



BUREAU of LABOR & INDUSTRIES

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

In the Matter of:

STAY HAI LLC,

Respondent.

Case No. 156-24; 157-24
(Consolidated)

FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

Respondent employed four wage claimants in 2020 at the piece rate of \$125 per pound. All four wage claimants performed work at the direction of Respondent and for Respondent's benefit, for which they were not paid. Additionally, Respondent employed two wage claimants in 2021 at the agreed-upon hourly rate of \$16. Both wage claimants employed in 2021 performed work for Respondent, for which they were not paid. Respondent was ordered to pay the six wage claimants a total of \$18,720.50 in unpaid, due, and owing wages. Respondent's failure to pay the wages owed to the six wage claimants was willful, and Respondent was ordered to pay a total of \$61,488 in ORS 652.150 penalty wages.

The above-entitled case came on regularly for hearing before Caroline A. Holien, designated as Administrative Law Judge ("ALJ") by, Christina Stephenson, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on August 27–29, 2024; October 15–17, 2024, and October 31, 2024, via Zoom.

1 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by
2 Administrative Prosecutors Isela Ramos Gonzalez and Jesse Neilson, employees of the
3 Agency. Respondent Stay Hai LLC (“Stay Hai”) was represented by Bernard Mazaheri,
4 attorney at law.

5 Wage Claimants Farkhat Sadyov (“Sadykov”); Afa Faraji (“Faraji”); Olsas (“OJ”)
6 Kashenov (“Kashenov”), Victoria Frolova (“Frolova”), and Jhony Bruno Hernandez
7 (“Hernandez”) were present at various times throughout the hearing. Stay Hai
8 Registered Agent and Manager Miles Clark (“M. Clark”) was present throughout the
9 hearing, as was Juan Lopez (“Lopez”), Compliance Specialist 3, Wage and Hour
10 Division.

11 The Agency called Lopez, Sadykov, Faraji, Kashenov, Frolova, Hernandez, and
12 M. Clark as witnesses. Stay Hai also called M. Clark as a witness.

13 Interpreters Emma Garkavi, Helena Green, and Rafi Aftandelian provided
14 Russian language translation services for the benefit of Sadykov and Kashenov and
15 translated their testimony for the record. Interpreters Christoper Michael Fallas Urena
16 and Fabio Arce provided Spanish language translation services for the benefit of
17 Hernandez and translated his testimony for the record.

18 The forum received into evidence Administrative Exhibits X1-X9 for Case No.
19 156-24 and X1-X6 for Case No. 157-24. The forum also received into evidence
20 Administrative Exhibits X11-X29 and X30-X38 for the Consolidated Cases.¹

21
22
23 ¹ Exhibit X31 includes Respondent’s Motion to Strike; Ex. X32 is the Agency’s Second Motion for Hearing
24 Recordings; Ex. X33 is the forum’s order denying the Agency’s motion for recordings; Ex. X34 includes
25 emails sent to the forum on October 18, 2024; Ex. X35 is the forum’s interim order scheduling the final
day of hearing; Ex. X36 is the Agency’s response to the motion to strike; and Ex. X37 is the forum’s
interim order denying Respondent’s motion to strike.

1 The forum received into evidence Agency Exhibits A4; A10; A26; A36; A37; A62-
2 A69; A71; A73-A102; A105-A114; A117-A120; A126-A140; A142-A149; A151-A180;
3 and A182 -A185.² The forum also received into evidence Respondent's Rebuttal
4 Exhibits R10-R12.

5 Having fully considered the entire record in this matter, I, Caroline Holien,
6 Administrative Law Judge, hereby make the following Findings of Fact (Procedural and
7 on the Merits), Ultimate Findings of Fact,³ Conclusions of Law, Opinion, and Order.

8 **FINDINGS OF FACT – PROCEDURAL**

9 ***Wage Claims Filed***

10 1) On September 15, 2019, Sadykov filed a wage claim with the Agency's
11 Wage and Hour Division alleging that William Dean Clark ("W. Clark") had employed
12 him from August 30, 2020, to September 9, 2020, and failed to pay wages earned and
13 due to him in the amount of \$10,300. Sadykov assigned his claim to the Agency
14 (Testimony of Sadykov, Lopez; Ex. A80, Ex. X1a – Case No. 156-24)

15 2) On August 8, 2021, Faraji filed a wage claim with the Agency alleging that
16 W. Clark had employed her from August 30, 2020, to September 9, 2020, and failed to
17 pay wages earned and owed to her in the amount of \$4,157. Faraji assigned her claim
18 to the Agency. (Testimony of Faraji, Lopez; Exs. A10, A81; Ex. X1a – Case No. 156-24,
19 Ex. A10)

20
21
22
23 ² The forum sealed Agency Exhibits A76-A170 finding that the privacy interest of the individual(s)
referenced in those exhibits outweighed the public's right to access that information.

24 ³ The Ultimate Findings of Fact required by ORS 183.470 are subsumed within the Findings of Fact –
25 The Merits.

1
2 3) On September 17, 2021, Frolova filed a wage claim with the Agency
3 alleging that W. Clark had employed her from August 30, 2020, to September 8, 2020,
4 and failed to pay wages earned and owed to her in the amount of \$9,800. Frolova
5 assigned her claim to the Agency. (Testimony of Frolova, Lopez; Ex. A82, Ex. X1a –
6 Case No. 156-24)

7 4) On September 4, 2023, Kashenov filed a wage claim with the Agency
8 alleging that W. Clark had employed him from August 30, 2020, to September 9, 2020,
9 and failed to pay wages earned and owed him in the amount of \$8,700. Kashenov
10 assigned his claim to the Agency. (Testimony of Kashenov, Lopez; Ex. Ex. 2b – Case
11 No. 157-24)

12 5) On July 7, 2021, Hernandez filed a wage claim alleging that an individual
13 located at 4640 Takilma Road, Cave Junction, Oregon, employed him from June 16,
14 2021, through June 20, 2021, and failed to pay wages earned and owed to him in the
15 amount of \$800. Hernandez assigned his claim to the Agency. (Testimony of
16 Hernandez, Lopez; Ex, A83, Ex. X1a – Case No. 156-24)

17 6) July 15, 2021, Wage Claimant Fernando Cazapa Barrera (“Cazapa
18 Barrera”) filed a wage claim alleging that an individual located at 4640 Takilma Road,
19 Cave Junction, Oregon, employed him from June 16, 2021, to June 20, 2021, and failed
20 to pay wages earned and owed to him in the amount of \$800. Cazapa Barrera
21 assigned his claim to the Agency. (Testimony of Lopez, Ex. X1a – Case No. 156-24)

22 **Case No. 156-24**

23 7) On July 10, 2023, the Agency issued Order of Determination (“OOD”) No.
24 21-2318 based on the assigned wage claims of Hernandez, Cazapa Barrera, Faraji,
25

1 Frolova, and Sadykov and the Agency's investigation. The OOD included the finding
2 that the wage claimants worked a total of 862 hours for Stay Hai and were entitled to
3 \$25,857 in unpaid wages, with interest. OOD No. 21-2318 also included the following
4 allegations:

- 5 a. Hernandez was owed \$800 for 50 hours worked during the period of June
6 6-21, 2021, with an hourly rate of \$16.00. The Agency also imposed
7 penalty wages at the rate of \$128 for 30 days for a total penalty of \$3,840.
- 8 b. Cazapa Barrera was owed \$800 for 50 hours worked during the period of
9 June 6-21, 2021, with an hourly rate of \$16.00. The Agency also imposed
10 penalty wages at the rate of \$128 for 30 days for a total penalty of \$3,840.
- 11 c. Faraji worked 221 hours from August 30, 2020, to September 8, 2020, and
12 was owed \$4,157 for approximately 34.64 pounds. The Agency also
13 imposed penalty wages at the rate of \$150.48 for 30 days for a total
14 penalty of \$4,514.40.
- 15 d. Frolova worked 221 hours from August 30, 2020, to September 8, 2020,
16 and was owed \$9,800 for approximately 81.66 pounds. The Agency also
17 imposed penalty wages at the rate of \$354.72 for 30 days for a total
18 penalty of \$10,641.60.
- 19 e. Sadykov worked 320 hours from August 30, 2020, to September 11, 2020,
20 and was owed \$10,300 for approximately 85.83 pounds. The Agency also
21 imposed penalty wages at the rate of \$257.52 for 30 days for a total
22 penalty of \$7,725.60.

23 (Ex. 1a (Exhibits A, B))

24 8) The Agency first mailed the OOD to M. Clark as Stay Hai's Registered
25 Agent at his last known mailing address, including 4640 Takilma Road and M. Clark's
address in Bristow, Oklahoma. The mailing was returned as undeliverable. The Agency
subsequently mailed the OOD to M. Clark at a mailing address in Oklahoma and
emailed it to both M. Clark and Mazaheri, Stay Hai's attorney of record. (Exs. X1a; A86-
A96)

1
2 9) On April 28, 2023, M. Clark spoke with Lopez by telephone. M. Clark
3 confirmed that he had received a letter from Lopez in April 2023 informing him of the
4 wage claims that had been filed, alleging Stay Hai owed wages for work performed. M.
5 Clark suggested that his father was responsible for the unpaid wages and indicated that
6 he no longer spoke with his father. Lopez confirmed M. Clark's email address and
7 requested that M. Clark send a response to the claims by May 5, 2023. (Testimony of
8 Lopez; E. A84)

9 10) On July 31, 2023, Mazaheri filed Notice of Appearance on behalf of Stay
10 Hai and filed Stay Hai's Answer and Affirmative Defenses. Stay Hai denied that it was
11 an employer and that it had ever hired or terminated the wage claimants. Stay Hai
12 argued that the hours claimed by Faraji, Frolova, and Sadykov were implausible. Stay
13 Hai also argued that Frolova was a family member who was exempted from the wage
14 laws of the State of Oregon as an agricultural employee. (Exs. X1b, X1c)

15 11) On April 30, 2024, the forum issued a Notice of Hearing in BOLI Case No.
16 156-24 to Stay Hai and the Agency for OOD # 21-2318, setting the time and place for
17 hearing for 9:30 a.m. on July 30, 2024, on Zoom. Together with the Notice of Hearing,
18 the forum sent a copy of the OOD, a multi-language warning notice, a document
19 entitled, "Summary of Contested Case Rights and Procedures" containing the
20 information required by ORS 183.413, a document entitled, Servicemembers Civil Relief
21 Act (SCRA) Notification" and a copy of the forum's contested case hearings rules, OAR
22 839-050-000 to 839-050-0445. (Exs. X2, X2a-X2h)

1
2 12) On April 30, 2024, Mazaheri requested to reschedule the hearing to
3 August 6, 2024, due to a scheduling conflict. The Agency did not oppose the request.
4 On May 9, 2024, the ALJ issued an interim order rescheduling the hearing Case No.
5 156-24 to be held at 9:00 a.m. on August 6, 2024. (Ex. X3)

6 13) On May 9, 2024, the ALJ issued an Interim Order Requiring Case
7 Summaries to be Filed and Setting Case Deadlines. (Ex. X4)

8 14) In an email exchange on June 7, 2024, between the ALJ and the attorneys
9 of record, Mazaheri consented to receiving forum filings electronically. Mazaheri
10 requested consolidation of Case Nos. 156-24 and 157-24 and production of the
11 Agency's file(s). Mazaheri also requested the matters be referred for mediation.
12 Mazaheri referenced an additional case involving civil penalties (Case No. 118-24) and
13 requested that it be stayed while Case Nos. 156-24 and 157-24 were mediated. (Ex.
14 X5)

15 15) The ALJ directed the parties to file formal motions as required under OAR
16 839-050-0030 and advised the parties that the forum had not consolidated any of the
17 three cases mentioned in the email exchange. The parties consented to receive forum
18 filings electronically in this email exchange. (Ex. X5)

19 16) On June 17, 2024, the Agency filed a Motion to Consolidate BOLI Case
20 Nos. 156-24, 157-24, and 118-24, arguing that consolidation was appropriate because
21 there were common parties and consolidation would avoid additional costs or delays
22 due to witnesses being common in all three cases. (Ex. X6)

1
2 17) On June 20, 2024, Mazaheri filed a Motion to Enlarge Time, offering a
3 number of reasons in support of Respondent's request for additional time at hearing.

4 (Ex. X7)

5 18) On June 20, 2024, Mazaheri filed a Motion to Schedule Mediation,
6 requesting that mediation be set for August 6, 7, or 8, 2024, before an ALJ. (Ex. X8)

7 19) On June 21, 2024, Mazaheri filed a Response to the Agency's Motion to
8 Consolidate in which he "did not object to consolidating the three cases together."
9 Mazaheri stated that none of the individuals involved in those cases had been properly
10 served but that he had communicated with M. Clark, who would be acting as the
11 corporate representative of Stay Hai. Mazaheri requested a hearing on all three matters
12 and also requested that the matters be referred for mediation. (Ex. X9)

13 20) On June 26, 2024, the Agency filed the Agency's Response to
14 Respondent Stay Hai's Motion to Mediate and Motion to Enlarge Time. The Agency
15 questioned whether Mazaheri represented the individually named Respondents M.
16 Clark, W. Clark, and Marilyn Heller. The Agency represented that it had served the
17 Notice of Intent to Assess Civil Penalties for BOLI Case No. 118-24 on M. Clark, W.
18 Clark, and Marilyn Heller on June 4, 2024, via USPS certified mail. The Agency further
19 represented that it had served its motion to consolidate on the same individuals via
20 USPS first class mail on June 17, 2024. The Agency objected to the motion seeking a
21 judicial-assisted mediation, citing the Respondent's previous withdrawal of settlement
22 offers that had been accepted by the claimants. The Agency further objected to the
23 motion to enlarge time. (Ex. X10)

1
2 **Case No. 157-24**

3 21) On May 30, 2024, the forum issued a Notice of Hearing in BOLI Case No.
4 157-24 to Stay Hai and the Agency for OOD # 23-2805, setting the time and place for
5 hearing for 9:30 a.m. on August 13, 2024, on Zoom. Together with the Notice of
6 Hearing, the forum sent a copy of the OOD, a multi-language warning notice, a
7 document entitled, "Summary of Contested Case Rights and Procedures" containing the
8 information required by ORS 183.413, a document entitled, Servicemembers Civil Relief
9 Act (SCRA) Notification" and a copy of the forum's contested case hearings rules, OAR
10 839-050-000 to 839-050-0445. (Exs. X2, X2a-X2g)⁴

11 **Case No. 118-24**

12 22) On July 23, 2024, the ALJ issued an Interim Order Referring Case to the
13 Administrator of the Wage and Hour Division in BOLI Case No. 118-24:

14 **"THE AGENCY'S MOTION FOR DEFAULT**

15 "On July 8, 2024, the Agency filed a motion seeking a Final Order by Default on
16 the grounds that Respondents Stay Hai, LLC ("Stay Hai"), Miles Clark ("M.
17 Clark"), William Clark ("W. Clark"), and Marilyn Heller ("M. Heller") failed to file a
18 timely request for hearing.⁵ In support of its motion, the Agency submitted
19 exhibits showing that the Notice of Intent to Assess Civil Penalties ("NOI") was
20 served upon Respondent Stay Hai by certified mail sent to Bernie Mazaheri⁶,
Stay Hai's attorney of record in the underlying wage claims, with a courtesy copy
of the notice being sent by email to Mr. Mazaheri. (Exs. 1, 2, 8, 9, 11) The
Agency also submitted exhibits showing that the NOI was served upon
Respondents M. Clark, Stay Hai's Registered Agency listed in the Oregon
Secretary of State's website, by regular and certified mail, with a courtesy copy
being sent to M. Clark by email to the email address used by M. Clark during the

21 ⁴ Exhibits X3 – X6 in Case No. 157-24 are the same as Exhibits 5, 6, 9, and 10 in Case No. 156-24.

22 ⁵ The Agency filed an amended motion later that same day with corrected exhibit attachments and exhibit
23 numbering. For the sake of clarity, the forum will refer to the exhibits as numbered in the Agency's
amended motion.

24 ⁶ Mr. Mazaheri has notified the forum during the course of the underlying wage claims (BOLI Case Nos.
156-24 and 157-24) that he does not represent either M. Heller or W. Clark in this case.

1
2 Agency's investigation. (Exs. 3-5, 10). The Agency also submitted exhibits
3 showing that the NOI was served upon W. Clark and M. Heller by regular and
4 certified mail.⁷ (Exs. 6, 7)

5 "The forum did not receive a response from Stay Hai, M. Clark, W. Clark or M.
6 Heller to the Agency's motion, which was due July 15, 2024. OAR 839-050-
7 0150.

8 DISCUSSION

9 "A party must file an Answer within 20 days after service of the charging
10 documents. OAR 839-050-0130(4). OAR 839-050-0130(1) provides:

11 "Except as otherwise provided for in ORS 652.332(1) the charging document will
12 be served on the party or the party's representative by personal service or by
13 United States Postal Service registered or certified mail. Service of a charging
14 document is complete upon the earlier of:

- 15 (a) Receipt by the party or the party's representative; or
- 16 (b) Mailing when sent by United States Postal Service registered or
17 certified mail to the correct address of the party or the party's
18 representative."

19 "A party who wishes to contest the charging document must file a written request
20 for a contested case hearing within the time specified in the charging document.
21 OAR 839-060-0330(1)(a). Default may occur when a party fails to file a required
22 response, including a request for hearing or an answer, within the time specified
23 in the charging document. OAR 839-050-0330(1)(a). The Administrator of the
24 Wage and Hour Division may issue a Final Order by default when a party is given
25 an opportunity to request a hearing and file an answer within the time specified in
a charging document and fails to do so. OAR 839-050-0430(1)(a).

"The Agency served the NOI for BOLI Case No. 118-24 on June 4, 2024, by
mailing the notice and associated documents to the parties or party
representatives at their last known addresses by regular and certified mail
pursuant to OAR 839-050-0030(1)(a),(b). (Exs. 1-4, 6, 7). Courtesy copies were
also sent to the email addresses used by M. Clark and Stay Hai during the
course of the Agency's investigation and to Stay Hai's attorney of record in the
underlying wage claims. (Exs. 5, 11).

"The Notice of Intent to Assess Civil Penalties states:

⁷ The Agency mailed the Notice of Intent to Assess Penalties to M. Heller at the address where she is listed as a property owner and that is listed as the mailing address for Stay Hai and M. Clark.

1
2 'If you desire a request for hearing, you must submit a written request for
3 hearing within 20 days of the date this notice was mailed to you. You
4 must mail any request for hearing to the address provided at the end of
5 this notice. The request for hearing must be received within 20 days of
6 the date this notice was mailed.'

7
8 "(Exs. 1, p. 13; Ex. 3, p. 11; Ex. 6, p. 11; Ex. 7, p. 11).
9

10 "The Notice of Intent to Assess Civil Penalties further states:
11

12 'FAILURE TO MAKE A WRITTEN REQUEST FOR HEARING WITHIN
13 THE TIME SPECIFIED SHALL CONSTITUTE A WAIVER OF YOUR
14 RIGHT TO A CONTESTED CASE HEARING. IF YOU DO NOT
15 REQEUST A HEARING WITHIN THE TIME SPECIFIED. * * * THE
16 COMMISSIONER MAY ENTER A FINAL ORDER BY DEFAULT
17 ASSESSING CIVIL PENALTIES. IF THE COMMISSIONER ISSUES A
18 DEFAULT ORDER, THE AGENCY'S FILE BECOMES PART OF THE
19 EVIDENTIARY RECORD FOR PURPOSES OF PROVIING A PRIMA
20 FACIE CASE.'

21 "(Exs. 1, p. 13; Ex. 3, p. 11; Ex. 6, p. 11; Ex. 7, p. 11)(emphasis in the original)
22

23 "To date, the forum has not received either an answer or a request for hearing
24 from Stay Hai, M. Clark, W. Clark or M. Heller. An answer or request for hearing
25 was due no later than June 24, 2024. Therefore, the Agency's motion for an
entry of default against Respondents Stay Hai, M. Clark, W. Clark and M. Heller
is **GRANTED**.

