

**In the Matter of  
LETTY LEE SESHER**

**Case No. 02-11**

**Final Order of Commissioner Brad Avakian**

**Issued August 30, 2011**

**SYNOPSIS**

Respondent employed Claimant as a care provider in 2009 at Respondent's adult foster care home. Claimant was only paid \$25.00 for eleven 12 hour overnight shifts that she worked and was entitled to be paid \$8.40 per hour, Oregon's minimum wage, plus any applicable overtime, for all the work she performed on overnight shifts. In total, Claimant worked 302.25 hours, including 15 overtime hours. Claimant was underpaid by \$896.80 and Respondent was ordered to pay Claimant that amount as unpaid, due, and owing wages. Respondent's failure to pay the wages was willful, and she was ordered to pay Claimant \$2,016.00 in penalty wages. Respondent was also ordered to pay \$2,016.00 in civil penalties based on her failure to pay the minimum wage or overtime wages to Claimant. ORS 652.140(2), ORS 652.150, ORS 653.055, ORS 653.261, OAR 839-020-0030.

---

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Brad Avakian, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on June 28, 2011, at the Oregon State Employment Department, located at 119 N. Oakdale, Medford, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by case presenter Patrick Plaza, an employee of the Agency. Wage claimant Amanda Lehrmann (Claimant) was present throughout the hearing and was not represented by counsel. Respondent Letty Seshher ("Respondent") did not appear at the hearing and was held in default.

The Agency called the following witnesses: Claimant; BOLI Wage and Hour Division compliance specialist Margaret Pargeter (telephonic); and Karen Kahl, Oregon Adult Foster Home supervisor.

The forum received into evidence:

a) Administrative exhibits X-1 through X-10 (submitted or generated prior to hearing); and

b) Agency exhibits A-1 through A-19 (submitted prior to hearing).

Having fully considered the entire record in this matter, I, Brad Avakian, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

#### **FINDINGS OF FACT – PROCEDURAL**

1) On July 28, 2009, Claimant filed a wage claim with the Agency alleging that Letty Seshar had employed her and failed to pay wages earned and due to her. At the same time, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for herself, all wages due from Respondent.

2) On January 19, 2010, the Agency issued Order of Determination No. 09-2269 based on the wage claim filed by Claimant and the Agency's investigation. In pertinent part, the Order alleged that:

- Respondent employed Claimant from May 8, 2009 through July 13, 2009 ("the wage claim period") at the regular rate of \$8.40 per hour;
- Claimant worked a total of 325.5 hours, including 16 overtime hours, earning \$2,799.30;
- Respondent only paid Claimant \$910.20, leaving a balance due and owing of \$1,889.10 in unpaid wages, plus interest thereon at the legal rate per annum from August 1, 2009, until paid;
- Respondent willfully failed to pay these wages and owes Claimant \$2,016.00 in penalty wages, with interest thereon at the legal rate per annum from September 1, 2009, until paid;
- Respondent paid Claimant less than the wages to which she was entitled under ORS 653.010 to 653.261 and is liable to Claimant for \$2,016.00 in civil penalties

pursuant to ORS 653.055(1)(b), with interest thereon at the legal rate per annum from January 1, 2009, until paid.

3) On March 4, 2010, Respondent filed an answer and request for hearing in which she stated that:

- The order was "unfair and unjust";
- She did not operate the facility at which Claimant was employed at the time of Claimant's alleged employment;
- She had turned over operation of the facility to Adam Boatsman, her grandson, who hired and fired all staff and was responsible for payroll in 2009.

4) On April 13, 2011, the Hearings Unit issued a Notice of Hearing to Respondent, the Agency, and Claimant setting the time and place of hearing for 9:00 a.m. on June 28, 2011, at the Medford office of the Oregon Employment Department.

5) On May 31, 2011, the Agency filed a motion to amend the Order of Determination to reduce the amount of the unpaid wages sought from \$1,889.10 to \$873.50. On June 2, 2011, the ALJ granted the Agency's motion.

6) On June 3, 2011, the Agency filed a motion in which it asked the forum to take judicial notice of ORS 443.725(2) and 443.735(3)(e), both statutes relating to licensing and compliance in adult foster care homes in Oregon. The ALJ granted the Agency's motion at the outset of the hearing.

7) Respondent did not make an appearance at the hearing and did not notify the Agency or the ALJ that she would not appear at the time and place set for hearing. The ALJ waited until 9:30 p.m., then declared Respondent in default and commenced the hearing.

