

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

Motitom Corp. and Morteza Kamali,
Appellants,

Citation and Notice of Assessment
W-212-22 & W-213-22

OAH Docket No. 07-2022-KI-01794

No. 2024-007-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 appeal filed by Motitom Corp. and Morteza Kamali, (Appellants), briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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 Corrected Initial Order on August 30, 2023.
2. The Director received a timely filed petition for review from the Appellants.
3. The Director adopts and incorporates by references the Findings of Fact Nos. 4.1 through 4.5, 4.7 through 4.8, 4.11, 4.15 through 4.17, 4.19, and 4.22 through 4.25.

NO. 2024-007-WPA _____

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DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

4. Motitom Corporation is a business that specializes in local and regional delivery of small to medium parcels and packages located at a warehouse in Fife, Washington. As such, Motitom Corporation's delivery drivers render services integral to the company's business. Morteza Kamali operated Motitom Corporation as the owner. *Olsen testimony and Exhibit 29.*
5. Motitom Corporation exercised control over how and where its delivery drivers performed their work, and Mr. Kamali acted as a supervisor on behalf of the employer by giving instructions regarding the work to be completed. At the request of Mr. Kamali, Mr. Linares downloaded the application to his personal cellular phone and scanned barcodes on packages when loaded and scanned them when delivered. If there were packages, Mr. Linares would start scanning on his personal cell phone with an application. Then, he would start loading them up on the delivery vehicle and take them out to deliver. Mr. Kamali gave instructions to Mr. Linares regarding the work to be completed. The Wage Claimants were required to report to a warehouse in Fife, Washington. *Linares and Olsen testimony and Exhibit 31.*
6. Mr. Kamali arranged to have Motitom Corporation provide Mr. Frederick and Mr. Linares with equipment essential for performing their delivery services. Mr. Kamali provided a Ford cargo van to Mr. Frederick and Mr. Linares to use for work, to go home, go to the bathroom, and go to lunch. A dolly and pallet jacks were also available for the Wage Claimants' use at the warehouse. *Linares and Olsen testimony.*
7. Motitom Corporation did not require its delivery drivers to have specific educational or experience requirements as a condition of employment, although Mr. Linares had prior experience as a delivery driver and had subsequently taken some CDL classes. *Linares and Olsen testimony.*
8. Mr. Linares accepted employment with Motitom Corporation expecting it to be continuous, and while Mr. Linares worked for Motitom Corporation, he did not perform work for any

other employer. *Linares and Olsen testimony.*

9. During the relevant period in August 2021, Mr. Frederick's agreed rate of pay from Motitom Corporation was \$175.00 per day. *Olsen testimony and Exhibit 5.*
10. For work performed from September 6, 2021 through September 23, 2021, Mr. Linares performed 1,497 stops for Motiom. *Linares and Olsen testimony and Exhibit 15 and 17.*
11. Motitom Corporation has not made any wage payments to Mr. Frederick's for any of his work nor to Mr. Linares for his work performed during the time frame of September 6, 2021 through September 23, 2021. Mr. Linares received payment of \$381.50 for stops made from August 10, 2021 through August 14, 2021. The final wages owed to Mr. Frederick are \$700.00. The final wages owed to Mr. Linares are \$2,619.75. *Linares and Olsen and testimony and Exhibit 1.*
12. In September and October 2021, the Department received worker rights complaints filed by Mr. Linares and Mr. Frederick. *Linares and Olsen testimony and Exhibit 3, 4, 5, and 6.*

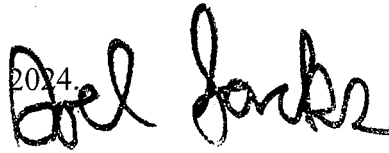
II. CONCLUSIONS OF LAW

1. Based on the Appellants' timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and Chapter 34.05 RCW.
2. The Director adopts Conclusions of Law Nos. 5.1 through 5.14 and Nos. 5.16 through 5.25.
3. Regarding Mr. Linares' hours, he performed work from August 10, 2021, through August 14, 2021, and again from September 6, 2021 through September 23, 2021, for 1,715 stops. Further, Mr. Frederick worked from August 18, 2021 through August 21, 2021 at a rate of \$175.00 per day. Appellants argues that they should not have to pay the Wage Claimants because they did not intend to have any employees. Appellants further argued that the Wage Claimants were independent contractors.

