

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

In the Wage Claim Matter of:
**OREGON BUREAU OF LABOR AND
INDUSTRIES** as assignee of **Jessica L Carter**,
Wage Claimant,

v.

**Christina Marie Suing, an individual, dba
The Wrangler**, Employer

ORDER OF DETERMINATION

FILE #: 24-1592

I. Jurisdiction

This Order of Determination (“Order”) is prepared pursuant to ORS 652.310 to 652.405. The Bureau of Labor and Industries (“Bureau”) has jurisdiction over this matter pursuant to ORS 652.330(1)(d).

II. Employer Liability for Unpaid Wages

This Order is based upon the assigned wage claim filed by Jessica L Carter (“wage claimant”), claiming unpaid wages from Christina Marie Suing, an individual, dba The Wrangler (“employer”). The wage claimant performed work, labor and services for the employer during the period October 1, 2023, through October 15, 2023, for a total of 60.75 hours at the rate of \$15.00 per hour. The employer issued a dishonored check with insufficient funds in the amount of \$795.77 for work performed during the period October 1, 2023, through October 15, 2023, no part of which has been paid, leaving a balance due and owing of \$795.77 in unpaid net wages. The wage claimant further performed work, labor and services for the employer during the period November 1, 2023, through November 15, 2023, for a total of 58.03 hours at the rate of \$15.00 per hour. The employer issued a dishonored check with insufficient funds in the amount of \$751.23 for work performed during the period of November 1, 2023, through November 15, 2023, no part of which has been paid, leaving a balance due and owing of \$751.23 in unpaid net wages. The Wage and Hour Division of the Bureau (“Agency”) has determined that the employer owes the wage claimant \$1,547.00, together with the interest thereon at the legal rate per annum from December 1, 2023, until paid.

III. Penalty Wages and Civil Penalty

Penalty Wages: The wage claimant's employment ceased on November 27, 2023. The Agency has determined that more than 30 days have elapsed since the wages became due and owing and since a written notice was sent to the employer pursuant to ORS 652.140(1)-(3) and ORS 652.150(2). The employer has willfully failed to pay the wages referred to in Paragraph II, entitling the wage claimant to \$3,600.00 in penalty wages under ORS 652.150(1) based on the wage claimant's hourly wage rate of \$15.00 with the interest thereon at the legal rate per annum from January 1, 2024, until paid. OAR 839-001-0470(1)-(2).

Dishonored Check Civil Penalty: In addition to the penalty wages due pursuant to ORS 652.150(1), the Agency has determined that the employer issued to the wage claimant dishonored checks in the amount of \$795.77 and \$751.23 for payment of wages due and, pursuant to ORS 652.195(1) and (2), ORS 30.701(1), and OAR 839-001-0300(2) and (3), is liable for a civil penalty in an amount equal to \$100.00 or triple the amount for which the check is drawn, whichever is greater, but which may not exceed the amount for which the check was drawn by more than \$500.00. The amount of this civil penalty for two dishonored checks is \$2,547.00 with the interest thereon at the legal rate per annum from the date of judgment, until paid.

IV. Right to a Contested Case Proceeding or Court Trial

The employer is entitled to a contested case hearing or a trial in a court of law in connection with this Order and may be represented by counsel at either proceeding.

V. Wages and Penalties Must Be Paid or a Hearing or Court Trial Requested

Pursuant to ORS 652.332 (1)(d), within 20 days of receipt of this Order, the employer must either pay the full amount of the wage claim described in Paragraph II and the penalty wages described in Paragraph III or present a written request for a contested case hearing or trial in a court of law to the Commissioner. A request for a contested case hearing must also include an "Answer" as described in Paragraph VIII. Pursuant to ORS 652.332(2), if the employer does not pay the amounts described in this Order as owed by the employer or request a contested case hearing or a trial in a court of law within 20 days of receipt of this Order, this Order shall become final against the employer.

VI. Where to File Request for Hearing and Answer

The employer's written request for a contested case hearing or court trial must be submitted to the Agency at the address shown on the last page of this order.

