



STATE OF WASHINGTON  
**DEPARTMENT OF LABOR AND INDUSTRIES**

P.O. Box 44000 • Olympia, Washington 98504-4000

March 11, 2025

**Via E-mail and U.S. Mail**

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Chanell Alapai  
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Orchideh Raisdanai  
14030 Main St NE, Suite A  
Duvall, WA 98019

RE: **Kona Poke House, LLC dba Kona Poke and Orchideh Raisdanai**  
OAH Docket No. 11-2023-LI-02000  
Director No. 2025-005-WPA

Dear Parties:

Please find the enclosed Director's Order on Remand, which is served on the date of mailing. A copy of the Initial Order is enclosed for your convenience.

Sincerely,

Joel Sacks  
Director

Enclosures

cc: Judge Dan Gerard  
Haley Bobbitt, Tacoma OAH  
Anastasia Sandstrom, AAG



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

In re:

KONA POKE HOUSE, LLC, dba KONA  
POKE; and ORCHIDEH RAISDANAI,  
the marital community thereof, and as an  
individual

Appellants,

Appeal of Citation and Notice of  
Assessment No. W-296-23 & W-297-23

OAH Docket No. 11-2023-LI-02000.

No. 2025-005-WPA

DIRECTOR'S ORDER ON  
REMAND

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the appeal filed by Kona Poke House, LLC and Orchideh Raisdanai, the marital community thereof, and as an individual (collectively "Kona Poke"), the appeal filed by the Department of Labor and Industries, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order on Remand.

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

**I. FINDINGS OF FACT**

The Director adopts and incorporates the following findings of fact from the Initial Order: 4.1 to 4.46, 4.49 to 4.52, 4.55, and 4.57.

NO. 2025-005-WPA

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DIRECTOR'S ORDER ON REMAND

RCW 49.48.084(4); RCW 34.05

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

- 4.59. The Office of Administrative Hearings issued and served the Initial Order on August 20, 2024.
- 4.60. The Director received a timely filed petitions for administrative review from Kona Poke and the Department.
- 4.61. Kona Poke hired Pedro Castro and Chanell Alapai to work in its restaurant. They were hired from Hawaii. Kona Poke paid Castro a \$5000 relocation bonus to come to Washington. Kona Poke paid Alapai a \$1000 relocation bonus. Kona Poke did not pay overtime wages, so both Castro and Alapai filed wage complaints with the Department under the Wage Payment Act (WPA).
- 4.62. Kona Poke provided the Department with an Excel spreadsheet, displaying the hours that it asserted Castro and Alapai worked. For each day of the week, the spreadsheet listed the employee's first name, the employee's "Time In," the employee's "Time Out," and the length of the employee's "Lunch," and an unlabeled column representing the total hours worked for the day.
- 4.63. On the right side of the spreadsheet was a sum representing the total hours worked for each employee during the week. But the totals shown often appear incorrect because the spreadsheet appears to make mathematical errors when it calculates the total hours worked during the day. Any time an employee's shift does not start and end at the same minute of the hour, the spreadsheet subtracts time from the total hours worked. The Department documents that for Castro and Alapai, the calendar contains 92 instances when the employee's start time, end time, and listed lunch time do not add up correctly. And it documents that for all employees, all persons listed on the spreadsheet, there are 235 different instances of the spreadsheet incorrectly totaling the hours an employee worked. The potential errors appear to apply to Castro, Alapai, and other employees.
- 4.64. Orchideh Raisdanai, Kona Poke's owner, and Joseph Abdouelmagd, Raisdanai's son, testified that each time a mathematical discrepancy appeared, it was not a flaw with the spreadsheet. Instead, they testified that each time a discrepancy occurred, the impacted employees took a longer lunch break. The testimony was that instead of adjusting the length of the lunch break on the calendar, the total hours were adjusted.
- 4.65. Kona Poke failed to pay Castro \$1162.50 for 31 hours of overtime, and Kona Poke failed to pay Alapai \$137.50 for 5 hours of overtime. Whether additional hours are owed will be the subject of the remanded hearing discussed below.
- 4.66. At the time the overtime was not paid, Raisdanai did not have a subjective "genuine belief" that she did not have to pay overtime because of a belief that "Kona Poke's relocation and bonus payments are creditable towards its overtime obligations." Appellant's Reply Br. 9 (Jan. 27, 2025). Kona Poke did not pay overtime during times Castro and Alapai worked for Kona Poke. The parties entered into an

