

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: Ming He and Asian Buffet,

Citation and Notice of Assessment No.
W-291-16

OAH Docket No. 06-2016-LI-00159

NO. 2017-014-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 served on December 22, 2016, having considered the petition for review filed by Ming He and Asian Buffet (the Appellant), briefing submitted to the Director's Office, and having reviewed the record created at hearing and the records and files herein, issues this Director's Order. This Order intends to resolve the contested issue of whether the Appellant paid all wages due to Alexia Tapia-Sanchez in violation of the wage payment and minimum wage laws. **The Appellant is ordered to pay wages to Alexia Tapia-Sanchez in the amount of \$11,736.89. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages except for the time period of December 22, 2016, to the date this order is served. The Appellant is ordered to pay the Department a penalty in the amount of \$1,173.69.**

The parties in this matter are the Department of Labor & Industries (Department) and the Appellant.

The Director makes the following 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 December 22, 2016, following a hearing that was held on November 1, 2016 and November 28, 2016. The Initial Order affirmed the Department's Citation and Notice of Assessment No. W-291-16.

2. On January 10, 2017, the Appellant timely filed a petition for review with the Director. The Appellant filed additional briefing on May 25, 2017.

3. On April 26, 2017, the Department filed a response brief.

4. The Director adopts and incorporates all the Initial Order's findings of facts.

5. The Director adopts and incorporates the Initial Order's "Issues Presented," the "Order Summary," and the "Hearing" summary.

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.

2. The Director adopts and incorporates all the Initial Order's conclusions of law.

3. The Appellant's request for a new hearing is not warranted. The record in this case, including the prehearing order and the hearing transcript, establishes that the Appellant was afforded a full and fair opportunity to identify and present its evidence in this case. The request for a new hearing is denied.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment No. W-291-16, as affirmed by the Initial Order of December 22, 2016, is incorporated by reference herein.

1. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of the failure to pay wages and interest. The Appellant is ordered to pay wages to Alexia Tapia-Sanchez in the amount of \$11,736.89. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages except for the time period of December 22, 2016, to the date this order is served. The Appellant is ordered to make these payments within thirty days of the date of service of this final Director's Order.

2. Payment of Civil Penalty: The Appellant is ordered to pay the Department a penalty in the amount of \$1,173.69. See Citation and Notice of Assessment for payment information.

order issued on date served.

DATED at Tumwater this _____ day of August, 2017.



JOEL SACKS
Director

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 mailing, or by emailing to DirectorAppeal@LNI.WA.GOV, 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

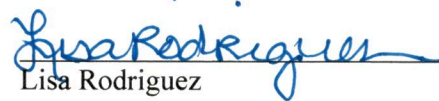
I, Lisa Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 7 day of August 2017, via U.S. Mail, postage prepaid to the following:

Ming He
Asian Buffet
11151 Clearspring Way
Indianapolis, IN 46239

Katy Dixon
Assistant Attorney General
Office of the Attorney General
800 Fifth Ave Ste. 2000
Seattle, WA 98104

Alexia Tapia-Sanchez
126 N Street SE
Quincy, WA 98848

DATED this 7 day of August, 2017, at Tumwater, Washington.



Lisa Rodriguez

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 06-2016-LI-00159

Ming He and Asian Buffet,

Appellants.

INITIAL ORDER

Agency: Labor and Industries
Program: Wage Payments
Agency No. W-291-16

For translation of this document, please call OAH, 253-476-6888. Para la traducción de este documento, por favor llame a la OAH, 253-476-6888.

1. ISSUES PRESENTED

- 1.1 Whether the Department of Labor and Industries' February 19, 2016, Citation and Notice of Assessment concluding that Ming He and Asian Buffet failed to pay wage claimant Alexia Tapia-Sanchez wages for 643.5 regular hours worked at a rate of minimum wage and 423 overtime hours worked at a rate of 1.5 times minimum wage, from December 18, 2012 through April 14, 2013, for a total of \$11,736.89 in wages, plus interest, in violation of RCW 49.46.020, should be affirmed or reversed.
- 1.2 Whether Ming He and Asian Buffett are liable for a penalty of \$1,173.69 as per RCW 49.48.083.