"Pursuant to OAR 839-050-0330(2) and ORS 183.417(4), this case is hereby
referred back to the administrator of the Wage and Hour Division to determine
whether the record⁸ demonstrates a prima facie case in support of the allegations
in the Notice of Intent to Assess Civil Penalties against Respondents Stay Hai,
LLC, Miles Clark, William Clark, and Marilyn Heller.

IT IS SO ORDERED."⁹

⁸ The record "includes all materials in the Agency's investigative file and all materials filed with the forum
by the Agency or the party up to the time set for hearing." OAR 839-050-0330(2).

⁹ Interim order included to clarify Finding of Fact No. 28.

1
2 **Consolidated Case Nos. 156-24 and 157-24¹⁰**

3 23) On July 2, 2024, the ALJ issued an Interim Order Granting Agency's
4 Motion to Consolidate Case Nos. 156-24 and 157-24 and Granting Respondent's
5 Motion to Extend Deadline for Filing Dispositive Motions that included:

6 "The parties have filed three motions in this matter. The Agency's motion to
7 consolidate and the Respondent's motion to extend prehearing deadlines and
8 rescheduled the hearing will be addressed in this interim order. Respondent's
9 motion for mediation will be addressed in a separate interim order.

10 **AGENCY'S MOTION TO CONSOLIDATE**

11 "On June 14, 2024, the Agency filed a motion to consolidate Case Nos. 156-24,
12 157-24, and 118-24 citing common questions of law and fact in each case, as
13 well as the potential cost savings of consolidating the three cases.

14 "On June 21, 2024, the attorney for Respondent Stay Hai, LLC ("Stay Hai")
15 informed the forum that Respondent Stay Hai and its corporate representative
16 did not object to consolidating the three cases. However, Respondent Stay Hai's
17 counsel clarified that he although he anticipated representing Stay Hai's
18 corporate representative, who was named as an individual Respondent in Case
19 No. 118-24, he did not expect to represent the two other individual Respondents
20 named in Case No. 118-24.

21 "OAR 839-050-0190 provides:

22 "The Administrative Law Judge, on their own motion, or upon motion of a
23 party, may order a joint contested case proceeding for two or more
24 contested cases over which they are presiding when the Administrative
25 Law Judge determines that the cases involve common questions of law or
fact. The Administrative Law Judge, in conducting the proceeding, may
establish procedures necessary to avoid additional costs or delay.'

"Case Nos. 156-24 and 157-24 involve wage claims filed against Respondent
Stay Hai that involve six wage claimants who have been employees of
Respondent Stay Hai. The wage claims allege a failure to pay the minimum
wage for all wages earned in work performed for Respondent Stay Hai; failure to
pay wages due upon termination of employment; failure to make payroll and
other records for wage claimants; failure to supply wage statements to wage
claimants; and failure to make available the payroll records of the wage claimants
to the Commissioner of the Bureau of Labor and Industries. The Agency seeks

24 ¹⁰ Exhibits X11 – X14 in the Consolidated Cases are duplicates of exhibits found in Case Nos. 156-24 and
25 157-24.

1
2 civil penalties based upon the wage claims against Respondent Stay Hai's
3 corporate representative, as well as his mother and father, in Case No. 118-24.

4 "The forum finds there are common questions of law and fact in Case Nos. 156-
5 24 and 157-24. Further, consolidating Case Nos. 156-24 and 157-24 would
6 avoid additional costs or delay for the parties. As of the date of this interim order,
7 the forum has not yet received a request for hearing in Case No. 118-24.
8 Therefore, the forum cannot determine whether consolidating Case No. 118-24
9 with Case Nos. 156-24 and 157-24 would meet the standard set forth in OAR
10 839-050-0190. Therefore, the Agency's motion to consolidate is GRANTED as to
11 Case Nos. 156-24 and 157-24. The Agency's motion to consolidate is DENIED
12 as to Case No. 118-24."

13 **RESPONDENT'S MOTION TO ENLARGE TIME**

14 "On June 20, 2024, Respondent Stay Hai filed a motion to enlarge time in Case
15 Nos. 156-24, 157-24, and 118-24 requesting to extend time for filing dispositive
16 motions noting the large size of the case file produced in Case No. 156-24.
17 Respondent also argues that the hearing should be rescheduled due to
18 mediation being conducted, noting that Case No. 118-24 presents new issues
19 that are not yet ripe for hearing. Respondent argues that resetting the
20 dispositive motion deadline by 21 days following the mediation is necessary
21 given that mediation has been requested in the three cases and the size of the
22 case file recently produced by the Agency.

23 "The Agency objects to Respondent Stay Hai's motion arguing that Case No.
24 118-24 does not expand the claims against Respondent Stay Hai but seeks civil
25 penalties based upon the conduct alleged in Case Nos. 156-24 and 157-24. The
Agency notes that any motion for summary judgment would have to be filed no
less than 21 days prior to the start of hearing, which would be July 16, 2024.

"OAR 839-050-0150 provides:

"(a) Any participant making a request for a postponement of any part of
the contested case proceeding must state in detail the reason for the
request. The Administrative Law Judge may grant the request for good
cause shown. In making this determination, the Administrative Law Judge
will consider:

- (A) Whether previous postponements have been granted;
- (B) The timeliness of the request;
- (C) Whether a participant has previously indicated it was prepared to
proceed;
- (D) Whether there is a reasonable alternative to postponement; for
example, submitting a sworn statement of a witness; and
- (E) The date the hearing was originally scheduled to commence."

1
2 "Given that Case Nos. 156-24 and 157-24 have been consolidated, as well as
3 the other procedural issues noted above, the Respondent's motion to extend the
4 deadline for filing dispositive motions is GRANTED. The deadline for filing
5 dispositive motions will be extended to July 16, 2024. Any responses filed must
6 be filed no later than seven days after service of the motion. OAR 839-050-
7 0150."

8 "The forum does not find that Respondent has shown good cause to reschedule
9 the contested hearing date. Case Nos. 156-24 and 157-24 are based upon wage
10 claims involving common claimants and common issues, as noted above. The
11 previous prehearing deadlines were agreed to by counsel. Further, pursuing
12 mediation is not good cause to further delay hearing in Case Nos. 156-24 and
13 157-24. Therefore, the Respondent's motion to extend the hearing schedule is
14 DENIED. However, given that Case Nos. 156-24 and 157-24 have been
15 consolidated, and the hearing for Case No. 157-24 is scheduled to begin August
16 13, 2024, the consolidated contested case hearing for Case Nos. 156-24 and
17 157-24 will begin at 9:30 a.m., on Tuesday, August 13, 2024. An interim order
18 setting the case summary deadline and incorporating the new deadline for filing
19 dispositive motions will be issued."

20 **IT IS SO ORDERED."**

21 (Ex. X15)

22 24) On July 2, 2024, the ALJ issued an Interim Order Requiring Case
23 Summaries to be Filed and Setting Case Deadlines, in which July 30, 2024, was set as
24 the Case Summary filing deadline and July 16, 2024, was set as the motion deadline.

25 (Ex. X16)

26 25) On July 2, 2024, the ALJ issued an Interim Order Referring Case to ALJ
27 Kari Furnanz for ALJ-Assisted Mediation. (Ex. X17)

28 26) On July 29, 2024, the Respondent timely filed its Case Summary, which
29 included an argument regarding the nature of the relationship between Frolova and M.
30 Clark and a general denial that Respondent was the employer of the wage claimants.
31 Respondent's Case Summary also included:

1
2 “Respondent does not anticipate that William Clark or Marilyn Heller will testify at
3 the hearing. However, Respondent reserves the right to call Mr. Wm Clark and
4 Ms. Heller. Respondent asserts that Mr. Wm Clark was the father of Mr. Clark
5 and had no right to conduct business for Respondent. Respondent does not
6 know what, if any, relationship Mr. Wm Clark had with Wage Claimants.
7 Respondent suspects that Mr. Wm Clark and Ms. Frolova may have been
8 partners in one or more projects and that the relationship soured. When, Mr.
9 Clark was romantically involved with Ms. Frolova, Mr. Clark was considered to be
10 part of the “friend” group that included one or more of the Wage Claimants. Ms.
11 Heller is the mother of Mr. Clark. Ms. Heller has no involvement with
12 Respondent. When Ms. Frolova was romantically involved with Mr. Clark, she
13 stayed one or more nights at a home owned by Ms. Heller. No work was ever
14 done for the benefit of Ms. Heller.”

15 (Ex. X19)

16 27) On July 30, 2024, the Agency timely filed its Case Summary and exhibits.

17 (Ex. X18)

18 28) On July 29, 2024, Mazaheri filed a motion to correct hearing date, citing
19 his unavailability for the scheduled hearing date due to a pre-planned family trip. (Ex.
20 X20)

21 29) On August 2, 2024, the ALJ issued an Interim Order Rescheduling
22 Hearing Setting Case Summary Supplement Filing Deadline that rescheduled the
23 hearing to be held on August 27, 2024, with Case Summary Supplements being due on
24 August 13, 2024. (Ex. X21)

25 30) On August 20, 2024, the ALJ issued an Interim Order Denying Motion to
Set Aside Default in Case No. 118-24:

Respondent’s Motion to Set Aside Entry of Default

“On July 29, 2024, Bernie Mazaheri (‘Mazaheri’), the attorney of record for Stay
Hai, LLC (‘Stay Hai’) in Case Nos. 156-24 and 157-24, filed a Motion to Set Aside
Default in Case No. 118-24 arguing that default was inappropriate as it was
sought after mediation was unsuccessful and that the Respondents named in
Case No. 118-24 did not receive proper notice. Mazaheri further argued that he
had referenced Case No. 118-24 in motions filed and, therefore, the entry of
default is inappropriate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

“On August 5, 2024, the Agency filed its response to the motion to set aside the default arguing that Stay Hai had failed to show good cause for setting aside the default. The Agency argued that Stay Hai, having been involved in the contested case process for Case Nos. 156-24 and 157-24, failed to timely request a hearing. The Agency further argued that the ALJ-assisted mediation the parties participated in on August 5, 2024, did not alleviate Stay Hai of its burden to timely request a hearing in Case No. 118-24. The Agency also noted that there was no allegation that the NOI’s issued were mailed to incorrect addresses. The Agency also argued that the motion to set aside the default is premature as the Wage and Hour Administrative has not yet issued a Final Order of Default. OAR 839-050-0330 and OAR 839-050-0340.

PROCEDURAL BACKGROUND

“Case Nos. 156-24 and 157-24 are based on five unpaid wage claims filed by Complainants against Stay Hai. Case No. 118-24 is based upon the Agency’s Notice of Intent to Assess Civil Penalties (‘NOI’) based upon the five unpaid wage claims. The Respondents named in Case No. 118-24 include Stay Hai; Miles Clark, Stay Hai’s corporate representative in Case Nos. 156-24 and 157-24; William Clark; and Marilyn Heller. It is necessary to set forth the procedural background for Case Nos. 156-24, 157-24, and 118-24 given the complication nature of the proceedings thus far.

Case No. 156-24

“On July 10, 2023, the Wage and Hour Division issued an Order of Determination (‘OOD’) finding that Stay Hai owed \$25,857 in unpaid wages to five wage claimants. On July 31, 2023, Mazaheri filed a Notice of Appearance and an Answer and Affirmative Defenses on behalf of Stay Hai, which included a request for a contested case hearing. On April 30, 2024, the forum issued a Notice of Hearing setting the matter for hearing on July 30, 2024.

Case No. 157-24

“On January 26, 2024, the Wage and Hour Division issued an OOD finding that Stay Hai owed unpaid wages in the amount of \$9,300 for work performed from August 30, 2020, through September 9, 2020. On May 30, 2024, the forum issued a Notice of Hearing setting the matter for hearing on August 13, 2024.

“On June 7, 2024, Mazaheri sent an email to the forum and Isela Ramos Gonzalez (‘Ramos Gonzalez’), Administrative Prosecutor, stating that included the following: he represented Stay Hai in Case Nos. 156-24 and 157-24. Mazaheri asked for the cases to be combined and that an ALJ-assisted mediation be conducted. Mazaheri also wrote in his email to the forum:

1
2 'I represent Stay Hai LLC. There are wage claims (Case No. 156 & 157).
3 Although the wage claimants differ the operative facts are the same in
4 both case numbers. I would like for both cases to be combined for the
5 sake of efficiency. Currently, one case is scheduled for trial on August 6th
6 and the other on August 13th. I am available on August 6th, but not on
7 August 13th.

8
9 'The above cases have not been mediated. Stay Hai LLC is agreeable to
10 mediation before an ALJ, and proposes August 6, 7, or 8 for mediation.
11 This request is made in good faith and not for the purpose of delay.

12
13 'The undersigned counsel has not received BOLI's file yet and has been
14 told that the file will not be delivered until June 14, 2024. The file is
15 essential for preparation for mediation, dispositive motions and a final
16 hearing. Currently, the dispositive motion deadline is June 21, 2024.
17 Seven days for review of the file is not an adequate period of time for
18 preparation. Moreover, Stay Hai LLC proposes to utilize energies for a
19 possible resolution at mediation rather than motion practice. Accordingly,
20 Stay Hai LLC requests that dispositive motions be due 21 days after
21 conclusion of mediation.

22
23 'An additional matter is case number 118, where BOLI seeks civil
24 penalties against Stay Hai LLC and three individuals. I do not formally
25 represent any of the individuals. I expect to represent Miles Clark if case
number 118 moves forward. I request that case number 118 be stayed
until after mediation. The two individuals that BOLI has brought claims
against are the parents of Miles Clark. 'The pressure placed on the family
with the proposal to hold them personally liable for a contested matter has
had a big impact on Stay Hai LLC. I am not authorized to accept service
for any individual. I am only authorized to accept service on Stay Hai LLC
that formally requests a hearing on all related matters.

'In sum, Stay Hai LLC proposes the following:

1. Combine cases 156 and 157;
2. Stay case 118 until after mediation;
3. Schedule mediation with an ALJ that is available on August 6, 7 or 8;
4. Reschedule dispositive motions at least 21 days after mediation;
5. Serve the individuals with the intent to assess civil penalties after mediation if the case is not resolved;
6. New case summaries deadline; and
7. New final hearing date.

1
2 'Opposing counsel is copied on this email. These issues have been
3 discussed between counsel via telephone. I will defer to the Honorable
4 Ramos Gonzalez to share her positions on the requests.

5 'It is important to note that Stay Hai LLC is currently a single member LLC.
6 It has no employees. It has never made a profit.'

7 (Mazaheri email rec'd 06/07/2024)

8 "The forum sent the following email, which included the Contested Case
9 Coordinator, in response:

10 'In reviewing your email, it appears that you are making several motions,
11 including a motion to consolidate BOLI Case ## 156-24 and 157-24; a
12 motion to stay the proceedings for a matter not yet before the forum; a
13 motion to reschedule the hearing in #157-24, and a motion seeking
14 mediation.

15 'The forum requires all motions to be filed pursuant to OAR 839-050-0030.
16 I would ask that any motion filed be clear as to which case number the
17 motion pertains to as BOLI Case ## 156-24 and 157-24 have not been
18 consolidated. Please let me know if you and Mx Ramos Gonzalez come
19 to any agreements regarding the issues raised in your email.

20 'Also, regarding BOLI Case # 157-24, does Respondent consent to
21 receive filings electronically? Again, since the cases currently before the
22 forum have not been consolidated, I need to receive confirmation that the
23 parties consent to receive filings electronically in the second case.

24 'The Contested Case Coordinator is asked to place a copy of this email
25 exchange in the forum file.'

(Forum email sent 06/07/2024)

"On June 14, 2024, the Agency filed a motion seeking to consolidate Case Nos.
118-24, 156-24, and 157-24, arguing that the cases involve common parties and
that Case No. 118-24 is based on the wage claims that gave rise to Case Nos.
156-24 and 157-24.

"On June 20, 2024, Stay Hai filed a Motion to Schedule Mediation in Case Nos.
118-24, 156-24, and 157-24. The motion included in footnote 1:

'The undersigned counsel only represents Stay Hai LLC. However, Stay
Hai LLC hopes that the matter can be resolved at mediation, so no
individual will be brought into the case. The undersigned counsel is not
authorized to accept service on behalf of any individual. The undersigned

1
2 counsel anticipates representing Miles Clark, if the matter is not dismissed
3 or resolved. Stay Hai LLC wishes for all cases against it to be
4 consolidated and heard at the same time.'

5 "On June 20, 2024, Stay Hai filed a Motion to Enlarge Time seeking additional
6 time for the filing of dispositive motions. The following was set forth as the
7 grounds for the motion:

8 'First, the Agency has moved to consolidate case numbers 156-24, 157-24
9 and 118-24. The undersigned counsel only represents Stay Hai LLC and
10 not any individuals. The Agency has added three individuals to case
11 number 118-24. The undersigned counsel does not believe that the
12 Agency has served the individuals. The undersigned counsel expects to
13 represent Miles Clark once he is served. The other two individuals are his
14 parents. The undersigned counsel does [sic] to expect to represent the
15 parents. The proposed consolidation is not opposed by Respondent Stay
16 Hai LLC.

17 'However, the fact that case number 118-24 expands the claims against
18 the single member LLC known as Stay Hai LLC the cases are not ripe for
19 a final hearing. Stay Hai LLC requests a hearing on all claims to occur at
20 once and in this respect concurs with the Agency's motion to consolidate.

21 'Second, Stay Hai LLC has requested mediation to occur on August 6, 7,
22 or 8, 2024, because these dates work for both the Agency and Stay Hai
23 LLC, and the representative for Stay Hai LLC at mediation (if scheduled)
24 would be Miles Clark. The Agency does not object to mediation, but
25 opposes the dates.

'Third, the Agency produced 1069 pages of file in the evening of June 18,
2024 the night before a recognized federal and Oregon holiday. Counsel
needs time to review, discuss with his client and prepare in good faith for
mediation, dispositive motions (if necessary) and a final hearing (if
necessary) as well as natural deadlines before a final hearing.

'Fourth, currently dispositive motions are due on June 21, 2024 in case
number 156-24. The undersigned believes that the Agency acknowledges
that Respondent does not have enough time to file a dispositive motion by
June 21, 2024.

'Fifth, the fact that the Agency is attempting to bring Miles Clark in
individually and his parents have changed the scope of the case.
Respondent Stay Hai LLC believes that no liability exists, but wishes to try
to settle at mediation in order to avoid the uncertainties and stress of
involving the sole member of the LLC and his parents.

1
2 'Sixth, a scheduling order has not been issued or agreed upon in case
3 number 157-24. The final hearing date of August 13th is a date that the
4 undersigned counsel is unavailable.

5
6 "Seventh, based upon information and belief no individuals have been
7 served in case number 118-24.

8
9 'Stay Hai LLC reiterates that it demands a final hearing in all cases
10 brought against it, but wishes to try to resolve all claims brought against it,
11 its sole member and his parents. Stay Hai LLC wishes to mediate before
12 an Administrative Law Judge, because it wishes to utilize an unbiased
13 individual that has experience in the subject matter.'

14
15 "On June 21, 2024, Stay Hai filed its response to the Agency's motion for
16 consolidation:

17
18 'Respondent, Stay Hai LLC, notifies the Honorable Court that it does not
19 object to consolidating the three cases together. Stay Hai LLC does not
20 believe that any of the individuals have been served. However, the
21 undersigned counsel has communicated with Miles Clark, who will be the
22 representative of Stay Hai LLC.

23
24 'A hearing is requested in all three cases. Accordingly, the Respondent
25 Stay Hai LLC and its corporate representative Miles Clark agree to the
consolidation. Mr. Clark does not believe that his parents have been
served with the case. Mr. Clark does wish to mediate before an
Administrative Law Judge.'

"On July 2, 2024, the forum issued an interim order granting the Agency's motion
for consolidation of Case Nos. 156-24 and 157-24 and denying the motion as to
Case No. 118-24. The forum noted that it had not yet received a request for
hearing in Case No. 118-24 and, as a result, was unable to determine whether
consolidation of the three case was appropriate under OAR 839-050-0150. The
forum rescheduled the hearing to August 13, 2024, which was the date set for
hearing in Case No. 157-24.

"On July 2, 2024, the forum also issued an order referring Case Nos. 156-24 and
157-24 for an ALJ-assisted mediation. The forum also issued an interim order
setting July 30, 2024, as the deadline for filing case summaries. Ultimately,
mediation was unsuccessful, and the contested case hearing in Case Nos. 156-
24 and 157-24 were rescheduled to begin August 27, 2024.

