

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: DIAMOND FREIGHT SYSTEMS,
INC., DFS FREIGHT, INC. AND TONY
MOUNTAINES, RAJIV SAUSON, AND
PARMINDER THIND, as individuals,

Appellants.

Citation and Notice of Assessment No.
W-578-17 and W-579-17

OAH Docket No. 07-2017-LI-00516
OAH Docket No. 07-2017-LI-00517

No. 2018-015-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 January 22, 2018, having considered the petitions for administrative review filed by the Department of Labor & Industries and by Diamond Freight Systems, Inc. and DFS Freight, Inc., briefing submitted to the Director's Office, and having reviewed the record created at hearing, issues this Director's Order. Diamond Freight Systems, Inc., DFS Freight, Inc. and Tony Mountaintes, Rajiv Sauson, and Parminder Thind, are collectively referred to as the "Appellants." Mark Johnsrud is the Wage Claimant.

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

I. FINDINGS OF FACT

1. The Wage Claimant filed a Worker's Rights Complaint Form with the Department on February 26, 2016.
2. The Department issued the Appellants Citations and Notices of Assessment on June 9, 2017. The Department assessed the Appellant DFS Freight \$31,204.30 in wages and assessed a \$3,120.43 penalty. The Department assessed the Appellant Diamond Freight \$14,383.97 and a \$2,935.38 penalty.
3. The Appellants filed a timely appeal on July 5, 2017.
4. The Office of Administrative Hearings issued an Initial Order on January 22, 2018.
5. The Department appealed on February 20, 2018. The Appellants appealed on January 30, 2018.
6. The Appellants owned and operated DFS Freight, Inc. and Diamond Freight, Inc. during the period at issue.
7. The Wage Claimant worked for DFS Freight, Inc. from March 23, 2011, through July 5, 2015. The Wage Claimant worked for Diamond Freight, Inc. from July 6, 2015, to December 31, 2015. The Wage Claimant's job offer referred to his position as a "Freight handler + Delivery + Receiving," but he was often referred to by others in the organization as a "Warehouse Manager." The Wage Claimant did not supervise any other employees, but instead worked alone in a warehouse located near SeaTac, Washington.
8. The Wage Claimant's duties included obtaining daily direction from dispatch regarding where he was to pick up freight and where he was to drop off freight, including times

of arrival and times of departure. The Wage Claimant did not work in an office and performed manual labor.

9. The Wage Claimant's daily schedule depended on when he was to obtain freight from a certain location and when he was to deliver freight at other locations. The Wage Claimant was to perform all daily work within an eight (8) hour period. The Wage Claimant worked five days per week, Monday through Friday.

10. The Wage Claimant was paid \$650.00 per week as a salary from February 26, 2013 through January 11, 2015, for an hourly rate of \$16.25. The Wage Claimant was paid \$675.00 per week from January 12, 2015, through December 31, 2015, for a rate of \$16.87 per hour. The Wage Claimant claimed eight (8) hours per day each workday on his time card. When the Wage Claimant worked less than 40 hours per week the Wage Claimant included the actual time worked on his time card and the Appellants reduced the Wage Claimant's pay by the hours not worked. When the Wage Claimant worked overtime, the Wage Claimant did not include the overtime hours worked on his time card but instead only claimed eight (8) hours for the workday.

11. The Wage Claimant only claimed overtime hours for the weeks ending August 18, 2013 (8 hours), August 24, 2013 (8 hours), and September 8, 2013 (8 hours). The Appellants paid the Wage Claimant his regular rate of pay of \$16.25 for the overtime hours. The Appellants did not pay the Wage Claimant one and one-half times his regular rate of pay.

12. The Wage Claimant kept contemporaneous records of his daily activities, including the times he began work and ended work each day.

13. It is undisputed that the Appellants paid the Wage Claimant for all hours claimed on the time sheets the Wage Claimant submitted.

14. During the period of July 7, 2015, through December 27, 2015, the Wage Claimant worked 1,000 regular hours for Diamond Freight, Inc. at an agreed rate of \$16.87 per hour and 552.5 overtime hours at an overtime rate of pay of \$25.31. The Wage Claimant received \$16,469.84. The Wage Claimant was not paid \$14,383.97 in agreed and overtime wages.