agreement about relocation bonuses to be paid because of relocation costs, not because of payments for overtime. When Kona Poke took the action to withhold overtime pay, the parties' agreement was that the bonuses were for relocation costs, not for overtime. The exhibit Kona Poke cited to, Dep't's Ex. 3 at 9-10, does not contradict this point. Instead, it discusses the belief that Castro would have to repay the relocation fee after the termination of the contract, but made no mention of an offset of wages owed during the period in which Castro worked. Dep't's Ex. 3 at 14 said that Raisdanai thought she overpaid Castro as a salary-based employee. She testified that she thought they were salaried employees. But salaried workers may be owed overtime if they are not exempt for reasons stated in RCW 49.46.130. And Kona Poke and Raisdanai did not argue that any of the exceptions to RCW 49.46.130 apply. Kona Poke raises no argument that there was a bona fide dispute as to whether Castro and Alapai were overtime-exempt salaried workers.

## II. CONCLUSIONS OF LAW

### A. Preliminary

The Director adopts and incorporates the following conclusions of law from the Initial Order: 5.1 to 5.12, 5.14 to 5.23, 5.25 to 5.29.

- 5.32. Based on Kona Poke's and the Department's timely filed petitions for administrative review, there is authority by the Director to review and decide this matter under RCW 49.48.084 and RCW 34.05.

### B. Relocation Bonuses—Kona Poke's Appeal

- 5.33. Kona Poke argues that the overtime due to Castro and Alapai should be offset by the relocation amounts paid to the employees under RCW 49.46.090(1).
- 5.34. RCW 49.46.090(1) provides that "[a]ny employer who pays any employee less than the amounts to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount due to such employee under this chapter, *less any amount actually paid to such employee by the employer*, and for costs and such reasonable attorney's fees as may be allowed by the court." (emphasis added). Because RCW 49.46.090 does not apply here, the Director takes no position as to scope and operation of the language "less any amount actually paid" except to observe that nondiscretionary relocation bonuses are not wages an employee is "entitled to by virtue of this chapter," but contracted wages under RCW 49.52.050, and it would not be consistent with the language and context of RCW 49.46.090 and the purpose of the Minimum Wage Act (MWA) to deduct wages not owed under RCW 49.46.
- 5.35. But in any event, this case arises under the WPA, RCW 49.48.082-.087. The main question is whether RCW 49.46.090 under the MWA applies to a case under the WPA. The WPA provides that if the Department finds an employer violated a "wage payment requirement," then the Department "may order the employer to pay

employees all wages owed.” RCW 49.48.083(2). A wage payment requirement is defined as “a wage payment requirement 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 49.46.090 is not referenced, and its omission must be viewed as deliberate. *See In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (“[T]o express one thing in a statute implies the exclusion of the other.”).