1
2 ***Motion for Default in Case No. 118-24***

3 "On July 8, 2024, the Agency filed an amended Motion for Default in Case No.
4 118-24. The Agency argued that it had done the following to serve the parties in
5 Case No. 118-24:

- 6 1. Stay Hai - the Agency served the NOI on Stay Hai through its attorney
7 (Mazaheri) on June 4, 2024, via United States Postal Service ("USPS")
8 certified mail to the address listed for Mazaheri in the Oregon State Bar
9 Member Directory and an out of state address provided by Mazaheri. The
10 Agency noted that it had provided a courtesy copy of the NOI to Mazaheri
11 via email.
- 12 2. Miles Clark - the Agency served the NOI on Respondent Miles Clark ("M.
13 Clark"), Stay Hai's Registered Agen listed in the Oregon Secretary of
14 State website, by mailing the NOI to the principal place of business and
15 mailing address listed on the Oregon Secretary of State's website using
16 USPS certified mail. The Agency noted that it had provided a courtesy
17 copy of the NOI to M. Clark using an email address regularly used during
18 the Agency's investigation (clarkmiles720@gmail.com).
- 19 3. William Clark and Marilyn Heller – the Agency served the NOI on William
20 Clark ("W. Clark" and Marilyn Heller ("M. Heller") by mailing the NOI to the
21 individuals at their last known addresses via USPS certified mail.

22 "The Agency argued that Answer was due from each of the four Respondents on
23 or before June 24, 2024. At the time of the filing, no such Answer or Request for
24 Hearing had been received from any of the Respondents.

25 "After receiving no answer to the Agency's motion from any of the four
Respondents, the forum issued an interim order granting the Agency's motion for
entry of default and referred the matter to the Wage and Hour Division to
determine whether the record demonstrates a prima facie case in support of the
allegations in the Notice of Intent to Assess Civil Penalties against Respondents
Stay Hai, LLC, Miles Clark, William Clark, and Marilyn Heller.

DISCUSSION

"At the outset, it must be noted that both the Agency and the forum have asked
Mazaheri to clarify if he has been engaged to represent any of the four
Respondents in Case No. 118-24 and the effective date of his representation.

"On August 5, 2024, the Agency sent the following email to the forum and
Mazaheri:

1
2 'The Agency requests a representation status update for Respondent
3 Miles Clark. Does Mr. Mazaheri represent Respondent Miles Clark and if
yes, what is the effective date of the representation? Thank you for this
update and clarification.'

4 (Email from Administrative Prosecutor Ramos Gonzalez, rec'd 08/05/2024)

5 "The forum then sent the follow email to the parties:

6 'Any updates regarding representation need to be filed so it can properly
7 be made part of the forum file. I would like it specifically noted for which
8 case numbers Mr. Mazaheri should be considered the attorney of record
for and which party, the corporate entity or individual respondent, is being
represented.'

9 (Email from the forum to Ramos Gonzalez and Mazaheri, sent 08/05/2024)

10 "Mazaheri's latest response was received on August 9, 2024:

11 'I have not been formally retained in 118 but it is connected to the two
12 cases scheduled for a final hearing on August 27th. If the Agency fails to
establish its claim in cases 156 and 157, then 118 fails.'

13 (Mazaheri email rec'd 08/09/2022)

14 "Mazaheri did not establish that he has the authority to file a motion on behalf of
15 any party to set aside the entry of default in Case No. 118-24. Mazaheri argues
16 that he referenced Case No. 118-24 in his motion to consolidate and his motion
to enlarge time. Mazaheri's "motion to consolidate" was an email to the forum
17 and to the Administrative Prosecutor, which did not include the Contested Case
Coordinator. The forum advised Mazaheri that same day that all motions needed
18 to be filed in accordance with OAR 839-050-0030. (Form email to the parties
sent 06/07/2024) Mazaheri responded that he would be filing separate motions
next week. (Mazaheri email to forum rec'd 06/07/2024).

19 "The Agency filed its motion to consolidate on June 14, 2024. On June 21, 2024,
20 Stay Hai filed its response indicating that it did not oppose "consolidating the
three cases together." Stay Hai's response also included, "A hearing is
21 requested in all three cases." (Stay Hai LLL Response filed 06/21/2024). The
forum denied the motion to consolidate Case No.118-24 with Case Nos. 156-24
22 and 157-24, because no Respondent had filed an Answer and/or request for
hearing in Case No. 118-2.

23 "The record does not reflect that Mazaheri represents any of the four
24 Respondents in Case 118-24. Mazaheri's general request to have all three
matters set for hearing is in direct conflict with his representations to the forum
25

1
2 that he has not been retained to represent any of the four Respondents in Case
3 No. 118-24, a position he has maintained since at least June 20, 2024. Given
4 the confusion created by Mazaheri's denials that he represents any of the four
5 Respondents in Case No. 118-24 that is direct conflict with his requests that all
6 three matters be heard in various filings, the forum cannot conclude that he has
7 the authority to request a hearing on behalf of any of the Respondents, let alone
8 file a motion to set aside the entry of default. As such, Mazaheri's motion to set
9 aside the entry of default in Case No. 118-24 is **DENIED**.

10
11 **"IT IS SO ORDERED."**

12 (Ex. X24)

13 31) On August 26, 2024, the Agency filed its First Addendum to the Agency's
14 Case Summary in which "performed additional redactions to some exhibits" as noted on
15 its exhibit list.¹¹ (Ex. X22)

16 32) On August 26, 2024, the Agency filed its Second Addendum to the
17 Agency's Case Summary seeking to "withdraw the exhibits crossed out below and file
18 versions of those exhibits in which the Agency has performed additional redactions" as
19 indicated on its exhibit list. (Ex. X23)

20 33) On August 27-29, 2024, the first three days of hearing were held. Faraji,
21 Sadykov, and Kashenov testified under oath. At the start of the hearing, pursuant to
22 ORS 183.415(7), the ALJ orally informed the participants of the issues to be addressed,
23 the matters to be proven and the procedures governing the conduct of the hearing.
24 (Hearing Record)

25 34) At the start of the first day of hearing, the ALJ took argument from the
Agency and Respondent regarding Respondent's motion to strike the additional exhibits
included in the addendum(s) to the Agency's case summary. The ALJ denied the
Respondent's motion to strike the additional exhibits noting the right of the participants

¹¹ All documents submitted to the forum during the course of a contested case proceeding are subject to the document retention policy set forth in ORS chapter 192.

1 under OAR 839-050-0210(3) to file an addendum to their Case Summary if the
2 participant intends to offer additional evidence not identified in the original case
3 summary. After offering additional time to Respondent to review the newly added
4 exhibits, the Respondent indicated that Respondent was prepared to move forward with
5 hearing. The Agency then moved to continue the hearing to the next day. The ALJ
6 denied the Agency's motion after argument from Respondent. Both parties then
7 indicated to the ALJ that they were ready to proceed to hearing. (Hearing Record)
8

9 35) On August 29, 2025, the ALJ took argument from the parties regarding the
10 Respondent's motion in limine seeking the exclusion of various pictures, testimony
11 about the claimants' feelings about the matter, and testimony and evidence regarding
12 the role of W. Clark. The ALJ denied the Respondent's motion finding that the pictures
13 were authenticated – or able to be authenticated – by witnesses listed by the Agency;
14 the feelings of the individuals was relevant to a degree as to the matters alleged; and
15 sufficient testimony had been presented suggesting W. Clark had a role in Stay Hai's
16 business operations. (Hearing Record)

17 36) On September 6, 2024, the Agency Filed a Notice of Change in Assigned
18 Prosecutor indicating that representation of the Agency had be reassigned to
19 Administrative Prosecutor Jesse Neilson. (Ex. X25)

20 37) On September 10, 2024, the Agency filed a Notice of Change in Assigned
21 Prosecutor indicating that the matter had been assigned to both Administrative
22 Prosecutors Neilson and Ramos Gonzalez. (Ex. X26)

23 38) On September 13, 2024, the Agency filed a Motion for Audio Recordings
24 of Proceedings for the hearing held from August 27-29, 2024. (Ex. X27)
25

1
2 39) On September 23, 2024, the ALJ issued an Interim Order Granting
3 Agency's Motion Seeking Hearing Recordings and Agency's Request for a Conference:

4 "On September 13, 2024, the Agency filed a Motion for Audio Recordings of
5 Proceedings requesting the audio recordings of the hearing conducted August
6 27, 28, and 29, 2024. The Agency argues that the Agency would like to review
7 the recordings prior to the hearing resuming on October 15, 2024, due to the
8 absence of Administrative Prosecutor Jesse Neilson during the first three days of
9 hearing and the delay between hearing dates. The Agency's motion notes that
10 Respondent opposes the motion.

11 "On September 20, 2024, the Agency sent an email to the forum requesting a
12 prehearing conference.

13 "On September 23, 2024, Respondent's counsel sent an email in which he
14 objected to the record being transcribed and provided to any party prior to the
15 conclusion of hearing. Respondent's counsel also objected to the Agency's
16 request for a prehearing conference arguing that the conference was part of the
17 Agency 'attempting to conduct discovery during the middle of trial.'

18 "OAR 839-050-0150 provides that the nonmoving participant must file a written
19 response to a motion filed within seven days after service of the motion. In this
20 case, Respondent's response to the Agency's motion seeking a copy of the
21 hearing recordings needed to be filed by September 20, 2024. Nothing was
22 received until the forum received Respondent's counsel's email on September
23 23, 2024, in response to the Agency's September 20, 2024, request for a
24 prehearing conference. The forum will consider the arguments presented in
25 Respondent's counsel's email given the Agency's latest request was sent via
email without a formal motion being filed.

17 **AGENCY'S REQUEST FOR COPIES OF THE HEARING RECORDINGS**

18 "OAR 839-050-0350(3) provides that, '[t]he written or mechanical record
19 ordinarily will not be transcribed unless requested for purposes of court review."
20 However, there is no prohibition against providing the parties with a copy of the
21 audio recordings of a hearing in a case such as this where there is a delay
22 between hearing dates and the addition of counsel. The forum finds that
23 providing a copy of the audio recordings to the parties in this matter would
24 ensure a more orderly and efficient approach during the final four days of
25 hearing.'

26 "The audio recordings will be made available to the parties using Dropbox. The
27 Dropbox link will be emailed to the parties at the addresses provided to the
28 forum. The parties are to notify Contested Case Coordinator Diane Anicker at

1 diane.anicker@boli.oregon.gov if there are any issues accessing the audio
2 recordings.

3 **AGENCY'S REQUEST FOR A CONFERENCE**

4 "The Agency sent the following response to the ALJ's inquiry as to the basis for
5 the Agency's request for a conference in this matter:

6 'We thought it would be valuable to discuss a few matters in order to make
7 sure that we are able to complete the hearing efficiently. Some potential
8 topics are the hearing start time, stipulations, the interpreter schedule,
9 discovery issues as needed, including written interrogatories, and a
10 potential Agency motion in limine.'

11 "It is appropriate for a conference to be held to address issues such as hearing
12 start time, the interpreter schedule and any other issues that may lead to the
13 hearing proceeding in a more efficient manner than it did during the first three
14 days of hearing. However, Respondent is correct that attempting to conduct
15 discovery in the middle of a hearing is highly unusual. Discovery is to be
16 completed prior to the start of hearing. It is unclear why either party would
17 attempt to conduct discovery at this point, which is approximately one month
18 after the hearing started on August 27, 2024, and three weeks prior to the
19 hearing being set to resume on October 15, 2024. Attempting to conduct
20 discovery in the middle of a contested case hearing is an issue best addressed
21 with a formal motion properly filed rather than with a conference.

22 "The ALJ has the authority to '[h]old appropriate conferences, if necessary,
23 before or during the course of the hearing to discuss the conduct of the
24 proceedings or the issues to be presented.' OAR 839-050-0240(1)(c) Given the
25 need to ensure an orderly approach during the final four days of hearing, it is
appropriate, if not necessary, for the ALJ to hold a conference to address the
conduct of proceedings. Therefore, a conference will be held on Thursday,
October 3, 2024, at 10:00 a.m. The conference will be held via Zoom. The
prehearing conference will be audio recorded.

19 **"IT IS SO ORDERED."**

20 (Ex. X28)

21 40) On October 7, 2024, the Agency filed a Motion to Compel Discovery,
22 arguing that the Respondent should be compelled to respond on or before or before
23 October 17, 2024, to the Agency's First Written Interrogatories dated September 20,
24 and September 23, 2024. (Ex. X29)

1
2 41) On October 14, 2024, the ALJ issued an Interim Order Denying Agency's

3 Motion to Compel:

4 "From August 27- 29, 2024, the forum held the first three days of hearing in the
5 consolidated hearing of Case Nos. 156-24 and 157-24. The hearing was
6 paused after it became apparent that the parties would be unable to submit their
7 cases within the time originally scheduled for hearing. The hearing is scheduled
8 to reconvene on Tuesday, October 15, 2024.

9 "On October 3, 2024, the ALJ conducted a prehearing conference, which was
10 audio recorded. Administrative Prosecutors Isela Ramos-Gonzalez ('Ramos-
11 Gonzalez') and Jesse Neilson ('Neilson') appeared, as did Bernie Mazaheri,
12 ('Mazaheri'), Respondent's attorney of record. The Agency indicated that it
13 intended to file a motion seeking an order compelling Respondent to file a written
14 response to the Agency's First Written Interrogatories that was sent after the
15 conclusion of the first three days of hearing. Respondent's attorney expressed
16 frustration at the timing of the motion and argued that discovery is traditionally
17 considered 'closed' at the time hearing commences. Respondent's attorney
18 argued that the Agency's attempt to seek discovery during a hearing recess was
19 inappropriate and should not be allowed. The Administrative Law Judge advised
20 Respondent's counsel to file a written response to the motion, if one was filed, in
21 order to preserve his argument for the record.

22 "On October 7, 2024, the Agency filed its Motion to Compel Discovery seeking:

23 '[A]n Order compelling the response to Written Interrogatories . . . on or
24 before October 17, 2024.' The Agency contends that its First Written
25 Interrogatories dated September 20, 2024, and September 24, 2024, seek
information that is reasonably likely to produce information generally
relevant to issues in Case Nos. 156-24 and 157-24. The Agency further
argues that the forum should consider its motion, which it concedes 'the
timing of [which] is unusual ... 1) as a means to ensuring an efficient use
of the remaining hearing time by reducing the number of questions for
Respondent's authorized corporate representative on direct and cross
examination and 2) to facilitate any post-hearing briefing on the issues of
employment relationship between Respondent and wage claimants,
agency, and joint employment for which the Agency's First Written
Interrogatories are relevant . . . '

26 "On October 10, 2024, the Administrative Law Judge sent an email to the parties
27 inquiring as to whether the Respondent intended to submit a response to the
28 Agency's motion. To date, no response has been received from Respondent's
29 counsel.

1
2 “Given the outcome of this ruling, as well as the Agency's motion being so close
3 in time to the scheduled start of the second portion of the hearing, the forum
4 issues this interim order after considering the arguments made at the time of the
prehearing conference but without the benefit of a written response from
Respondent.

5 **PROCEDURAL BACKGROUND**

6 “At various dates between July 26, and September 17, 2021, the Wage and
7 Hour Unit of the Bureau of Labor and Industries (‘Wage and Hour Unit’) mailed
8 Notice of Claim letters to Respondent, which included an ‘Employer Response’
9 form to be returned if the claims were disputed. The Notice of Claim letters
addressed claims for unpaid wages filed by Claimants Jhony B. Hernandez,
Fernando Cazapa Barrera, Afa Faraji, Victoria Frolova, and Farkhat Sadykov.
(Case No. 156-24)

10 “On September 23, 2021, the Wage and Hour Unit sent a second letter to the
11 Respondent following up on the Notice of letters previously sent. The Wage and
12 Hour Unit received no response to the September 23, 2021, letter; nor did it
receive any response to a third letter sent to Respondent on July 12, 2022,
following up on the Notice of Claim letters previously sent to Respondent.

13 “On March 16, 2023, the Wage and Hour Unit sent a letter to Respondent
14 regarding an Order of Determination that was being issued. The Agency
received no response to the letter.

15 “On July 10, 2023, the Wage and Hour Unit of the Bureau of Labor and Industries
16 (‘Wage and Hour Unit’) issued an Order of Determination concluding that Stay
Hai, LLC owed unpaid wages for work performed to Jhony B. Hernandez,
Fernando Cazapa Barrera, Afa Faraji, Victoria Frolova, and Farkhat Sadykov.

17 “On July 31, 2023, the Respondent filed an Answer and Affirmative Defenses
18 arguing that the Agency lacked jurisdiction as Respondent was not an employer
of the wage claimants, as Defined under ORS 652.310.

19 “On September 23, 2023, the Agency sent a Notice of Claim letter to Respondent
20 regarding an unpaid wage claim frilled by Olzhas Kashenov. (Case No.157-24)
The Agency received no response from Respondent.

21 “On January 26, 2024, the Wage and Hour Unit issued an Order of Determination
22 concluding that Stay Hai, LLC owed unpaid wages for work performed to Olzhas
Kashenov.

23 “On April 30, 2024, the Agency issued a Notice of Hearing setting Case No. 156-
24 24 for hearing. On May 30, 2024, the Agency issued a Notice of Hearing setting
Case No. 157-24 for hearing.

1
2 “On June 4, 2024, the Agency issued its Notice of Intent to Assess Civil Penalties
in Case No. 118-24.

3 “On June 14, 2024, the Agency filed a motion to consolidate Case Nos. 156-24,
4 157-24, and 118-24. On June 21, 2024, the Respondent filed its response to the
motion to consolidate.

5 “On July 2, 2024, the forum issued an interim order consolidating Case Nos. 156-
6 24 and 157-24. The forum did not consolidate Case No. 118-24 with Case Nos.
7 156-24 and 157-24, because the forum had not yet received a request for
hearing from Respondents Stay Hai, LLC, Miles Clark, Marilyn Heller, and
William Clark.

8 “On July 8, 2024, the Agency filed a motion seeking the entry of default against
9 the Respondents Stay Hai, LLC, Miles Clark, Marilyn Heller, and William Clark in
Case No. 118-24, based Respondents’ failure to file timely requests for hearing.
10 On July 23, 2024, after receiving no response from any of the Respondents and
relying upon information submitted by the Agency in support of its motion, the
11 Administrative Law Judge issued an interim order granting the Agency’s motion.
The Administrative Law Judge subsequently denied Mazaheri’s motion to set
12 aside the entry of default in an interim order dated August 20, 2024, based upon
the finding that Mazaheri had failed to show that he had the authority to file such
13 a motion given various communications Mazaheri had with the forum and the
Agency regarding his representation of Stay Hai, LLC and/or Miles Clark for
Case No. 118-24.

14 DISCUSSION

15
16 “OAR 839-050-0200(1) provides:

17 ‘The Administrative Law Judge has the sole discretion to order discovery
18 by a participant in appropriate cases. This rule does not require the
Administrative Law Judge to authorize any discovery. If the Administrative
19 Law Judge does authorize discovery, the Administrative Law Judge will
control the methods, timing, and extent of discovery, but nothing in this
rule prevents informal exchanges of information. When the Administrative
20 Law Judge orders discovery, the Administrative Law Judge will notify the
participants of the possible sanction, pursuant to section (11) of this rule,
21 for failure to provide the discovery ordered.’

22 “In a BOLI contested case proceeding, ‘[a]ny discovery request must be
23 reasonably likely to produce information that is generally relevant to the case.’”
OAR 839-050- 0200(7).

24 “[A] request for a discovery order must be filed with the Contested Case
Coordinator, be in writing, and must include a description of the attempts to
25

1 obtain the requested discovery informally. The Administrative Law Judge will
2 consider any objections by the participant from whom discovery is sought.' OAR
3 839-050-0200(5). Pursuant to OAR 839-050-0200(8), the Administrative Law
4 Judge will issue an order granting or denying a discovery request in whole or in
5 part. Participants must comply with such orders and have a continuing obligation,
6 through the close of hearing, to provide the other participants with any newly
7 discovered material that is within the scope of the discovery order.

