

**FILED**

MAR 15 2012

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Chief Financial Officer  
Docketed by: DAB



REPRESENTING  
CHIEF FINANCIAL OFFICER  
**JEFF ATWATER**  
STATE OF FLORIDA

**FILED**  
2012 MAR 16 A 10:14  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF:

Case No.: 11-110-1A-WC

LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC.,  
A DISSOLVED FLORIDA CORPORATION AND LA  
FRAMING CONTRACTOR, INC

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**FINAL ORDER**

THIS PROCEEDING came on for final agency action and Jeff Atwater, Chief Financial Officer of the State of Florida, or his designee, having considered the record in this case, including the Stop-Work Order and Order of Penalty Assessment, and the Amended Order of Penalty Assessment, and being otherwise fully advised in the premises, hereby finds that:

1. On April 1, 2011, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department") issued a Stop-Work Order and Order of Penalty Assessment in Division of Workers' Compensation Case No. 11-110-1A to LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC. The Stop-Work Order and Order of Penalty Assessment included a Notice of Rights wherein LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC was advised that any request for an administrative proceeding to challenge or contest the Stop-Work Order and Order of Penalty Assessment must be filed within

twenty-one (21) days of receipt of the Stop-Work Order and Order of Penalty Assessment in accordance with Section 120.569 and 120.57, Florida Statutes.

2. On April 1, 2011, the Stop-Work Order and Order of Penalty Assessment was personally served on LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC. A copy of the Stop-Work Order and Order of Penalty Assessment is attached hereto as "Exhibit A" and incorporated herein by reference.

3. On April 19, 2011, the Department issued an Amended Order of Penalty Assessment in Division of Workers' Compensation Case No. 11-110-1A to LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC. The Amended Order of Penalty Assessment assessed a total penalty of \$12,985.36 against LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC.

4. On April 29, 2011, the Amended Order of Penalty Assessment was personally served on LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC. A copy of the Amended Order of Penalty Assessment is attached hereto as "Exhibit B" and incorporated herein by reference.

5. LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC failed to answer the Stop-Work Order and Order of Penalty Assessment and the Amended Order of

Penalty Assessment or request a proceeding in accordance with Sections 120.569 and 120.57, Florida Statutes.

### **FINDINGS OF FACT**

The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on April 1, 2011, and the Amended Order of Penalty Assessment issued on April 19, 2011, which are fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

### **CONCLUSIONS OF LAW**

Based upon the Findings of Fact adopted herein, the Department concludes that LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC violated the specific statutes and rules alleged in the Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment and hereby adopts the violation(s) charged in the Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment as the Conclusions of Law in this case.

### **PENALTY IMPOSED**

The Findings of Fact and Conclusions of Law adopted herein constitute grounds for the Chief Financial Officer to impose the penalty as set forth herein.

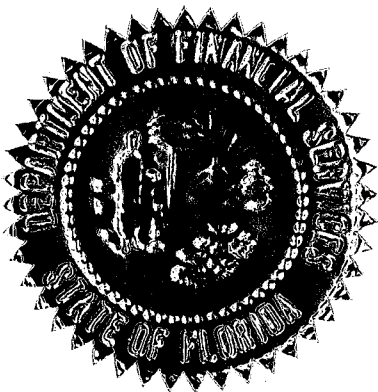
IT IS THEREFORE ORDERED that:

- a. LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC

shall immediately pay the total penalty of \$12,985.36, in full, to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund; and

b. LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC shall immediately cease all business operations in the State of Florida until such time as the Department issues an order releasing the Stop-Work Order and Amended Order of Penalty Assessment. The Department shall not issue an Order releasing the Stop-Work Order and Amended Order of Penalty Assessment until LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC., A DISSOLVED FLORIDA CORPORATION AND LA FRAMING CONTRACTOR, INC has come into compliance with the coverage requirements of Chapter 440, Florida Statutes and has paid a total penalty of \$12,985.36 to the Department.

**DONE AND ORDERED** on this 15<sup>th</sup> day of March, 2012.



A handwritten signature in black ink, appearing to read "E. Tanner Holloman". The signature is written in a cursive style and is positioned above a horizontal line.