VII. Representation of Employer

Contested case hearings will be conducted in accordance with ORS 652.310 to ORS 652.405, ORS chapter 183, and the Bureau's administrative rules regarding such hearings. The employer and the wage claimant may each be represented by counsel. All partnerships, corporations, unincorporated associations, including limited liability companies, and government agencies MUST be represented either by an attorney or by an "authorized representative" AT ALL STAGES OF THE HEARING, including the filing of a written request for hearing and Answer. OAR 839-050-0110(1). Before appearing in the case, an authorized representative must provide written authorization to appear on behalf of the party. This authorization must be provided no later than the time that a request for hearing and Answer is filed. Other employers, including individuals, may choose whether or not to be represented by an attorney. Any attorney appearing on your behalf must be a member in good standing with the Oregon State Bar, or a member in good standing of the bar of another state or United States court who is permitted to appear in this proceeding by order of the administrative law judge. OAR 839-050-0020(13).

VIII. Requirements for Answer

The employer's request for a contested case hearing must include a written "Answer" to the factual determinations contained in Paragraphs II and III. The Answer must include an admission or denial of each factual determination set out in those paragraphs. The Answer must also affirmatively allege a short and plain statement of each affirmative defense which the employer will assert at the contested case hearing, including financial inability to pay the wages or compensation at the time they accrued.

IX. Consequence of Failure to Deny Factual Determinations or to Plead Affirmative Defenses in Answer

Except for good cause, the factual determinations set out in Paragraphs II and III that are not denied in the Answer shall be deemed admitted. Failure to raise an affirmative defense in the Answer is a waiver of that defense. Any new facts or defenses alleged in the Answer will be deemed denied by the Agency and wage claimant.

X. Consequence to Employer that is a Contractor or Business Licensed Under ORS Chapter 701

If the employer is a contractor or business licensed under ORS chapter 701 (Construction Contractors and Contracts), failure to pay in full the wage claim and any penalties assessed within

60 days of the date that the Order becomes final, will result in notification to the Construction Contractors Board of such failure to pay and the suspension of the contractor's or business's license. ORS 652.332(1)(f).

XI. Notice of Hearing

If the employer files a written request for hearing and an Answer, the employer will be served with a Notice of Hearing that states the time and place of the hearing and the name of the administrative law judge designated by the Commissioner to preside at the hearing.

XII. Consequence of Failure to Request Hearing and File Answer or Request Court Trial

If the employer does not submit either (1) a written request for a contested case hearing that includes an Answer or (2) a written demand for a trial in a court of law within 20 days from the receipt of this Order, such failure shall constitute a waiver of the employer's right to a contested case hearing or a jury trial. This Order shall become final and the Agency investigative file, including all materials submitted by the employer, will be designated as the record of the case. A Final Order on Default will be issued and no hearing will be held.

XIII. Consequence of Withdrawing Timely Request for Hearing

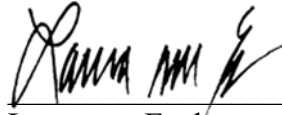
If the employer makes a timely request for hearing but later withdraws that request, the Agency's file, including the materials submitted by the employer, and all materials filed with the Forum up to the time the employer's withdrawal request is made will be designated as the record of the case. This Order shall become final, a Final Order on Default will be issued, and no hearing will be held.

XIV. Consequence of Failure to Appear at Hearing

If the employer files a request for hearing and an Answer, but later notifies the Agency or Contested Case Coordinator that the employer will not appear at the time and place specified for hearing, or fails to appear at hearing without prior notification, the Agency's file, including all materials in the Agency's investigative file, the Agency charging document and the employer's answer, and all materials filed with the Forum by the Agency or the employer up to the time set for hearing, will be designated as the record of the case. No hearing will be held, the employer's request for hearing will be dismissed, and a Final Order on Default will be issued.

DATED this _____ day of _____, 20____.

CHRISTINA E. STEPHENSON, Commissioner
Bureau of Labor and Industries

A handwritten signature in black ink, appearing to read 'Laura van Enkevort', written over a horizontal line.

Laura van Enkevort, Administrator
Wage and Hour Division
Bureau of Labor and Industries

MAKE ALL PAYMENTS, REQUESTS FOR ADMINISTRATIVE HEARING, DEMANDS FOR TRIAL IN A COURT OF LAW OR INQUIRIES TO:

Order Processor
Bureau of Labor and Industries
Administrative Prosecution Unit
1800 SW 1st Ave, Suite 500
Portland, OR 97201
Phone: 971-358-3928

WH-61 (Rev. 5/24)