8 "OAR 839-050-0200(11) provides:

9 "The Administrative Law Judge may refuse to admit evidence that has not
10 been disclosed in response to a discovery order or subpoena, unless the
11 participant that failed to provide discovery shows good cause for having
12 failed to do so or unless excluding the evidence would violate the duty to
13 conduct a full and fair inquiry under ORS 183.417(8). If the Administrative
14 Law Judge admits evidence that was not disclosed as ordered or
15 subpoenaed, the Administrative Law Judge may grant a continuance to
16 allow an opportunity for the other participant(s) to respond."

17 "The Agency argues that the Agency's First Written Interrogatories "seek
18 information that is reasonably likely to produce information that is generally
19 relevant to Case Nos. 156-24 and 157-24. The Agency argues that '[t]his matter
20 has raised legal issues of the employment relationship between wage claimants
21 and Respondent, agency, joint employment.

22 "The Agency's First Written Interrogatories include the following 23 requests for
23 information.

24 "Interrogatory No. 1 requests the Respondent provide the name, role,
25 dates in role of its corporate officers, managers, and supervisors;

26 'Interrogatory No. 2 requests the names of the business who principal
27 place of business was 4640 Takilma Road;

28 'Interrogatory No. 3 requests the dates on which Stay Hai LLC operated at
29 4640 Takilma Road;

30 'Interrogatory No. 4 requests the dates on which Stay Hai maintained
31 surveillance cameras at 4640 Takilma Road;

32 'Interrogatory No. 5 requests the dates on which Respondent maintained
33 portable toilets;

34 'Interrogatory No. 6 requests the monthly utility amounts for 4640 Takilma
35 Road;

36 'Interrogatory No. 7 requests whether there have ever been firearms
37 stored at 4640 Takilma Road;

1
2 'Interrogatory No. 8 requests the names of the spouses, siblings, children,
3 or parents of Stay Hai LLC's owner, officers, managers, or supervisors
who have resided at 4640 Takilma Road;

4 'Interrogatory No. 9 requests the identification of Stay Hai LLC's business
5 accounts at financial institutions;

6 'Interrogatory No. 10 requests the identification of Stay Hai LLC's land,
equipment, vehicles, and other assets;

7 'Interrogatory No. 11 requests what types of insurance Stay Hai LLC
8 maintains;

9 'Interrogatory No. 12 asks whether Stay Hai LLC executed a lease
agreement to operate at 4640 Takilma Road;

10 'Interrogatory No. 13 requests where Stay Hai LLC maintains its business
11 records and whether any business records of Stay Hai LLC have been lost
or destroyed;

12 'Interrogatory No. 14 requests the years in which Stay Hai LLC has filed
13 state taxes;

14 'Interrogatory No. 15 requests the relationship between Stay Hai LLC and
Daw Properties LLC;

15 'Interrogatory No. 16 requests the relationship between Stay Hai LLC and
16 Marilyn Heller;

17 'Interrogatory No. 17 requests the type of business of Stay Hai LLC from
its inception to the present;

18 'Interrogatory No. 18 requests Miles Clark's current and past relationship
19 with the following businesses: Awarehouse LLV, Dawn Properties LLC,
Levity Farms LLC, and Zaamaste LLC;

20 'Interrogatory No. 19 requests the relationship between Stay Hai LLC and
21 Awarehouse LLV, Dawn Properties LLC, Levity Farms LLC, and
Zaamaste LLC;

22 'Interrogatory No. 20 requests the names of the farm labor contractors
23 with which Stay Hai LLC has conducted business;

24 'Interrogatory No. 21 requests the residential and mailing address of Miles
Clark from 2017 to the present;

1
2 'Interrogatory No. 22 requests the addresses with which Stay Hai LLC has
3 been affiliated in Oregon;

4 'Interrogatory No. 23 requests the identities of all licenses and permits
5 issued by the State of Oregon to Stay Hai LLC and any of its corporate
6 officers, owners, managers, and supervisors.'

7 "The Agency argues Respondent failed to provide an adequate response to its
8 Informal Discovery Request sent on May 1, 2024, for Case No. 156-24. The
9 Agency notes Respondent's response to its requests for the production of
10 documents was simply, 'None.' The Agency did not seek a discovery order of
11 the Administrative Law Judge as provided for under OAR 839-050-0200.

12 "The Agency presumably had knowledge of the role of William Clark and/or
13 Marilyn Heller in the business operations of Stay Hai, LLC, when it issued its
14 Notice of Intent to Assess Civil Penalties in Case No. 118-24 on June 4, 2024.
15 The Agency has been aware of the interpersonal and financial relationships
16 between Stay Hai, LLC, Miles Clark, William Clark, and Marilyn Heller as early as
17 May 2023 based upon the various emails referenced in the Agency's motion that
18 were submitted with the Agency's Case Summary for hearing but have not yet
19 been admitted into the record. The Agency's motion does not describe what
20 efforts, if any, it made to seek the information sought in its First Written
21 Interrogatories when it first had contact with Miles Clark as the authorized
22 representative of Stay Hai, LLC, in May 2023.

23 "The Administrative Law Judge has the authority to order discovery but is not
24 required to authorize **any** discovery. OAR 839-050-0200(1)(emphasis added).
25 The Administrative Law Judge has the authority to control the timing of discovery.
Discovery is intended to be completed prior to the start of hearing to avoid undue
surprise; unnecessary expense; and, in this type of case, the misuse of
administrative resources. The Agency offers no argument as to why it made no
effort to pursue formal discovery prior to the start of hearing and waited until just
eight days prior to the start of the final few days of hearing. There is nothing in
the Agency's motion that convinces the Administrative Law Judge that it would
be appropriate to order discovery in the middle of hearing when the Agency had
ample opportunity to seek the information sought in its First Written
Interrogatories. Therefore, the Agency's motion is **DENIED**.

21 "IT IS SO ORDERED."

22 (Ex. X30)

23 42) The ALJ conducted hearing in this matter from October 15-17, 2024.

24 Frolova, Lopez, and M. Clark testified under oath. (Hearing Record)

1
2 43) On October 17, 2024, Stay Hai filed a Motion to Strike Victoria Frolova as
3 Wage Claimant, arguing that Frolova lied under oath and that striking her as a wage
4 claimant would be an appropriate sanction against the Agency. (Ex. X31)

5 44) On October 18, 2024, the Agency filed its Second Motion for Audio
6 Recording of Proceedings held from October 15-17, 2024. (Ex. 32)

7 45) On October 22, 2024, the ALJ issued an Interim Order Denying Agency's
8 Second Motion for Release of Hearing Recordings:

9 "On August 27-29, 2024, the forum held the first three days of hearing in these
10 matters. A recess was called after it became apparent that additional time would
11 be required to complete the hearing. The hearing resumed on Tuesday, October
12 15, 2024. The hearing was recessed on October 18, 2024, to accommodate the
Agency's witness who was reportedly working in a remote location out of state
and not available for hearing. The ALJ directed counsel to confer and to pick a
date and time for the continuation of the hearing.

13 "On October 17, 2024, approximately 20 minutes prior to the scheduled start of
14 hearing, Respondent filed Respondent's Motion to Strike Victoria Frolova
15 ("Frolova") as Wage Claimant in which Respondent alleged Frolova had testified
16 falsely above five material issues. Respondent's motion included a timeline of
events it alleges is pertinent to the issues to be decided by the ALJ regarding
Frolova's wage claim. Also included with Respondent's motion was a series of
text messages purportedly between Frolova and Miles Clark ("M. Clark"),
Respondent Stay Hai, LLC's authorized representative.

17 "On October 18, 2024, the Agency filed the Agency's Second Motion for Audio
18 Recordings of Proceedings citing the Agency's need to review the record in order
19 to address issues raised in Respondent's motion to strike Frolova as a wage
20 claimant. Included in the Agency's email to the forum was a paragraph of text
21 that Respondent's attorney apparently instructed the Agency's counsel to include
22 in its email to the forum. The forum is unclear whether Respondent intended this
to serve as a response to the Agency's motion given that it in no way complies
with the rules of this forum. See OAR 839-050-0150. Given the outcome of this
interim order, the forum has not considered this single paragraph of text included
in the Agency's email.

23 "OAR 839-050-0350(3) provides that, '[t]he written or mechanical record
24 ordinarily will not be transcribed unless requested for purposes of court review.'
25 The forum previously provided the hearing recordings to the parties after the
addition of a second Administrative Prosecutor as co-counsel in an effort to

1
2 ensure a more orderly and efficient approach during the future hearing dates. No
3 such reason exists to provide the parties with the hearing recordings today. Both
4 Administrative Prosecutors were present for Frolova's testimony and are capable
5 of filing a response to the Respondent's motion to strike a wage claimant who is
6 alleged to have perjured herself.

7 "As noted at the conclusion of the second portion of the hearing, the ALJ
8 informed the parties that the seven day period for responding to the motion would
9 begin on Monday, October 21, 2024, due to the parties being otherwise occupied
10 by the hearing. The Agency shall file its written response to the Respondent's
11 motion to strike Frolova as a wage claimant no later than October 28, 2024. See
12 OAR 839-050-0150

13 **"IT IS SO ORDERED."**

14 (Exs. X33, X34)

15 46) On October 23, 2024, the ALJ issued an Interim Order Scheduling
16 Contested Case Hearing Dates:

17 "On August 27-29, 2024, the forum held the first three days of hearing in these
18 matters. The hearing resumed on Tuesday, October 15, 2024. The hearing was
19 recessed on October 18, 2024, to accommodate two wage claimants who were
20 reportedly working in remote locations out of state and were not available to
21 testify during the scheduled hearing dates.

22 "On October 23, 2024, the Agency notified the forum that the parties had
23 conferred and had agreed that the hearing would resume on **Thursday, October**
24 **31, 2024, at 9:00 a.m.** Out of an abundance of caution, the forum will also
25 schedule **Friday, November 1, 2024**, as a second day for hearing and advises
counsel to ensure that they and any potential witnesses are available that day in
order to ensure the timely conclusion of the contested case proceeding.

IT IS SO ORDERED."

(Ex. X35)

47) On October 28, 2024, the Agency filed its Response to Strike Victoria
Frolova as Wage Claimant. (Ex. X36)

1
2 48) On October 29, 2024, the ALJ issued an Interim Order Denying
3 Respondent's Motion to Strike the Testimony of Wage Claimant Victoria Frolova:

4 "On October 17, 2024, [Stay Hai] filed a motion to strike the testimony of Wage
5 Claimant [Frolova] alleging that Frolova provided false testimony regarding the
6 nature of her relationship with Stay Hai's Authorized Representative Miles Clark
7 ('M. Clark'). Respondent Stay Hai also alleges that Frolova provided false
8 testimony regarding the nature of her relationship with Yuliya Pukhouskaya and
9 with 'Slavi,' a business associate and neighbor of M. Clark in Cave Junction,
10 Oregon. Neither individual is a Wage Claimant in either matter and neither have
11 been listed as a witness in either participant's Case Summary. In support of its
12 motion, Respondent submitted a series of text messages purportedly between
13 Frolova and M. Clark.

14 "On October 28, 2024, the Agency filed its response to the Respondent's motion.
15 The Agency argues that any evidence pertaining to an alleged intimate
16 relationship between Frolova and M. Clark was improperly allowed at the time of
17 hearing and any evidence pertaining to such a relationship should not be
18 allowed. The Agency cites Oregon Evidence Code ('OEC') 412-1, which
19 provides that parties generally may not offer evidence pertaining to the sexual
20 conduct or sexual predisposition unless it was already put at issue by an alleged
21 victim, and that in order to offer such evidence, a party must make a written
22 motion at least 15 days before the proceeding after which a court may decide to
23 admit such evidence only after an in camera review of the evidence.

24 "The Agency further argues that the text messages submitted with Respondent's
25 motion constitute improper extrinsic evidence submitted for the purposes of
impeachment. The Agency argues that impeachment is permitted by evidence of
conviction of crime (see OEC 608, ORS 40.355), for bias or interest (see OEC
609-1, ORS 40.360), and by prior inconsistent statements (see OEC 613, ORS
40.380(2)).

26 'Concerning prior inconsistent statements, extrinsic evidence is only
27 admissible after "the witness is afforded an opportunity to explain or deny
28 the same and the opposite party is afforded an opportunity to interrogate
29 the witness thereon." OEC 613, ORS 40.380(2). For impeachment for bias
30 or interest, the OEC does permit the admission of extrinsic evidence, but
31 only after "the witness denies or does not fully admit the facts claimed to
32 show bias or interest." OEC 609-1, ORS 40.360(2). Under OEC 608,
33 specific instances of the conduct of a witness 'for the purpose of attacking
34 or supporting the credibility of the witness ... may not be proved by
35 extrinsic evidence.'" ORS 40.350.

1
2 “The Agency also argues:

3 “‘In a wage claim case, the Agency has the burden of proving the following
4 elements by a preponderance of the evidence: (1) that the respondent
5 employed the claimants; (2) any pay rate upon which the respondent and
6 the claimants agreed, if other than minimum wage; (3) the amount and
7 extent of work the claimants performed; and (4) that the claimants
8 performed work for the respondent for which they were not properly
9 compensated.’ *In the Matter of WDSA Inc., dba Gresham Schmizza Public
House, dba Gresham Pizza Schimizza Public House*, 38 BOLI 146, 156-
58 (2022). See also *In the Matter of University of Oregon*, 38 BOLI 91, 108
(2022); *In the Matter of BG Construction, Inc.*, 38 BOLI 2, 6 (2021); *In the
Matter of Derrick’s Custom Painting, Inc.*, 37 BOLI 271, 276 (2020); *In the
Matter of Pamplin Broadcasting-Oregon, Inc. dba Pamplin Media Group*,
37 BOLI 18, 29, 38 (2018); *In the Matter of Banyan Built Construction Inc.*,
36 BOLI 271, 275 (2018).

10 “On August 27-29, 2024, and October 15-17, 2024, the forum held a contested
11 case hearing in this matter. Frolova testified and was subject to cross
12 examination by the Respondent’s attorney. It was only after Frolova’s testimony
13 and the morning prior to the final day of hearing that Respondent offered the text
14 messages that are purportedly between Frolova and M. Clark. Respondent
15 argues that it had no reason to anticipate Frolova’s denial of a relationship with
16 M. Clark. However, it was clear that Frolova’s relationship, or lack thereof, with
17 M. Clark would be an issue given the nature of Respondent’s previous
18 arguments, including a contention in Respondent’s Answer that Frolova was a
19 family member subject to exemption from the wage and hour laws. Respondent
20 did not list Frolova as a witness in its Case Summary, which listed only one
21 exhibit and only potential witnesses. Respondent’s motion sets forth no authority
22 for the ALJ striking the testimony of a witness, particularly that of a Wage
23 Claimant.

24 “The Agency correctly notes that there are well established elements that must
25 be proven in a claim involving unpaid wages. However, contrary to the Agency’s
contention that the nature of the relationship between Frolova and M. Clark is not
relevant, such evidence is relevant as to how Frolova and the other Wage
Claimants came to be in Cave Junction and how the Wage Claimants came to
allegedly perform work for Respondent Stay Hai for which they were not paid.

“Frolova was subject to a lengthy examination, including a spirited cross
examination by the Respondent’s attorney. The forum is not persuaded that it is
necessary to strike her testimony based upon Respondent’s assertions and
evidence that has not been authenticated or properly offered at hearing.
Frolova’s credibility as a witness is for the fact finder to determine. The forum will
consider the testimony offered by all witnesses when making its credibility
findings.

1
2 “The Respondent’s motion to strike the testimony of Wage Claimant Frolova is
3 DENIED.

4 **“IT IS SO ORDERED.”**

5 (Ex. X37)

6 49) On October 31, 2024, the Respondent filed a Motion to Amend Exhibit List
7 and Incorporated Amended Exhibits seeking to add exhibits pertaining to text messages
8 from Frolova after September 8, 2020; pre-August 2020 text messages intended to
9 impeach Frolova; a picture referred to as ‘June 9, 2021, moving day picture;’ ‘a June 19,
10 2021, picture of Miles Clark;’ and a marijuana licensing email. (Ex. X38)

11 50) On October 31, 2024, the ALJ conducted the final day of hearing in this
12 matter. Hernandez and M. Clark testified under oath. At the close of Hearing, Mazaheri
13 made a motion to dismiss arguing that the Agency had failed in its burden of
14 establishing a prima facie case. The ALJ took the matter under advisement and
15 directed the parties to address it in their post hearing briefing. (Hearing Record)

16 51) On November 4, 2024, the ALJ issued an Interim Order Setting Deadlines
17 for Written Argument on the Agency’s Motion to Amend the Charging Documents:

18 “On October 31, 2024, at the end of the seventh day of hearing, the Agency
19 made a motion to amend the charging documents to include Miles Clark, the
20 authorized representative for Respondent Stay Hai, LLC, as a Respondent in this
21 matter. The parties graciously agreed to submit written arguments on the issue.
22 The Agency’s written argument is due no later than November 8, 2024.
23 Respondent’s written argument is due no later than November 27, 2024.

24 **IT IS SO ORDERED.”**

25 (Ex. X39)¹²

52) On November 14, 2024, the Agency filed a Motion for a Protective Order.

(Ex. X40)

¹² The Agency orally withdrew its motion to amend the charging documents at hearing.

1
2 53) On November 20, 2024, the ALJ issued an Interim Order Regarding Post-
3 Hearing Procedures and Setting Briefing Deadlines:

4 "On November 8, 2024, Administrative Prosecutor Isela Ramos Gonzalez
5 ('Ramos Gonzalez') notified the forum that the Agency was withdrawing its
6 motion to amend the charging documents pursuant to OAR 839-050-0140(4) and
7 OAR 839-050-0140(5). Ramos Gonzalez included a request for a conference to
8 establish post hearing briefing deadlines in the email.

9 "On November 14, 2024, the forum conducted a conference in this matter via
10 Zoom. The conference was digitally recorded. Administrative Prosecutors Ramos
11 Gonzalez and Jesse Neilson ('Neilson') appeared on behalf of the Agency, as did
12 Johanna Riemenschneider ('Riemenschneider'), Department of Justice. Bernie
13 Mazaheri ('Mazaheri'), Attorney at Law, appeared on behalf of Respondent.
14 Counsel represented to the forum that each party rested their respective case
15 and were prepared to proceed with post-hearing briefing in lieu of offering oral
16 closing statements.

17 "The following items were addressed during the conference:

18 **THE AGENCY'S MOTION FOR PROTECTIVE ORDER**

19 "Just prior to the conference, Neilson filed a Motion for a Protective Order
20 regarding any evidence pertaining to any alleged romantic relationship between a
21 wage claimant and Miles Clark, Respondent's Authorized Representative.
22 Mazaheri requested additional time beyond the seven days provided for under
23 OAR 839-050-150 to file a response to the motion on behalf of the Respondent.
24 The ALJ found that Mazaheri established good cause for the request. Therefore,
25 Respondent shall file its response to the Agency's motion for a protective order
no later than Tuesday, November 26, 2024.

26 **"EXHIBITS ADMITTED AT HEARING**

27 Forum File

28 156-24 X1-X8

29 157-24 X1-X6

30 Consolidated 156- and 157-24 X11- X37¹³

31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

¹³ Exhibit X31 includes Respondent's Motion to Strike; Ex. X32 is the Agency's Second Motion for Hearing Recordings; Ex. X33 is the forum's order denying the Agency's motion for recordings; Ex. X34 includes emails sent to the forum on October 18, 2024; Ex. X35 is the forum's interim order scheduling the final day of hearing; Ex. X36 is the Agency's response to the motion to strike; and Ex. X37 is the forum's interim order denying Respondent's motion to strike.

1
2 Agency's Exhibits

3 A4; A10; A36; A37; A62-A69; A71; A74-A80; A81-A96; A99; A101-
4 A102; A105-A114; A117-A120; A126-A140; A142-A149; A151; A152-
5 A158; A159-A163¹⁴; A164-A180; and A182 -A185.

6 Respondent's Rebuttal Exhibits

7 R10 – R12

8 "Counsel is asked to review the exhibits listed above and submit any proposed
9 corrections to the forum no later than **Tuesday, November 26, 2024**. Exhibits
10 that are noted as being withdrawn by the Agency in its Case Summary and
11 Amended Case Summary will remain part of the forum file but will be stored in a
12 sealed envelope. Exhibits A76 and A170 will be sealed based upon a finding that
13 the individual's privacy interests outweighs the public's right to access that
14 information.