2. ORDER SUMMARY

- 2.1 The Department of Labor and Industries' February 19, 2016, Citation and Notice of Assessment concluding that Ming He and Asian Buffet failed to pay wage claimant Alexia Tapia-Sanchez wages for 643.5 regular hours worked at a rate of minimum wage and 423 overtime hours worked at a rate of 1.5 times minimum wage, from December 18, 2012 through April 14, 2013, for a total of \$11,736.89 in wages, plus interest, in violation of RCW 49.46.020, is **AFFIRMED**.
- 2.2 Ming He and Asian Buffett are liable for a penalty of \$1,173.69 as per RCW 49.48.083.

3. HEARING

Hearing Date	November 1, 2016; November 28, 2016
Administrative Law Judge	Courtney E. Beebe
Appellant	Ming He and Asian Buffett
Appellant's Witnesses	Ming He; Spouse Ms. Ming He
Appellant's Exhibits	None

Agency	Department of Labor and Industries
Agency Representative	Katy Dixon, Assistant Attorney General
Agency Witnesses	Alezia Tapia Sanchez, Wage Claimant; Yesenia Sebedra, Industrial Relations Agent; Claudia Sanchez; Hermilo Cruz; Laura Camancho
Agency Exhibits	Department's Exhibits 1 through 16 were admitted
Interpreters	Barbara Robinson, Mandarin Interpreter; CTS LanguageLink for Spanish Interpretation

4. FINDINGS OF FACT

Based on the evidence presented, the Administrative Law Judge makes the following findings of fact:

Investigation of Licensee

- 4.1 Ming He and his spouse Ms. Ming He owned and operated the Asian Buffett restaurant ("Appellants") in Quincey, WA between December 18, 2012 and April 14, 2013. Ming He and his spouse sold the Asian Buffett to Guangce Zhang and Xiyi Zhang on August 20, 2014.
- 4.2 During 2012, the minimum wage in Washington State was \$9.04 per hour. During 2012, the overtime rate of pay for a minimum wage worker was \$13.56 per hour. During the year 2013, minimum wage in the state of Washington was \$9.19 per hour. During 2013, the overtime rate of pay for a minimum wage worker was \$13.79 per hour.
- 4.3 Alexia Tapia-Sanchez ("Wage Claimant") was seeking employment and responded to a posting for help at the Appellant's business. The Wage Claimant speaks fluent English and Spanish. The Appellant hired the Wage Claimant to bus tables, set tables, seat guests, clean, and perform other duties, because the Wage Claimant was bi-lingual. The Wage Claimant began working at the Appellant's business on December 18, 2012.
- 4.4 The Appellant and the Wage Claimant did not agree on the Wage Claimant's hourly rate, but did agree that the Wage Claimant could keep all of her tips. The Appellant also expected that the Wage Claimant would assist the Appellants' in learning the English language in addition to her other duties.
- 4.5 The Wage Claimant kept track of the hours she worked and the work performed for the Appellant in her day planner. (Department's Exhibit 9.) Between

December 18, 2012 and April 14, 2013, the Wage Claimant worked 643.5 regular hours and 423 overtime hours at Appellant's business. The Wage Claimant worked whenever hours were offered to her and she was available to work.

- 4.6 The Appellant did not pay the Wage Claimant any wages for the hours she worked between December 18, 2012 and April 14, 2013. The Appellant did not keep any records of the Wage Claimant's employment or the hours she worked. The Appellant admitted on the record that the Appellant did not pay employees except kitchen workers but allowed employees to keep any tips earned.
- 4.7 The Wage Claimant continued to work for the Appellant because she needed income to assist with raising her child while she attended school. The Wage Claimant quit working for the Appellant because she was offered another job with a set pay rate and schedule.
- 4.7 The Wage Claimant filed a Worker's Rights Complaint on September 24, 2015, after she received information that other workers employed by the Appellant had made similar claims for unpaid wages.

Jurisdiction

- 4.8 The Department of Labor and Industries ("Department") issued the Appellant a Citation and Notice of Assessment on February 19, 2016, concluding that the Appellant owed the Wage Claimant wages in the amount of \$11,736.69.
- 4.9 The Appellant requested a hearing on March 16, 2016.
- 4.10 The matter was referred to the Office of Administrative Hearings on June 6, 2016.

