



BUREAU OF LABOR AND INDUSTRIES
BRAD AVAKIAN, COMMISSIONER
STATE OF OREGON

2016-006069

Klamath County, Oregon



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06/09/2016 09:56:39 AM

Fee: \$82.00

JUDGMENT COVER SHEET

FILE NUMBER: 16-0060

TITLE OF DOCUMENT: Final Order (on default)

JUDGMENT AMOUNT: \$8,126.00

Owed by: Filiberto Aguirre aka Filiberto Gomez aka Giliberto Aguirre, an individual, dba New Sun Yard Work and dba New Sun

(Judgment debtor(s))

OWED TO: Bureau of Labor and Industries
(Judgment creditor)

After recording return to:
Fiscal Services Unit
Bureau of Labor and Industries
800 NE Oregon Street #1045
Portland, Oregon 97232-2180

BRAD AVAKIAN
COMMISSIONER



CERTIFIED TRUE COPY
M. Jundsten
Authorized Representative
Bureau of Labor & Industries
CHRISTIE HAMMOND
DEPUTY COMMISSIONER

BUREAU OF LABOR AND INDUSTRIES

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
Sergio I. Arizola,
Wage Claimant,

vs.

Filiberto Aguirre aka Filiberto Gomez aka
Gilberto Aguirre, an individual, dba New Sun
Yard Work and dba New Sun,
Employer

FINAL ORDER OF DETERMINATION
(DEFAULT)

NO. 16-0060

After recording, return to:
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Bureau of Labor and Industries
800 NE Oregon St #1045
Portland, OR 97232-2180

On April 30, 2016, an Order of Determination in the within-captioned proceeding was duly served in the manner provided for by law. Said Order of Determination provided employer, hereinafter known as Filiberto Aguirre aka Filiberto Gomez aka Gilberto Aguirre, an individual, dba New Sun Yard Work and dba New Sun, with an opportunity to make written request for a hearing before the Commissioner of the Oregon Bureau of Labor and Industries, or, alternatively, request a trial in a court of law within twenty days after service of the Order of Determination. No such request was received within the time allowed, and that Order of Determination became final by default on June 2, 2016.

BASED UPON THE FOREGOING and the investigative information and documentary material on file herein, the Commissioner of the Oregon Bureau of Labor and Industries finds that the amount of the wages and civil penalties claimed as set forth in the Order of Determination herein are now due and owing.

//

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Said Filiberto Aguirre aka Filiberto Gomez aka Giliberto Aguirre, an individual, dba New Sun Yard Work and dba New Sun, pay to the Commissioner of the Oregon Bureau of Labor and Industries the full sum of \$1,886.00 as and for unpaid wages, together with interest thereon at the legal rate per annum from August 1, 2015 until paid; the further sum of \$3,120.00 as and for penalty wages, together with interest thereon at the legal rate per annum from September 1, 2015, until paid; and the further sum of \$3,120.00 as and for civil penalties, together with interest thereon at the legal rate per annum from September 1, 2015, until paid.

Dated and mailed this 3rd day of June, 2016.

BRAD AVAKIAN, Commissioner
Oregon Bureau of Labor and Industries

By Gerhard Taeubel
Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

NOTICE OF YOUR RIGHTS TO REVIEW OF THIS ORDER

There are two types of review available to attempt to reverse this Final Order: administrative review and judicial review. Each type of review is independent of the other. A respondent adversely affected by a final order on default may (1) seek administrative review or (2) seek judicial review or (3) first seek administrative review, then seek judicial review if not granted relief from the final order through the administrative review process. Respondents who seek review may wish to consider using the administrative review process because it is simpler, less expensive, and less time-consuming than the judicial review process.

A. ADMINISTRATIVE REVIEW

Respondent may request relief from this Order on Default pursuant to OAR 839-050-0340, a copy of which is attached. A written Request for Relief from Default must be received at the address below within 10 days after the date this Order on default is issued. The Request for Relief from Default must address the issue of good cause with respect to the reason(s) for default, not the underlying merits of the case. "Good cause" means a respondent failed to perform a required act due to an excusable mistake or a circumstance over which a respondent had no control. "Good cause" does not include a lack of knowledge of the law. OAR 839-050-0020(12). Your request for Relief from Default and any supporting documents must be addressed to:

Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries
Suite 1045, State Office Building
800 NE Oregon Street
Portland, Oregon 97232-2180

When the administrator of the Wage and Hour Division receives your request for relief from default, the administrator may issue an order granting relief from default. Otherwise, the administrator will forward your request for relief and the administrator's written response, if any, to the Bureau's Hearings Unit for assignment to an administrative law judge. Any response by the administrator will be served on the party requesting relief. The administrative law judge will then issue an order granting or denying the request for relief from default, along with a notice of judicial review rights.