15 **"WITNESSES WHO TESTIFIED AT HEARING**

16 "Wage Claimants Farkhat Sadykov; Afa Faraji; Olsas ("OJ") Kashevnov; Victoria
17 Frolova; and Jhony Bruno Hernandez

18 "Juan Lopez, Compliance Specialist 3, Wage and Hour Division

19 "Miles Clark, Authorized Representative, Stay Hai, LLC

20 **"ISSUED TO BE ADDRESSED IN POST-HEARING BRIEFING¹⁵**

- 21
- 22 • Is there an employment relationship between Respondent Stay Hai,
23 LLC, and each of the wage claimants. What factors should the forum
24 consider in determining whether an employer/employee relationship
25 exists or does not exist for each wage claimant and the Respondent?
 - If the forum were to conclude that the wage claimants performed work
for Stay Hai, LLC, for which they were not paid, during the period in
question, what impact, if any, does the lack of a license issued by the
Oregon Liquor Control Commission ("OLCC") have on the
Respondent's duty to pay wages?

22 ¹⁴ The Agency offered Exs. A159-163 at hearing. After Respondent requested and was granted an
23 opportunity to voir dire the witness regarding the exhibits, the exhibits were not addressed. At the
24 conference held on November 14, 2024, the exhibits were admitted subject to the Respondent's
25 objections on late production; relevancy, and bolstering.

¹⁵ No issue identified in this interim order should be construed as the forum having reached any
conclusions as to the issues in this matter.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- If the forum were to conclude that the wage claimants performed work for Stay Hai, LLC, for which they were not paid, during the period in question, how much are the wages owed and the basis for that amount?
 - Should the actions of Miles Clark, William Clark, and Marilyn Heller be imputed to the Respondent Stay Hai, LLC?
 - During the period following the dissolution of Stay Hai, LLC, as a corporate entity, what factors support or do not support a finding of corporate liability for actions taken by the respondent during that period?
 - Based upon the allegations set forth in the Respondent's motion to strike, how should the forum treat the testimony of Wage Claimant Victoria Frolova?

9

10

11

"Counsel is also asked to address the Respondent's argument that the matter should be dismissed based upon the Agency's failure to establish its prima facie case for each of the wage claims at issue in this matter, including that of Fernando Cazapa Barrera, who did not testify at hearing.

12

"FILING DEADLINES FOR POST-HEARING BRIEFS

13

14

"Agency's First Brief	December 20, 2024
"Respondent's Response Brief	January 31, 2025
"Agency's Reply Brief	February 21, 2024

15

"IT IS SO ORDERED."

16

(Ex. X41)

17

54) On November 22, 2024, the Agency filed a Notice of Change in Assigned

18

Prosecutor informing the forum that Ramos Gonzalez was no longer assigned to the

19

matter. (Ex. X42)

20

55) On November 22, 2024, the Agency filed its Third Motion for Audio

21

Recordings of Proceedings. (Ex. X43)

22

56) On November 26, 2024, the Respondent filed its response to the Agency's

23

Motion for a Protective Order. (Ex. 44)

1
2 57) On December 5, 2024, the ALJ issued an Interim Order Regarding
3 Agency's Motion for a Protective Order and Motion Requesting Copies of Audio
4 Recordings of Hearing:

5 "On November 14, 2024, the Agency filed a Motion for Protective Order seeking
6 the issuance of a protective order prohibiting 'the disclosure or use outside of the
7 proceeding of all material, including witness testimony, exhibits, motions, and
8 briefing, of which the disclosure would constitute an unreasonable invasion of
9 privacy.' Specifically, the Agency seeks a protective order regarding testimony
10 pertaining to the nature of the relationship between Miles Clark, the Authorized
11 Representative of the Respondent, and Wage Claimant Victoria Frolova. The
12 Agency argues a protective order is necessary due to the 'pervasiveness of
13 exhibits' accompanying Respondent's motion to strike Frolova's testimony, as
14 well as information contained in Agency's Exhibit A-112.

15 "On November 26, 2024, the Respondent filed an objection to the motion arguing
16 that the Agency had been aware of the relationship between Frolova and Miles
17 Clark based upon evidence offered at hearing. Respondent argues that
18 Frolova's credibility is at issue and contends she made false statements at
19 hearing that opened the door for the rebuttal testimony and evidence offered at
20 hearing. Respondent also argues that constitutional issues preclude the
21 issuance of a protective order.¹⁶

22 "The forum finds that disclosure of the evidence pertaining to any personal
23 relationship Frolova is alleged to have had with any witness in this matter is
24 subject to the privacy concerns protected by ORS 192.355(2)(a). This protection
25 shall extend not only to the testimony offered but to the exhibits accompanying
the Respondent's motion to strike Frolova's testimony and Exhibit A-112.
Therefore, the Agency's motion for a protective order prohibiting the disclosure or
use outside of the proceeding of all material, including witness testimony,
exhibits, motions, and briefing, pertaining to any alleged personal relationships
between Frolova and Miles Clark and/or wage claimants.

"On November 22, 2024, the Agency filed a motion seeking copies of the audio
recordings of the proceeding. Respondent has not filed a response to the
motion. Therefore, the Agency's motion seeking copies of the audio recordings
of the proceedings is hereby GRANTED. The audio recordings will be provided
using Dropbox as they have provided previously.

22 **IT IS SO ORDERED."**
23 (Ex. X45)

24 ¹⁶ "Respondent requested the forum to reconsider its order allowing for written closing statements. Given
25 that the parties spent a good deal of time with the ALJ during a post-hearing conference to establish the
deadlines currently in place, the ALJ will not alter the order requiring written oral arguments in this matter."

1
2 58) On December 20, 2024, the Agency filed its opening brief. (Ex. X46)

3 59) On February 20, 2025, the Agency filed notice that it did not intend to file
4 a reply brief based upon Respondent's failure to file a response brief. (Ex. X47)

5 60) On February 21, 2025, the ALJ issued an Interim Order Re Post-Hearing
6 Brief Filing Deadlines:

7 "On November 14, 2024, the ALJ conducted a conference in this matter via
8 Zoom that was digitally recorded and recorded on Zoom. Administrative
9 Prosecutors Isela Ramos Gonzalez ("Ramos Gonzalez") and Jesse Neilson
10 ('Neilson') appeared on behalf of the Agency, as did Johanna Riemenschneider
11 ('Riemenschneider'), Department of Justice. Bernie Mazaheri ('Mazaheri'),
Attorney at Law, appeared on behalf of Respondent. Counsel represented to the
forum that the parties were prepared to proceed with post-hearing briefing in lieu
of offering oral closing statements. The parties agreed to the following post-
hearing briefing deadlines:

12 Agency's First Brief	December 20, 2024
Respondent's Response Brief	January 31, 2025
13 Agency's Reply Brief	February 21, 2024

14 "The ALJ subsequently issued an interim order on November 20, 2024,
15 identifying the issues to be addressed by the parties in the post-hearing briefs, as
well as listing the post-hearing brief filing deadlines set forth above.

16 "The Agency timely filed its first brief. Respondent has not filed its response brief;
nor has the Respondent or its counsel of record had any contact with the forum.

17 "On February 14, 2025, the Agency sent an email to the forum and Respondent's
18 counsel that included notice that the Agency did not intend to file a reply brief as
the Respondent had failed to file a response to the Agency's first brief. The ALJ
19 asked the Agency for a formal filing outlining the reasons for its notice.
Respondent did not respond to the Agency's February 14, 2025, email.

20 "On February 20, 2025, the Agency filed its Notice Regarding Filing Deadlines for
Post-Hearing Briefing that included:

21 "The Agency submitted Agency's First Brief on December 20, 2024. The
22 Respondent's Response Brief was due to be submitted on January 31,
23 2025. The Agency's representatives have not been served with a
Response Brief and are not aware of one having been filed. For this
24 reason, the Agency does not intend to submit an Agency's Reply Brief,
which was scheduled to be due on February 21, 2025. As Respondent did

1
2 not file a brief in response to the Agency's First Brief, the Agency rests on
the brief submitted on December 20, 2024.'

3 "OAR 839-050-0050(1) provides that, "The Administrative Law Judge may
4 disregard any document that is filed with the Contested Case Coordinator
beyond the established number of days for filing." Respondent has not timely
5 filed its response brief and has not made a timely request for additional time as
6 required under OAR 839-050-0050(2). Therefore, the ALJ will consider the
record in this matter closed pursuant to OAR 839-050-0350(2) and will prepare a
proposed order based on the record of the proceeding as it stands today.

7 **"IT IS SO ORDERED."**

8 61) On November 4, 2025, the ALJ issued a proposed order that notified the
9 participants that they were entitled to file exceptions to the proposed order within ten
10 days of its issuance. Neither party filed any exceptions to the proposed order.

11 62) On January 27, 2026, BOLI's Commissioner issued a memorandum to
12 Administrative Law Judge Caroline Holien delegating the authority to enter a final order
13 in this proceeding, pursuant to ORS 183.411, 651.060(3) and OAR 839-050-0420(6).
14 (Forum File)

15 **FINDINGS OF FACT – THE MERITS**

16 1) Stay Hai is a Domestic Limited Liability Company ("LLC") that first
17 registered with the Oregon Secretary of State Business Registry effective December 27,
18 2017. Stay Hai was administratively dissolved effective February 27, 2020. Stay Hai
19 requested to return to active status on February 26, 2021. (Ex. A65)

20 2) As of February 26, 2021, the address for Stay Hai's principal place of
21 business was 4640 Takilma Road, Cave Junction, Oregon, 97523. (Ex. A65)

22 3) The Oregon Secretary of State's Business Registry lists Miles Clark ("M.
23 Clark") as the Registered Agent and Manager for Stay Hai. M. Clark's mailing address
24 as both the Registered Agent and Manager is listed as 4640 Takilma Road. (Ex. A65)
25

1
2 4) On February 23, 2022, Stay Hai filed an Amended Annual Report listing
3 M. Clark as its Registered Agent and Manager. The Amended Annual Report also
4 listed the mailing address and primary place of business for Stay Hai LLC as the 4640
5 Takilma Road address. The business of Stay Hai LLC is described as “cannabis and
6 cannabis related products and services.” (Ex. A65)

7 5) M. Clark established Stay Hai with the intent of operating it as a cannabis
8 cultivation and production business. M. Clark first started the process of getting
9 licensed by the Oregon Liquor and Cannabis Commission (“OLCC”) in late 2017. In
10 early 2018, M. Clark learned that the licensing process had stalled so he focused on
11 performing work around the property. (Testimony of M. Clark; Exs. A106-A111)

12 6) OLCC ultimately issued Stay Hai a cannabis license in 2023. (Testimony
13 of M. Clark; Ex. A69)

14 7) M. Clark has personally held an OLCC marijuana worker permit since
15 approximately 2018. (Testimony of M. Clark; Ex. 64)

16 ***M. Clark’s Role as Stay Hai’s Registered Agent and Manager***

17 8) M. Clark holds a Bachelor of Arts (“BA”) degree in humanities with a
18 concentration in philosophy from Soka University of America, a small liberal arts
19 college. M. Clark has worked as a chef and a line cook, and he has worked in
20 construction for his mother’s business, Don Properties. M. Clark has also worked as a
21 consultant on Korean farming methods for his father and local growers in the Cave
22 Junction area. (Testimony of M. Clark)

23 9) M. Clark has been involved in various companies involved in the
24 cultivation and processing of cannabis. M. Clark’s mother and father and their business
25

1 associates were frequently involved, either tangentially or directly, in these businesses,
2 including Awarehouse, LLC. M. Clark worked with his father, W. Clark, and a neighbor
3 and the neighbor's girlfriend, to establish Awarehouse, Inc., as a cannabis cultivation
4 and production business. (Testimony of M. Clark; Exs. A64-A68; A105-A111)

5
6 10) Stay Hai has never been a profit producing enterprise. Stay Hai's
7 operational funds were typically sourced from the private bank accounts of M. Clark and
8 other family members and business associates. Stay Hai does not own any real
9 property or other major assets. Stay Hai, at all times pertinent to this matter, owned
10 only small equipment such as a security system installed at the 4640 Takilma Road
11 address and other equipment associated with the production of cannabis. (Testimony of
12 M. Clark)

13 11) Stay Hai has never maintained any general liability insurance, commercial
14 property insurance or workers' compensation insurance. (Testimony of M. Clark)

15 ***Stay Hai's Principal Place of Business at 4640 Takilma Road***

16 12) M. Clark's mother, M. Heller, is the owner of 4640 Takilma Road. From
17 December 2017 through late May or early June 2021, 4640 Takilma Road was M.
18 Clark's primary residence. M. Clark had initially agreed to pay his mother \$2,000 per
19 month in rent. However, since neither Stay Hai nor M. Clark were producing significant
20 income during this period, they agreed that M. Clark would perform labor on the
21 property in lieu of paying rent. M. Clark was using a personal loan of \$10,000 in cash
22 from "Slavi," one of the "Bulgarian friends" who lived near the 4640 Takilma Road
23 property, and cash proceeds from a legal settlement to cover personal expenses during
24 this period. (Testimony of M. Clark; Exs. A71-72)

1
2 13) There is one four-bedroom home on the property that is connected to a
3 three-car garage by a “mother-in-law” apartment. The home is essentially one long
4 building composed of two “double-wide trailers” with multiple additions. Those buildings
5 are located near the driveway that enters from Takilma Road. There is a cliff that runs
6 through the property that separates the property in the “upper part” and “lower part.”
7 (Testimony of M. Clark; Ex. X71)

8 14) W. Clark lived at 4640 Takilma Road with his girlfriend for a period
9 between approximately October 2017 through January 2021. W. Clark and his girlfriend
10 were joined by the children of W. Clark’s girlfriend at various times during that period.
11 (Testimony of M. Clark)

12 15) Down the road from 4640 Takilma Road are the Clark’s “Bulgarian
13 friends.” There are also other neighbors in the area with whom W. Clark has both
14 financial and personal relationships. Many of the neighbors in the area where 4640
15 Takilma Road is located are engaged in cannabis cultivation and processing.
16 (Testimony of M. Clark)

17 16) W. Clark was directly involved in the business operations of Stay Hai and
18 acted as an agent of Stay Hai, particularly in the recruitment of cannabis trimmers.
19 (Testimony of M. Clark, Frolova; Exs. A106-A111)

20 ***W. Clark Offers Work to Frolova on Behalf of Stay Hai***

21 17) Frolova was personally acquainted with W. Clark and M. Clark prior to
22 August 2020. On at least one occasion M. Clark visited Frolova and stayed at her home
23 in Los Angeles. M. Clark considered their relationship to be a romantic one, but Frolova
24 did not consider M. Clark as a romantic interest. (Testimony of M. Clark and Frolova)
25

1
2 18) W. Clark offered Frolova work as a cannabis trimmer at the 4640 Takilma
3 Road address. Frolova had been working as a trimmer at a marijuana dispensary in
4 downtown Los Angeles when W. Clark offered her the job. Frolova understood that W.
5 Clark was offering to pay cannabis trimmers \$125 per pound. (Testimony of Frolova)

6 19) Frolova did not have to apply for the job offered by W. Clark, and there
7 was no written agreement or other employment paperwork completed prior to Frolova
8 beginning work for Stay Hai. Stay Hai did not pay Frolova a fee or have any other type
9 of financial arrangement with Frolova to secure her services in recruiting cannabis
10 trimmers. (Testimony of Frolova)

11 20) Frolova told her friend Faraji, who was working with her at the Los
12 Angeles dispensary, of W. Clark's job offer. Faraji agreed to accompany Frolova to
13 Oregon with the understanding that she would be paid \$125 per pound when the work
14 was completed, and she would be provided housing onsite in Cave Junction during the
15 period that cannabis trimming work was available. (Testimony of Faraji)

16 21) Sadykov worked as a cannabis trimmer alongside Frolova and Faraji at
17 the Los Angeles dispensary where Sadykov had started working in February 2020 – a
18 few months prior to Frolova and Faraji having started work there. Sadykov did not know
19 either Frolova or Faraji prior to the job at the Los Angeles dispensary. The Los Angeles
20 dispensary paid Sadykov and other cannabis trimmers approximately \$100 per pound.
21 (Testimony of Sadykov)

22 22) In late July 2020 or early August 2020, Sadykov overheard Frolova talking
23 to Faraji about their plan to travel to Cave Junction, Oregon to work as cannabis
24
25

1 trimmers. Sadykov asked Frolova if it would be possible for him to join them.

2 (Testimony of Sadykov)

3 23) Frolova told Faraji and Sadykov that W. Clark had agreed to pay \$125 per
4 pound of trimmed cannabis. (Testimony of Frolova, Sadykov, Faraji).

5 24) After learning from Frolova that he could join her and Faraji in Oregon,
6 Sadykov invited Kashenov to join him in working as a cannabis trimmer in Oregon.
7 Sadykov told Kashenov the work offered \$125 per pound and onsite housing would be
8 provided. Sadykov and Kashenov rented a vehicle and drove approximately nine hours
9 to Oregon. (Testimony of Sadykov, Kashenov)

10 25) Faraji, Sadykov and Kashenov did not have to complete an application or
11 other employment related paperwork prior to working as cannabis trimmers at the 4640
12 Takilma Road property. Frolova, Faraji, Sadykov, and Kashenov did not intend to
13 volunteer their time and understood that they would be compensated for all work
14 performed. None of the four wage claimants ever maintained businesses in which they
15 contracted to offer their services as cannabis trimmers to other businesses before,
16 during and after the period they worked for Stay Hai as cannabis trimmers. (Testimony
17 of Frolova, Faraji, Sadykov, Kashenov; Hearing Record

18 ***Sadykov and Kashenov Arrive at 4640 Takilma Road***

19 26) During the evening of August 26, 2020, Sadykov and Kashenov arrived at
20 the locked driveway gate at 4640 Takilma Road. Sadykov and Kashenov had gotten
21 lost trying to find 4640 Takilma Road and had exchanged a series of text messages with
22 M. Clark, who provided them with directions to the property. M. Clark greeted Sadykov
23

1 and Kashenov at the driveway gate when they arrived and allowed them to drive their
2 rental vehicle on to the property. (Testimony of Sadykov, Kashenov)
3

4 27) Kashenov observed that there were approximately 15 people already
5 trimming cannabis while seated outside of a large home located on the property after
6 they arrived. M. Clark introduced them to his father, W. Clark. Both M. Clark and W.
7 Clark indicated that they were happy to see them and explained that there was a large
8 amount of work to be done. Kashenov initially assumed that he would be working at the
9 4640 Takilma Road property for an extended period of time given the number of
10 trimmers he saw working and the large amount of untrimmed cannabis that he observed
11 on the property. (Testimony of Kashenov)

12 28) M. Clark and W. Clark told Kashenov and Sadykov where they were going
13 to sleep and where they were going to work. They also showed Kashenov and Sadykov
14 where the cannabis was being cultivated and processed. M. Clark and W. Clark
15 introduced them to the other cannabis trimmers who were working on the porch
16 attached to the main house while they explained the work process to Kashenov and
17 Sadykov. Both Sadykov and Kashenov considered W. Clark and M. Clark to be their
18 supervisors. (Testimony of Sadykov, Kashenov)

19 29) Kashenov understood that the business operating at 4640 Takilma Road
20 was a family business jointly operated by M. Clark and W. Clark. Kashenov considered
21 M. Clark to be the "ideas guy" and W. Clark to be the person that you talked to
22 regarding financial issues. Kashenov understood based upon his conversations with M.
23 Clark and W. Clark that W. Clark was an investor in the business operating at 4640
24 Takilma Road. (Testimony of Kashenov)
25

1
2 30) W. Clark confirmed for Sadykov and Kashenov that they would be paid
3 \$125 per pound without a set work schedule. Kashenov understood that W. Clark had
4 an account with Bank of America and would withdraw cash from that account to pay him
5 and the other workers. (Testimony of Sadykov, Kashenov)