8) The ALJ issued a proposed order on July 25, 2011, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. No exceptions were filed.

#### **FINDINGS OF FACT – THE MERITS**

1) At all times material herein, Respondent owned and operated an adult foster care home ("Respondent's facility") located at 9975 Monument Drive in Grants Pass, Oregon.

2) Persons who operate an adult foster care home in Oregon must be licensed by the Oregon Department of Human Services. Respondent was initially licensed to operate an adult foster care home in 1990. Her Class II license was renewed effective June 4, 2008, with an expiration date of June 3, 2009.<sup>i</sup> Respondent's Class II license entitled her to take up to three residents who require "full assistance" into her facility.

3) Although Respondent applied for license renewal, her license had not yet been renewed and expired on June 3, 2009. However, under Oregon law, she was allowed to continue operating her business while her renewal application was pending and did so through the end of July 2009.

4) Claimant was referred to Respondent by the Oregon Employment Department Workforce Program. At Respondent's facility, she was given an employment application that she completed and returned. Subsequently she underwent and passed a criminal history check by the Grants Pass Senior Disability Services Office. A week later, Adam Boatsman called Claimant to come in for an interview. Boatsman, who is Respondent's grandson and also worked at Respondent's facility, told Claimant that he was helping his grandmother. Boatsman interviewed and hired Claimant and told her that she would be paid the minimum wage of \$8.40 per hour.

5) Claimant began working for Respondent as a care provider on March 20, 2009, and worked through July 13, 2009. Boatsman was her supervisor and set her work schedule. Claimant was paid for all hours worked through May 7, 2009.

6) During Claimant's employment with Respondent, Respondent's workweek began on Monday and ended on Sunday.

7) From May 8, 2009 through July 13, 2009, Claimant worked the following dates and hours for Respondent:

<u>Workweek</u>	<u>Hours</u>
5/4-10	12.5 <sup>ii</sup>
5/11-17	49 <sup>iii</sup>
5/18-24	35.5 <sup>iv</sup>
5/25-31	17.5
6/1-7	17.5
6/8-14	18
6/15-21	20
6/22-28	44 <sup>v</sup>
6/29-7/5	34.25 <sup>vi</sup>
7/6-12	42 <sup>vii</sup>
7/13	12 <sup>viii</sup>

In total, she worked 302.25 hours in this time period, including 15 overtime hours.

8) Claimant completed a timecard each week that she worked for Respondent. On each of three timecards covering the weeks of May 4-10, 11-17, and 18-24, she wrote in one shift of "12 hrs." Boatsman crossed out "12 hrs" and wrote "\$25" after each crossed-out entry.

9) During the wage claim period, Claimant worked overnight on 11 different shifts, each time working a 12 hour shift, for a total of 132 hours. She was paid \$25.00 in cash for each of those shifts. She was paid \$8.40 per hour for the other 170.25 hours that she worked and received no extra pay for her overtime hours. In total, she was paid \$1,705.10.

10) During the wage claim period, Claimant earned a total of \$2,601.90 (302.25 hours x \$8.40 = \$2,538.90; 15 overtime hours x \$8.40 x .5 = \$63.00; \$2,538.90 + \$63.00 = \$2,601.90).

11) Claimant quit Respondent's employment because Boatsman would not pay her more than \$25.00 for her 12 hour shifts.

12) In total, Respondent owes Claimant \$896.80 in unpaid, due and owing wages (\$2,601.90 - \$1,705.10 = \$896.80).

13) Respondent has not paid any additional wages to Claimant since Claimant quit.

14) On July 31, 2009, the Agency mailed a document entitled "Notice of Wage Claim" to Respondent at Respondent's facility that stated:

"You are hereby notified that AMANDA K. LEHRMANN has filed a wage claim with the Bureau of Labor and Industries alleging:

"Unpaid statutory minimum wages of \$850.60 at the rate of \$8.40 per hour from May 8, 2009 to July 13, 2009.

"IF THE CLAIM IS CORRECT, you are required to IMMEDIATELY make a negotiable check or money order payable to the claimant for the amount of wages claimed, less deductions required by law, and send it to the Bureau of Labor and Industries at the above address.

"IF YOU DISPUTE THE CLAIM, complete the enclosed 'Employer Response' form and return it together with the documentation which supports your position, as well as payment of any amount which you concede is owed the claimant to the BUREAU OF LABOR AND INDUSTRIES within ten (10) days of the date of this Notice.