III. FINAL DECISION AND ORDER

1. The Department's Citation and Notice of Assessment is **AFFIRMED**.
2. Appellants violated RCW 49.48.010 by failing to pay final wages to Wage Claimant, David Frederick, for work performed from August 18, 2021 through August 21, 2021—four (4) days at a rate of \$175.00 per day. Appellants are jointly and severally liable for payment of final wages of \$700.00, 1% monthly interest on these unpaid wages, as well as a penalty of \$1,000.00 under RCW 49.48.083.
3. Appellants violated RCW 49.48.010 by failing to pay final wages to Wage Claimant, Julio Garcia Linares, for work performed from September 6, 2021 through September 23, 2021—1,497 stops at a rate of \$1.75 per stop. Appellants are jointly and severally liable for payment of final wages of \$2,619.75, 1% monthly interest on these unpaid wages, as well as a penalty of \$1,000.00 under RCW 49.48.083.

DATED at Tumwater this 27 day of August, 2024.



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 emailing it to 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, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER** was mailed on the 27 day of August 2024, to the following via regular, postage prepaid:

Travis Alley, AAG
Office of the Attorney General
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Angie.Faulkner@atg.wa.gov
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Julio Garcia Linares
1508 S. 80th St.
Tacoma, WA 98408

David Frederick
3724 S. Tyler St. #B
Tacoma, WA 98409

Motitom Corporation
P.O. Box 2107
Milton, WA 98354

Morteza Kamali
P.O. Box 2107
Milton, WA 98354
mkamali@motitom.com

DATED this 27 day of August, 2024, at Tumwater, Washington.



MSA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Motitom Corp. and Morteza Kamali,

Appellants/Employer.

Docket No. 07-2022-LI-01794

CORRECTED INITIAL ORDER

Agency: Labor and Industries
Program: Wage Payments
Agency Nos. W-212-22 & W-213-22

This 'Corrected Initial Order' is issued to correct typographical errors in the previous initial order, issued on August 14, 2023. Specifically, findings 4.15 and 4.20 incorrectly identify Mr. Linares instead of Mr. Frederick. The original errors appear in ~~strikethrough font~~ while all corrections are in **bold, italicized, and underlined font**. These corrections do not change the intent of the decision.

1. ISSUES

- 1.1. Did Appellants, Motitom Corporation and Morteza Kamali, as an individual, violate RCW 49.48.010 by failing to pay final wages to Wage Claimant, David Frederick for 4 days of work performed from August 18, 2021 through August 21, 2021, at a rate of \$175.00 per day?
- 1.2. Did Appellants, Motitom Corporation and Morteza Kamali, as an individual, violate RCW 49.48.010 by failing to pay final wages to Wage Claimant, Julio Garcia Linares for work performed from August 10, 2021, through August 14, 2021, and again from September 6, 2021 through September 23, 2021, for 1,715 stops at a rate of \$1.75 per stop?
- 1.3. If so, what is the appropriate penalty and interest?

2. ORDER SUMMARY

- 2.1. Yes, Appellants, Motitom Corporation and Morteza Kamali, as an individual, violated RCW 49.48.010 by failing to pay final wages to Wage Claimant, David Frederick for 4 days of work performed from August 18, 2021 through August 21, 2021, at a rate of \$175.00 per day.
- 2.2. Appellants, Motitom Corporation and Morteza Kamali, are jointly and severally liable for payment of 1% monthly interest on these unpaid wages, as well as a penalty of \$1,000.00 under RCW 49.48.083.
- 2.3. Yes, Appellants, Motitom Corporation and Morteza Kamali, as an individual, violated RCW 49.48.010 by failing to pay final wages to Wage Claimant, Julio

Garcia Linares for work performed from August 10, 2021, through August 14, 2021, and again from September 6, 2021 through September 23, 2021, for 1,715 stops at a rate of \$1.75 per stop.

- 2.4. Appellants, Motitom Corporation and Morteza Kamali, are jointly and severally liable for payment of 1% monthly interest on these unpaid wages, as well as a penalty of \$1,000.00 under RCW 49.48.083.