15. During the period of February 26, 2013, through July 5, 2015, the Wage Claimant worked 4,797.25 regular hours for DFS Freight, Inc. at \$16.25 and \$16.87 per hour and 1,281.25 overtime hours. The Wage Claimant received \$79,113.64 in agreed and overtime wages. The Wage Claimant was not paid \$31,204.32 in agreed and overtime wages. The Wage Claimant is the most credible witness regarding hours worked.

16. Rajiv Sauson served as Vice President of DFS Freight, Inc. and he also served as Vice President, Treasurer, and Director of Diamond Freight, Inc. Mr. Sauson had ownership interest in DFS Freight, Inc. and Diamond Freight, Inc. and made financial decisions for both companies. Although Tony Mountaintes had responsibility for daily operations, Mr. Sauson and his partner Parminder Thind worked with him on hiring and firing of employees, setting an employee's salary, approving time cards, and management of drivers. Mr. Sauson and Mr. Thind approved raising the Wage Claimant's salary to \$650, and then to \$675 per week.

17. Parminder Thind served as President, Vice President, Secretary, Treasurer, Chairman of the Board, and Director of DFS Freight, Inc. For Diamond Freight, Inc., Mr. Thind served as President, Secretary, and Chairman of the Board. Mr. Thind had ownership interest in DFS Freight, Inc. and Diamond Freight, Inc. and made financial decisions for both companies. Although Tony Mountaintes had responsibility for daily operations, Mr. Thind and his business partner Rajiv Sauson worked with him on hiring and firing of employees, setting an employee's

salary, approving time cards, and management of drivers.. Mr. Sauson and Mr. Thind approved raising the Wage Claimant's salary to \$650, and then to \$675 per week.

18. Tony Mountaintes managed daily operations as operations manager for DFS Freight, Inc. and Diamond Freight, Inc. The Secretary of State listed Anthony Mountaintes as a registered agent for DFS Freight, Inc. Mr. Mountaintes worked jointly with Mr. Sauson and Mr. Thind to make decisions on hiring and firing employees, setting employee compensation, approving timecards and other management of drivers. This included advocating for raises for the Wage Claimant from his initial salary of \$600 per week, to \$650, and then to \$675 per week. Mr. Mountaintes handled employment termination decisions himself if he could not reach Mr. Sauson or Mr. Thind. Mr. Mountaintes also represented DFS Freight, Inc., Diamond Freight, Inc. and Northwest Freight and Parcel LLC during the Department's investigation of the Wage Claimant's complaint and throughout the appeals process, appearing on behalf of the Appellants and as a party at the hearing.

19. DFS Freight, Inc., Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes did not explain how the Wage Claimant's job duties fell under the professional, administrative, or executive exemptions to overtime pay in WAC 296-128-510 through -530. Rajiv Sauson testified that the Wage Claimant was a salaried worker because of his "job description" and the fact he accepted the job and continued to work for the company for "five years with no complaints." Appellants' witness testified the Wage Claimant was a "supervisor", but did not provide any evidence that he supervised any other employees other than coordinating loading of freight and deliveries with other drivers.

20. DFS Freight, Inc., Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes did not make a genuine effort to keep a proper and accurate record of hours

worked and to compensate the Wage Claimant at the overtime rate of pay for overtime hours worked, even when the Wage Claimant advised them of overtime hours worked on his timecards from July to October 2015 when he worked for Diamond Freight, Inc. The Appellants knew of overtime hours worked by the Wage Claimant from bills of lading, the dispatcher Nancy Orris, and the daily logs. Instead of ensuring that the Wage Claimant accurately reported his hours worked, Appellants threw out a number of the Wage Claimant's personal records when they cleaned the warehouse. The Appellants willfully and intentionally failed to pay the Wage Claimant his wages because they knew he was working overtime hours and they did not pay him for those hours. There is no bona fide dispute.

21. The Director did not consider the record in *In re Northwest Freight and Parcel, Inc.* No. 2018-014-WPA in rendering this decision, and the record is not made part of this record, except insofar as exhibits from that matter were entered into evidence.

II. CONCLUSIONS OF LAW

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

2. Under the WPA, the Department 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, 687-88, 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, 445-46, 983 P.2d 1167 (1999). The *prima facie* showing must be supported by a preponderance of the evidence.

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).

