

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES  
STATE OF WASHINGTON

In re: FAMILY PRESERVATION  
SERVICE OF WASHINGTON, INC., and  
ROBERT KELLER,

Appellant.

Citation and Notice of Assessment  
No. 59563

OAH Docket No. 07-2020-LI-01470

NO. 2022-008-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order, the petition for review filed by the Department of Labor and Industries (Department) with the Director's Office, the briefing submitted to the Director's office by the parties, and the record developed at the Office of Administrative Hearings, issues this Director's Order.

The parties are the Department, Family Preservation Service of Washington, Inc. (Family Preservation Service), Robert Keller, and Rachel Martinell.

**Family Preservation Service and Robert Keller (Appellants) are ordered to pay wages to Rachel Martinell in the amount of \$1,405.70. The Appellants are also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages.**

DIRECTOR'S ORDER

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OFFICE OF THE DIRECTOR  
DEPARTMENT OF LABOR & INDUSTRIES  
P.O. BOX 44001  
OLYMPIA, WA 98504-4001

The Director makes these Findings of Fact, Conclusions of Law, and Final Decision and Order.

## I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on July 26, 2021. The Initial Order affirmed the Department's Citation and Notice of Assessment No. 59563 as modified. It found that Family Preservation Service violated RCW 49.46.020 and RCW 49.46.130 by failing to pay minimum wage and overtime wages to Rachel Martinell totaling \$1,405.70 during the period of September 4, 2017, through June 11, 2018. But the Initial Order found that Robert Keller was not personally liable for payment of the unpaid wages and that the \$1,000 civil penalty under RCW 49.48.083(3) was inappropriate.
2. On August 25, 2021, the Department timely filed a petition for review with the Director. Family Preservation Service and Robert Keller did not file a petition for review.
3. The only issues before the Director are whether Robert Keller is liable for the unpaid wages under RCW 49.48.083(2) and whether a civil penalty under RCW 49.48.083(3) is appropriate. The issue of whether Rachel Martinell was an independent contractor or an employee was not raised in a timely petition for review and is not before the Director.
4. The Director adopts and incorporates the Initial Order's "Issues" section and the "Hearing" summary.
5. On April 3, 2020, the Department issued Citation and Notice of Assessment No. 59563 to Family Preservation Service and Robert Keller individually for failing to pay Rachel Martinell wages due in the amount of \$1,405.70. The Department assessed interest in the amount of \$364.79 and issued a civil penalty of \$1,000.00.
6. On or about April 22, 2020, Family Preservation Service and Robert Keller timely appealed the Citation and Notice of Assessment.
7. The Director adopts and incorporates the Initial Order's findings of facts 4.3 through 4.33.

## II. CONCLUSIONS OF LAW

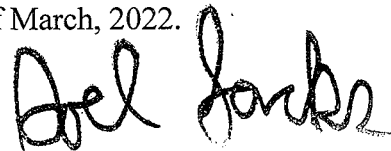
1. The Director adopts and incorporates the Initial Order's conclusions of law 5.1 through 5.16, 5.18 through 5.20, and 5.22 through 5.32.

2. Robert Keller meets the definition of an “employer” under RCW 49.48.082(6) and RCW 49.46.010(4). The requirements for establishing liability under RCW 49.52.050 and RCW 49.52.070 do not apply here, and a violation of a wage payment requirement in the Minimum Wage Act, RCW 49.46, need not be willful in order for a corporate officer to be liable for the payment of unpaid wages under RCW 49.48.083(2). As an employer, Robert Keller is personally liable for payment of minimum wage and overtime wages to Rachel Martinell totaling \$1,405.70 during the period of September 4, 2017, through June 11, 2018.
3. There was a bona fide dispute regarding whether Rachel Martinell was an independent contractor or an employee. A civil penalty is therefore inappropriate.

### III. DECISION AND ORDER

1. Consistent with the above Findings of Fact and Conclusions of Law, the Initial Order dated July 6, 2021, is MODIFIED. Citation and Notice of Assessment No. 59563 is MODIFIED.
2. Family Preservation Service and Robert Keller violated RCW 49.46.020 and RCW 49.46.130 by failing to pay minimum wage and overtime wages to Rachel Martinell totaling \$1,405.70 during the period of September 4, 2017, through June 11, 2018.
3. Family Preservation Service and Robert Keller are liable for payment of 1% monthly interest on these unpaid wages, pursuant to RCW 49.48.083(2).
4. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of failing to pay wages and interest. Family Preservation Service and Robert Keller are ordered to pay wages to Rachel Martinell in the amount of \$1,405.70. The Appellants are also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages. The Appellants are ordered to make these payments within thirty days of service of this Director’s Order.
5. Family Preservation Service and Robert Keller did not willfully violate wage payment requirements. Therefore, a penalty under RCW 49.48.083(3) is not appropriate.

DATED at Tumwater, Washington this 15 day of March, 2022.



JOEL SACKS  
Director

DIRECTOR’S ORDER

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## SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

## APPEAL RIGHTS

**Reconsideration.** Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by emailing to [DirectorAppeal@LNI.WA.GOV](mailto:DirectorAppeal@LNI.WA.GOV), or by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

**NOTE: A petition for reconsideration is not required before seeking judicial review.** If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

**Judicial Review.** Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

## DECLARATION OF MAILING

I, Lisa Deck, declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 15 day of March 2022 to the following via e-mail and U.S. Mail, postage prepaid, to:

Robert C. Keller  
Family Preservation Service of Washington  
4570 Avery Lane SE, Suite C102  
Lacey, WA 98503  
[rckeller@fpsofwa.com](mailto:rckeller@fpsofwa.com)  
[rckeller500@comcast.net](mailto:rckeller500@comcast.net)

Christina Dallen, AAG  
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Rachel Martinell  
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Bothell, WA 98012  
[rachelpauline29@outlook.com](mailto:rachelpauline29@outlook.com)

DATED this 15 day of March, 2022, at Tumwater, Washington.

  
LISA DECK