"If your response to the claim is not received on or before August 14, 2009, the Bureau may initiate action to collect these wages in addition to penalty wages, plus costs and attorney fees."

15) On July 31, 2009, Boatsman was licensed to operate a Class I adult foster home, effective August 10, 2009. His Class I license was the equivalent of a "beginner's" license and authorized him to take residents who require "assistance in 3-4 activities of daily living" into his facility.

16) On October 5, 2009, Pargeter sent a letter to Respondent in which she summarized Claimant's wage claim, enclosed copies of the records that Claimant provided to the Agency to support her wage claim, and asked Respondent to "take one of the following actions by October 15, 2009:

“1. Submit to me a check payable to Amanda Lehrmann in the gross \$1,889.10, along with a statement of lawful deductions, if any.

“2. Submit to the evidence Ms. Lehrmann did not work the hours claimed, or that she has been paid.

“3. Submit evidence computations are incorrect.”

Respondent did not respond to this inquiry and never sent any records to Pargeter.

17) Penalty wages are computed as follows for Claimant, in accordance with ORS 652.150:  $\$8.40 \text{ per hour} \times 8 \text{ hours} \times 30 \text{ days} = \$2,016.00$ .

18) ORS 653.055 civil penalties are computed as follows for Claimant, in accordance with ORS 652.150 and ORS 653.055:  $\$8.40 \text{ per hour} \times 8 \text{ hours} \times 30 \text{ days} = \$2,016.00$ .

19) All the witnesses were credible.

#### **ULTIMATE FINDINGS OF FACT**

1) At all times during the wage claim period, Respondent was licensed to operate and operated an adult foster care home in Grants Pass, Oregon.

2) Adam Boatsman, acting as an agent for Respondent, hired Claimant to work as a caregiver for Respondent in March 2009 at the statutory minimum wage of \$8.40 per hour.

3) Claimant worked for Respondent from March 20, 2009, through July 13, 2009. She was paid for all hours worked through May 7, 2009.

4) From May 8 through July 13, 2009, Claimant worked a total of 302.25 hours, including 15 overtime hours. She worked overnight on 11 different shifts, each time working a 12 hour shift, for a total of 132 hours. She was paid \$25.00 in cash for each of those shifts. She was paid \$8.40 per hour for the other 170.25 hours that she worked. In total, Claimant was paid \$1,705.10 for her work during the wage claim period. She earned a total of \$2,601.90 during the wage claim period, leaving unpaid, due and owing wages of \$896.80.

5) Claimant quit Respondent's employ on July 14, 2009, because Respondent would not pay her more than \$25.00 for her overnight shifts.

6) On July 31, 2009, the Agency mailed a notice to Respondent that notified Respondent of Claimant's wage claim and demanded that Respondent pay the unpaid, due, and owing wages if the claim was correct. Respondent has not paid any additional wages to Claimant and still owes Claimant \$896.80.

7) Penalty wages are computed as follows for Claimant, in accordance with ORS 652.150:  $\$8.40 \text{ per hour} \times 8 \text{ hours} \times 30 \text{ days} = \$2,016.00$ .

8) ORS 653.055 civil penalties are computed as follows for Claimant, in accordance with ORS 652.150 and ORS 653.055:  $\$8.40 \text{ per hour} \times 8 \text{ hours} \times 30 \text{ days} = \$2,016.00$ .

#### **CONCLUSIONS OF LAW**

1) At all times material herein, Respondent Letty Lee Seshier was an Oregon employer who suffered or permitted Claimant to work in Grants Pass, Oregon, and Claimant was Respondent's employee, subject to the provisions of ORS 652.110 to 652.200, ORS 652.310 to 652.405, and ORS 653.010 to 653.055.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and Respondent herein. ORS 652.310 to 652.405.

3) Respondent violated ORS 652.140(2) by failing to pay to Claimant all wages earned and unpaid not later than five days, excluding Saturdays, Sundays and holidays, after Claimant quit Respondent's employment. Respondent owes Claimant \$896.90 in unpaid, due, and owing wages.

4) Respondent willfully failed to pay Claimant all wages due and owing and owes \$2,016.00 in penalty wages to Claimant. ORS 652.150.

5) Respondent paid Claimant less than the wages to which she was entitled under ORS 653.010 to 653.261 by failing to pay her Oregon's minimum wage, as well as

overtime wages for all hours worked over 40 in a given workweek and is liable to pay civil penalties to Claimant in the amount of \$2,016.00. ORS 653.055(1)(b).