Credibility Finding

- 4.11 The testimony of the parties and the documentation presented conflicted on material points, particularly the job duties actually performed by the Wage Claimant and whether the Wage Claimant was an employee. Based upon the evidence presented, and having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony and the totality of the circumstances presented, the Administrative Law Judge finds that the Wage Claimant's testimony regarding the hours worked and her status as an employee is more credible and corroborated by documentary evidence and the testimony of other witnesses who saw her working at the business, than the testimony of Ming He and his spouse Ms. Ming He.
- 4.12 The determination is made primarily because Ming He and Ms. Ming He failed to produce any witness testimony or other documentation to support their claims

despite multiple opportunities to present witnesses, and because they both inconsistently testified that the Wage Claimant did work for the business and did not work for the business, and alternatively, that they did not know the names of their employees.

5. CONCLUSIONS OF LAW

Based on the facts above, the Administrative Law Judge makes the following conclusions of law:

Jurisdiction

- 5.1 The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under RCW 34.05, RCW 49.46, RCW 49.48, and RCW 49.52.

Burden of Proof

- 5.2 Under the WPA, the wage claimant has the initial burden of showing *prima facie* evidence of a wage payment law violation. See, *Anderson v. Mt. Clemens Pottery Co.*, 328 US. 680, 687-688, S.Ct. 1187, 90 L.Ed. 1515 (1946) (federal minimum wage law under Fair Labor & Standards Act); *MacSuga v. County of Spokane*, 97 Wn.App. 435, 445-446, 983 P.2d 1167 (1999). The *prima facie* showing must be supported by a preponderance of the evidence.
- 5.3 A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighed against the evidence in opposition thereto. *Yamamoto v. Puget Sound Lbr. Co.*, 84 Wash. 411, 146 Pac. 861 (1915).
- 5.4 Substantial evidence must be presented and must be "sufficient to persuade a fair-minded person of the truth or correctness of the matter." *Ongom v. Dept. of Health*, 124 Wn App. 935, 948-49, 104 P.3d 29 (2005), *reviewed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005).

Applicable Law

- 5.5 Wage Payment Act, RCW 49.48 (WPA) authorizes administrative enforcement of wage payment requirements. Upon receipt of a wage complaint that alleges a violation of a wage payment requirement, the Department "shall investigate" and, unless otherwise resolved, "shall" issue either a citation (when finding a wage law violation) or a determination of compliance (when finding no violation) within sixty days. RCW 49.48.083. The Department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period. (Id.)

- 5.6 Wage payment requirements are those “set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.” RCW 49.48.082(10). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. RCW 49.48.082(12).
- 5.7 RCW 49.46.020 requires that every employer shall pay to each of his or her employees a rate of minimum wage for hours worked. See also WAC 296-126.
- 5.8 RCW 49.46.010(7) defines “wage” as:
- [C]ompensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules by director.
- RCW 49.46.010(7).
- 5.9 An employer is required to pay overtime when an employee works over 40 hours in a work week. RCW 49.46.130(1). The overtime rate is not less than one and a half times the regular rate at which the worker is employed. *Id.*
- 5.10 Hours worked means all hours which the worker is authorized or required by the business to be on the premises or at a prescribed work place. WAC 296-126-002(8). This could include travel time, training, and meeting time, wait time, on-call time, and time for putting on and taking off uniforms and also may include meal periods. RCW 49.48, 49.46 and 49.52.
- 5.11 The WMWA defines an “employee” as “any individual employed by an employer.” RCW 49.46.010. The term “employee” is further defined as “an employee who is employed in the business of his employer whether by way of manual labor or otherwise.” WAC 296-126-002.

Analysis

- 5.12. The first issue presented is whether the Wage Claimant was an employee of the Appellant’s business. The Department has asserted that the Wage Claimant meets the definition of employee in the WMWA, and the Appellant claims that the Wage Claimant was not an employee.
- 5.13 As found above, there is credible evidence presented by the Department that the Wage Claimant appeared at the Appellant’s business and performed manual labor including seating customers, setting tables, readying silverware, busing tables, serving drinks, and other tasks. Given the lack of any credible evidence to the contrary from the Appellant, it must be concluded that the Wage Claimant was an employee of the Appellant’s business.