- 5.36. Other than wages, the remedies in RCW 49.46.090 and RCW 49.48.083 are not the same. The remedies in RCW 49.46.090 include the “less any amount actually paid” language, assignment, and attorney fees, and they are not remedies under the WPA or Administrative Procedure Act (APA). The remedies in the WPA are to provide wages and interest in citations and notices of assessment, with assessed penalties, and to provide determinations of compliance for employers who paid the wages. RCW 49.48.083(1)-(2). The matters are appealed in an administrative process under the APA. RCW 49.48.084(3). In contrast, matters under RCW 49.46.090(1) are litigated in court.
- 5.37. The “less any amount actually paid” provision in RCW 49.46.090(1) doesn’t apply to the WPA because the structure, remedy, and jurisdiction differ between the statutes. Case law confirms this conclusion. *Champagne v. Thurston County*, 163 Wn.2d 69, 88, 178 P.3d 936 (2008), distinguished RCW 49.46.090 as applied to other statutes that do not have its same language. It examined the language of the Wage Rebate Act, RCW 49.52, and held that this act “does not provide for a lessening of liability based upon wages eventually paid but instead assigns exemplary damages based upon the employer’s willful withholding.” *Id.* at 83, n.12 (citing RCW 49.52.090). This same reasoning applies here because the WPA does not provide for a lessening of liability but instead directs an employer to pay “all wages due.” RCW 49.48.083(2). Unlike RCW 49.46.090(1), there is no provision that states “less any amount actually paid” in RCW 49.48.083(2). The language “less any amount actually paid” cannot be read into the statute. *See City of Seattle v. Fuller*, 177 Wn.2d 263, 269, 300 P.3d 340 (2013) (court does not add words to the statute).
- 5.38. Kona Poke cites *Seattle Prof’l Eng’g Employees Ass’n v. Boeing Co.*, 139 Wn.2d 824, 831, 991 P.2d 1126 (2000); *Hill v. Xerox Bus. Servs., LLC*, No. C12-0717-JCC, 2024 WL 580788, at \*5 (W.D. Wash. Feb. 13, 2024) (unpublished), *reconsideration denied*, No. C12-0717-JCC, 2024 WL 2943821 (W.D. Wash. June 11, 2024) (unpublished); and *Khadera v. ABM Indus. Inc.*, No. C08-0417 RSM, 2012 WL 581402, at \*4 (W.D. Wash. Feb. 21, 2012) (unpublished). The federal cases are not precedential, and none of the cases discuss or apply to the WPA.
- 5.39. In contrast to RCW 49.46.090(1), RCW 49.48.083(2) focuses on the “all wages owed.” The overtime wages are enforceable as a wage payment requirement under RCW 49.46.130. RCW 49.48.082(12), .083(1). The overtime wages were not paid, and they constitute “all wages owed.” Because there is no offset as claimed by Kona Poke in the WPA, there is no offset here.

### C. Willfulness—Kona Poke’s Appeal

- 5.40. Kona Poke challenges the finding of willfulness. Under RCW 49.48.083(3), “[i]f 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.” RCW 49.48.082(13) defines “willful” as a “knowing and intentional *action* that is neither accidental nor the result of a bona fide dispute . . . .” (emphasis added). It is the employer’s burden to prove a bona fide dispute, meaning that the employer had both a subjective “genuine belief” in the dispute, and that the dispute itself is objectively “fairly debatable.” *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553, 562, 424 P.3d 207 (2018). The subjective component is a question of fact, and the objective component is a question of law. *Id.* As found above, there was no subjective “genuine belief” about the relocation fee excusing payment at the time the wages were due. And there is no objectively reasonable basis for this belief as well, so there is no bona-fide dispute.
- 5.41. Kona Poke argues it was fairly debatable as to whether the relocation bonuses were creditable against the later overtime work. RCW 49.48.082(13) defines “willful” as a knowing and intentional “action.” RCW 49.48.082(13). That action occurs during the time the wages were owed, and the willfulness issue is resolved by a consideration of what time period to determine if there was a fairly debatable point about the action that led to the failure to pay. Wage payment requirements arise when the employee should be receiving pay; in this case when Kona Park took the action to withhold overtime pay. At the time the relocation bonuses were made the parties’ agreement was that they were for relocation costs, not for overtime. It is not reasonable that the bonuses would apply to overtime hours in each paycheck because the bonuses were for relocation pay. That Kona Poke later believed it could offset the relocation costs on termination of the contract does not create a bona fide dispute as to whether overtime wages were due while Castro and Alapai were working for Kona Poke. A later action does not create a bona fide dispute. *See Allen v. Dameron*, 187 Wn.2d 692, 710, 389 P.3d 487 (2017) (bankruptcy does not excuse failure to pay wages). After-the-fact theories do not create a bona fide dispute.
- 5.42. Kona Poke and Raisdanai knowingly, intentionally, and purposely failed to pay overtime wages owed to Castro and Alapai. That overtime was owed was plain on the face of the spreadsheet provided by Kona Poke. Kona Poke acted willfully and owes penalties in the amount of \$2000.
- 5.43. Regardless the Director’s ruling on applicability of RCW 49.46.090 to this WPA case, Kona Poke independently owes \$2000 in penalties because it violated the wage payment requirement by failing to pay overtime. RCW 49.48.083(3).