E. Tanner Holloman  
Director, Workers' Compensation

**NOTICE OF RIGHTS**

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.110. Review proceedings must be instituted by filing a Notice of Appeal with Julie Jones, DFS Agency Clerk, Department of Financial Services, Room 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida, 32399-0390 and a copy of the Notice of Appeal, a copy of this Order and filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Lynda Aguayo; dba, LA Framing Contractor, Inc., a dissolved Florida Corporation and LA Framing Contractor, Inc, 4942 County Highway 181-C, Ponce De Leon, Florida 32455, on this 15<sup>th</sup> day of March, 2012.



Paige Shoemaker  
Florida Bar No. 143022  
Assistant General Counsel  
Department of Financial Services  
Division of Legal Services  
200 E. Gaines Street  
Tallahassee, FL 32399-4229  
850 413-1606  
850 413-1978 (fax)

COPIES FURNISHED TO:

Lynda Aguayo, dba, LA Framing Contractor, Inc., a dissolved Florida Corporation and LA Framing Contractor, Inc  
4942 County Highway 181-C  
Ponce De Leon, Florida 32455

Robert Borden  
103-A Lewis Street  
Fort Walton Beach, Florida 32547

Paige Shoemaker  
Department of Financial Services  
Division of Legal Services  
200 East Gaines Street  
Tallahassee, Florida 32399-4229

**STATE OF FLORIDA, DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF WORKERS' COMPENSATION**

<b>EMPLOYER NAME:</b> LYNDA AGUAYO, DBA, LA FRAMING CONTRACTOR, INC, a Dissolved Florida Corporation and LA FRAMING CONTRACTOR, INC		<b>STOP-WORK ORDER No.:</b> 11-110-1A
<b>FEIN:</b> 271162735	<b>ISSUANCE DATE:</b> 04/19/2011	
<b>EMPLOYER ADDRESS:</b> 4942 COUNTY HIGHWAY 181C		
<b>CITY:</b> PONCE DE LEON	<b>STATE:</b> FL	<b>ZIP:</b> 324552952

**AMENDED ORDER OF PENALTY ASSESSMENT**

The Division of Workers' Compensation issued a Stop-Work Order in this case on 04/01/2011. The Stop-Work Order included an Order of Penalty Assessment that identified the penalties assessable under sections 440.10 and 440.107, F.S. The Division hereby amends the Order of Penalty Assessment based on the following penalties:

- Failure to secure the payment of workers' compensation within the meaning of section 440.107(2), F.S., by:
  - failing to obtain coverage that meets the requirements of Chapter 440, F. S., and the Insurance Code;
  - materially understating or concealing payroll;
  - materially misrepresenting or concealing employee duties so as to avoid proper classification for premium calculations;
  - materially misrepresenting or concealing information pertinent to the computation and application of an experience rating modification factor.

For such violation(s) the Employer is assessed a penalty of \$12,985.36 (section 440.107(7)(d), F.S.) as detailed in the attached PENALTY WORKSHEET, which is incorporated herein by reference;

- Conducting business operations in violation of the Stop-Work Order as detailed in the attached PENALTY WORKSHEET, which is incorporated herein by reference, for which the Employer is assessed a penalty of \$.00 (section 440.107(7)(c), F.S.);
- Misrepresenting the status of the employee(s) as an independent contractor(s), as detailed on the attached PENALTY WORKSHEET, which is incorporated herein by reference, for which the Employer is assessed a penalty of \$.00 (section 440.10(1)(f), F.S.).

It is hereby **ORDERED** that the Employer is assessed a **TOTAL PENALTY** of \$12,985.36.

The penalties assessed herein supersede any penalties previously assessed in this case. The Employer shall pay the **TOTAL PENALTY** by money order or cashier's check, made payable to the **DFS-Workers' Compensation Administration Trust Fund**.

The Stop-Work Order issued in this case shall remain in effect until either (a) The Division issues an order releasing the Stop-Work Order upon finding that the employer has come into compliance with the coverage requirements of the workers' compensation law and pays the total penalty in full, or (b) The Division issues an Order of Conditional Release From Stop-Work Order pursuant to the employer coming into compliance with the coverage requirements of the workers' compensation law and entering into a Payment Agreement Schedule For Periodic Payment of Penalty.