6 31) After showing Kashenov and Sadykov where workers were required to get
7 the cannabis that was to be trimmed and where he was to work, M. Clark and W. Clark
8 provided Kashenov and Sadykov with work supplies, including trays, trimmers, scissors,
9 and alcohol. Kashenov was instructed Kashenov and Sadykov to put the trimmed
10 product in a "turkey bag" and to put their names on the bag. They were then instructed
11 as to where to deposit the bag of trimmed product when they were done. (Testimony of
12 Sadykov, Kashenov)

13 32) Sadykov and Kashenov understood that they were free to set their own
14 work schedule during the 24-hour day. Both understood that they were not being paid
15 hourly but were going to be paid based on the total weight of cannabis trimmed.
16 (Testimony of Sadykov, Kashenov)

17 33) On August 27, 2020, Kashenov and Sadykov began performing work
18 trimming cannabis for Stay Hai at the 4640 Takilma Road property. Neither worked for
19 other employers while they worked for Stay Hai, and they used only the tools provided
20 to them by W. Clark and M. Clark. Both understood that they were required to follow
21 the procedures outlined by W. Clark and M. Clark. (Testimony of Sadykov, Kashenov)

22 ***Frolova and Faraji Arrive in Oregon***

23 34) On August 30, 2020, Frolova and Faraji flew to Medford, Oregon, for the
24 purpose of working as cannabis trimmers at the 4640 Takilma Road property. Frolova
25

1 purchased the airline tickets for herself and Faraji, and Faraji reimbursed Frolova for the
2 cost of the ticket. (Testimony of Frolova, Faraji)

3 35) Faraji brought a pair of scissors with her that she had previously used as a
4 cannabis trimmer for the Los Angeles dispensary. Faraji did not bring any other tools or
5 equipment with her to Oregon. Frolova did not bring any equipment with her.
6 (Testimony of Faraji, Frolova)

7 36) On August 30, 2020, M. Clark picked up Faraji and Frolova at the Medford
8 airport. Faraji asked M. Clark questions about the work she was to perform while in
9 Oregon during their drive to the 4640 Takilma Road property. Faraji was comfortable
10 with the prospect of working for M. Clark because the information he provided during
11 the drive from the airport was consistent with the information provided by Frolova. M.
12 Clark confirmed for Faraji that she would be paid \$125 per pound of trimmed cannabis.
13 (Testimony of Faraji)

14 37) Faraji understood M. Clark and his father, W. Clark, operated the cannabis
15 operation at 4640 Takilma Road as a family business. Faraji viewed both M. Clark and
16 W. Clark as owners of the business and her supervisors. (Testimony of Faraji)

17 38) After arriving and meeting the other workers already onsite, Faraji only
18 recognized Sadykov as someone she knew. (Testimony of Faraji)

19 39) Faraji and Frolova were directed to sleep in an RV parked on the property
20 near the house. Sadykov and Kashenov slept inside the house in the living room area.
21 (Testimony of Faraji, Frolova, Sadykov, Kashenov)

1
2 ***Cannabis Trimming Work Performed at 4640 Takilma Road***

3 40) A typical workday began at approximately 9:00 a.m., with a 30- to 60-
4 minute break for lunch and dinner. M. Clark would typically prepare or provide a
5 communal meal for the cannabis trimmers. Cannabis trimmers were not required to
6 work a set schedule, and they were allowed to take days off while performing work at
7 4640 Takilma Road. Cannabis trimmers typically worked until the early morning hours.
8 (Testimony of Kashenov, Sadykov, Frolova, Faraji)

9 41) The cannabis trimmers used one bathroom that was located inside of the
10 house. As a result, they staggered their work schedules to ensure that each of them
11 had access to the bathroom throughout the day. (Testimony of Sadykov, Kashenov,
12 Frolova, Faraji)

13 42) M. Clark generally oversaw the cannabis trimming and directed the
14 performance of the cannabis trimmers. Either M. Clark or W. Clark would weigh the
15 worker's trimmed product and either the worker or M. Clark or W. Clark would enter the
16 weight in grams in a ledger that was kept by either M. Clark or W. Clark. (Testimony of
17 Kashenov, Sadykov, Frolova, Faraji)

18 43) M. Clark told workers that he, as the grower of the cannabis, would pay
19 the cannabis trimmers from the proceeds of the sale of the trimmed cannabis.
20 (Testimony of Frolova)

21 44) Kashenov and Sadykov worked the same or similar schedule from August
22 30, 2020, through September 8, 2020. Kashenov and Sadykov would work until the
23 early morning hours with short breaks throughout the day. Sadykov and Kashenov
24 typically worked approximately 13 hours per day. (Testimony of Kashenov, Sadykov)
25

1
2 45) Frolova and Faraji also worked a worked a similar schedule from
3 approximately August 30, 2020, through September 7, 2020. Frolova, and Faraji
4 typically worked approximately 13 hours per day. (Testimony of Frolova, Faraji)

5 46) Frolova would sometimes weigh her own product when neither W. Clark or
6 M. Clark could come to the barn to weigh her trimmed product. Frolova recorded the
7 weights in her own notes to ensure that her trimmed product was accurately measured.
8 Frolova did not weigh the product of other workers. (Testimony of Frolova)

9 47) Faraji entered the amount of the final trimmed product at the end of each
10 day on her phone. On or about September 9, 2020, after she left the 4640 Takilma
11 Road property, Faraji calculated the pounds of product she trimmed and totaled the
12 amounts in her phone. (Testimony of Faraji; Ex. A129)

13 48) Both Sadykov and Kashenov followed the same procedure of having their
14 bag of trimmed cannabis weighed by either W. Clark or M. Clark. Sadykov entered the
15 amount of trimmed cannabis in grams into a ledger in the presence of either W. Clark or
16 M. Clark under his nickname, "Farra" or "Faza." Kashenov's weights were typically
17 written in grams under his nickname, "OJ." (Testimony of Sadykov, Kashenov; Exs. A4,
18 A159-163)

19 49) From August 30, 2020, through September 7, 2020, Sadykov trimmed
20 cannabis in the following amounts:
21
22
23
24
25

<u>DAYS WORKED</u>	<u>WEIGHT IN GRAMS</u> ¹⁷	<u>WEIGHT IN POUNDS</u>
August 31, 2020	3,373 g	7.45 lbs.
September 1, 2020	4,597 g	10.13 lbs.
September 3, 2020	4,022 g	8.87 lbs.
September 4, 2020	3,510 g	7.74 lbs.
September 6, 2020	5,187 g	11.44 lbs.
September 7, 2020	1,012 g	2.23 lbs.
TOTALS	21,701 g	47.86 lbs.

(Testimony of Sadykov; Exs. X159-X164)

50) Stay Hai owes Sadykov \$5,982.50 (47.86 lbs. x \$125) in unpaid wages for work performed from August 30, 2020, through September 7, 2020. (Hearing Record)

51) From August 30, 2020, through September 7, 2020, Kashenov trimmed cannabis in the following amounts:

<u>DAYS WORKED</u>	<u>WEIGHT IN GRAMS</u>	<u>WEIGHT IN POUNDS</u>
August 31, 2020	3,295 g	7.26 lbs.
September 1, 2020	3,100 g	6.83 lbs.
September 2, 2020	3,067 g	6.76 lbs.
September 3, 2020	3,051 g	6.73 lbs.
September 4, 2020	2,826 g	6.23 lbs.
September 6, 2020	4,350 g	9.59 lbs.
September 7, 2020	1,026 g	2.26 lbs.
TOTALS	20,715 g	45.66 lbs.

(Testimony of Kashenov; Exs. X159-X164)

52) Stay Hai owes Kashenov \$5,707.50 (45.66 lbs. x \$125) in unpaid wages for work performed from August 30, 2020, through September 8, 2020. (Hearing Record)

¹⁷ The amounts weighed were measured in grams. The forum takes judicial notice that to determine the weight in pounds the amount in grams is divided by 453.592.

53) From August 30, 2020, through September 8, 2020, Faraji tracked the weights of her trimmed cannabis using her cell phone. Faraji calculated the conversion of grams to pounds and recorded the weights in pounds. Faraji trimmed cannabis in the following amounts:

<u>DAYS WORKED</u>	<u>WEIGHT IN POUNDS</u>
August 30, 2020	1.54 lbs.
August 31, 2020	3.03 lbs.
September 1, 2020	3.70 lbs.
September 2, 2020	4.06 lbs.
September 3, 2020	3.94 lbs.
September 4, 2020	3.66 lbs.
September 5, 2020	5.17 lbs.
September 7, 2020	4.16 lbs.
September 8, 2020	4.00 lbs.
TOTAL	33.26 lbs.

(Testimony of Faraji; Ex. A129)

54) Stay Hai owes Faraji \$4,157.50 (33.26 lbs. x \$125) in unpaid wages for work performed from August 30, 2020, through September 8, 2020. (Hearing Record)

55) From August 30, 2020, through September 8, 2020, Frolova trimmed cannabis in the following amounts:

<u>DAYS WORKED</u>	<u>WEIGHT IN GRAMS</u>	<u>WEIGHT IN POUNDS</u>
August 30, 2020	692 g	1.52 lbs.
August 31, 2020	1,267 g	2.79 lbs.
September 1, 2020	1,221 g	2.69 lbs.
September 2, 2020	993 g	2.18 lbs.
September 4, 2020	629 g	1.38 lbs.
TOTALS	4,802 g	10.56 lbs.

(Testimony of Frolova; Ex. 1a, Exhibits A,B – Case No. 156-24)

56) Stay Hai owes Frolova \$1,320 (10.56 x \$125) in unpaid wages for work performed from August 30, 2020, through September 4, 2020. (Hearing Record)

1
2 57) There were evacuation orders issued in early September 2020 due to
3 wildfires in the area. Frolova and Faraji left 4640 Takilma Road on or about September
4 8, 2020. Kashenov and Sadykov left the next day on or about September 9, 2020.
5 (Testimony of Frolova, Faraji, Kashenov, Sadykov)

6 58) Kashenov understood, based comments made by W. Clark and M. Clark
7 at or near the time he left 4640 Takilma Road, that everyone was expected to return to
8 the property when it was safe to do so to finish trimming the remaining product.
9 Kashenov believed he would be paid when he returned and after he finished trimming.
10 (Testimony of Kashenov)

11 59) When Frolova left 4640 Takilma Road, she understood based upon her
12 conversations with W. Clark that he intended to sell the trimmed product and then pay
13 the workers what was owed to them. (Testimony of Frolova)

14 60) Faraji did not discuss how she would be paid before leaving the property,
15 but assumed she would be paid as promised by W. Clark and M. Clark. (Testimony of
16 Faraji)

17 ***Work Performed by Hernandez and Cazapa Barrera***

18 61) Hernandez has worked as a farm laborer for approximately ten years.
19 Hernandez and Cazapa Barrera were living and working together south of Medford,
20 Oregon, in June 2021. (Testimony of Hernandez)

21 62) Hernandez and five other people, including Cazapa Barrera, spoke with a
22 man with the nickname "El Michoacano" in response to a job posting on Facebook.
23 After speaking with "El Michoacano," Hernandez understood that they were to be paid
24 an hourly wage of \$16 for construction work. (Testimony of Hernandez)
25

1
2 63) After receiving directions from "El Michoacano," Hernandez, Cazapa
3 Barrera and others met "El Michoacano" at a gas station in Grants Pass, Oregon.
4 Hernandez and the others followed him in their own vehicle for approximately 45
5 minutes to a location that Hernandez later determined was 4640 Takilma Road.
6 (Testimony of Hernandez; Ex. A185)

7 64) Hernandez observed that "an older guy, an American and . . . some young
8 people" were at the property when they arrived. Hernandez observed them moving
9 marijuana plants while he was on the property. Hernandez and the other workers
10 learned upon their arrival that they were to build greenhouse for cannabis growing.
11 They were promised one month of work. (Testimony of Hernandez)

12 65) Hernandez, Cazapa Barrera and the other workers constructed the
13 greenhouses using PVC pipes and white tarps from June 16-20, 2020. Hernandez took
14 a video with his cell phone showing the greenhouses and the black bags he understood
15 held cannabis. Hernandez also kept notes as to the hours worked while he was at 4640
16 Takilma Road. (Testimony of Hernandez; Exs. A182-A183)

17 66) Hernandez and Cazapa Barrera worked the following hours from June 16,
18 2021, through June 20, 2021:

<u>WORK DAYS</u>	<u>HOURS WORKED</u>
June 16, 2021 ("miércoles")	10.5 hours
June 17, 2021 ("jueves")	9.0 hours
June 18, 2021 ("viernes")	11.0 hours
June 19, 2021 ("sabado"):	10.5 hours
June 20, 2021 ("domingo")	7.0 hours
TOTAL	48 hours¹⁸

23 (Testimony of Hernandez; Ex. A83, X1a, Exhibits A, B – Case No. 156-24)

24
25 ¹⁸ The days of the week were listed in Spanish on the exhibit admitted at hearing.

1
2 67) Stay Hai owes Hernandez and Cazapa Barrera \$768 in unpaid wages for
3 work performed June 16-20, 2021. (Hearing Record)

4 68) Hernandez understood that "El Michoacano" worked with the older and
5 younger white men he saw at the property. Hernandez knew the house the white men
6 were seen coming and going from did not belong to "El Michoacano," and he assumed it
7 belonged to the two white men given their apparent freedom to come and go from the
8 house. Hernandez later learned that one of the "gringos" he observed going in and out
9 of the house was M. Clark. (Testimony of Hernandez)

10 69) Hernandez, Cazapa Barrera and the other workers worked approximately
11 48 hours before it became clear to them that they were not going to be paid for their
12 work. The man with the nickname, "El Michoacano" became increasingly more hostile
13 and made offensive comments to Hernandez and others before Hernandez and the
14 other workers demanded payment. When their demand was refused, Hernandez,
15 Cazapa Barrera and the other workers left 4640 Takilma Road. (Testimony of
16 Hernandez; Ex. A184)

17 ***Efforts to Get Paid for Work Performed for Stay Hai***

18 70) For several months after they left the 4640 Takilma Road property,
19 Frolova, Faraji, Sadykov and Kashenov made various efforts to get paid for work they
20 performed for Stay Hai at 4640 Takilma Road. (Testimony of Frolova, Faraji, Sadykov,
21 Kashenov; Exs. A131-A137)

22 71) Frolova was promised by both W. Clark and M. Clark several times that
23 payment was forthcoming, but she never received payment for the work that she
24 performed. At some point, W. Clark informed Frolova that he would pay her, Faraji,
25

1 Sadykov, and Kashenov \$120 per pound when he received payment for the cannabis
2 that had been trimmed before the wildfire evacuation in September 2020. (Testimony of
3 Frolova)
4

5 72) On June 21, 2021, Faraji sent a letter to “William Dean Clark, Miles Clark
6 and Others” at 4640 Takilma Road, Cave Junction, OR 97523, informing them that she
7 was owed payment for work that was performed prior to September 9, 2020, in the
8 amount of \$4,157. Faraji’s letter warned that if she did not receive payment within five
9 business days from the date of her letter that she would file a claim with BOLI and in
10 small claims court. Faraji sent a similar letter to “Miles Clark, William D. Clark and
11 Others” at 2480 E. Chevy Chase Drive, Glendale, California 91206, which she
12 understood to be another location where one or more of them could be found. Faraji
13 sent the letters via certified mail through the US Postal Service. (Testimony of Faraji;
14 Exs. A131-134)

15 73) Sadykov sent several text messages to W. Clark asking to be paid what
16 was owed to him. W. Clark told Sadykov that he would pay him, but after a few months
17 W. Clark told Saykov to “get lost, leave me alone, before I sue you for harassment.”
18 When Sadykov told W. Clark that he had legal status in this country, W. Clark told him
19 that he would not succeed in filing a claim against him because he did not have status
20 in this country and was not a citizen. (Testimony of Sadykov)

21 74) Kashenov called and sent several text messages to “Bill Fish,” a nickname
22 that he knew W. Clark went by demanding payment of his wages. At first the
23 exchanges were civil, but they became increasingly hostile as time passed. (Exs. A179-
24 180)
25

1
2 75) For the next eight to nine months, Frolova spoke with other workers who
3 were trying to get paid for the work they had performed as cannabis trimmers at 4640
4 Takilma Road. Frolova received promises from both W. Clark and M. Clark that
5 payment was forthcoming, but neither she nor the other workers ever received payment
6 for work performed at 4640 Takilma Road. (Testimony of Frolova)

7 76) Frolova discovered approximately eight months after leaving Oregon that
8 W. Clark had purchased a property with a \$60,000 downpayment. Frolova called W.
9 Clark and asked if he had used the money he was supposed to pay them to pay for his
10 house. W. Clark told Frolova to go back to her "third level country" and that she was a
11 nobody that he was done talking to her. (Testimony of Frolova)

12 77) For several months after returning from Oregon, Frolova continued to
13 exchange messages and phone calls with M. Clark believing that he was also owed
14 money from W. Clark. (Testimony of Frolova, M. Clark)

15 ***Penalty Wages Due***

16 78) Despite knowing that each wage claimant was seeking payment of unpaid
17 wages, Stay Hai willfully failed to pay the claimants the wages due to them. (Hearing
18 Record)

19 79) The hourly rates for the purpose of calculating penalty wages are as
20 follows:

<u>WAGE CLAIMANT</u>	<u>DAYS WORKED</u>	<u>HOURS WORKED</u>	<u>WAGES OWED</u>	<u>HOURLY RATE</u>
Sadykov	6 days	72 hours	\$5,982.50	\$83.09
Kashenov	7 days	84 hours	\$5,707.50	\$67.95
Faraji	9 days	108 hours	\$4,175.50	\$38.66
Frolova	5 days	60 hours	\$1,320.00	\$22.00

1
2 80) The penalty wages owed to Sadykov, Kashenov, Faraji and Frolova are as
3 follows:

<u>WAGE CLAIMANT</u>	<u>HOURLY RATE</u>	<u>PENALTY WAGES DUE</u>
Sadykov	\$83.09	\$19,941.60
Kashenov	\$67.95	\$16,308.00
Faraji	\$38.66	\$9,278.40
Frolova	\$22.00	\$5,280.00

6
7 81) Hernandez and Cazapa Barrera were to be paid an hourly rate of \$16 for
8 48 hours of work. Stay Hai willfully failed to pay Hernandez and Cazapa Barrera wages
9 due them for work performed. Therefore, Hernandez and Cazapa Barrer are each due
10 \$3,840 in penalty wages. (Hearing Record)

11 ***Credibility of Witnesses***

12 82) Lopez was a credible witness. Lopez testified that he made several efforts
13 to obtain information from M. Clark and his parents. Lopez testified that M. Clark was
14 generally responsive to his inquiries. However, Lopez was ultimately left with only the
15 information provided by the wage claimants. As a result, Lopez was required to use the
16 Agency's standard method of estimating the number of hours worked in calculating the
17 amount of the penalty wages, which resulted in figures that Lopez conceded were not
18 likely correct. Therefore, while the calculations used in the OOD's were likely incorrect,
19 that does not adversely affect Lopez's credibility as a witness but it is the unfortunate
20 reality when the employer fails to maintain employee work records. (Testimony of
21 Lopez)

22 83) Faraji was a credible witness. Faraji testified clearly and directly as to how
23 she came to work as a cannabis trimmer at 4640 Takilma Road. Particularly credible
24 was Faraji's testimony that she was comfortable working in a remote part of Oregon
25

1 only after receiving confirmation from M. Clark during their drive from the Medford
2 airport that she would be paid \$125 per pound of trimmed cannabis and the information
3 he provided was substantially similar to the information provided by Frolova.
4

5 Faraji provided pictures and videos taken from the job site that clearly place her
6 at 4640 Takilma Road during the period in question. Faraji also provided detailed
7 testimony as to how she maintained a daily log of her work product on her phone and
8 why she recorded pounds rather than grams as noted in the work production logs relied
9 upon by the other wage claimants. As such, the forum credited Faraji's testimony and
10 documentary evidence over the photos of the work production logs used in calculating
11 the wage claims of Sadykov, Kashenov, and Frolova. (Testimony of Faraji; Exs. A126-
12 129)