4. “If the employer fails to keep records, the burden is on the employer to prove the claimed hours were not worked.” *MacSuga v. Cty. of Spokane*, 97 Wn. App. 435, 445, 983 P.2d 1167 (1999). If the employee shows by “reasonable inference” the number of hours worked, then the burden shifts to the employer. *Id.* at 445.

5. The Fair Labor Standards Act of 1938 (“FLSA”) deals with overtime and minimum wage requirements for employees. The Washington Minimum Wage Act (“WMWA”), RCW 49.46 and the Wage Payment Act, RCW 49.48 (“WPA”) are based on the FLSA. The Wage Claimant seeks unpaid wages under the WMWA and WPA.

6. 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 by setting forth good cause for an extension of the time period. *Id.*

7. 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).

8. RCW 49.52.050(2) provides that it is unlawful to willfully withhold an agreed wage, which includes any wage an “employer is obligated to pay such employee by any statute,

ordinance, or contract.” The provisions of RCW 49.52.050(2) include oral or written agreements for hourly wages in excess of the minimum wage.

9. An employer is required to pay overtime when an employee works over 40 hours in a workweek. 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.* An employer is not required to pay overtime to “any person exempted pursuant to RCW 49.46.010(3).” RCW 49.46.010(2)(a). “Payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(3)(c).” *Id.* Individuals “employed in a bona fide executive, administrative, or professional capacity” are exempt from the overtime payment requirement. RCW 49.46.010(3)(c) and WAC 296-128-510, 520, and 530.

10. When an employee ceases to work for an employer, “the wages due him or her on account of his or her employment shall be paid to him or her at the end of the established pay period.” RCW 49.48.010.

11. The evidence presented by the Department shows that the Wage Claimant’s position does not meet the criteria for any of the exemptions to overtime wages set forth in RCW 49.46.010(3)(c) and WAC 296-128-510, 520, and 530. The Wage Claimant is not an executive and does not have an ownership interest in the Appellants’ company, the Wage Claimant’s work is not professional, and as found above, the Wage Claimant performed manual labor, did not manage any other employees, and worked out of an office. Additionally, the Wage Claimant’s daily work did not rely on the exercise of discretion or independent judgment, but instead was entirely directed by the Appellants’ dispatch employees.

12. The Department has shown by a preponderance of the evidence that the Wage Claimant’s position is not exempt from the requirement that overtime wages be paid for hours worked over forty hours per week.

13. While there is significant testimony in the record about the Wage Claimant's activities, the best evidence regarding the hours the Wage Claimant actually worked are the Wage Claimant's contemporaneous logs of the hours he worked each week. The Wage Claimant was able to corroborate his record keeping method under oath, and there is nothing in the record that shows the Wage Claimant's records were anything but an accurate reflection of the hours he was working for the Appellants. Granted, the Appellants offered substantial testimony to show that the Wage Claimant was not actually performing work but was actually unavailable and/or intoxicated, but this testimony does not outweigh the contemporaneous written records kept by the Wage Claimant.

14. Based on the evidence presented, it is concluded that during the period of July 7, 2015, through December 27, 2015, the Wage Claimant worked 1,000 regular hours for Diamond Freight, Inc. at an agreed rate of \$16.87 per hour and 552.5 overtime hours at an overtime rate of pay of \$25.31.

15. For the period of July 7, 2015, through December 27, 2015, the Wage Claimant received \$16,469.84. The Wage Claimant is owed \$14,383.97 in agreed and overtime wages.

16. Based on the evidence presented, it is concluded that during the period of February 26, 2013, through July 5, 2015, the Wage Claimant worked 4,797.25 regular hours for DFS Freight, Inc. at \$16.25 and \$16.87 per hour and 1,281.25 overtime hours. The Wage Claimant received \$79,113.64 in agreed and overtime wages. The Wage Claimant is owed \$31,204.30 in agreed and overtime wages.

17. The Department has shown by a preponderance of the evidence that DFS Freight, Inc. violated RCW 49.52.050 and RCW 49.46.130 by failing to pay the Wage Claimant wages in the amount of \$31,204.30. The Department of Labor and Industries' June 9, 2017 Citation and Notice of Assessment must be affirmed as to the wages owed.