Pursuant to Rule 69L-6.028, Florida Administrative Code, if the Division imputes the employer's payroll, the employer shall have twenty business days after service of the order assessing the penalty to provide business records sufficient for the Division to determine the employer's payroll for the period requested in the business records request for the calculation of the penalty. If sufficient business records are not provided within twenty business days after service of the order assessing the penalty, the calculation of the penalty imputing the employer's payroll will remain in effect.

**LIEN NOTICE**

Pursuant to Section 440.107(11), F.S., the Department may initiate lien proceedings to collect any penalty due that has not been paid. In addition, the Department may refer any unpaid penalty that is due to a collection agency for the initiation of proceedings to collect the unpaid penalty.

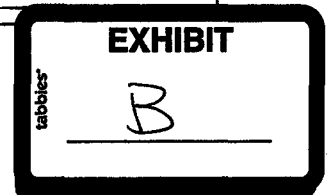
Please see the Notice of Rights on the reserve side that pertains to your rights regarding this action.

**CERTIFICATE OF SERVICE**

Pursuant to section 440.107(4), F.S., ROBERT BORDEN

served a true copy of this Amended Order of Penalty Assessment:

<input checked="" type="checkbox"/> By hand delivery:	DATE: <u>4-29-11</u>	TIME: <u>11:00 AM</u>	SERVER: <u>Borden</u>
<input type="checkbox"/> By certified mail:	DATE: _____	TIME: _____	ARTICLE: _____



## NOTICE OF RIGHTS

You have a right to administrative review of this action by the Department under sections 120.569 and 120.57, Florida Statutes.

To obtain review, you must file a written petition requesting review. If you dispute a material fact contained in this action, you are entitled to a hearing under Sections 120.569 and 120.57(1), Florida Statutes, at which you may be represented by counsel, present evidence and argument on the issue(s), examine witnesses, submit a proposed recommended order, and file exceptions to the recommended order of the Administrative Law Judge. If you do not dispute a material fact contained in this action, you are entitled to a hearing under section 120.57(2), Florida Statutes, at which you may be represented by counsel, present documentary evidence, and present a written statement in opposition to this action.

A petition for a hearing under sections 120.569 and 120.57, Florida Statutes, must conform to Rule 28-106.2015, Florida Administrative Code. The petition shall contain a) the name, address, and telephone number, and facsimile number (if any) of the petitioner; b) the name, address, and telephone number, and facsimile number of the attorney or qualified representative of the petitioner (if any) upon whom service of pleadings and other papers shall be made; c) a statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate; d) a statement of when the petitioner received notice of the agency action; and e) a statement including the file number to the agency action.

You must file the petition for hearing so that it is received by the Department within twenty-one (21) days of your receipt of this agency action. The petition must be filed with Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. **FAILURE TO FILE A PETITION WITHIN THE TWENTY-ONE (21) DAYS CONSTITUTES A WAIVER OF YOUR RIGHT TO ADMINISTRATIVE REVIEW OF THE AGENCY ACTION.**

Mediation under section 120.573, Florida Statutes, is not available.

### ISSUING AGENCY NAME AND ADDRESS

Division of Workers' Compensation, Bureau of Compliance: 103- A Lewis St. Fort Walton Beach, Florida 32547

Attn: Robert Borden, Telephone: 850 833 9048



**State of Florida, Department of Financial Services  
Division of Workers' Compensation, Bureau of Compliance  
1st Amended Order Of Penalty Assessment**

**BUSINESS NAME: LA FRAMING CONTRACTOR, INC  
SUCCESSOR: L & G FRAMING LLC**

**DWC Case No. 11-110-1A  
TOTAL PENALTY: \$12,985.36**

**Part 1. Penalty for failure to obtain coverage that meets the requirements of Chapter 440, F.S. and the Insurance Code.**