6) Under the facts and circumstances of this record, and according to the applicable law, the Commissioner of the Bureau of Labor and Industries has the authority to order Respondent Letty Lee Seshier to pay Claimant her earned, unpaid, due and payable wages, penalty wages, and civil penalties, plus interest, on all sums until paid. ORS 652.332.

## OPINION

### CLAIMANT'S WAGE CLAIM

In a wage claim default case, the Agency needs only to establish a prima facie case supporting the allegations of its Order of Determination in order to prevail. *In the Matter of Village Café, Inc.*, 30 BOLI 80, 88 (2008). Since 1998,<sup>ix</sup> the forum has held that the Agency's prima facie case consists of the following elements: 1) Respondent employed Claimant; 2) The pay rate upon which Respondent and Claimant agreed, if other than minimum wage; 3) Claimant performed work for which she was not properly compensated; and 4) The amount and extent of work Claimant performed for Respondent. *See, e.g. In the Matter of 82<sup>nd</sup> Street Mall, Inc.*, 30 BOLI 140, 142 (2009). In this case, the forum follows its longstanding precedent but changes the traditional order in which the elements are analyzed so that it determines the "amount and extent of work" before deciding whether Claimant "performed work for which she was not properly compensated." This change, which makes no difference in the outcome, is based on the forum's recognition that: (1) Logically, it makes more sense to determine how much work someone performed *before* analyzing whether they were properly paid for all work performed; and (2) In terms of judicial efficiency, deciding whether someone was properly paid for all work performed *before* deciding how much work that person performed has often been an unnecessarily time-consuming experience for the forum.

The forum notes that it may consider any unsworn and unsubstantiated assertions contained in a respondent's answer in a default case, but those assertions are overcome whenever they are contradicted by other credible evidence in the record. *In the Matter of Sehat Entertainment, Inc.*, 30 BOLI 170, 181 (2009).

### **CLAIMANT WAS EMPLOYED BY RESPONDENT**

ORS 653.010 defines "employ" as "to suffer or permit to work \* \* \*." In this case, the Agency established the following relevant facts through the credible testimony of Claimant, Kahl, and Pargeter:

1. Respondent was licensed to operate and operated an adult foster care home in Grants Pass, Oregon, throughout the wage claim period;
2. Claimant was referred to Respondent's adult foster care home by the Oregon Employment Department Workforce Program for a job opening as a care provider;
3. Respondent's grandson Boatsman, who worked at Respondent's adult foster care home, hired Claimant, set her work hours, and paid her;
4. Boatsman was not licensed to operate an adult foster care home until August 10, 2009.

Based on these facts, the forum concludes that Respondent, not Boatsman, "suffer[ed] or permit[ted]" Claimant to work and was Claimant's employer.

### **THE PAY RATE TO WHICH RESPONDENT AND CLAIMANT AGREED**

The Agency alleged, and the forum finds that Respondent and Claimant agreed to the statutory minimum wage rate of \$8.40 per hour. Although Respondent only paid Claimant \$25.00 for her 12 hour overnight shifts, Claimant was legally entitled to be paid \$8.40 per hour for her work on those shifts.<sup>x</sup> Claimant's overtime rate for hours worked over 40 in a given workweek is calculated by multiplying \$8.40/hr. x 1.5 = \$12.60/hr. OAR 839-020-0030(1).

### **AMOUNT AND EXTENT OF WORK CLAIMANT PERFORMED FOR RESPONDENT**

Respondent produced no records to dispute Claimant's version of the hours that she worked. When the employer produces no records, the forum may rely on evidence

produced by the agency from which “a just and reasonable inference may be drawn.” *In the Matter of Kilmore Enterprises*, 26 BOLI 111, 122 (2004). A claimant’s credible testimony may be sufficient evidence to show the amount of hours worked by the claimant and amount owed. *Id.* at 123.

At hearing, the Agency produced Claimant’s time cards for the wage claim period that showed the hours she worked **except** for her 12 hour overnight shifts. Only three of those overnight shifts, all in May when she first worked those shifts, were written on her time cards. Each was crossed out and the figure “\$25” written in next to it. Claimant credibly testified that she did not write down all 11 overnight shifts that she worked on her time cards because Boatsman, her supervisor, told her not to write them down. Claimant also credibly testified that Boatsman did the noted editing on her timecards. The Agency produced Claimant’s handwritten calendar of hours worked that Claimant submitted with her wage claim showing the dates she worked all 11 overnight shifts, and Claimant credibly testified that this record was accurate. Relying on these records and Claimant’s credible testimony, the forum concludes that Claimant worked a total of 302.25 hours in the wage claim period, including 15 overtime hours.