- 5.13 The second issue presented is whether the Wage Claimant worked the hours she claimed to have worked. The Appellant presented no evidence of record keeping, schedules, or timesheets regarding the hours the Wage Claimant worked. On the other hand, the Wage Claimant presented her handwritten time records in her planner and credibly testified that she kept track of the hours she worked contemporaneously with performing the work. Thus, it must be concluded that the Department has offered sufficient evidence that between December 18, 2012 and April 14, 2013, the Wage Claimant worked 643.5 regular hours and 423 overtime hours at Appellant's business.
- 5.14 Lastly, the Wage Claimant's rate of pay is at issue. Given that the Appellant and the Wage Claimant did not agree as to the Wage Claimant's rate of pay and there is no other evidence by which the Wage Claimant's rate of pay can be determined, it must be concluded that the Wage Claimant's rate of pay was minimum wage.
- 5.15 Based on a minimum wage of \$9.04 per hour and the overtime rate of \$13.56 per hour during 2012 and a minimum wage of \$9.19 per hour and an overtime rate of pay \$13.79 per hour during 2013, it must be concluded that the Wage Claimant is entitled to \$11,736.69 in regular and overtime wages.
- 5.16 The evidence presented, when fairly considered, produces a stronger impression that the Wage Claimant was an employee of the Appellant's business and worked the hours she claimed to work at the pay rate of minimum wage. The Department's February 19, 2016 Citation and Notice of Assessment must be affirmed.

Interest

- 5.17 Unpaid wages may accrue interest at the rate of 1% of the unpaid wage amount until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083.
- 5.18 The Wage Claimant is entitled to interest at a rate of 1% from April 14, 2013. The Department's February 19, 2016 Citation and Notice of Assessment should be affirmed as to interest.

Penalty

- 5.19 The Department has the authority to issue a civil penalty to employers who unlawfully withhold an employee's wages. RCW 49.48.083(3)(a). The statute provides:

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also

may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

- 5.20 A willful violation is defined in RCW 49.48.082(13) as a "knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.53.050(2)." RCW 49.48.082(13).
- 5.21 In this case, there was is no bona fide dispute between the parties. The wage claimant worked and the Appellant simply did not pay her any wages for the work performed. It is concluded that while a violation was "willful." Therefore, the Department's assessment of a \$1,173.69 penalty in the February 19, 2016 Citation and Notice of Assessment, must be affirmed.

6. INITIAL ORDER

- 6.1 The Department of Labor and Industries' February 19, 2016, Citation and Notice of Assessment is AFFRIMED. Ming He and Asian Buffett must pay Alexia Tapia-Sanchez \$11,736.89 in wages. Ming He and Asian Buffett are liable to the Department of Labor and Industries for a penalty of \$1,173.69.

Order issued from Tacoma, Washington on the date of mailing.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Administrative Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Administrative Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Administrative Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Administrative Review, the Director *must actually receive* the Petition for Administrative Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Administrative Review to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.²

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under chapter 34.05 RCW.

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 06-2016-LI-00159

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Ming He Asian Buffet 11151 Clearspring Way Indianapolis, IN 46239 Appellant 91 7199 9991 7036 8588 6432</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Katy Dixon Assistant Attorney General 800 Fifth Avenue, Suite 2000 MS: TB-14 Seattle, WA 98104 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Alexia Tapia-Sanchez 126 N Street SE Quincy, WA 98842 Wage Claimant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Thursday, December 22, 2016

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Assistant

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

PO Box 44000 • Olympia Washington 98504-4000

2017年8月7日

Ming He
Asian Buffet
11151 Clearspring Way
Indianapolis, IN 46239

Katy Dixon
Assistant Attorney General
Office of the Attorney General
800 Fifth Ave Ste. 2000
Seattle, WA 98104

Alexia Tapia-Sanchez
126 N Street SE
Quincy, WA 98848

关于: **Ming He 和 Asian Buffet**
OAH编号06-2016-LI-00159 主任决议
编号2017-014-WPA

尊敬的当事人:

请查阅随附的主任决议, 其已于邮寄之日送达。同时随附一份初始决议的副本, 供您参阅。

谨上,



Joel Sacks
主任

抄送: Don Capp法官
Lisa Dublin法官
Barb Cleveland, Olympia OAH
Anastasia Sandstrom, AAG

