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**Testimony Before The Committee on Labor and Public Employees
 In Support of SB 798: An Act Requiring Double Damages Be Awarded In Civil
 Actions To Collect Wages**

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Good Afternoon, Senator Prague, Representative Zalaski and members of the committee. My name is Nadine Nevins. I am the managing attorney of the Bridgeport office of Connecticut Legal Services and I run the Stamford Day Laborer Wage Clinic (SDLWC), a free legal clinic for low-income workers who have not been paid their wages and/or overtime. Thank you for this opportunity to testify today in support of SB 798, which would make the award of double damages mandatory to workers who are not paid the wages and overtime they earned. It will conform Connecticut's wage collection statute to the Fair Labor Standards Act (FLSA), 29 U.S.C. §216(b) which mandates the payment of double damages by any employer who does not pay its employees the wages and overtime they are owed.

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I am submitting this testimony on behalf of Greater Hartford Legal Aid, New Haven Legal Assistance Association, Connecticut Legal Services and the Legal Assistance Resource Center of CT (LARCC).

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Why do we need to make the award of double damages mandatory? Because Connecticut's wage and hour laws are regularly and systematically violated. At the SDLWC, which handles cases just for Stamford residents, we see between 15-25 workers per clinic who have been unpaid, underpaid or not paid overtime. The clinic, which started 3 ½ years ago, operates about twice a month. The Connecticut Department of Labor (CTDOL) reports that from July 2009 to June 2010 there were 4048 wage complaints filed with the CTDOL. They point out that this number does not include wage violations uncovered by DOL when investigating an employer for other violations e.g. when an employer misclassifies a worker as an independent contractor and does not pay its workers overtime. It also does not count the number of Connecticut workers who file wage claims with the United States Department of Labor, or who file lawsuits in state or federal court.

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The problem is not unique to Connecticut. A study of workplace violations in New York, Chicago and Los Angeles found workplace violations, including wage theft, to be rampant. The report "exposes a world of work in which the core protections that many Americans take for granted—the right to be paid at least the minimum wage, the right to be paid for overtime hours....are failing significant numbers of workers. The sheer breadth of the problem, spanning key industries in the economy, as well as its profound impact on workers, entailing significant economic hardship, demands urgent attention." Bernhardt, Annette, Milkman, Ruth and Theodore, Nik. 2009. "Broken Laws, Unprotected Workers: Violations of



Employment and Labor laws in America's Cities". Found at www.unprotectedworkers.org.

In response to the increase of wage theft states throughout the country are ramping up their penalties for employers who do not pay their workers. They include Arizona, California, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, New York, North Dakota, South Carolina and Vermont.

New York state enacted the Wage Theft Prevention Act (S8380, §198) effective April 2011 that provides for mandatory double damages in cases of wage theft. That is 4 times the previous penalty. M.G.L.A.149 § 150 in Massachusetts provides that an employee who prevails in a civil action for lost wages "shall be awarded **treble** damages, as liquidated damages, for any lost wages." Effective July 12, 2008. Dade County Florida enacted the Wage Theft Ordinance effective March 1, 2010. Double damages are mandatory, treble damages are discretionary.

The Connecticut statute that protects workers from wage theft C.G.S. §31-72, on its face, allows for the award of double damages. However, cases interpreting and applying the statute have held that a finding of bad faith, arbitrariness, or unreasonableness is required to support an award of double damages. *State v. Lynch*, 948 A.2d 1026, 287 Conn. 464 (2008), *Ravetto v. Triton Thalassic Technologies*, 941 A.2d 309, 285 Conn. 76(2008), *Schoonmaker v. Lawrence Brunoli, Inc.*, 265 Conn. 210, 269, 828 A.2d 64 (2003), quoting *Sansone v. Clifford*, 219 Conn. 217, 229, 592 A.2d 931 (1991). The courts have imposed an additional burden on workers, not apparent on the face of the statute, that was designed to "effectuate the statutory policies of compensating employees and deterring employees from failing to pay wages." *Butler v. Hartford Technical Institute, Inc.*, 243 Conn. 559, 580, 657 A.2d 212 (1997). The wage collection statutes "are like the Fair Labor Standards Act, a remedial statute that is entitled to liberal construction and is to be construed broadly in favor of employees whom the legislature intended to benefit." *Schoonmaker v. Lawrence Brunoli, Inc.*, 265 Conn. 210, 269, 828 A.2d 64 (2003), *Commissioner of Labor v. C.J.M. Services, Inc.*, 806 A.2d 862, 1105, 73 Conn. App. 39, *certification granted in part*, 812 A.2d 862, 262 Conn. 921, *affirmed in part, reversed in part*, 842 A.2d 1124, 268 Conn. 283 (2002).

This proposal will conform the Connecticut wage collection statute to the FLSA to better deter employers from cheating workers out of their pay, the state out of its taxes and will level the playing field for honest employers who are undercut by unscrupulous employers who pay less for their labor.

Thank you for your consideration.

Respectfully submitted by,

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FACTS about

WAGE THEFT AND DAMAGE AWARDS

Wage theft or nonpayment of wages, is rampant throughout the United States and in Connecticut. The problem has worsened with the downturn in the economy. Under the federal Fair Labor Standards Act (FLSA) double damages are awarded automatically in non-payment of wage cases.

The Connecticut statute that protects workers from wage theft, CGS 31-72, on its face, allows for the award of double damages in cases of non-payment of wages. However, CT case law has held that a finding of bad faith, arbitrariness, or unreasonableness is required to support an award of double damages. Thus it is harder for workers to collect double damages under Connecticut law.

Advocates are seeking to conform the Connecticut wage collection statute to the FLSA, to mandate double damages in non-payment of wages cases to deter unscrupulous employers from cheating workers out of their pay and the state out of its taxes.

Day laborers are particularly vulnerable to wage theft because they are generally less educated and more unfamiliar with the wage laws and their rights than other workers. The Stamford Day Laborer Wage Clinic has claimed over \$2 million in unpaid wages and overtime on behalf of low wage Stamford workers in the 3 years it has been in existence.

According to the Connecticut Department of Labor, from July 2009 to June 2010 there were 4048 wage complaints filed with the CT DOL. This does not count wage violations uncovered by DOL when investigating an employer for other labor violations e.g when an employer misclassifies a worker as an independent contractor and does not pay its workers overtime. It also does not count the number of Connecticut workers who file claims with the federal DOL.

Many other states allow for double damages and Massachusetts actually calls for treble damages. This is a simple fix that does not cost the state money and in fact, allows for recovery of taxes for the state. Business benefits by creating a level playing field instead of one where unscrupulous employers undercut legitimate employers because they pay less for their labor.

For more information contact Sara Parker McKernan, Legal Assistance Resource Center of CT, 860-278-5688 x207.

