. Gilberto Ochoa is owed \$6,287.50, plus interest beginning May 13, 2016. The Citation and Notice of Assessment for Wage Payment Violations, W-629-17, issued May 5, 2017, is **AFFIRMED**.
- 2.2 Solorzano, LLC dba Aztek General Contractors and Luis Solorzano, as an individual, violated RCW 49.52.050 and RCW 49.48.010, by failing to pay Wage Claimant Martin Ortiz Jardinez for all hours worked during the period of November 16, 2015 through December 31, 2015. Martin Ortiz Jardinez is owed \$1,193.75, plus interest beginning November 16, 2015. The Citation and Notice of Assessment for Wage Payment Violations, W-630-17, issued May 5, 2017, is **AFFIRMED**.

- 2.3 Solorzano, LLC dba Aztek General Contractors and Luis Solorzano, as an individual, are liable for penalties totaling \$2,000.00, as per RCW 49.48.083.

3. HEARING

<i>Hearing Date</i>	January 10, 2018
<i>Administrative Law Judge</i>	Jane Cantor Shefler
<i>Appellant</i>	Solorzano LLC dba Aztek General Contractors and Luis Solorzano, as an individual
<i>Appellant Representative</i>	Roger Hillman, Attorney at law
<i>Appellant Witness</i>	Luis Solorzano Paz
<i>Appellant Exhibits</i>	Exhibit A was offered and admitted at hearing.
<i>Agency</i>	Department of Labor and Industries
<i>Agency Representative</i>	Rachel Echols, Assistant Attorney General
<i>Agency Witnesses</i>	Ruth Castro, Industrial Relations Agent, Gilberto Ochoa, Wage Claimant, and Martin Ortiz Jardinez, Wage Claimant
<i>Agency Exhibits</i>	Department Exhibits 1 through 31 were offered and admitted at hearing.
<i>Court Reporter</i>	Daria McKeever, Central Court Reporting & Video.
<i>Interpreter</i>	Allison Ostrur, FourCorners Translation
<i>Close of Record</i>	The record was closed on January 10, 2018.

4. FINDINGS OF FACT

Based on the evidence presented, the Administrative Law Judge makes the following findings of fact:

Jurisdiction

- 4.1 The Department of Labor and Industries ("Department") issued Citation and Notice of Assessment No. W-629-17 on May 5, 2017, alleging that Solorzano, LLC dba Aztek General Contractors and Luis Solorzano, as an individual ("Aztek", "Employer", or "Appellant") violated RCW 49.52.050 and RCW 49.48.010, by failing to pay Wage Claimant Gilberto Ochoa ("Ochoa") all wages due for the period of May 13, 2016 through August 13, 2016. The Department assessed Appellant a penalty of \$1,000.00. *Exhibit 1, pages 2, 6, 8-11.*
- 4.2 The Department issued Citation and Notice of Assessment No. W-630-17 on May 5, 2017, alleging that the Appellant violated RCW 49.52.050 and RCW 49.48.010, by

failing to pay Wage Claimant Martin Ortiz Jardinez ("Jardinez") all wages due for the period of November 16, 2015 through December 31, 2015. The Department assessed Appellant a penalty of \$1,000.00. *Exhibit 1, pages 2, 6, 8-11.*

- 4.3 The Appellant filed a letter of appeal on June 2, 2017. *Exhibit 3.*
- 4.4 The matter was referred to the Office of Administrative Hearings on August 25, 2017.

Solorzano LLC dba Aztek General Contractors

- 4.5 Luis Solorzano Paz ("Solorzano") is the sole member of Solorzano, LLC dba Aztek General Contractors. *Exhibit 6, page 3.* Through this business, Aztek performed general remodeling and other construction services.
- 4.6 As of the date of hearing, Aztek was no longer in operation. *Testimony of Luis Solorzano Paz ("Solorzano Testimony").*
- 4.7 Aztek's general construction contractor license expired October 15, 2017. *Exhibit 6, page 1.*
- 4.8 Solorzano did not maintain payroll records concerning the employment of either Ochoa or Jardinez. *Solorzano Testimony.*