华盛顿州劳工工业部主任

关于：Ming He和Asian Buffet

《欠薪传票和评估通知书》编号W-291-16

OAH诉讼事件表编号06-2016-LI-00159

编号2017-014-WPA

主任决议

RCW 49.48.084(4); RCW 34.05

劳工工业部主任Joel Sacks已对**2016年12月22日**送达的初始决议进行了审议，对Ming He和Asian Buffet（上诉人）提交的复议申请进行了审议（陈辩书已提交给主任办公室），并对听证会上所创建的记录以及此处所含的记录和文件进行了审议，特此发出此主任决议。此决议旨在解决上诉人违反了工资支付和最低工资法律并应向Alexia Tapia-Sanchez支付所有工资的争议问题。上诉人被裁决应向Alexia Tapia-Sanchez支付总额为\$11,736.89的工资。上诉人还被裁决应根据RCW 49.48.083(2) 规定，每个月支付金额为工资百分之一的利息，2016年12月22日至本决议送达之日的期间除外。上诉人还被裁决应向劳工部支付总额为\$1,173.69的罚金。

本事件中的双方为劳工工业部（劳工部）和上诉人。

III. 裁决与决议

与上述事实认定和法律裁定一致，由2016年12月22日的初始决议维持原判的《欠薪传票和评估通知书》（编号W-291-16）已纳入此处以供参考。

1. 支付工资。参见《欠薪传票和评估通知书》以查阅支付信息和未能支付工资和利息的影响。上诉人被裁决应向Alexia Tapia-Sanchez支付总额为\$11,736.89的工资。上诉人还被裁决应根据RCW 49.48.083(2) 规定，每个月支付金额为工资百分之一的利息，2016年12月22日至本决议送达之日的期间除外。上诉人还被裁定应在本最终主任决议送达之日起的三十天之内支付这些款项。

2. 支付罚金：上诉人还被裁决应向劳工部支付总额为\$1,173.69的罚金。参见《欠薪传票和评估通知书》以查阅支付信息。

塔姆沃特 (Tumwater), 2017年8月———日。
裁决于解决之日发出



JOEL SACKS
主任

送达

本裁决于交付给美国邮政之日即视为已送达您处。RCW 34.05.010(19)。

上诉权利

重新审议。任何一方皆可提交重新审议申请。RCW 34.05.470。任何重新审议申请皆必须在本裁决送达后的10天内提出，并且必须声明请求救济的具体理由。除非重新审议申请中清晰地体现 (a) 裁决中存在重大笔误，或 (b) 存在具体的重大事实或法律错误，否则任何事宜皆不会予以重新审议。重新审议申请以及为其提供支持的任何论据皆应通过邮寄的方式提交，或者也可以通过电子邮件发送至

DirectorAppeal@LNI.WA.GOV，或者直接递送至Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001，并向所有其他方及其代表提供一份副本。提交指的是主任办公室实际收到文件。 RCW 34.05.010(6)。

注：寻求司法审查并不要求必须先提交重新审议申请。但是，若提交了重新审议申请，将从申请得到解决之时起开始计算30天的期限。若在申请提交日期起的二十 (20) 天内，主任未能 (a) 处置申请，或 (b) 向各方送达一份指明其将对申请采取行动的截止日期的书面通知，则及时提交的重新审议申请将被视为遭到拒绝。RCW 34.05.470(3)。

司法审查。任何司法审查申请必须在本裁决送达后的30天内向适当的法院提出并送达。RCW 34.05.542。RCW 49.48.084(5) 规定，“未在本节和RCW第34.05章所规定的时间期限内针对裁决提起上诉，则裁决将具有终局效力和法律约束力，且不再接受进一步的上诉。”根据RCW第34.05章第五部分“司法审查与民事强制执行”中所指定的程序，司法审查程序可通过向高等法院提出申请的方式发起。

华盛顿州
行政听证办公室

案件:

Ming He和Asian Buffet,

上诉人

诉讼事件表编号06-2016-LI-00159

初始决议

机构: 劳工工业部

项目: 工资支付

机构编号: W-291-16

如需本文件的翻译, 请致电OAH, 电话是253-476-6888。Para la traducción de este documento, por favor llame a la OAH, 253-476-6888.