3. HEARING

- 3.1. Hearing Date: May 31, 2023 and June 1, 2023
- 3.2. Administrative Law Judge: Travis Dupree
- 3.3. Appellants: Motitom Corporation and Morteza Kamali
- 3.3.1. Witness: Morteza Kamali
- 3.4. Agency: Department of Labor & Industries
- 3.4.1. Representative: Travis Alley, Assistant Attorney General
- 3.4.2. Witness: Breann Olsen and Julio Garcia Linares
- 3.4.3. Observer: Jessica So, Assistant Attorney General
- 3.4.4. Court Reporters: Christy Sheppard and Tami Vondran
- 3.5. Exhibits: Exhibits 1 through 50 and Exhibits A through O were admitted.
- 3.6. Note: that the evidentiary record was left open for the Appellant to redact personally identifying information from their exhibits and resubmit. The record closed on June 13, 2023.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. On April 21, 2022, the Department issued a Citation and Notice of Assessment W-212-22 to Motitom Corporation and Morteza Kamali for failing to pay David

Frederick, final wages in the amount of \$700. The Department assessed interest in the amount of at least \$52.27 with interest continuing to accrue as long as the wage remained unpaid and a penalty of \$1,000.00. *Exhibit 1.*

- 4.2. On April 21, 2022, the Department also issued a Citation and Notice of Assessment W-213-22 to Motitom Corporation and Morteza Kamali for failing to pay Julio Garcia Linares, final wages in the amount of \$2,619.75. The Department assessed interest in the amount of at least \$175.52 with interest continuing to accrue as long as the wage remained unpaid and a penalty of \$1,000.00. *Exhibit 1.*
- 4.3. On April 25, 2022, Motitom Corporation and Morteza Kamali submitted an appeal of the Citation and Notice of Assessment W-212-22 and W-213-22. *Exhibit 2.*

Motitom Corporation, David Frederick, and Julio Garcia Linares

- 4.4. A dispute of fact occurred between the parties. As a result, a credibility finding is warranted. Specifically, the parties dispute whether Mr. Kamali agreed to pay Mr. Frederick and Mr. Linares as employees. Mr. Kamali testified that Mr. Frederick and Mr. Linares were not employees and that they did not work the amount of hours claimed. Mr. Kamali intended them to be independent contractors and had them sign independent contractor agreements. However, Mr. Kamali did not keep documentation of the hours worked by Mr. Frederick and Mr. Linares nor the independent contractor agreements. Mr. Linares provided text message conversations between himself and Mr. Kamali which describes the delivery driver as an employee. Mr. Frederick and Mr. Linares also provided documentation regarding the time spent making deliveries. On this point, I find Mr. Linares's testimony to be more credible than Mr. Kamali because it is consistent with the text message conversations and Mr. Frederick's and Mr. Linares' documentation. *Julio Garcia Linares and Breann Olsen testimony and Exhibits 3, 11, 12, 15, 17, 23, 43, and 44.*
- 4.5. Further, a dispute of fact occurred between the parties regarding the type of business Motitom Corporation. Mr. Kamali testified that he is involved in a variety of businesses including web designing, information technology, online marketing, designing web base software, and social media application. However, a letter sent on behalf of Motitom Corporation by its attorney at the time to the Department dated February 14, 2022, specifically states their business "specializes in local and regional delivery of small to medium parcels and packages." On this point, I find the February 14, 2022 letter more persuasive than the testimony at the hearing as Mr. Kamali denial of the characterization of his business is not credible. *Olsen testimony and Exhibit 29.*

Based on this above-cited credibility finding, the following facts were established by a 'preponderance of the evidence', more likely than not:

- 4.6. Motitom Corporation is a business specializes in local and regional delivery of small to medium parcels and packages located at a warehouse in Fife, Washington. Morteza Kamali operated Motitom Corporation as the owner. *Olsen testimony and Exhibit 29.*
- 4.7. Beginning August 18, 2021 through August 24, 2021, David Frederick began working as a delivery driver with Mr. Kamali, at Motitom Corporation. *Olsen testimony and Exhibit 5.*
- 4.8. Beginning August 10, 2021 through September 18, 2021 through, Julio Garcia Linares began working as a delivery driver with Mr. Kamali, at Motitom Corporation. *Linares testimony.*
- 4.9. At the request of Mr. Kamali, Mr. Linares downloaded the application to his personal cellular phone and scanned barcodes on packages when loaded and scanned them when delivered. If there were packages, Mr. Linares would start scanning on his personal cell phone with an application. Then, he would start loading them up on the delivery vehicle and take them out to deliver. Mr. Kamali gave instructions to Mr. Linares regarding the work to be completed. The Wage Claimants were required to report to warehouse in Fife, Washington. *Linares and Olsen testimony and Exhibit 31.*
- 4.10. Mr. Kamali provided a Ford cargo van to use for work, to go home, go to bathroom, and go to lunch. The dolley and pallet jacks were also available for the Wage Claimants use at the warehouse. *Linares and Olsen testimony.*
- 4.11. Mr. Linares's work schedule at Motitom Corporation changed from week to week. While Mr. Linare could choose his start time, Motitom told him when to work and what day to work on. Mr. Linares would start approximately at either 4:00 am or 5:00 am. *Linares and Olsen testimony and Exhibit 31.*
- 4.12. Mr. Linares had prior experience as a delivery driver and had taken some CDL classes. *Linares and Olsen testimony.*
- 4.13. While Mr. Linares worked for Motitom Corporation, he did not perform work for any other employer. *Linares and Olsen testimony.*