Ochoa Wage Claim – W-629-17

- 4.9 Ochoa worked for Aztek during 2016. Prior to May 2016, Ochoa completed a siding job for which he was paid in full. *Exhibit 4, page 2; Testimony of Gilberto Ochoa ("Ochoa Testimony").*
- 4.10 In the period between May and August 2016, Aztek hired Ochoa to perform three jobs. In May 2016, Ochoa was hired to paint a house in Seattle, for the flat rate of \$3,500.00. *Exhibit 4, pages 2 and 4; Ochoa Testimony; Solorzano Testimony.*
- 4.11 In June and July 2016, Ochoa worked for Aztek, installing sheetrock/dry wall at a location in Kenmore, for the flat rate of \$1,600.00. *Exhibit 4, pages 2 and 4; Ochoa Testimony.* For this job, Ochoa worked with his brother Juan Manuel Ochoa.
- 4.12 In August, 2016, Ochoa was hired by Aztek to install siding at a location in Lynnwood, for a flat rate of \$1,187.50. *Exhibit 4, pages 2 and 4, Ochoa Testimony.*
- 4.13 Solorzano denies that Ochoa was employed by Aztek for these three jobs. Rather, he asserts that he had subcontracted the work to Cypress Construction, a company owned by Juan Manuel Ochoa. *Exhibit 26; Solorzano Testimony.* Solorzano maintains he paid Cypress Construction in full for all work performed by Ochoa. The payments to Cypress Construction were in cash, delivered directly to either Ochoa or his brother. *Exhibit 26; Solorzano Testimony.*
- 4.14 Solorzano did not provide any documentation of payments made to Ochoa, his brother, or to Cypress Construction. *Exhibit 26; Solorzano Testimony.*

Ochoa Department Investigation

- 4.15 Ochoa filed a Worker's Rights Complaint Form on December 13, 2016. He asserted that he was owed for worked performed during the period of May 13, 2016 through August 13, 2016. *Exhibit 7.*
- 4.16 Ruth Castro, Industrial Relations Agent, investigated the Worker's Rights Complaint. During the course of her investigation, she spoke with both Ochoa and Solorzano, by telephone and by meeting with them (separately) in person. *Exhibit 4.* Both parties independently informed her of the three jobs at issue, including the agreed rate of compensation for each project. *Exhibit 4, pages 2 and 4.*
- 4.17 Ms. Castro requested documentation from the Employer showing payments made to Ochoa for the work performed. *Exhibit 4, page 4; Exhibit 12.* The Employer failed to provide the requested records. Based on the information available, Ms. Castro determined that Ochoa had not been paid for the three projects and he was owed compensation in the amount of \$6,287.50.

Ochoa Credibility Finding

- 4.18 The testimony of Ochoa and Solorzano conflicted on material points, particularly as to whether the Wage Claimant was an employee. Based upon the evidence presented, and having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony and the totality of the circumstances presented, the Administrative Law Judge finds that Ochoa's testimony regarding his status as an employee is more credible than that of the Employer.
- 4.19 Solorzano presented only uncorroborated testimony regarding Ochoa's status as an employee. During the investigation of the wage complaint, Solorzano confirmed the three jobs at issue, including the flat rate compensation for each. *See, Exhibit 4, page 4; Exhibit 26.* Solorzano did not provide any documentation, either during the investigation or at hearing, to support his contention that he had subcontracted the work to Cypress Construction or that he had paid Cypress Construction for the work performed.

Jardinez Wage Claim – W-630-17

- 4.20 On or about November 2, 2015, Aztek hired Martin Ortiz Jardinez to install siding at a location in Shoreline, at the agreed rate of pay of \$25.00 per hour. He worked at this job until December 31, 2015. *Testimony of Martin Ortiz Jardinez ("Jardinez Testimony").*
- 4.21 During the period of November 16, 2015 through December 31, 2015, Jardinez worked solely for Aztek. *Jardinez Testimony.* During this time, Jardinez worked 168 regular hours and 26.5 overtime hours. *Exhibit 17.* Total compensation due for this work is \$5,193.75, calculated as follows: 168 hours at regular rate of \$25.00 per hour (\$4,200.00), and 26.5 hours at the overtime rate of \$37.50 per hour (\$993.00).

4.22 Jardinez received \$4,000 for this work, by four checks of \$1,000 each, issued from November 6, 2015 through December 21, 2015. *Exhibit 27*. On or about December 12, 2015, Solorzano issued a check (#1032) to Jardinez, also in the amount of \$1,000. This check was not honored by the bank due to insufficient funds. *Exhibit 16; Exhibit A, page 5; Jardinez Testimony*.

Jardinez Department Investigation

4.23 Jardinez filed a Worker's Rights Complaint Form on December 21, 2016. He asserted that he was owed for work performed during the period of November 16, 2015 through December 31, 2015. *Exhibit 15*.

4.24 Ms. Castro investigated the Worker's Rights Complaint. During the course of her investigation, she spoke with both Jardinez and Solorzano, by telephone and by meeting with them (separately) in person. *Exhibit 5*.

4.25 Ms. Castro requested documentation from Solorzano, showing payments made to Jardinez for the work performed. *Exhibit 4, page 4; Exhibits 12 and 25*. In response, Solorzano submitted copies of the checks issued to Jardinez. Based on the information available, Ms. Castro determined that Solorzano had not paid Jardinez all amounts due for the work performed during the period at issue and that Jardinez is owed \$1,193.75.