18. The Department has shown by a preponderance of the evidence that Diamond Freight Inc. violated RCW 49.52.050 and RCW 49.46.130 by failing to pay the Wage Claimant wages in the amount of \$14,383.97 and the Department of Labor and Industries' June 9, 2017 Citation and Notice of Assessment must be affirmed as to the wages owed.

19. 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.

20. The Wage Claimant is entitled to interest at a rate of 1% from for the period of February 26, 2013 through December 31, 2015. The Department's Citations and Notices of Assessment must be affirmed as to the interest owed.

21. 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). 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 49.52.050(2)." RCW 49.48.082(13).

22. RCW 49.52.050, the agreed wage statute, makes it unlawful for an employer to willfully withhold wages it must pay to an employee. If there is a willful withholding of wages, the employee may receive the agreed wage. RCW 49.52.050(2). The Director also determines the appropriateness of penalties under RCW 49.48.083(3) using the willfulness standard in RCW 49.52.050. RCW 49.48.082(13). Our Supreme Court noted that the test for "willful" failure to pay is not stringent—the employer's failure to pay must simply be volitional. *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 159, 961 P.2d 371 (1998). The question of willfulness is a question of fact. *Schilling*, 136 Wn.2d at 160. Here DFS Freight, Inc., Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes failed to keep accurate records of hours

worked by the Wage Claimant, even when they were aware that the Wage Claimant had worked overtime hours. The Appellants' refusal to pay overtime wages to the Wage Claimant when he reported overtime hours was volitional. An employer acts willfully in depriving an employee of wages when it "makes no genuine effort to keep a proper record of their payroll account with the [employee] or to determine by audit the correct amount of wages owing." *Brandt v. Impero*, 1 Wn. App. 678, 680, 463 P.2d 197 (1969). The Appellants did not keep accurate records of hours worked by the Wage Claimant, even when they knew the Wage Claimant had worked overtime hours.

23. Willfulness is also found where the employer's refusal to pay is volitional: "Willful means merely that the person knows what he is doing, intends to do what he is doing, and is a free agent." *Morgan v. Kingen*, 166 Wn.2d 526, 534, 210 P.3d 995 (2009) (internal quotations omitted). The Appellants knew the Wage Claimant worked overtime hours when he reported it on timecards during the time the company operated as Diamond Freight, Inc. They also knew of overtime hours because of records showing delivery and pick up times. Even when the Wage Claimant reported overtime hours on his timecards, the Appellants only paid some of the hours at straight time, or did not pay for the hours.

24. An employer's failure to pay wages is not willful where a bona fide dispute existed between the employer and employee regarding the payment of wages. *Schilling*, 136 Wn.2d at 160. The Appellants asserted that the Wage Claimant was exempt from overtime under the professional, administrative, and/or executive exemptions to overtime in WAC 296-128-510 through -530. However, they failed to explain how the Wage Claimant's job duties fell under any of these exemptions. The Appellants also asserted that the Wage Claimant's reporting of hours was not credible, but they did not produce accurate records of hours worked even though they knew the Wage Claimant worked overtime hours.

25. DFS Freight, Inc., Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes did not raise a bona fide dispute with regard to whether the Wage Claimant was exempt from overtime pay and whether the Wage Claimant was owed overtime wages. Because the Appellants failed to keep accurate records of hours worked, they failed to show that the Wage Claimant did not work the overtime hours he claimed based on his contemporaneous personal record of hours worked. An employer who willfully violates a wage payment requirement may be ordered to pay a civil penalty of not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. RCW 49.48.083(3). If an employer is a “repeat willful violator” the Department shall also assess a civil penalty of not less than one thousand dollars or amount equal to ten percent of the total amount of unpaid wages, whichever is greater. RCW 49.48.125(1). The Appellants contest the amount owed to the Wage Claimant but this does not establish a bona fide dispute because they were aware he worked overtime and was not paid for all overtime worked. Knowledge that the Wage Claimant worked uncompensated overtime hours at a minimum establishes willfulness.

26. DFS Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes owe a penalty in the amount of \$3,120.43 under RCW 49.48.083(3) and RCW 49.48.125(1).

27. Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes owe a penalty in the amount of \$2,935.38 as per RCW 49.48.083.