### D. Amounts Owed—Department’s Appeal

- 5.44. The Department argues the hours found owed by the ALJ do not reflect the hours owed to the workers. It points to the mathematical discrepancies in Kona Poke’s spreadsheet. The extensive nature of these discrepancies and their uniformity are suggestive of mathematical errors in the formulas. In the Initial Order, the

Administrative Law Judge accepted Kona Poke's explanation for the mathematical discrepancies that they were manual reductions based on lunch hours. The Director gives due regard to the Administrative Law Judge's opportunity to observe the witnesses. RCW 34.05464(4). Indeed, the explanation offered by Kona Poke is suggestive that the hours were correct.

- 5.45. The Director does not believe there was a complete record under which to decide the issue about the hours. Resolution of the hours issue may be had by consulting additional evidence as offered by the Department. The Department sought to elicit testimony of the Department's industrial relations agent, Giselle Taylor, as to the contents of Kona Poke's spreadsheet based on an examination of the formulas and contents in the cells. Taylor has been an industrial relations agent for two years and three months. She testified that she uses Excel daily in her job, and she produced an Excel spreadsheet in this case. Part of her job is to use Excel in an investigation. She testified that she would be able to explain whether an Excel spreadsheet contains a mathematical formula or whether it contains manually inputted numbers. Kona Poke objected, citing foundation. The Administrative Law Judge asked Taylor whether she knew why some entries were in black and some were in blue without reference to earlier testimony, and she did not know. The Administrative Law Judge then sustained the objection. This was error.
- 5.46. Review by the Director of an evidentiary issue is de novo under the APA. "The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing." RCW 34.05.464(4). "Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). Taylor testified as to using Excel "daily," Tr. 396, and to being familiar with formulas and manual entry. This testimony satisfies the requirement that it be evidence "which reasonably prudent persons are accustomed to rely on in the conduct of their affairs." Under RCW 34.05.452(2), use of the Washington Rules of Evidence is only permitted if it does not conflict with RCW 34.05.452(1), which occurred here. But even if the foundation objection is entertained under the Washington Rules of Evidence, Taylor had personal knowledge about Excel under ER 602. The fact that she did not know about the difference between the black and blue entries without resort to earlier testimony goes to weight not admissibility.
- 5.47. Kona Poke argues that the spreadsheet was not in evidence, but this is not a valid objection, without more explanation, as the spreadsheet was available to Taylor and the parties. The industrial relations agent could testify to the contents of the electronic version of the spreadsheet before her because this is "the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1).
- 5.48. Kona Poke also argues that Taylor's testimony about the formulas was speculation. This objection was not raised at hearing. And Kona Poke fails to explain why it



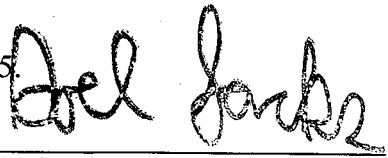
would be speculation to use a spreadsheet available for reference by all parties and the Administrative Law Judge.