Jardinez Credibility Finding

4.26 At hearing, Solorzano challenged the credibility of Jardinez because he failed to inform the Department that he had received \$4,000 from the employer for the work performed during the period at issue. By questioning his credibility, Solorzano implies that Jardinez misrepresented hours worked. Based upon the evidence presented, and having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony and the totality of the circumstances presented, the Administrative Law Judge finds that the Jardinez's testimony regarding the hours worked and his status as an employee is more credible than that of the Employer.

4.27 Solorzano acknowledged that Jardinez was an employee, at least during a portion of the period at issue, and asserted that Jardinez agreed to work for a flat rate of pay of \$1,000 per week. The Employer also asserted that the \$4,000 paid to Jardinez was payment in full for all work performed for Aztek. Solorzano maintained that Jardinez was subsequently hired by Hayworth Design and Construction and that any wages owed to Jardinez are the responsibility of this company. *See, Appellant's Hearing Brief, page 2*. However, Solorzano did not present any testimony or documentation contradicting the record of hours worked submitted by Jardinez to the Department in support of his claim, nor did he provide any proof that Jardinez had been employed by another company during the period at issue.

5. CONCLUSIONS OF LAW

Based on the facts above, the Administrative Law Judge makes the following conclusions:

Jurisdiction

- 5.1 The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under RCW 34.05 and 49.48.084.

Burden of Proof

- 5.2 Under the Washington Wage Payment Act, RCW 49.48 (WPA), the wage claimant has the initial burden of showing *prima facie* evidence of a wage payment law violation. See, *Anderson v. Mt. Clemens Pottery Co.*, 328 US. 680, 687-688, S.Ct. 1187, 90 L.Ed. 1515 (1946) (federal minimum wage law under Fair Labor & Standards Act); *MacSuga v. County of Spokane*, 97 Wn.App. 435, 445-446, 983 P.2d 1167 (1999). The *prima facie* showing must be supported by a preponderance of the evidence.
- 5.3 A preponderance of the evidence is that evidence sufficient to incline a fair and impartial mind to one side of the issue rather than the other. *Mendoza v. Dept. of Agriculture*, 2006 Wash.App.LEXIS 2363 (Ct. App.Wa.II, No. 34262-6-II), citing *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005).
- 5.4 Substantial evidence must be presented and must be "sufficient to persuade a fair-minded person of the truth or correctness of the matter." *Ongom v. Dept. of Health*, 124 Wn App. 935, 948-49, 104 P.3d 29 (2005), *reversed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005).

Applicable Law

- 5.5 The WPA authorizes administrative enforcement of wage payment requirements. Upon receipt of a wage complaint that alleges a violation of a wage payment requirement, the Department "shall investigate" and, unless otherwise resolved, "shall" issue either a citation (when finding a wage law violation) or a determination of compliance (when finding no violation) within sixty days. RCW 49.48.083. The Department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period. *Id.*
- 5.6 Wage payment requirements are those "set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department." RCW 49.48.082(10). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. RCW 49.48.082(12).
- 5.7 Under RCW 49.46.070, an employer is obligated to kept accurate payroll records for each employee.

5.8 RCW 49.46.020 requires that every employer shall pay to each of his or her employees a rate of minimum wage for hours worked. See also, Chapter 296-126 WAC.

5.9 RCW 49.46.010(7) defines "wage" as:

[C]ompensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules by director.

5.10 Employers must pay employees for all hours worked. Under Department Administrative Policy ES.C.2, "hours worked" is defined as:

[A]ll hours during which the employee is authorized or required, known or reasonably believed by the employer to be on duty on the employer's premises or at a prescribed work place.

See also, WAC 296-126-002(8).

5.11 An employee cannot waive the legal right to receive all wages due. RCW 49.46.090(1) provides in pertinent part:

Any employer who pays any employee less than the amounts to which such employee is entitled under or by virtue of [Chapter 49.46 RCW] shall be liable to such employee affected for the full amount due such employee less any amount actually paid to such employee by the employer Any agreement between such employee and the employer allowing the employee to receive less than what is due under [Chapter 49.46 RCW] shall be no defense to such action.

5.12 An employer is required to pay overtime when an employee works over 40 hours in a work week. RCW 49.46.130(1). The overtime rate is not less than one and a half times the regular rate at which the worker is employed. *Id.* A work week is defined as a fixed and regularly reoccurring seven day period. WAC 296-128-015.

5.13 RCW 49.48.083(2) provides that the Department may order an employer to pay interest on the amount of unpaid wages due:

If the department determines that an employer has violated a wage payment requirement and issues to the employer a citation and notice of assessment, the department may order the employer to pay employees all wages owed, including interest of one percent per month on all wages owed, to the employee. The wages and interest owed must be calculated from the first date wages were owed to the employee, except that the department may not order the employer to pay any wages and interest that were owed more than three years before the date the wage complaint was filed with the department.