28. RCW 49.52.050 imposes liability on “[a]ny employer or officer, vice principal or agent of any employer” who violates standards relating to the rebate of wages, payment of wages, and accurate records. There must be a showing that an agent had some control over payment of wages before personal liability attached to the agent. *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 522-23, 22 P.3d 795 (2001). Under RCW 49.52.050, an employer or agent must have knowledge of any wage withholding policies and fail to correct any

improper wage withholding to be liable for wage withholding. *Jumamil v. Lakeside Casino, LLC*, 179 Wn. App. 665, 684, 319 P.3d 868 (2014). Federal courts typically apply the "economic realities test" to determine if an individual is liable for FLSA violations along with a corporate entity or limited liability company. "The overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages." *Donovan v. Agnew*, 712 F.2d 1509, 1511 (1st Cir. 1983). Some federal courts that generally look for corporate ownership are willing to waive the requirement in certain situations, and find supervision of the corporation sufficient where the individual effectively dominates a corporation's administration or otherwise acts, or has the power to act on behalf of the corporation vis-a-vis its employees. *Donovan v. Sabine Irrig. Co., Inc.*, 695 F.2d 190 (5th Cir. 1983); *Reich v. Circle Inv., Inc.*, 998 F.2d 324 (5th Cir. 1998) (personal liability imposed where individual exercised control over work situation and employees, including various functions related to hiring, payroll, and records).

29. Rajiv Sauson is personally and jointly liable as an employer of the Wage Claimant along with DFS Freight, Inc., Diamond Freight, Inc., Parminder Thind, and Tony Mountaintes because he was a corporate officer, had ownership interest in, and made financial decisions for both corporations. Mr. Sauson jointly made decisions on hiring and firing employees, setting employee salaries, approving timecards, and managing drivers along with his business partner Parminder Thind, and Tony Mountaintes, the operational manager. Mr. Sauson made joint decisions regarding the Wage Claimant's compensation, including approving salary raises for him up to \$675 per week.

30. Parminder Thind is personally and jointly liable as an employer of the Wage Claimant along with DFS Freight, Inc., Diamond Freight, Inc., Rajiv Sauson, and Tony

Mountaintes because he was a corporate officer, had ownership interest in, and made financial decisions for both corporations. Mr. Thind jointly made decisions on hiring and firing employees, setting employee salaries, approving timecards, and managing drivers along with his business partner Rajiv Sauson and Tony Mountaintes, the operational manager. Mr. Thind made joint decisions regarding the Wage Claimant's compensation, including approving salary raises for him up to \$675 per week.

31. Tony Mountaintes is personally and jointly liable as an employer of the Wage Claimant along with DFS Freight, Inc., Diamond Freight, Inc., Rajiv Sauson, and Parminder Thind because he managed daily operations of both companies as the operations manager and as the registered agent for DFS Freight, Inc. Mr. Mountaintes also worked jointly with Mr. Sauson and Mr. Thind to make decisions on hiring and firing employees, setting employee compensation, approving timecards, and other management of drivers. This included advocating for raises for the Wage Claimant from his initial salary of \$600 per week up to \$675 per week. Mr. Mountaintes handled employment termination decisions himself if he could not reach Mr. Sauson or Mr. Thind. Mr. Mountaintes also represented the corporations during the Department's investigation of the Wage Claimant's complaint and throughout the appeals process, appearing on behalf of Appellants and as a party at the hearing.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the June 9, 2017 Citation and Notice of Assessment is AFFIRMED.

1. DFS Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes violated RCW 49.52.050 and RCW 49.46.130 by failing to pay the Wage Claimant overtime wages in the amount of \$31,204.30.


2. DFS Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes are jointly liable for a penalty of \$3,120.43 as per RCW 49.48.083.

3. Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes violated RCW 49.52.050 and RCW 49.46.130 by failing to pay the Wage Claimant overtime wages in the amount of \$14,383.97.

4. Diamond Freight, Inc., Rajiv Sauson, Parminder Thind, and Tony Mountaintes are jointly liable for a penalty of \$2,935.38 as per RCW 49.48.083.

5. The Appellants are directed to the Citations and Notices of Assessment for payment information.

DATED at Tumwater, Washington this 14 day of September 2018.



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 Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 14 day of September 2018, via U.S. Mail, postage prepaid, to the following:

Diamond Freight Systems, Inc.
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DATED this 14 day of September 2018, at Tumwater, Washington.



Lisa Deck