- 5.49. The Initial Order's Findings of Fact Nos. 4.47, 4.48, 4.53, 4.54, 4.56, 4.58 are not adopted because they relate to the spreadsheet hours issue; a matter that needs to be resolved on remand with a complete record. Likewise Conclusions of Law No. 5.13, 5.30, and 5.31 are not adopted to allow completion of the record. Conclusion of Law No. 5.24 is not adopted as the issue is otherwise decided.
- 5.50. This case is remanded to Office of Administrative Hearings to take testimony on the spreadsheet Excel issue. The parties may offer additional testimony and exhibits if relevant to this issue. The Administrative Law Judge should then enter findings on whether the entries were because of mathematical errors or whether they were manually entered, if such findings are possible. If the total amounts were because of mathematical errors, the Administrative Law Judge should consider the credibility of Kona Poke's claims about lunch deductions and wages owed.
- 5.51. At least 31 hours of overtime is owed to Castro and 5 hours of overtime is owed to Alapai. Kona Poke did not dispute these amounts; it only claimed it need not pay because of its alleged RCW 49.46.090 issue. The question before the Administrative Law Judge will be whether to accept the Department's claim that Kona Poke owes 47.67 hours of overtime to Castro and 11.5 hours of overtime to Alapai based on the Department's theory that there should not be deductions for time claimed by Kona Poke as manually entered lunch times. Any additional number of hours over the 31 and 5 hours may be adjusted to conform with the evidence. The remanded order should also determine the total wage amount due.
- 5.52. All other issues presented in the Initial Order and this Director Order on Remand have been decided and may not be revisited.
- 5.53. The Administrative Law Judge should issue a Second Initial Order with appeal rights under RCW 49.48.084(3).

### III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Initial Order of August 20, 2024, is incorporated by reference in the manner provided herein, and this matter is **REMANDED** to take further action as directed.

DATED at Tumwater this 11 day of March, 2025.

  
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](mailto:directorappeal@lni.wa.gov) or by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

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

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

### DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER ON REMAND** was mailed on the date listed below to the following via regular, postage prepaid:

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Orchideh Raisdanai  
14030 Main St NE, Suite A  
Duvall, WA 98019

DATED this 11 day of March, 2025, at Tumwater, Washington.

  
\_\_\_\_\_  
LISA DECK



**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of the assessment of  
Wage Payment Act and/or Minimum  
Wage Act violations against:

Kona Poke House, LLC dba Kona  
Poke; and Orchideh Raisdanai, and  
the marital community thereof, as an  
individual,

Appellants.

Docket No. 11-2023-LI-02000

**INITIAL ORDER**

Agency: Dept. of Labor and Industries  
Program: Wage Payments  
Agency Nos. W-296-23 and W-297-23

**1. ISSUES**

- 1.1. Did Kona Poke House, LLC dba Kona Poke and/or Orchideh Raisdanai fail to pay wages for all hours Pedro Castro worked during the period beginning March 3, 2022, through July 3, 2022, as alleged in Citation No. W-296-23 and the Notice of Assessment dated July 27, 2023?
- 1.2. Did Kona Poke House, LLC dba Kona Poke and/or Orchideh Raisdanai fail to pay wages for all hours Chanell Alapai worked during the period beginning March 6, 2022, through May 12, 2022, as alleged in Citation No. W-297-23 and the Notice of Assessment dated July 27, 2023?
- 1.3. If either or both of the foregoing are so, did that conduct violate the Wage Payment Act and/or the Minimum Wage Act?
- 1.4. If so, are Kona Poke House, LLC dba Kona Poke and/or Orchideh Raisdanai liable for the payment of wages, interest, and/or penalties?
- 1.5. If so, in what amount or amounts?

**2. ORDER SUMMARY**

- 2.1. Yes. Kona Poke House, LLC dba Kona Poke and/or Orchideh Raisdanai failed to pay wages for all hours Pedro Castro worked during the period beginning March 3, 2022, through July 3, 2022, as alleged in Citation No. W-296-23 and the Notice of Assessment dated July 27, 2023.
- 2.2. Yes. Kona Poke House, LLC dba Kona Poke and/or Orchideh Raisdanai failed to pay wages for all hours Chanell Alapai worked during the period beginning March 6, 2022, through May 12, 2022, as alleged in Citation No. 297-23 and the Notice of Assessment dated July 27, 2023.

- 2.3. Accordingly, this conduct of Kona Poke House, LLC dba Kona Poke House violated the Wage Payment Act and the Minimum Wage Act.
- 2.4. Therefore, Kona Poke House, LLC and Orchideh Raisdanai are liable for the payment of wages, interest, and penalties.
- 2.5. Kona Poke House, LLC and Orchideh Raisdanai are liable for the payment of wages in the amounts of \$1162.50 and \$137.05, interest on unpaid wages in an amount to be calculated by the Department of Labor and Industries, and penalties totaling \$2,000.00.