Analysis – Ochoa Wage Claim

- 5.14 The Department has provided evidence that the Ochoa was employed directly by the Employer and was not, during the period at issue, an employee of Cypress Construction. This evidence was not refuted by the Employer through any credible testimony or documentation. The Employer acknowledged that Ochoa worked on the three projects and also confirmed the rate of payment for each. The Employer did not provide any documentation that he had paid Cypress Construction for the work performed. Based on the record herein, Department has shown Ochoa was not paid for his work on the three projects.
- 5.15 Under RCW 49.52.050 and RCW 49.48.010, the Appellant owes Ochoa \$6,287.50 for unpaid wages, plus interest on the unpaid wage amount, beginning May 13, 2016. The Department's Citation and Notice of Assessment for Wage Payment Violations, No. W-629-17, dated May 5, 2017, is AFFIRMED.

Analysis – Jardinez Wage Claim

- 5.16 The Department has provided evidence that the Jardinez was employed by the Employer during the period of November 16, 2015 through December 31, 2015, at an agreed rate of pay of \$25.00 per hour. Jardinez submitted a record of hours worked, showing that he worked 168 regular hours and 26.5 overtime hours during the period at issue. This evidence was not refuted by the Employer through any credible testimony or documentation.
- 5.17 For the period of November 16, 2015 through December 31, 2015, the Employer owes Jardinez \$4,200 for 168 regular hours worked and \$993.75 for 26.5 overtime hours worked. During the period at issue, Jardinez received \$4,000.00. The Employer owes Jardinez \$1,193.75 for unpaid wages, plus interest, beginning November 16, 2015. The Department's Citation and Notice of Assessment for Wage Payment Violations, No. W-630-17, dated May 5, 2016, is AFFIRMED.

Penalty

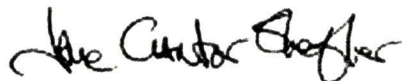
- 5.18 The Department has the authority to issue a civil penalty to employers who unlawfully withhold an employee's wages. RCW 49.48.083(3)(a). The statute provides:
- (3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.
- (a) A civil penalty for a willful violation of a wage payment requirement shall be not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

- 5.19 A willful violation is defined in RCW 49.48.082(13) as a "knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.53.050(2)."
- 5.20 In this case, the Employer's failure to pay all compensation due to the wage claimants was not accidental. There were no bona fide disputes between the Employer and either of the wage claimants as to the amount of wages due. The Employer's failure to pay the wage claimants for all hours worked was "knowing and intentional." The violation of the wage payment requirements was thus "willful" under RCW 49.48.083(3)(a). The Department's assessment of a penalty of \$1,000.00 for each Citation is appropriate under RCW 49.48.083(3)(a). Penalties totaling \$2,000.00, as assessed in Citation and Notice of Assessment, No. W-629-17 and No. W-630-17, are affirmed.

6. INITIAL ORDER

- 6.1 The Department of Labor and Industries' Citation and Notice of Assessment for Wage Payment Violations, No. W-629-17, dated May 5, 2017, is AFFIRMED.
- 6.2 Solorzano LLC dba Aztek General Contractors and Luis Solorzano, as an individual, must pay Gilberto Ochoa \$6,287.50, plus interest, accruing at the rate of one percent (1%) per month on the unpaid wage amount, beginning May 13, 2016 and until payment in full is received by the Department of Labor and Industries.
- 6.3 The Department of Labor and Industries' Citation and Notice of Assessment for Wage Payment Violations, No. W-630-17, dated May 5, 2017, is AFFIRMED.
- 6.4 Solorzano LLC dba Aztek General Contractors and Luis Solorzano, as an individual, must pay Martin Ortiz Jardinez \$1,193.75, plus interest, accruing at the rate of one percent (1%) per month on the unpaid wage amount, beginning November 16, 2015 and until payment in full is received by the Department of Labor and Industries.
- 6.5 Solorzano LLC dba Aztek General Contractors and Luis Solorzano, as an individual, are liable for penalties totaling \$2,000.00.

Issued from Tacoma, Washington on the date of mailing.



Jane Cantor Shefler
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – READ CAREFULLY

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.¹

You may e-mail your Petition for Administrative Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Administrative Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Administrative Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Administrative Review, the Director *must actually receive* the Petition for Administrative Review during office hours at the Director's office *within 30 days of the date this Initial Order was mailed to the parties*. You must also provide a copy of your Petition for Administrative Review to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.²

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under Chapter 34.05 RCW.

CERTIFICATE OF SERVICE ATTACHED

¹ RCW 49.48.084; RCW 34.05.464

² RCW 49.48.084; Chapter 34.05

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 08-2017-LI-00541

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

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- First Class Mail
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Date: Monday, January 29, 2018

OFFICE OF ADMINISTRATIVE HEARINGS



Javon Harvey
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