B. JUDICIAL REVIEW

Whether you seek administrative relief from default as provided above and are unsuccessful, or you do not seek such relief at all, you are entitled to judicial review of this Final Order pursuant to ORS 183.482. If you do not seek administrative relief from default, to obtain judicial review, you must file a Petition for Judicial Review with the Court of Appeals in Salem, Oregon, within sixty (60) days of the service of this Final Order. If you first seek administrative relief from default as provided above, and that request for relief is denied, you will be notified in the order denying relief from default of your right to judicial review within sixty (60) days of that order. In either event, if you file a Petition for Judicial Review, **YOU MUST ALSO SERVE A COPY OF THE PETITION FOR JUDICIAL REVIEW ON THE BUREAU OF LABOR AND INDUSTRIES AND THE DEPARTMENT OF JUSTICE - APPELLATE DIVISION AT THE FOLLOWING ADDRESSES:**

Mark Lundsten, Judgment Unit
Wage and Hour Division
Bureau of Labor and Industries
800 NE Oregon Street, # 1045
Portland, OR 97232-2180

Department of Justice
Appellate Division
1162 Court Street NE
Salem, Oregon 97301-4096

If you file a Petition for Judicial Review and if you wish to stay the enforcement of this final order pending judicial review, you must file a request with the Bureau of Labor and Industries, at the address above. Your request must contain the information described in ORS 183.482(3) and OAR 137-003-0090 to 137-003-0092.

M. Jumbsten

Authorized Representative
Bureau of Labor & Industries

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 **Sergio I. Arizola**,
Wage Claimant,

v.

**Filiberto Aguirre aka Filiberto Gomez aka
Gilberto Aguirre, an individual, dba New
Sun Yard Work and dba New Sun, Employer**

ORDER OF DETERMINATION

FILE #: 16-0060

After recording, return to:
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Bureau of Labor and Industries
800 NE Oregon St #1045
Portland, OR 97232-2180

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.

II. Employer Liability for Unpaid Wages

This Order is based upon the assigned wage claim filed by Sergio I. Arizola ("wage claimant"), claiming unpaid wages from Filiberto Aguirre aka Filiberto Gomez aka Gilberto Aguirre, an individual, dba New Sun Yard Work and dba New Sun ("employer"). During the period June 6, 2015 through July 16, 2015 the wage claimant performed work, labor and services for the employer at the regular rate of \$13.00 per hour for each hour worked. The employer was required by the provisions of ORS 653.261(1) and OAR 839-020-0030 to compensate the wage claimant at one and one-half times the regular rate of pay for each hour worked over 40 hours in a given work week. During the period June 6, 2015 through July 16, 2015 the wage claimant worked a total of 198 hours, 48 of which were hours worked over 40 hours in a given work week, and is entitled to \$2,886.00 in wages and overtime, no part of which has been paid except the sum of \$1,000.00, leaving a balance due and owing of \$1,886.00 in unpaid wages and overtime. The Wage and Hour Division of the Bureau ("Agency") has determined that the employer owes the wage claimant \$1,886.00, together with the interest thereon at the legal rate per annum from August 1, 2015, until paid.

III. Penalty Wages

Penalty Wages: The wage claimant's employment ceased on July 16, 2015. The Agency has determined that more than thirty 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 and ORS 652.150. The employer has willfully failed to pay the wages referred to in Paragraph II, entitling the wage claimant to \$3,120.00 in penalty wages under ORS 652.150 based on the claimant's hourly wage rate of \$13.00, with the interest thereon at the legal rate per annum from September 1, 2015, until paid. OAR 839-001-0470.

Civil Penalties: The Agency has also determined that the employer paid the wage claimant less than the wages to which the wage claimant was entitled under ORS 653.010 to 653.261 and is therefore liable to the wage claimant for civil penalties pursuant to the provisions of ORS 653.055(1)(b) in the amount of \$3,120.00, with the interest thereon at the legal rate per annum from September 1, 2015, until paid. OAR 839-001-0470(4); OAR 839-001-0496

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, 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. 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. 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(10).

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. 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.

XI. 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.

XII. Consequence of Withdrawing Timely Request for Hearing

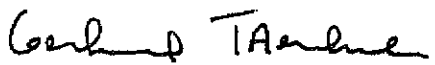
If the employer makes a timely request for hearing but later withdraws that request, the Agency's file, including the materials submitted by the employer, and all materials filed with the Forum up to the time the employer's withdrawal request is made will be designated as the record of the case. This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

XIII. 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 15th day of April, 2016.

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries


GERHARD TAEUBEL, 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:

Mark Lundsten, Order Processor
Bureau of Labor and Industries
Wage and Hour Division
800 NE Oregon Street, Suite 1045
Portland, Oregon 97232-2180
Phone: 971-673-0848

WH-61 (Rev. 07-14)