### **3. HEARING**

- 3.1. Hearing Dates: June 4-6, 2024
- 3.2. Administrative Law Judge: Terry A. Schuh
- 3.3. Appellants: Kona Poke House, LLC dba Kona Poke, and Orchideh Raisdanai
  - 3.3.1. Representative: Grant A. Follis, Attorney, Anderson Hunter Law Firm, P.S.
  - 3.3.2. Witnesses:
    - 3.3.2.1. Orchideh Raisdanai
    - 3.3.2.2. Trevor Parker, Former Employee, Kona Poke House
    - 3.3.2.3. Parker Gunnhild, Former Police Officer, Dupont
    - 3.3.2.4. Joshua Beckham, Business Consultant
    - 3.3.2.5. Joseph Abouelmagd, Employee Kona Poke House
    - 3.3.2.6. Aidan Meikle, Former Employee, Kona Poke House
- 3.4. Agency: Department of Labor and Industries
  - 3.4.1. Representative: Scott E Michael, Assistant Attorney General
  - 3.4.2. Witnesses:
    - 3.4.2.1. Giselle Taylor, Industrial Relations Agent, Department of Labor and Industries
    - 3.4.2.2. Aidan Meikle, Former Employee, Kona Poke House
- 3.5. Exhibits: Exhibits 1 through 18, offered by the Department of Labor and Industries were admitted into the record as evidence. Exhibits A through H, offered by the Appellants, were admitted into the record as evidence.
- 3.6. Court Reporter: Pam J. Nelson, Capital Pacific Reporting, appeared and reported the proceedings.

- 3.7. Observers: Heather Leibowitz, Assistant Attorney General; Christina Dallen, Assistant Attorney General; and Dunbar Myrick, Law Clerk – all from the Office of the Attorney General.

#### 4. FINDINGS OF FACT

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

##### *Jurisdiction*

- 4.1. The Department of Labor and Industries (the Department) issued a Citation and Notice of Assessment, dated July 27, 2023, addressing Citations Nos. W-296-23 and W-297-23, assessing Kona Poke House, LLC dba Kona Poke (Kona Poke) and Orchideh Raisdanai (Ms. Raisdanai or Raisdanai) wages, interest, and penalties for their alleged failure to pay overtime wages to Pedro Castro (Mr. Castro or Castro) and Chanell Alapai (Ms. Alapai and Alapai). Ex. 1.
- 4.2. On August 25, 2023, Kona Poke and Ms. Raisdanai filed their appeal. Ex. 2.

##### *Kona Poke*

- 4.3. Ms. Raisdanai and her business partners opened Kona Poke in February 2022. Raisdanai Testimony. Its menu is traditional Hawaiian, relying on Ms. Raisdanai's family recipes. Raisdanai Testimony. Sixty or seventy percent of its business is poke, a style of cooked fish. Raisdanai Testimony.
- 4.4. Kona Poke sources its fish and other ingredients from Hawaii. Raisdanai Testimony.
- 4.5. It is a small restaurant, measuring 1034 square feet in size. Raisdanai Testimony. It does not offer dine-in service, only takeout. Raisdanai Testimony. It does not have a dishwasher and the only dishes, etc. it uses are for food preparation and storage. Raisdanai Testimony.
- 4.6. Customers order in one of three ways: online, by telephone, or walk-in. Raisdanai Testimony. Because Kona Poke cannot produce a large volume of food daily, some customers order online or by voicemail before the restaurant opens so that they can be better assured of being served. Raisdanai Testimony.

##### *Orchideh Raisdanai*

- 4.7. Ms. Raisdanai's family comes from Miloli'i, the last Hawaiian fishing village on the island of Hawaii. Raisdanai Testimony. They operated a restaurant there. Raisdanai Testimony.
- 4.8. Ms. Raisdanai was one of the owners of Kona Poke at the time relevant here. Raisdanai Testimony. She remains an owner. Raisdanai Testimony. Along with the other owners, she hired Mr. Castro and Ms. Alapai, determined their wages, determined their duties, and reported their hours to the payroll service for issuing

paychecks. Raisdanai Testimony. She also participated directly and almost daily in the operation of Kona Poke. Raisdanai Testimony.