1. 控告问题

1.1 劳工工业部于2016年2月19日发出的裁定Ming He和Asian Buffet未向工资索赔人Alexia Tapia-Sanchez支付2012年12月18日至2013年4月14日期间643.5个正常工时的最低工资水平工资以及423个加班工时的最低工资水平1.5倍的工资(工资总计为\$11,736.89, 利息另计)且违反了RCW 49.46.020的《欠薪传票和评估通知书》是否应当维持原判或是予以推翻。

1.2 Ming He和Asian Buffet是否有责任依据RCW 49.48.083支付\$1,173.69的罚金。

2. 决议概要

2.1 劳工工业部于2016年2月19日发出的裁定Ming He和Asian Buffet未向工资索赔人Alexia Tapia-Sanchez支付2012年12月18日至2013年4月14日期间643.5个正常工时的最低工资水平工资以及423个加班工时的最低工资水平1.5倍的工资(工资总计为\$11,736.89, 利息另计)且违反了RCW 49.46.020的《欠薪传票和评估通知书》维持原判。

2.2 Ming He和Asian Buffet有责任依据RCW 49.48.083支付\$1,173.69的罚金。

3. 听证会

听证会日期	2016年11月1日; 2016年11月28日
行政法官	Courtney E. Beebe
上诉人	Ming He和Asian Buffet
上诉人之证人	Ming He; 配偶Ming He女士
上诉人之证据	无
机构	劳工工业部
机构代表人	Katy Dixon, 助理总检察长
机构证人	Alezia Tapia Sánchez, 工资索赔人;

- 4.6 上诉人并未就工资索赔人在2012年12月18日至2013年4月14日期间所工作的工时支付任何工资。上诉人并未就工资索赔人的就业或是她所工作的工时做任何记录。上诉人在记录中承认，上诉人并未向厨房工人以外的员工支付工资，但上诉人允许员工自行留下所赚得的小费。
- 4.7 工资索赔人继续为上诉人工作的原因是她需要在上学期间赚取收入以帮助抚养她的孩子。工资索赔人从上诉人的餐厅辞职的原因是她获得了另一份有固定的工资标准和日程安排的工作。
- 4.8 工资索赔人在获悉了上诉人所雇用的其他工人就未付工资提交了类似索赔之后，于2015年9月24日提交了一份工人权利投诉。

管辖权

- 4.8 劳工工业部(“劳工部”)于2016年2月19日向上诉人发出了一份《欠薪传票和评估通知书》，裁定上诉人拖欠工资索赔人金额为\$11,736.69的工资。
- 4.9 上诉人于2016年3月16日申请了听证会。
- 4.10 该问题于2016年6月6日提交至行政听证办公室。

可信度查证

- 4.1 各方的证词和所呈递的文件在重大要点上存在冲突，尤其是工资索赔人实际履行的工作职责以及工资索赔人当时是否是一名员工。基于所呈递的证据，并经过审慎考虑与衡量所有证据，包括各方的行为与动机、证词的合理性与呈现情况的完整性，行政法官判定，工资索赔人就其所工作的工时以及其作为员工的身份的证词更为可信且有书面证据以及曾看到她在餐厅工作的其他证人的证词予以证实，比Ming He及其配偶Ming He女士的证词更具可信度。
- 4.12 作出先前判定的原因在于Ming He与Ming He女士在多次呈现证人的机会下均未能出示任何证人证词或其他证明文件以支持其主张，而且其二人的证词不一致，其证实了工资索赔人的确曾在餐厅工作却又并未在餐厅工作过，或者他们并不知道其员工的姓名。

5.6 工资支付要求指的是“载于RCW 49.46.020、49.46.130、49.48.010、49.52.050或49.52.060之中的规定以及劳工部所采用的任何相关条例。” RCW 49.48.082(10)。这些工资支付要求包括但不限于对于支付最低工资、加班工资、协商一致的工资以及最后工资期的工资的要求。RCW 49.48.082(12)。

5.7 RCW 49.46.020要求每位雇主皆应按照最低工资标准且根据每位员工所工作的时间向员工支付工资。另请参阅WAC 296-126。

5.8 RCW 49.46.010(7) 将“工资”定义为：

由于就业的原因应向员工支付的报酬，该等报酬应以美国的法定货币或是可按照全额面值即期转换为现金的银行支票进行支付，但受限于主任条例所可能允许的该等扣减、收费或折让。