Employee Name	Calculation Methodology	(a) Class Code	(b) Period of Non-Compliance		(c) Gross Payroll *	(d) Column (c) /100	(e) Approved Manual Rate	(f) Premium (d) x (e)	(g) Penalty** (f) x 1.5
RAMIRO HERNANDEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	05/17/2010	06/22/2010	6,200.30	62.00	13.96	865.56	1,298.34
RAMIRO HERNANDEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	12/03/2010	12/31/2010	4,859.70	48.60	13.37	649.74	974.61
RAMIRO HERNANDEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	01/01/2011	01/20/2011	3,351.51	33.52	13.83	463.51	695.27
RAMIRO HERNANDEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	03/25/2011	04/01/2011	1,340.61	13.41	13.83	185.41	278.12
SALVADOR SANCHEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	05/17/2010	06/22/2010	6,200.30	62.00	13.96	865.56	1,298.34
SALVADOR SANCHEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	12/03/2010	12/31/2010	4,859.70	48.60	13.37	649.74	974.61
SALVADOR SANCHEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	01/01/2011	01/20/2011	3,351.51	33.52	13.83	463.51	695.27
SALVADOR SANCHEZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	03/25/2011	04/01/2011	1,340.61	13.41	13.83	185.41	278.12
PEDRO MORAN	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	05/17/2010	06/22/2010	6,200.30	62.00	13.96	865.56	1,298.34

\* If the employer has failed to provide business records sufficient to enable the Department to determine the employer's payroll, payroll shall be imputed to be the statewide average weekly wage as defined in s.440.12(2) F.S. multiplied by 1.5, (440.107(7)(e)).

\*\* Premium multiplied by statutory factor of 1.5

\*\*\* Greater of penalty under column (g) or \$1000. s440.107(d)(1)

**State of Florida, Department of Financial Services  
Division of Workers' Compensation, Bureau of Compliance  
1st Amended Order Of Penalty Assessment**

**BUSINESS NAME: LA FRAMING CONTRACTOR, INC**  
**SUCCESSOR: L & G FRAMING LLC**

**DWC Case No. 11-110-1A**  
**TOTAL PENALTY: \$12,985.36**

**Part 1. Penalty for failure to obtain coverage that meets the requirements of Chapter 440, F.S. and the Insurance Code.**

Employee Name	Calculation Methodology	(a) Class Code	(b) Period of Non-Compliance		(c) Gross Payroll *	(d) Column (c) /100	(e) Approved Manual Rate	(f) Premium (d) x (e)	(g) Penalty** (f) x 1.5
PEDRO MORAN	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	12/03/2010	12/31/2010	4,859.70	48.60	13.37	649.74	974.61
PEDRO MORAN	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	01/01/2011	01/20/2011	3,351.51	33.52	13.83	463.51	695.27
PEDRO MORAN	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	03/25/2011	04/01/2011	1,340.61	13.41	13.83	185.41	278.12
JOSE MANUEL RAMIREZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	05/17/2010	06/22/2010	6,200.30	62.00	13.96	865.56	1,298.34
JOSE MANUEL RAMIREZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	12/03/2010	12/31/2010	4,859.70	48.60	13.37	649.74	974.61
JOSE MANUEL RAMIREZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	01/01/2011	01/20/2011	3,351.51	33.52	13.83	463.51	695.27
JOSE MANUEL RAMIREZ	<input checked="" type="radio"/> Imputed <input type="radio"/> AWW <input type="radio"/> Records	5645	03/25/2011	04/01/2011	1,340.61	13.41	13.83	185.41	278.12
<b>Part 1 Penalty Sub-Totals: ***</b>					<b>63,008.48</b>			<b>8,656.88</b>	<b>12,985.36</b>

\* If the employer has failed to provide business records sufficient to enable the Department to determine the employer's payroll, payroll shall be imputed to be the statewide average weekly wage as defined in s.440.12(2) F.S. multiplied by 1.5, (440.107(7)(e)).

\*\* Premium multiplied by statutory factor of 1.5

\*\*\* Greater of penalty under column (g) or \$1000. s440.107(d)(1)

**TOTAL PENALTY for Parts 1, 2, 3, 4, 5: \$12,985.36**