13 84) Sadykov's testimony was credible. Sadykov's testimony was clear and
14 direct and described a likely series of events. Further, Sadykov's testimony was
15 consistent with the many pictures and videos he provided putting him at 4640 Takilma
16 Road, performing the work described in his wage claim, during the period in question.
17 Respondent offered little evidence to disprove Sadykov's testimony or otherwise call
18 into question the credibility of the testimony provided under oath. (Testimony of
19 Sadykov; Exs. A138-A147)

20 85) Like Sadykov, Kashenov was a credible witness. Kashenov testified in a
21 clear and concise manner as to the work he performed and what he believed he was
22 owed in unpaid wages. Kashenov's testimony was also consistent with pictures and
23 videos provided by both him and Sadykov putting him at 4640 Takilma Road,
24
25

1 performing the work described in his wage claim, during the period in question.
2 (Testimony of Kashenov; Exs. A148-A158, A164-178)
3

4 86) Hernandez's testimony was also credible. Hernandez testified that he
5 performed construction work at a property that he later determined was 4640 Takilma
6 Road. Hernandez's testimony was logical and described a likely series of events.
7 Efforts to impeach were unpersuasive. There is no reason why Hernandez would testify
8 that he built greenhouses for what he assumed was a cannabis growing operation for
9 which he was not paid. Further, it is unlikely that M. Clark built the greenhouses
10 himself, as his testimony suggested, given the amount of cannabis being cultivated and
11 processed described in the testimony of various witnesses. (Testimony of Hernandez)

12 87) Hernandez testimony also established that Cazapa Barrera was at the
13 work site performing the same or similar work as Hernandez. Hernandez and Cazapa
14 Barrera lived together, traveled together to the worksite, and worked together during the
15 period outlined in the testimony of Hernandez. (Testimony of Hernandez)

16 88) M. Clark's testimony was credited only to the extent it was not
17 contradicted by the credible evidence of record. M. Clark's attempts to obfuscate the
18 purpose and function of Stay Hai were not credible. Stay Hai was clearly established to
19 cultivate and process cannabis. M. Clark spent an exhaustive amount of time
20 describing his love for the cannabis growing process in his testimony. He also
21 described the significant efforts he made to gain a cannabis license for Stay Hai, as well
22 as a permit for himself personally to operate within Oregon. Clearly, M. Clark and W.
23 Clark were in business together given that almost every wage claimant alleging they
24 performed work as cannabis trimmers at 4640 Takilma Road testified that they
25

1 understood that they were working for a family business operated by M. Clark and his
2 father. Suggesting that W. Clark was responsible for failing to pay the wage claimants
3 was disingenuous at best given that all credible evidence of record shows that each
4 wage claimant traveled to 4640 Takilma Road with the promise of payment for work
5 performed as cannabis trimmers. Stay Hai was incorporated and operated with 4640
6 Takilma Road as its address, which was also M. Clark's personal address as the
7 registered agent and manager for Stay Hai. The forum cannot and will not take the leap
8 encouraged by the Respondent's attorney to ignore government and business records
9 establishing that Stay Hai operated as a cannabis operation at 4640 Takilma Road
10 where four wage claimants travelled to in order to perform the very thing the business
11 was established to achieve – saleable cannabis. Therefore, M. Clark's testimony was
12 considered less credible than the testimony offered by the wage claimants and was
13 credited only when it was consistent with other credible evidence of record. (Testimony
14 of M. Clark)

15
16 89) The ALJ took under advisement the Respondent's motion to strike the
17 testimony of Frolova based on Respondent's allegation that Frolova's testimony was
18 fabricated and she had perjured herself. The parties were asked to submit written
19 argument as to how the forum should treat Frolova's testimony. Respondent failed to
20 timely file a response to the Agency's post-hearing opening brief. (Exs. X41, X46-48)

1
2 90) The forum finds Frolova's testimony credible.¹⁹ Frolova described in detail
3 about how she came to perform cannabis trimming work for W. Clark and M. Clark. She
4 also provided detailed testimony as to the level of supervision and direction that both W.
5 Clark and M. Clark exercised while she performed work for Stay Hai.

6 The forum did find Frolova's denials of a relationship between her and M. Clark
7 questionable. It makes little sense that Frolova would recruit other workers for a
8 cannabis operation in a remote part of Oregon absent a relationship between her and
9 either W. Clark and M. Clark. However, the exact nature of the relationship makes no
10 difference in the determination of whether her testimony describing the work performed
11 as a cannabis trimmer for Stay Hai was credible.

12 The forum also found Frolova's testimony that she was a superior trimmer as
13 compared to the other wage claimants questionable. Frolova testified that she could
14 trim nine pounds of cannabis per day. However, that is not consistent with the figures
15 listed in the work production notes. The ALJ spent a good deal of time going through
16 the mass of exhibits submitted by the Agency and could not find any documentation
17 supporting Frolova's testimony that she trimmed nine pounds of cannabis each day she
18 was at 4640 Takilma Road.

19 Therefore, the forum will not strike Frolova's testimony as demanded by
20 Respondent. The forum credits Frolova's testimony to the extent that it is not
21 contradicted by other credible evidence of record, specifically, pictures of work
22 production notes provided by other wage claimants.

23
24 ¹⁹ The forum considered the argument presented by the Agency in its post-hearing opening brief. Absent
25 any argument to the contrary, the forum rejects Respondent's argument that Frolova's testimony should
be stricken in its entirety.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONCLUSIONS OF LAW

1) At all times material herein, Respondent Stay Hai, LLC was an active domestic business company that employed the Claimants. ORS 652.310.

2) BOLI's Commissioner has jurisdiction over the subject matter and Respondent herein. ORS 652.330, 652.332.

3) Respondent Stay Hai, LLC owes unpaid wages to Claimants Farkhat Sadykov; Olsas Kashenov; Afa Faraji; Victoria Frolova; Jhony Bruna Hernandez; and Fernando Cazapa Barrera in the amounts set out in Findings of Fact ##46-53, 63, and 64, and more than five days have elapsed since Claimants employment ceased. ORS 652.140.

4) The failure of Respondent Stay Hai, LLC to pay Claimants Farkhat Sadykov; Olsas Kashenov; Afa Faraji; Victoria Frolova; Jhony Bruna Hernandez; and Fernando Cazapa Barrera all unpaid, due and owing wages after their respective periods of employment ceased was willful and each of the Wage Claimants are entitled to the penalty wages totaling \$61,488. ORS 652.150.

5) Under the facts and circumstances of this record, and according to the applicable law, BOLI's Commissioner has the authority to order Respondent to pay the Claimants their earned, unpaid, due and payable wages, ORS 652.150 penalty wages, plus interest on all sums until paid. ORS 652.332.

OPINION

In a wage claim case, the Agency has the burden of proving the following elements by a preponderance of the evidence: (1) that the respondent employed the claimants; (2) any pay rate upon which the respondent and the claimants agreed, if

1 other than minimum wage; (3) the amount and extent of work the claimants performed;
2 and (4) that the claimants performed work for the respondent for which they were not
3 properly compensated. *In the Matter of WDSA Inc., dba Gresham Schmizza Public*
4 *House, dba Gresham Pizza Schimizza Public House*, 38 BOLI 146, 156-58 (2022).

5
6 As noted in Finding of Fact – Procedural # 57, the parties were asked to submit
7 post-hearing briefing on various objections and arguments offered at hearing. Several
8 of those arguments must be addressed prior to determining whether the Agency
9 established its prima facie case.

10 **Employment Relationship Between Stay Hai and the Wage Claimants**

11 Stay Hai, through its manager and registered agent M. Clark, denied that it was
12 an employer as defined under ORS 652.310 or that it ever engaged the personal
13 services of Sadykov, Kashenov, Frolova or Faraji. M. Clark testified that Stay Hai was
14 merely at the beginning stages of developing a cannabis growing and services
15 operation during the period in question. However, the evidence shows that as far back
16 as 2017, M. Clark has shown an intent to cultivate and sell cannabis as evidenced by
17 his corporate registration with the Oregon Secretary of State. Further, M. Clark applied
18 for and received a marijuana worker permit one year later. Throughout his efforts to
19 legally cultivate and process cannabis in Oregon, M. Clark listed his personal mailing
20 address, as well as the mailing address and place of business for Stay Hai at 4640
21 Takilma Road. The substantial evidence of record shows that Stay Hai was functioning
22 in its intended capacity of a cannabis production and service company in August and
23 September 2020. Therefore, the next issue is whether Stay Hai, as a cannabis product
24 and service company, was an employer for purposes of the wage claims.

1 ORS 652.310(2) defines, “employer,” as “any person who in this state, directly or
2 through an agent, engages personal services of one or more employees * * *.” An
3 “employee” is defined as “any individual who otherwise than as copartner of the
4 employer or as an independent contractor renders personal services wholly or partly in
5 this state to an employer who pays or agrees to pay such individual at a fixed rate,
6 based on the time spent in the performance of such services or on the number of
7 operations accomplished, or quantity produced or handled.” ORS 652.310(3).

8 Sadykov, Kashenov, Frolova, and Faraji

9 The credible evidence of record establishes that Sadykov, Kashenov, Frolova
10 and Faraji each performed work for Stay Hai as employees in August and September
11 2020. Stay Hai’s argument that these wage claimants performed work for another entity
12 is unconvincing given the utter lack of evidence in the record even suggesting that these
13 four individuals traveled to a remote part of Oregon from Los Angeles to work for
14 someone else while at the principal place of business of Stay Hai.

15 Even if the forum were to conclude that Sadykov, Kashenov, Frolova and Faraji
16 were employees of W. Clark or another business entity, the substantial evidence
17 establishes that it was a joint employment situation that served to benefit that employer
18 and Stay Hai.

19 A joint employment relationship exists when two associated employers share
20 control of an employee. Joint or co-employers are responsible, both individually and
21 jointly, for compliance with all applicable provisions of Oregon’s wage and hour laws. *In*
22 *the Matter of Brown’s Architectural Sheetmetal, Inc. and Brun Metals Company, LLC*, 35
23 BOLI 68, 91 (2016). *See also In the Matter of Portland Flagging, LLC* (#28-15), 34
24

1 BOLI 244, 264 (2016) (joint employment exists when employers have a mutually
2 beneficial agreement to share the services of an employee, one employer acts directly
3 or indirectly in the interest of the other employer with respect to the employee, where
4 the employers share direct or indirect control of the employee, or where one employer
5 controls the other employer). Therefore, even if a joint employment relationship was
6 found to exist, the evidence shows that such an arrangement served to benefit Stay Hai
7 in its cannabis production business with respect to the work performed by the wage
8 claimants in these matters.

9
10 The substantial credible evidence of record shows that Stay Hai was the
11 employer of Sadykov, Kashenov, Frolova and Faraji. In the alternative, if another
12 employer was involved, Stay Hai was a joint employer of the wage claimants as their
13 work as cannabis trimmers served to benefit Stay Hai and the other employer.
14 Therefore, Stay Hai is determined to have been an employer of Sadykov, Kashenov,
15 Frolova and Faraji.

16 Hernandez and Cazapa Barrera

17 Hernandez credibly testified that he and others, including Cazapa Barrera were
18 recruited to perform construction work at a location he later determined to be 4640
19 Takilma Road. Hernandez testified that he and other workers constructed greenhouses
20 using PVC pipe and tarps for what he understood to be a cannabis operation.
21 Hernandez described “gringos,” who appeared to own the home located on the
22 property, one of whom he identified at hearing as being M. Clark. Respondent focused
23 on Hernandez’s testimony describing his recruitment by a man he called, “El
24 Michoacan,” and suggested that he was their employer. However, Hernandez
25

1 testimony made clear that it was the “gringos” on site that provided the direction and
2 provided them with lunch and water and for whom the greenhouses were being
3 constructed. Therefore, Hernandez’s testimony establishes that Stay Hai employed
4 both Hernandez and Cazapa Barrera.

5 The parties were asked to address how the forum should treat Cazapa Barrera’s
6 failure to testify at hearing. The Agency’s argument is well taken:
7

8 “Hearsay evidence of Cazapa Barrera’s claim can constitute substantial evidence
9 and is admissible in this proceeding. The reliability of any finding based in part on
10 hearsay evidence can be determined by weighing the factors set forth in *Reguero*
11 *v. Teacher Standards and Practices*, 312 Or 402 (1991), which include the
12 alternatives to relying on the evidence, the importance of the facts sought to be
13 proven to the outcome of the proceeding, considerations of economy, the status
14 of supporting or opposing evidence, the efficacy of cross-examination, and the
15 consequences of the decision. The weight to give to particular factors depends
16 on the circumstances. *Cole/Dinsmore v. DMV*, 336 Or 565, 585 (2004). Here, the
17 factors favor including hearsay evidence of Cazapa Barrera’s claim. First, the
18 failure of an individual to provide testimony does not weigh in favor of either party
19 when both had the opportunity to subpoena that individual for hearing. *Petteys v.*
20 *DMV*, 195 Or App 644, 651 (2004). Second, the consequences of the decision
21 either way are neutral because while reliance on hearsay testimony may result in
22 an order adverse to Respondent, it will further the Agency’s interest in protecting
23 workers. See *Id.* Third, the most important factor is the state of supporting or
24 opposing evidence. *Id.* at 652. Here, Cazapa Barrera’s claim is well-supported by
25 the contemporaneous documentation from Claimant Bruno Hernandez and his
sworn testimony. See Exhibit A-184; October 31, 2024 Transcript, Testimony of
Bruno Hernandez.”

18 The forum concludes that the substantial evidence of record, including the
19 credible testimony of Hernandez, establishes that Cazapa Barrera was working
20 alongside Hernandez during the period of their wage claim. See *In the Matter of*
21 *Autoteam, LLC, Global Auto Motors, LLC, and Drive Credit, LLC*, 34 BOLI 44, 54
22 (2015)(Claimant’s failure to appear at hearing did not, in and of itself, warrant automatic
23 dismissal of his claims when credible testimony from a co-worker or other person
24 familiar with the hours worked by the claimant is offered).

1
2 ***Respondent's Agent's Actions Should be Imputed to Stay Hai***

3 Respondent argued that the actions of Stay Hai's agents were not taken on
4 behalf of Stay Hai and their actions should not be imputed to the corporate entity.
5 Respondent failed to offer any argument in support of its contention in post-hearing
6 briefing. The Agency offered the following in its post-hearing opening brief:

7 "The actions of an employer's employees and agents can be imputed to the
8 employer. Where multiple persons or entities exert control over employees, if
9 there is not a situation of joint employment, then a person acting on behalf of a
10 party with respect to the employee may still be an agent of that party. See
11 *McClusky v. City of North Bend*, 308 Or App 138 (2020) rev den 368 Or 37
12 (2021). For example, an LLC's manager is an agent of that LLC, and his actions
13 are imputed to the LLC. *In the Matter of Stephanie Nichols*, 24 BOLI 106 (2003).
14 Even when an agent may not be authorized to act by the employer, an employer
15 may still be bound by the unauthorized actions of an agent if a third-party
16 reasonably believes the agent is authorized to act. *Houck v. Feller Living Trust*,
17 191 Or App 39, 42-43 (2003).

18 "At the time the 2020 wage claimants were employed, both Miles Clark and
19 William Clark were managers of Stay Hai, LLC and their actions can be imputed
20 to Respondent. Claimants testified consistently that William Clark and Miles Clark
21 were present, living onsite, and managing their work activities. It is a reasonable
22 inference that William Clark and Miles Clark were acting on behalf of the
23 business they organized and that had secured the property for its business
24 operations.

25 "The 2021 wage claimants identified Miles Clark as being on site, along with an
 older white man, engaged in farming operations and providing refreshments to
 their crew, during their work, as well as the person they understood to be
 directing the individual who was more directly supervising their work. It is a
 reasonable inference that Miles Clark was acting on behalf of the business he
 organized and that had secured the property for its business operations."

 The Agency's argument is well taken. It makes little sense that W. Clark and M.
Clark as managers of Stay Hai would not have the authority to act on behalf of Stay Hai.
Further, it was reasonable for Hernandez to assume that M. Clark was acting on behalf
of Stay Hai when he allowed Hernandez, Cazapa Barrera and the other workers to
construct greenhouses that appeared to be intended to be used in a cannabis growing

1 operation. Therefore, the actions of W. Clark, M. Clark and M. Heller and others
2 working on behalf of Stay Hai are imputed to Stay Hai.
3

4 ***Dissolution of Stay Hai***

5 Respondent argued at hearing that Stay Hai should not be liable for wages
6 allegedly owed to the wage claimants because it had been administratively dissolved.
7 Again, the parties were asked to submit post-hearing briefing on the issue raised by
8 Respondent, who failed to file anything. The Agency's argument that the administrative
9 dissolution of Stay Hai should have no bearing on the issue of whether Stay Hai is
10 required to pay the wages claimed is well taken:

11 "Respondent's administrative dissolution in 2020 has no bearing on the issues in
12 this case. In certain circumstances, a limited liability corporation (LLC) may be
13 administratively dissolved by the Secretary of State. See ORS 63.647. While
14 administratively dissolved, the LLC continues its existence 'but may not carry on
15 any activities except activities that are necessary or appropriate to wind up and
liquidate the limited liability company's business and affairs under ORS 63.637
and notify claimants under ORS 63.641 and 63.644.' ORS 63.651(3). However,
there are two provisions in ORS Chapter 63 that are relevant here and provide
that the LLC is liable for all its actions during the period of administrative
dissolution.

16 "First, the Secretary of State may reinstate an LLC, and when that action takes
17 effect, 'the reinstatement relates back to and takes effect as of the effective date
18 of the administrative dissolution and the limited liability company resumes
19 carrying on the limited liability company's business as if the administrative
20 dissolution *had never occurred*.' ORS 64.654(3) (Emphasis added). Second,
21 under ORS 63.629, members of an LLC can bind the LLC with post-dissolution
transactions, including when the transaction is entered into with a party that does
not have 'actual notice' it is transacting with a dissolved LLC or if the action of the
LLC member is otherwise authorized or ratified by the LLC. ORS 63.629;
Wohrman v. Rogers, 274 Or App 846, 852–53 (2015).

22 "Both events occurred with respect to Respondent. While administratively
23 dissolved in 2020, the Secretary of State reinstated the LLC in 2021, thus the
24 2020 dissolution never occurred and has no effect. See Agency Exhibit A-65. In
25 addition, the record contains no evidence that claimants had actual notice of the
dissolution, and the actions of Respondent's representative to engage in
employment activities are binding on Respondent for this reason as well."

1
2 ***Stay Hai's Failure to Hold the Appropriate License from the OLCC***

3 Respondent argued that, even if an employment relationship was found, that
4 Stay Hai's failure to have the appropriate license from the OLCC during the period in
5 question somehow relieves Stay Hai of the duty to pay wages found to be due for work
6 performed. The ALJ asked the parties to submit written argument on the issue raised
7 by the Respondent. The Agency timely filed its argument, whereas the Respondent
8 failed to file any response. The Agency's argument is well taken:

9 "An agreement may not be enforced if it contravenes the terms of a statute. An
10 agreement is illegal based on the violation of a statute when the statute contains
11 an express statement that agreements executed in contravention of its terms are
12 void or voidable. Without such an express statement, Oregon courts have long
13 held that resolving such a question requires examination of legislative intent to
14 determine whether the legislature intended to void the agreement at issue by
15 enacting the statute in question. *Uhlmann v. Kin Daw*, 97 Or 681, 694–95 (1920)
(failure to register partnership did not render agreements entered into by
16 partnership unenforceable); *heeler v. Bucksteel Co.*, 73 Or App 495, 500, rev den
17 299 Or 583 (1985) (failure to obtain license as professional engineer prevented
18 enforcement of agreement with unlicensed engineer to provide engineering
19 services).

20 "The voters of Oregon established a commercial regulatory system for the
21 production of marijuana and industrial hemp in 2014. Ballot Measure 91 (2014).
22 As codified in Oregon Revised Statutes Chapter 475C, this regulatory system
23 provides that:

24 'A person may not produce, process, transport, deliver or sell a marijuana
25 item unless the person holds a valid license issued under ORS 475C.005
to 475C.525 or a registration issued under ORS 475C.770 to 475C.919 or
is exempted under ORS 475C.305.'

26 ORS 475C.185(2)(a).²⁰ Similarly, ORS 475C.065 states that production of
27 marijuana is subject to regulation by the Oregon Liquor and Cannabis
28 Commission (OLCC) and that a 'marijuana producer must have a production
29 license issued by the commission for the premises at which the marijuana is
30 produced.'