David Frederick's Earnings

- 4.14. During the relevant period of August 18, 2021, through August 23, 2021, Mr. Frederick's agreed rate of pay from Motitom Corporation was \$175.00 per day. *Olsen testimony and Exhibit 5.*

- 4.15. For the relevant period, Mr. Linares **Frederick** performed four days of work for Motitom Corporation. *Olsen testimony and Exhibit 3, 11, and 12.*
- 4.16. Mr. Kamali did not document the work hours and payroll information for Mr. Frederick. *Kamali, and Olsen testimony.*

Julio Garcia Linares's Earnings

- 4.17. During the relevant period of August 10, 2021, through August 14, 2021, and September 6, 2021, through September 23, 2021. Mr. Linares's agreed rate of pay from Motitom Corporation was \$1,200.00 per week or \$1.75 per stop and \$30.00 daily for fuel. *Linares and Olsen testimony and Exhibit 3.*
- 4.18. For the relevant period, Mr. Linares performed 1,497 stops for Motitom Corporation. *Linares and Olsen testimony and Exhibit 15 and 17.*
- 4.19. Mr. Kamali did not document the work hours and payroll information for Mr. Linares. *Kamali, and Olsen testimony.*
- 4.20. Motitom Corporation has not made any wage payments to Mr. Frederick's nor Mr. Linares for work performed during this time period. The final wages owed to Mr. Linares **Frederick** are \$700. The final wages owed to Mr. Linares are \$2,619.75. *Linares and Olsen and testimony and Exhibit 1.*

Worker Rights Complaint

- 4.21. In September 2021, the Department received Mr. Linares's and Mr. Frederick's worker rights complaints. *Linares and Olsen testimony and Exhibit 3, 4, 5, and 6.*
- 4.22. On September 14, 2021, Industrial Relations Agent, Breann Olsen was assigned to investigate Mr. Linares's and Mr. Frederick's wage complaint. On November 24, 2021, Agent Olsen requested employee time records for Mr. Linares. Mr. Kamali did not provide documented work hours and payroll information for Mr. Linares. Mr. Linares and Mr. Frederick provided a record of hours they worked for Motitom Corporation. *Olsen testimony and Exhibit 3, 11, 12, 15, 17, 18, 23, 43, and 44.*
- 4.23. After considering the information submitted up to that point, Agent Olsen prepared a Notice of Citation and Assessment, which the Department issued to Motitom Corporation and Morteza Kamali individually on April 21, 2022. The citation held Motitom Corporation and Morteza Kamali liable for unpaid wages to Mr. Linares in the total amount of \$2,619.75 as well as \$175.52 in interest and a penalty of \$1,000.00.

- 4.24. Agent Olsen also prepared another Notice of Citation and Assessment, which the Department issued to Motitom Corporation and Morteza Kamali individually on April 21, 2022. The citation held Motitom Corporation and Morteza Kamali liable for unpaid wages to Mr. Frederick in the total amount of \$700.00 as well as \$52.27 in interest and a penalty of \$1,000.00. *Olsen testimony and Exhibit 1 and 48.*
- 4.25. On April 25, 2022, Motitom Corporation and Morteza Kamali submitted an appeal of the Citation and Notice of Assessment W-212-22 and W-213-22. *Exhibit 2.*

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter here under Revised Code of Washington ("RCW") 49.48.084 and Chapter 34.05 RCW.

