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Authorized Representative  
Bureau of Labor & Industries

BEFORE THE BUREAU OF LABOR AND INDUSTRIES

OF THE STATE OF OREGON

Voi M99 Page 25113

In the Wage Claim Matter of:

OREGON BUREAU OF LABOR AND INDUSTRIES AS )  
assignee of Marla Susan Hardisty-Sykora, )  
Wage Claimant, )

ORDER OF DETERMINATION

NO. 99-1738

v. )

Whispering Pines Holding Company Inc. dba )  
Whispering Pines Mercantile, an Oregon Corporation )  
Employer )

I.

This Order of Determination is prepared pursuant to Oregon Revised Statutes (hereinafter referred to as "ORS") 652.310 to 652.405.

II.

This order is based upon wage claim filed by Marla Susan Hardisty-Sykora, hereinafter referred to as the wage claimant, claiming unpaid wages from Whispering Pines Holding Company Inc. dba Whispering Pines Mercantile, hereinafter referred to as the "employer." The wages were earned by the wage claimant in Oregon during the period October 25, 1998 through December 9, 1998 at the rate of \$311.53 per week for six weeks and four days during said period of time, \$382.79 of which has been paid, leaving a balance due and owing in the sum of \$1664.33. The Bureau of Labor and Industries, hereinafter referred to as the Bureau, has determined that the employer owes the wage claimant \$1664.33 in unpaid wages, together with interest thereon at the legal rate per annum from January 1, 1999 until paid.

III.

Pursuant to ORS 652.414 the Bureau has also determined that the wage claimant is entitled to and has received payment from the Wage Security Fund (hereinafter "Fund") in the sum of \$1664.33.

After recording, return to:  
Susan Dix, Order Processor

1 - ORDER OF DETERMINATION

BUREAU OF LABOR & INDUSTRIES  
WAGE AND HOUR DIVISION, ROOM 1160  
800 NE OREGON STREET # 32  
PORTLAND, OR 97232

all  
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The Commissioner of the Bureau of Labor and Industries is entitled by Oregon Revised Statute 652.414(2) to recover from the employers the amount paid from the Fund together with a penalty of 25 percent of the sum paid from the Fund, which amount is \$416.08 along with interest thereon at the legal rate per annum from February 1, 1999, until paid.

IV.

Pursuant to ORS 652.332, the employer is hereby directed to pay the Commissioner of the Bureau of Labor and Industries the amount of the wage claim, described in Paragraph II above, and the penalty amount, described in Paragraph III above. This payment is due within 20 days after the receipt of this Order of Determination.

V.

The employer is entitled to a contested case hearing in connection with this Order of Determination. This hearing, at which both the employer and the wage claimant may be represented by counsel, will be conducted in accordance with ORS 652.310 to ORS 652.405, ORS Chapter 183 and the Bureau's Administrative Rules pertaining to such hearings. NOTE: If the employer is a government agency, corporation, or unincorporated association (including, but not limited to, an LLC), it must be represented by an attorney. If the employer desires a hearing, the undersigned must be notified in writing of such request within 20 days of the employer's receipt of this Order of Determination. The employer is also entitled, as an alternative to the Administrative Hearing described above, to demand a trial in a court of law. If the employer demands a trial in a court of law, the undersigned must be notified in writing of such demand within 20 days of receipt of this Order of Determination.

VI.

If the employer requests a contested case hearing, the employer and the wage claimant will be notified of the time and place of such hearing and furnished with an Order of the Bureau designating the

officer who will preside at such hearing and indicating whether such officer shall have authority to enter a final order in the case.

#### VII.

SHOULD THE EMPLOYER FAIL TO REQUEST EITHER A CONTESTED CASE HEARING OR TO DEMAND A TRIAL IN A COURT OF LAW IN WRITING TO THE UNDERSIGNED WITHIN 20 DAYS FROM THE RECEIPT OF THIS ORDER OF DETERMINATION, SUCH FAILURE SHALL CONSTITUTE A WAIVER OF THE EMPLOYER'S RIGHT TO A CONTESTED CASE HEARING OR A TRIAL IN A COURT OF LAW. If the employer fails to file an answer and request a hearing within the time specified, or if the employer makes a timely request for hearing but later withdraws that request, the Agency's file will be designated as the record of the case and no hearing will be held. This Order of Determination shall become final immediately upon expiration of the time provided for herein for making such request or demand.

#### VIII.

If the employer requests a contested case hearing, such a request must also include a written "Answer" to the factual determinations contained in Paragraphs II and III above. Such written "Answer" must include an admission or denial of each factual allegation contained in those paragraphs and shall affirmatively allege a short and plain statement of each affirmative defense which the employer will assert at the contested case hearing. For example, the affirmative defense of the financial inability to pay the wages or compensation at the time they accrued must be included in the written "Answer."

#### IX.

Except for good cause, the factual determinations set out in Paragraphs II and III above and not denied in the "Answer" shall be deemed admitted; failure to raise an affirmative defense in the "Answer" shall be deemed a waiver of such affirmative defense; any affirmative defense alleged in the "Answer"

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shall be deemed denied by the wage claimant without necessity of further pleading; evidence shall not be taken on any factual or legal issue not raised in this Order of Determination or the employer's "Answer."

X.

If the employer files a request for hearing and an answer, but later notifies the Agency or the Hearings Unit that the employer will not appear at the time and place specified for hearing, or, without such notification, fails to appear at hearing, the Agency's file will automatically become part of the contested case record for the purpose of proving a prima facie case.

DATED this 14<sup>th</sup> day of May, 1999.

JACK ROBERTS, Commissioner  
Bureau of Labor and Industries

*Christine N. Hammond*

CHRISTINE N. HAMMOND, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

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

Susan Dix, Order Processor  
Bureau of Labor and Industries  
Wage and Hour Division  
800 NE Oregon Street # 32  
Portland, Oregon 97232  
Phone: 731-4074, ext. 246  
WH-61 (Rev. 10/97)

State of Oregon, County of Klamath  
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In Vol. M99 Page 25113  
*Linda Smith,*  
County Clerk Fee \$20 - *KR*