31
32
33
34 ²⁰ Under ORS 475C.009(38)(a), "[p]roduces" "means the manufacture, planting, cultivation, growing or
35 harvesting of marijuana."

1
2 “As these statutes were adopted by voter initiative, we apply a similar
3 methodology to determine voters’ intent as with statutes enacted by the
4 legislature, looking first to the text and context of the measure. *State v. Soto*, 372
5 Or 561, 579 (2024) (citations omitted). In looking first at the text of the statutes, it
6 is clear that neither statute cited above states that any employment contracts
7 entered into by a person who does not hold a valid license are void or voidable.
8 Nor is there any indication from the context of these statutes that the voters
9 intended a different result. In fact, Section 4 of Ballot Measure 91 states that
10 “ORS 475C.005 to 475C.525 may not be construed: (1) To amend or affect state
11 or federal law pertaining to employment matters”. Ballot Measure 91, § 4 (2014),
12 codified at ORS 475C.013.

13
14 “Thus it would be contrary to the intent of the voters to finding that respondent’s
15 employees are not entitled to the protections of our state employment laws. The
16 Agency’s Order of Determination in this matter looks backward to ensure to
17 ensure the claimants receive payment for services rendered. It does not seek to
18 perpetuate an unlawful activity. In any event, Respondent did obtain an OLCC
19 license for production in 2021. See, above Statement of Facts; Agency Exhibit
20 Nos. A-69; Testimony of Miles Clark. Any prior failure to obtain a license does not
21 exempt Respondent from compliance with Oregon’s employment laws.

22
23 “Further, the legislative history for Ballot Measure 91 clarifies that the initiative
24 was intended to protect workers. Supporters of Ballot Measure 91 stated that the
25 Measure, among its any purposes, ‘[b]rings existing jobs into the legal
marketplace, decriminalizes them, and makes them subject to laws regarding
workplace safety, Social Security, income tax withholding, and legal protections
for workers.’ Official Voters’ Pamphlet, General Election Coos, Curry, Douglas,
November 4, 2014, at 112 (Emphasis added). If Respondent’s employment
contracts were to be voided by this Forum, it would run to the benefit of
Respondent and reward any unlicensed activity but deprive those workers of the
protections to which they are entitled under Oregon’s wage and hour laws. Such
as result is not consistent with the intent of Ballot Measure 91. A case on point is
Mayfly Group, Inc. v. Ruiz, 208 Or App 219, 227–28 (2006) rev den 342 Or 344
(2007). In *Mayfly Group*, a third-party contractor sought to avoid its obligations
under a contract with an unlicensed farm labor contractor because the contractor
had not obtained a license from the Agency under ORS Chapter 658. The
Oregon Court of Appeals concluded that the legislature did not intend for a
business using the services of an unlicensed contractor to void their contract
because 1) the statutory scheme and implementing regulations provided ample
enforcement mechanisms and it would be contrary to the maxims of statutory
construction to insert additional mechanisms not included by the legislature, and
2) voiding the contract would frustrate the purpose of the legislation to protect
workers and ensure their compensation, as allowing the third-party to avoid
paying the unlicensed farm labor contractor would provide a “windfall” to the
third-party and create a situation where the unlicensed contractor may not meet
its payroll obligations to the workers who provided farm labor. *Mayfly Group, Inc.*
v. Ruiz, 208 Or App at 227–28.

1
2 “Here, both elements favor a similar conclusion that the voters did not intent for
3 Respondent’s employment contracts to be void. First, there are statutory
4 provisions to enforce the licensing requirements in ORS Chapter 475, the terms
5 of which do not include the voidability of employment contracts. See ORS
6 475C.405 – ORS 475C.409; See also ORS 475C.379:

7 “(1) A person commits the crime of unlawful production of marijuana if the
8 person produces marijuana or industrial hemp:

9 (a) At a location that is not confirmed by the Oregon Health Authority, the
10 Oregon Liquor and Cannabis Commission or the State Department of
11 Agriculture to be the location of an industrial hemp operation registered or
12 licensed under ORS 571.281, a premises for which a license was issued
13 under ORS 475C.085 or a marijuana grow site registered under ORS
14 475C.792; and

15 (b) In an amount that is not allowed by state law.

16 2) Unlawful production of marijuana is a Class A misdemeanor.

17 (3) Marijuana or industrial hemp that is unlawfully produced, as described
18 in subsection (1) of this section, is considered contraband and may be
19 destroyed by a law enforcement agency.’

20 See also ORS 475C.057; ORS 475C.185. Second, failure to apply Oregon’s
21 employment laws here would also provide Respondent a windfall and deprive
22 workers of the wages to which they are entitled for their labor. Such a result is
23 contrary to the voters’ intent in enacting Ballot Measure 19 and must be rejected.”

24 *Agency’s Post-Hearing Opening Brief, pp. 9-12.*

25 **Stay Hai Owes Unpaid Wages to the Wage Claimants**

The substantial evidence of record establishes that Stay Hai was the employer of
Sadykov, Kashenov, Frolova and Faraji, as well as Hernandez and Cazapa Barrera.
Therefore, the Agency has established Element 1 of its prima facie case. Similarly, the
Agency has satisfied Element 2 – rate of pay – of its prima facie case.

Sadykov, Kashenov, Faraji and Frolova each testified that they understood that
they were to be paid \$125 per pound of trimmed cannabis. Each testified that they
assumed that they would be paid at the end of the job. Respondent argued that rate of
pay was outlandish. However, the evidence shows that Sadykov, Faraji and Frolova

1 were paid \$100 per pound in Los Angeles. A difference of \$25 is not so great as to
2 make the figure of \$125 per pound unlikely to be an agreed upon figure for payment.
3

4 Sadykov, Kashenov, Frolova, and Faraji each listed \$120 as the agreed upon
5 payment amount in their wage claims. Frolova testified that she and the other wage
6 claimants listed \$120 in their wage claims because that was the amount that W. Clark
7 agreed to pay when she contacted him to demand payment of the wages owed to her
8 and the others. All four wage claimants testified at hearing that the agreed upon rate of
9 pay was \$125 per pound. Respondent did not offer any credible evidence disproving
10 the sworn testimony of Sadykov, Kashenov, Frolova, and Faraji. Therefore, the forum
11 concludes that the agreed upon rate of pay was \$125 per pound.

12 Similarly, the forum concludes that Stay Hai, through the recruitment of
13 Hernandez and Cazapa Barrera by "El Michoacan" on behalf of Stay Hai, promised to
14 pay Hernandez and Cazapa Barrera an hourly wage of \$16. Hernandez's testimony on
15 the agreed upon hourly wage was clear and direct and consistent from the time he filed
16 his wage claim. Again, the Respondent offered no credible evidence to disprove the
17 testimony of Hernandez.

18 **Element 3**

19 Under OAR 839-020-0004(21), "hours worked" means all hours for which an
20 employee is employed by and required to give to the employer and includes all time
21 during which an employee is necessarily required to be on the employer's premises, on
22 duty or at a prescribed workplace and all time the employee is suffered or permitted to
23 work.
24
25

1
2 It is the employer's responsibility to keep records relating to the pay owed to
3 employees. ORS 653.045; OAR 839-020-0080(5). A claimant's credible testimony may
4 be sufficient evidence to show the amount of hours worked by the claimant. *In the*
5 *Matter of Abdul Rahim Ghaffari*, 35 BOLI 38, 61 (2016), *aff'd without opinion, Ghaffari v.*
6 *Bureau of Labor and Industries*, 289 Or App 158, 407 P3d 985 (2017), *rev den* 362 Or
7 794, 416 P3d 1098 (2018). Ultimately, a wage claimant always bears the burden of
8 proving he performed work for which he was not properly compensated. *In the Matter of*
9 *Autoteam, LLC, Global Auto Motors, LLC, and Drive Credit, LLC*, 34 BOLI 44, 54
10 (2015). When the employer produces no records of the hours that a wage claimant
11 worked, the forum may rely on evidence produced by the agency from which "a just and
12 reasonable inference may be drawn." *In the Matter of Derrick's Custom Painting, Inc.*,
13 37 BOLI 271, 276 (2020); *In the Matter of Autoteam, LLC, Global Auto Motors, LLC, and*
14 *Drive Credit, LLC*, 34 BOLI 44, 54 (2015).

15 Sadykov

16 The Agency produced pictures of Stay Hai's work production logs at various
17 points between August 31, 2020, and September 7, 2020. The evidence shows that
18 Sadykov trimmed a total of 21,701 grams of cannabis, which amounts to 47.84 pounds.

19 The Agency contends that the forum should use an average amount of 8.96
20 pounds for 13 days for a total of 116.48 pounds. There was no evidence to show that
21 anyone performed work on days where entries were not included on the work
22 production logs. Each wage claimant testified that their amounts were entered at the
23 time the trimmed product was weighed. Therefore, the forum declines to find that the
24 wage claimants should be credited for work not listed on the work production logs.
25

1 Stay Hai owes Sadykov \$5,980.32 for the 47.84 pounds of product trimmed from
2 August 31, 2020, to September 7, 2020.

3 Kashenov

4 A review of the pictures of the work product logs taken by Kashenov at various
5 points between August 31, 2020, and September 7, 2020, shows that Kashenov
6 trimmed a total 20,715 grams of cannabis, which amounts to 45.67 pounds. Stay Hai
7 owes Kashenov \$5,708.60 for the 45.67 pounds of product trimmed from August 31,
8 2020, to September 7, 2020

9 Faraji

10 Faraji produced records showing the number of pounds of cannabis she trimmed
11 each day. Faraji credibly testified that she maintained a running log on her phone
12 throughout the period she performed cannabis trimming for Stay Hai. The credible
13 evidence of record shows that Faraji trimmed a total of 33.26 pounds of cannabis for
14 Stay Hai from August 30, 2020, to September 8, 2020. Therefore, Stay Hai owes Faraji
15 \$4,157.50 for work performed.

16 Frolova

17 A review of the pictures of the work product logs taken by Kashenov at various
18 points between August 31, 2020, and September 7, 2020, shows that Frolova trimmed a
19 total of 4,802 grams of cannabis, which amounts to 10.59 pounds. Frolova testified she
20 kept her own records while working for Stay Hai. However, there is no evidence of
21 those records in the hearing record. Therefore, relying on evidence produced by the
22 Agency from which a "just and reasonable inference may be drawn," the forum
23 concludes that Stay Hai owes Frolova \$1,323.33 for the 10.59 pounds of product
24

1 trimmed from August 31, 2020, to September 8, 2020. See *In the Matter of Abdul*
2 *Rahim Ghaffari*, 35 BOLI 38, 61 (2016).

3
4 *Hernandez and Cazapa Barrera*

5 Hernandez testified that he, Cazapa Barrera and others worked approximately 48
6 hours over a five day period constructing greenhouses at 4640 Takilma Road from June
7 16, 2021, through June 20, 2021. Cazapa Barrera did not testify at hearing. However,
8 without contrary evidence, the forum may rely on credible testimony as to the amount of
9 hours worked. Notably, the credible testimony to support a wage claim need not come
10 from the wage claimant himself but can be supported with credible testimony from a co-
11 worker or other person familiar with the hours worked by claimant. Therefore, the fact
12 that claimant failed to appear at the hearing, in and of itself, did not warrant an
13 automatic dismissal of his claims. *In the Matter of Autoteam, LLC, Global Auto Motors,*
14 *LLC, and Drive Credit, LLC*, 34 BOLI 44, 54 (2015).

15 The forum concludes that Hernandez and Cazapa Barrera each worked
16 approximately 48 hours and are each owed \$768 (48 hours x \$16) for work performed
17 for Stay Hai.

18 **Element 4**

19 Each of the four claimants credibly testified that they were not paid the wages
20 owed to them for work performed for Stay Hai. There is no evidence in the record
21 showing that Stay Hai paid any wages to any of the six wage claimants. Therefore, the
22 Agency has established the final element of its prima facie case.

1
2 **ORS 652.150 Penalty Wages**

3 The Agency is seeking penalty wages under ORS 652.150(1) and (2) which
4 provide in pertinent part:

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

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

18 *In the Matter of Christopher Lee Ruston and Christine M. Stahler*, 34 BOLI 56, 64
19 (2015).

20 OAR 839-001-0470(e) directs, in cases such as this when employees are paid in
21 a manner other than an hourly rate, that:

22 “Notwithstanding subsection (d), when wages are earned based on commission,
23 bonus, piece rate, or other methods not based on hours worked, the wages will
24 be reduced to an hourly rate for penalty computation purposes by dividing the
25 total wages earned in the last 30 calendar days of employment by the total
number of hours worked in the last 30 calendar days of employment. If the
employee was employed for less than 30 days, the total wages earned during the
entire period of employment will be divided by the number of hours worked
during the entire period of employment.”

“The maximum penalty will be no greater than the employee’s hourly rate of pay
times 8 hours per day times 30 days.” OAR 839-001-0470(c).

The forum may award penalty wages when a respondent's failure to pay wages
is willful. Willfulness does not imply or require blame, malice, or moral delinquency.

1 Rather, a respondent commits an act or omission “willfully” if he or she acts (or fails to
2 act) intentionally, as a free agent, and with knowledge of what is being done or not
3 done. *In the Matter of Christopher Lee Ruston*, 34 BOLI at 63.

4
5 *Penalty Wages Due to Sadykov, Kashenov, Faraji and Frolova*

6 The Agency proved that Stay Hai did not pay Sadykov, Kashenov, Faraji and
7 Frolova for work performed in August and September 2020. Stay Hai was aware of the
8 wage claims as early as April 2023, when M. Clark as the registered agent and
9 manager of Respondent Stay Hai confirmed for Lopez that he had received notice of
10 the wage claims. (Findings of Fact – Procedure #9) Respondent acted willfully in failing
11 to pay Sadykov, Kashenov, Faraji and Frolova for the work they performed.

12 The forum found that the typical workday for Sadykov, Kashenov, Faraji and
13 Frolova began at approximately 9:00 a.m. and continued to the early morning hours,
14 with two meal breaks and various short breaks throughout the day. Given the evidence
15 that work lights were set up on the porch area of the home where the wage claimant’s
16 testified they were directed to perform their work as cannabis trimmers, it is reasonable
17 to infer that they worked until after midnight. Given the lack of documentation by the
18 employer and the approximations offered by the wage claimants, the forum concludes
19 that Sadykov, Kashenov, Faraji, and Frolova worked 12 hours each day. The forum
20 therefore concludes that Sadykov, Kashenov, Frolova and Faraji are owed penalty
21 wages in the following amounts:

<u>WAGE CLAIMANT</u>	<u>DAYS WORKED</u>	<u>HOURS WORKED</u>	<u>WAGES OWED</u>	<u>HOURLY RATE</u>
Sadykov	6 days	72 hours	\$5,982.50	\$83.09
Kashenov	7 days	84 hours	\$5,707.50	\$67.95
Faraji	9 days	108 hours	\$4,175.50	\$38.66
Frolova	5 days	60 hours	\$1,320.00	\$22.00

1 The Agency provided documentary and testimonial evidence that in March 2023
2 its investigative staff made the written demand contemplated by ORS 652.150(2) for
3 Claimant's wages. The Agency's OOD's issued on July 10, 2023, repeated this
4 demand. Because Respondent failed to pay Wage Claimants Sadykov, Kashenov,
5 Faraji, and Frolova their unpaid wages after receiving the notices, the forum computes
6 penalty wages at the maximum rate set out in ORS 652.150(1) as follows:
7

<u>WAGE CLAIMANT</u>	<u>HOURLY RATE</u>	<u>PENALTY WAGES DUE</u>
Sadykov	\$83.09	\$19,941.60
Kashenov	\$67.95	\$16,308.00
Faraji	\$38.66	\$9,278.40
Frolova	\$22.00	\$5,280.00

10 *Penalty Wages Due Hernandez and Cazapa Barrera*
11

12 The Agency proved through the credible testimony of Hernandez that he and
13 Cazapa Barrera were to be paid an hourly rate of \$16 for what turned out to be 48 hours
14 of work. As noted above, Respondent was aware of the wage claims of Hernandez and
15 Cazapa Barrer as early as April 2023 and failed to pay them the wages owed to them
16 for work performed for the benefit of Stay Hai. The forum therefore concludes that
17 Hernandez and Cazapa Barrera are each due penalty wages in the amount of \$3,840
18 (\$16 x 8 hours x 30 days) pursuant to ORS 652.150.
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORDER

NOW, THEREFORE, as authorized by ORS 652.332, the Commissioner of the Bureau of Labor and Industries hereby orders Respondent **Stay Hai, LLC** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 1800 SW 1st Avenue, Suite 500, Portland, Oregon 97209, the following:

1) A certified check payable to the Bureau of Labor and Industries in trust for Claimant Farkhat Sadykov in the amount of **TWENTY-FIVE THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS AND TEN CENTS** (\$25,924.10), less appropriate lawful deductions, representing \$5,982.50 in gross earned, unpaid, due and payable wages and \$19,941.60 in ORS 652.150 penalty wages, plus interest at the legal rate on the sum of \$5,982.50 from October 1, 2020, until paid, and interest at the legal rate on the sum of \$19,941.60 from November 1, 2020, until paid.

2) A certified check payable to the Bureau of Labor and Industries in trust for Claimant Olsas Kashenov in the amount of **TWENTY-FIVE THOUSAND FIFTEEN DOLLARS AND FIFTY CENTS** (\$25,015.50), less appropriate lawful deductions, representing \$5,707.50 in gross earned, unpaid, due and payable wages and \$19,308.00 in ORS 652.150 penalty wages, plus interest at the legal rate on the sum of \$5,982.50 from October 1, 2020, until paid, and interest at the legal rate on the sum of \$16,308, from November 1, 2020, until paid.

3) A certified check payable to the Bureau of Labor and Industries in trust for Claimant Afa Faraji in the amount of **THIRTEEN THOUSAND FOUR HUNDRED FIFTY THREE DOLLARS AND NINETY CENTS** (\$13,453.90), less appropriate lawful deductions, representing \$4,175.50 in gross earned, unpaid, due and payable wages and \$9,278.40 in ORS 652.150 penalty wages, plus interest at the legal rate on the sum of \$4,175.50 from October 1, 2020, until paid, and interest at the legal rate on the sum of \$9,278.40 from November 1, 2020, until paid.

4) A certified check payable to the Bureau of Labor and Industries in trust for Claimant Victoria Frolova in the amount of **SIX THOUSAND SIX HUNDRED DOLLARS** (\$6,600.00), less appropriate lawful deductions, representing \$1,320.00 in gross earned, unpaid, due and payable wages and \$5,280.00 in ORS 652.150 penalty wages, plus interest at the legal rate on the sum of \$1,320.00 from October 1, 2020, until paid, and interest at the legal rate on the sum of \$5,280 from November 1, 2020, until paid.

1
2 5) A certified check payable to the Bureau of Labor and Industries in trust for
3 Claimant Jhony Bruno Hernandez in the amount of **FOUR THOUSAND SIX**
4 **HUNDRED EIGHT DOLLARS** (\$4,608.00), less appropriate lawful deductions,
5 representing \$768 in gross earned, unpaid, due and payable wages and
6 \$3,840.00 in ORS 652.150 penalty wages, plus interest at the legal rate on the
7 sum of \$768.00 from July 1, 2021, until paid, and interest at the legal rate on the
8 sum of \$3,840.00, from August 1, 2021, until paid.

9
10 6) A certified check payable to the Bureau of Labor and Industries in trust for
11 Claimant Fernando Cazapa Barrera in the amount of **FOUR THOUSAND SIX**
12 **HUNDRED EIGHT DOLLARS** (\$4,608.00), less appropriate lawful deductions,
13 representing \$768.00 in gross earned, unpaid, due and payable wages and
14 \$3,840 in ORS 652.150 penalty wages, plus interest at the legal rate on the sum
15 of \$768 from July 1, 2021, until paid, and interest at the legal rate on the sum of
16 \$3,840, from August 1, 2021, until paid.

17
18
19
20
21
22
23
24
25


Caroline Holien, Administrative Law Judge
Bureau of Labor and Industries

Issued ON: January 28, 2026