Wage Payment Law

- 5.2. If an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1).
- 5.3. If the Department determines that the employer violated one or more wage payment requirements, the Department issues a Citation and Notice of Assessment. RCW 49.48.083(1); RCW 49.48.082(1), (7). If not, the Department issues a Determination of Compliance. RCW 49.48.083(1); RCW 49.48.082(3).
- 5.4. 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(12). 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.
- 5.5. 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."
- 5.6. Unpaid wages may accrue interest at the rate of 1% of the unpaid wage amount per month until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083(2).

- 5.7. 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 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. *Id.*
- 5.8. 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)."
- 5.9. Further, an employer acts 'willfully' in depriving a worker of earned wages when the employer 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 owed to the employee". *Brandt v. Impero*, 1 Wn. App. 678, 463 P.2d 197 (1969).
- 5.10. Under the Wage Payment Act and the Minimum Wage Act, Chapter 49.46 RCW, "employers" are "any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee." RCW 49.46.010(4). Employers are liable for wage payment violations, including deductions, minimum wage, overtime, final wages, and agreed wages. RCW 49.48.082(6), RCW 49.48.083(2).
- 5.11. In order to establish a worker is an independent contractor, the burden is on the employer to establish the worker's independent contractor status. *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120 (2002).
- 5.12. In order to establish a worker's independent contractor status, under the 'economic means test', the employer must show: (1) Degree of control exerted by the employer; (2) Worker's opportunity for profit or loss depending on the worker's managerial skill; (3) Worker's investment in equipment or materials required for the task; (4) Whether the services rendered by the worker requires special skill; (5) Degree of permanence of the working relationship; and (6) Whether services rendered is an integral part of the employer's business. *Anfinson v. Fedex*, 174 Wn. 2d 851 (2012) and *Real v. Discoll*, 603 F. 2d 748 (1979).
- 5.13. Personal liability for wage claim violations is imposed under RCW 49.52.050. Under that statute, liability is imposed on employers, officers, vice principals or agents of any employer for violation of wage payment laws, including the violations at issue here. A vice principal or agent must have the authority to make decisions regarding the payment of wages, and that person must have acted pursuant to that authority in withholding the wages to which the worker

is lawfully entitled or individual liability cannot be imposed. *Ellerman v. Centerpoint Prepress Inc.*, 143 Wn.2d 514, 22 P.3d 795 (2001).

5.14. RCW 49.60.030 regarding freedom from discrimination—declaration of civil rights provides in part that:

(1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

Motitom Corporation and Morteza Kamali violated Washington wage payment laws.

5.15. Regarding Mr. Linares' hours, he performed work from August 10, 2021, through August 14, 2021, and again from September 6, 2021 through September 23, 2021, for 1,715 stops. Further Mr. Frederick worked from August 18, 2021, through August 23, 2021 at a rate of \$175.00 per day. Appellant/Employer argues that they should not have to pay the Wage Claimants because they did not intend to have any employees. Appellant/Employer further argued that the Wage Claimants were independent contractors.

5.16. Specifically, the Appellant/Employer argued that they had no oversight of its drivers. This argument is unpersuasive because Mr. Kamali acted as a supervisor on behalf of the employer regarding the work to be completed, specifically, giving instructions regarding the work to be completed, where the work was to be completed.

5.17. The Appellant's argument that the Wage Claimant had the ability to increase his profit through managerial skill or the opportunity for profit or loss is unpersuasive because the agreed rate of pay was \$175.00 per day for Mr. Frederickson and \$1.75 per stop and \$30.00 daily for fuel for Mr. Linares. Neither Wage Claimant had managerial to control profit or loss from either of these rates since the number deliveries available were out of their control.

5.18. Additionally, the Appellant argued that it does not fundamentally possess or maintain the equipment needed to offer services. However, this argument is unpersuasive because the Appellant provided the Wage Claimants with Ford cargo van to use for work.