RCW 49.46.010(7)。

5.9 若员工在一个工作周内工作超过40小时，则雇主必须向员工支付加班费。RCW 49.46.130(1)。加班费的标准不得低于工人雇佣时所确定的正常工资标准的一点五倍。同上。

5.10 所工作的时数指的是雇主授权或要求工人位于经营场所或指定的工作地点的所有时数。WAC 296-126-002(8)。这可能包括通勤时间、培训和会议时间、等候时间、待命时间、穿上和脱下制服的时间，甚至还可能包括用餐时间。RCW 49.48、49.46及49.52。

5.11 WMWA将“员工”定义为“雇主所雇用的任何个人”。RCW 49.46.010。“员工”一词进一步定义为“其雇主在其经营场所内雇用的负责开展体力劳动或是其他形式劳动的员工”。WAC 296-126-002。

分析

5.12. 所呈递的第一个问题在于工资索赔人是否为上诉人餐厅的一名员工。劳工部声称，工资索赔人符合WMWA中关于员工的定义，而上诉人声称工资索赔人当时并非一名员工。

5.13 根据上述发现，劳工部呈递了可信的证据，证明工资索赔人曾出现在上诉人的餐厅并履行了包括引导客人就做、布置餐桌、准备餐具、收拾餐桌、上饮料以及其他任务在内的体力劳动。鉴于上诉人没有任何相反的可信证据，故必须裁定工资索赔人曾为上诉人餐厅的一名员工。

(a) 对于工资支付要求的故意违反行为的民事罚款应当不低于一千美元或是等同于未付工资总额百分之十的金额，以较高者为准。对于工资支付要求的故意违反行为的民事罚款最高应为两万美元。

5.20 故意违反在RCW 49.48.082(13) 中定义为“根据RCW 49.53.050(2) 项下适用于工资支付违规行为的标准所作出的评估，属于知情且蓄意的行为，既非意外也非善意争议的结果。” RCW 49.48.082(13)。

5.21 在本案件中，双方之间不存在善意争议。工资索赔人履行了工作，但上诉人根本并未就她所履行的工作向她支付任何工资。因此判定该违规行为属于“故意”性质。因此，劳工部在2016年2月19日发出的《欠薪传票和评估通知书》中估定的\$1,173.69罚金须维持原判。

6. 初始决议

6.1 劳工工业部于2016年2月19日发出的《欠薪传票和评估通知书》维持原判。Ming He和Asian Buffet必须向Alexia Tapia-Sanchez支付金额为\$11,736.89的工资。Ming He和Asian Buffet有责任向劳工工业部支付金额为\$1,173.69的罚金。

判决于邮寄日期从华盛顿州塔科马发出。



Courtney Beebe
行政法官
行政听证办公室

OAH送达回证，诉讼事件表编号06-2016-LI-00159

本人特此证明，本文件的真实副本已根据指示通过合并邮件服务 (Consolidated Mail Services) 从华盛顿州塔科马 (Tacoma) 送达至以下人士之处：

Ming He Asian Buffet 11151 Clearspring Way Indianapolis, IN 46239 上诉人 91 7199 9991 7036 8588 6432	<input checked="" type="checkbox"/> 第一类邮件 <input checked="" type="checkbox"/> 挂号信，回执 <input type="checkbox"/> 邮递员亲手送达 <input type="checkbox"/> 校园邮件 <input type="checkbox"/> 传真 <input type="checkbox"/> 电子邮件
Katy Dixon Assistant Attorney General 800 Fifth Avenue, Suite 2000 MS:TB-14 Seattle, WA98104 机构代表人	<input type="checkbox"/> 第一类邮件 <input type="checkbox"/> 挂号信，回执 <input type="checkbox"/> 邮递员亲手送达 <input checked="" type="checkbox"/> 校园邮件 <input type="checkbox"/> 传真 <input type="checkbox"/> 电子邮件
Alexia Tapia-Sanchez 126 N Street SE Quincy, WA 98842 工资索赔人	<input checked="" type="checkbox"/> 第一类邮件 <input type="checkbox"/> 挂号信，回执 <input type="checkbox"/> 邮递员亲手送达 <input type="checkbox"/> 校园邮件 <input type="checkbox"/> 传真 <input type="checkbox"/> 电子邮件

日期：2016年12月22日星期四
 行政听证办公室



Melanie Barnhill
 法律助理