### **CLAIMANT PERFORMED WORK FOR WHICH SHE WAS NOT PROPERLY COMPENSATED**

Claimant was properly compensated at the rate of \$8.40 per hour for all the work she performed except for the eleven 12 hour overtime shifts that she worked. Calculated at her straight time wage rate, Claimant earned \$100.80 for each 12 hour overtime shift ( $\$8.40 \times 12 = \$100.80$ ). Instead of \$100.80, she was paid \$25.00 in cash for each of those shifts, constituting an underpayment of at least \$75.80 for each shift, not counting any applicable overtime. This undisputed underpayment completes the proof required by the Agency to satisfy its prima facie case.

## **CONCLUSION**

In total, Claimant earned \$2,601.90 during the wage claim period and is owed \$896.80 (\$2,601.90 in wages earned *minus* \$1,705.10 in wages paid). The forum notes that this remedy exceeds the \$873.50 in unpaid wages alleged to be due and owing in the Agency's amendment to its Order of Determination. In prior cases, the forum has held that the commissioner has the authority to award unpaid wages exceeding those sought in the Agency's Order of Determination when they are awarded as compensation for statutory wage violations alleged in the charging document. *See, e.g., In the Matter of Westland Resources, Inc.*, 23 BOLI 276, 286 (2002). The unpaid wages owed to Claimant in this case were earned within the wage claim period alleged in the Order of Determination and are awarded as compensation for violations of ORS 653.025 and ORS 653.261 that were alleged in the Order of Determination. Accordingly, the forum awards \$896.80, the full amount of unpaid wages proved by the Agency at hearing.

## **CLAIMANT IS OWED PENALTY WAGES**

The forum may award penalty wages when a respondent's failure to pay wages was willful. Willfulness does not imply or require blame, malice, or moral delinquency. Rather, a respondent commits an act or omission "willfully" if he or she acts (or fails to act) intentionally, as a free agent, and with knowledge of what is being done or not done. *Sabin v. Willamette Western Corp.*, 276 Or 1083, 557 P2d 1344 (1976).

The Agency presented credible evidence that: (1) Claimant and Respondent agreed Claimant would work for \$8.40 per hour; (2) Respondent, through Boatsman, her agent and Claimant's supervisor, set Claimant's work hours and was aware of them; (3) Boatsman altered three of Claimant's time cards to cross out the "12 hrs" she had written and write "\$25" next to the crossed-out hours; and (4) Claimant quit after Boatsman paid her \$25.00 in cash for each of her 12 hour overtime shifts instead of \$8.40 per hour.

There is no evidence that Boatsman, Respondent's agent, acted other than voluntarily and as a free agent in underpaying Claimant and the forum concludes that Respondent acted willfully in failing to pay Claimant her wages and is liable for penalty wages under ORS 652.150.

ORS 652.150(1) and (2) provide, in pertinent part:

“(1) Except as provided in subsections (2) and (3) of this section, if an employer willfully fails to pay any wages or compensation of any employee whose employment ceases, as provided in ORS 652.140 \* \* \*, then, as a penalty for the nonpayment, the wages or compensation of the employee shall continue from the due date thereof at the same hourly rate for eight hours per day until paid or until action therefor is commenced.

“(2) If the employee or a person on behalf of the employee sends a written notice of nonpayment, the penalty may not exceed 100 percent of the employee's unpaid wages or compensation unless the employer fails to pay the full amount of the employee's unpaid wages or compensation within 12 days after receiving the written notice. If the employee or a person on behalf of the employee fails to send the written notice, the penalty may not exceed 100 percent of the employee's unpaid wages or compensation. \* \* \*”

The Agency provided documentary and testimonial evidence that its investigative staff made the written demand contemplated by ORS 652.150(2) for Claimant's wages on July 31 and October 5, 2009. The Agency's Order of Determination, issued on January 19, 2010, repeated this demand. Respondent failed to pay the full amount of Claimant's unpaid wages within 12 days after receiving the written notices and has still not paid them. Consequently, the forum assesses penalty wages at the maximum rate set out in ORS 652.150(1) (hourly rate x eight hours per day x 30 days = penalty wages). Penalty wages for Claimant equal \$2,016.00 (\$8.40 per hour x eight hours x 30 days).