- 5.19. The Appellant further argues that the Wage Claimant brought special skills as drivers. The Appellant's argument is unpersuasive because delivery is not traditionally a high skilled profession.
- 5.20. The Appellant contends that the Wage Claimant's work was not integral to its business because he engages in a variety of different business types. This argument is unpersuasive because the job duties performed by the Wage Claimants were integral part of delivering packages for the Appellant/Employer's business in local and regional delivery of small to medium parcels and packages.
- 5.21. The Appellant also argued that Mr. Linares cannot be an employee allegedly due to his immigration status. The Appellant's allegation and argument are unpersuasive pursuant to RCW 49.60.030.
- 5.22. Finally, Appellant/Employer argued that the amount owed should be reduced because of damage caused by Mr. Linares in a vehicle accident. However, this argument is unpersuasive as damage to a vehicle would not excuse the obligation to pay final wages. Additionally, the undersigned lacks any jurisdiction over any alleged vehicle damage as it is outside the scope of the issues that are being appealed.
- 5.23. The Appellant/Employer's arguments are unpersuasive as the facts established that Mr. Linares and Mr. Frederick performed the work in question as an employee for Motitom Corporation. Additionally, Mr. Kamali is personally liable because as the owner of Motitom Corporation, he had the authority to make decisions regarding the payment of wages.
- 5.24. As such, Motitom Corporation and Morteza Kamali are still jointly and severally liable for payment of Mr. Linares' wages in the total amount of \$2,619.75, along with interest at the rate of 1% per month from the date these wages were earned, under RCW 49.48.083. Further, Motitom Corporation and Morteza Kamali are jointly and severally liable for payment of Mr. Frederick's wages in the total amount of \$700.00, along with interest at the rate of 1% per month from the date these wages were earned, under RCW 49.48.083.
- 5.25. Regarding whether the wages were knowingly and intentionally withheld, Motitom Corporation and Morteza Kamali argues that its failure to pay wages was due to its bone fide dispute in the wages owed. However, this argument is unpersuasive as the Appellant appeared to act 'willfully' by failing to keep records of the hours worked by the Wage Claimants. Because the wages were knowingly and intentionally withheld, Motitom Corporation and Morteza Kamali are jointly and severally responsible for a penalty in the amount of \$1,000.00 for each Wage Claimant, a total of \$2,000.00, under RCW 49.48.083(3).

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Department's Notice of Citation and Assessment is **AFFIRMED**.
- 6.2. Appellants, Motitom Corporation and Morteza Kamali, as an individual, violated RCW 49.48.010 by failing to pay final wages to Wage Claimant, David Frederick for 4 days of work performed from August 18, 2021 through August 21, 2021, at a rate of \$175.00 per day.
- 6.3. Appellants, Motitom Corporation and Morteza Kamali, are jointly and severally liable for payment of 1% monthly interest on these unpaid wages, as well as a penalty of \$1,000.00 under RCW 49.48.083.
- 6.4. Appellants, Motitom Corporation and Morteza Kamali, as an individual, violated RCW 49.48.010 by failing to pay final wages to Wage Claimant, Julio Garcia Linares for work performed from August 10, 2021, through August 14, 2021, and again from September 6, 2021 through September 23, 2021, for 1,715 stops at a rate of \$1.75 per stop.
- 6.5. Appellants, Motitom Corporation and Morteza Kamali, are jointly and severally liable for payment of 1% monthly interest on these unpaid wages, as well as a penalty of \$1,000.00 under RCW 49.48.083.

Issued from Tacoma, Washington on the date of mailing.



Travis Dupree
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for 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 Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Review, the Director *must actually receive* the Petition for 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 Review to the other parties at the same time.

If the Director does not receive a Petition for 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 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. 07-2022-LI-01794

I certify that true copies of this document were served on those listed below, from Tacoma, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by Email.

<p>Motitom Corporation 5211 S. Tacoma Way Tacoma, WA 98409 <i>Appellant/Employer</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6305 4642 08 <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
<p>Morteza Kamali 3429 E. Grandview Ave Tacoma, WA 98404 <i>Appellant/Employer</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6305 4642 15 <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
<p>Travis Alley, AAG Office of the Attorney General 800 Fifth Ave Suite 2000 Seattle, WA 98104 <i>Agency Representative</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Travis.Aleley@atg.wa.gov Lisa.Henley@atg.wa.gov Iniseaeservice@atg.wa.gov</p>
<p>Jessica So, AAG Office of the Attorney General 800 Fifth Avenue Suite 2000 Seattle, WA 98104 <i>Agency Representative</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Jessica.So@atg.wa.gov Rachel.Thornton@atg.wa.gov Iniseaeservice@atg.wa.gov</p>
<p>David Frederick 3724 S. Tyler St. #B Tacoma, WA 98409 <i>Intervenor/Wage Claimant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>

<p>Julio Garcia Linares 1508 S. 80th St. Tacoma, WA 98408 <i>Intervenor/Wage Claimant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
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Date: Wednesday, August 30, 2023

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson
Legal Assistant 2