### **ORS 653.055 CIVIL PENALTIES**

In its Order of Determination, the Agency alleged that Claimant is entitled to a civil penalty under ORS 653.055(1)(b) based on Respondent's failure to pay Claimant “the wages to which [Claimant] was entitled under ORS 653.010 to 653.261.” ORS

653.055(1)(b) provides that the forum may award civil penalties to an employee when the employer pays less than the wages to which the employee is entitled under ORS 653.010 to 653.261, computed in the same fashion as ORS 652.150 penalty wages. This includes unpaid minimum and overtime wages. *82<sup>nd</sup> Street Mall*, 30 BOLI 150; *In the Matter of Sehat Entertainment*, 30 BOLI 170, 183 (2009). “Willfulness” is not an element. *In the Matter of Captain Hooks, LLP*, 27 BOLI 21, 225 (2006). A *per se* violation occurs when an employee’s wage rate is the minimum wage, the employee is not paid all wages earned, due, and owing under ORS 652.140(1) or 652.140(2), and no statutory exception applies. *In the Matter of Allen Belcher*, 31 BOLI 1, 10 (2009).

The Agency proved that Claimant was entitled to Oregon’s minimum wage, that Claimant worked 15 overtime hours, and that Claimant is owed \$896.80 in unpaid, due and owing wages. She earned a total of \$189 in overtime wages (15 hours x \$12.60 = \$189.00). Subtracting Claimant’s earned overtime wages from her unpaid, due and owing wages yields the sum \$707.80, the amount of her unpaid straight time wages based on Oregon’s minimum wage. No statutory exception applies that exempts Respondent from the requirement to pay Claimant Oregon’s minimum wage. From these calculations, the forum concludes that Claimant was not paid the minimum wage for all hours worked and was not paid for her overtime hours. Accordingly, she is entitled to ORS 653.055(1)(b) civil penalties based on Respondent’s failure to pay her the minimum wage and applicable overtime wages for all hours that she worked.

The forum assesses ORS 653.055(1)(b) civil penalties based on the formula set out in ORS 652.150(1) (hourly rate x eight hours per day x 30 days). Using this formula, Respondent is liable to pay a civil penalty to Claimant in the amount of \$2,016.00 (\$8.40 per hour x eight hours x 30 days).

## **ORDER**

NOW, THEREFORE, as authorized by ORS 652.140(2), ORS 652.150, ORS 653.055, ORS 653.261, and ORS 652.332, and as payment of the unpaid wages, penalty wages, and civil penalties, the Commissioner of the Bureau of Labor and Industries hereby orders Respondent **LETTY LEE SESHAR** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, the following:

(1) A certified check payable to the Bureau of Labor and Industries in trust for Claimant Amanda Lehrmann in the amount of FOUR THOUSAND NINE HUNDRED TWENTY-EIGHT DOLLARS AND EIGHTY CENTS (\$4,928.80), less appropriate lawful deductions, representing \$896.80 in gross earned, unpaid, due and payable wages, plus interest at the legal rate on that sum from August 1, 2009, until paid; \$2,016.00 in penalty wages, plus interest at the legal rate on that sum from September 1, 2009, until paid; and civil penalties of \$2,016.00, plus interest at the legal rate on that sum from September 1, 2009, until paid.

---

<sup>i</sup> No evidence was presented to show Respondent's licensing history between 1990 and 2008.

<sup>ii</sup> Only includes hours worked after May 7, as the Order of Determination only alleges that Claimant was not paid for all hours worked beginning May 8.

<sup>iii</sup> Includes two x 12 hour shifts.

<sup>iv</sup> Includes one x 12 hour shift.

<sup>v</sup> Includes two x 12 hour shifts.

<sup>vi</sup> Includes two x 12 hour shifts.

<sup>vii</sup> Includes three x 12 hour shifts.

<sup>viii</sup> Includes one x 12 hour shift that started on July 12.

<sup>ix</sup> The elements of the Agency's prima facie case in a wage claim were first set out in the case of *In the Matter of Catalogfinder, Inc.*, 18 BOLI 242, 260 (1999).

<sup>x</sup> See *In the Matter of Toni Kuchar*, 23 BOLI 265, 274 (2002) (ORS 653.025 prohibits employers from paying employees less than the minimum wage for each hour of work time).