*Pedro Castro*

- 4.9. Kona Poke hired Mr. Castro to be its chef, on the recommendation of a consulting chef for whom Mr. Castro worked in Hawaii. Raisdanai Testimony.
- 4.10. The initial plan was to hire Mr. Castro in the Spring of 2022, planning for a June or July opening. Raisdanai Testimony. However, Mr. Castro called Ms. Raisdanai in December, having quit his job in Hawaii, and asked to accelerate his anticipated employment with Kona Poke, Raisdanai Testimony. So, Kona Poke decided to hire Mr. Castro at once and plan on opening the restaurant in March or April. Raisdanai Testimony.
- 4.11. Accordingly, by a letter dated December 21, 2021, Kona Poke offered Mr. Castro employment as its chef at an annual salary of \$52,000. Raisdanai Testimony; Ex. 5. Kona Poke hired Mr. Castro on a five-year contract with a path to partial ownership. Raisdanai Testimony.
- 4.12. Kona Poke also provided Mr. Castro with a relocation bonus of \$5,000. Raisdanai Testimony; Ex. 7, p. 8.
- 4.13. Initially, for nearly two months, Kona Poke housed Mr. Castro in a hotel. Raisdanai Testimony. Following that, he moved into the home of Ms. Raisdanai's family. Raisdanai Testimony. Kona Poke gave him a car and an advancement of his pay. Raisdanai Testimony.
- 4.14. Mr. Castro wanted only to grill and to supervise and manage. Raisdanai Testimony; Joseph Abouelmagd (Mr. Abouelmagd or Abouelmagd) Testimony. He did not want to wash dishes, clean the floor, clean and organize the restaurant, or prep food. Raisdanai Testimony; Abouelmagd Testimony. He only wanted to grill and supervise. Raisdanai Testimony; Abouelmagd Testimony.

*Chanell Alapai*

- 4.15. Shortly after Mr. Castro arrived, his girlfriend, Ms. Alapai, followed, with only about a week's warning to Ms. Raisdanai. Raisdanai Testimony.
- 4.16. Ms. Alapai and Mr. Castro moved into a space in Ms. Raisdanai's basement. Raisdanai Testimony. Ms. Alapai told Ms. Raisdanai that she had management experience, as well as experience with payroll and human resources paperwork, and she needed a job. Raisdanai Testimony. So, Kona Poke hired her. Raisdanai Testimony.



- 4.17. By a letter dated February 24, 2022, Kona Poke offered Ms. Alapai employment as its manager at an annual salary of \$38,000. Raisdanai Testimony; Ex. 10; see also, Ex. 15, p. 1; Ex. 3, p. 29
- 4.18. Kona Poke also paid Ms. Alapai \$1,000 in relocation pay and \$730.77 in advanced vacation pay. Ex. 15, p. 1; Ex. 12, p. 2.

#### *Wage Complaints*

- 4.19. Mr. Castro filed a wage complaint on July 18, 2022. Giselle Taylor (Ms. Taylor or Taylor) Testimony; Ex. 4. He sought wages for unpaid overtime. Taylor Testimony; Ex. 4.
- 4.20. Ms. Alapai filed a wage complaint on July 24, 2022. Taylor Testimony; Ex. 9. She sought wages for unpaid overtime. Taylor Testimony; Ex. 9.

#### *Department's Investigation*

- 4.21. When the Department receives a wage complaint from an employee, the Department investigates the wage complaint by gathering information and documentation from both the employee and the employer. Taylor Testimony. At the conclusion of its investigation, the Department determines whether wages are owed. Taylor Testimony.
- 4.22. The Industrial Relations Agent investigating a wage complaint makes notes memorializing telephone conversations, email exchanges, and documents that comprise the investigation. Taylor Testimony; see Ex. 3.
- 4.23. Here, Ms. Taylor's investigation began in July 2022 and concluded in October 2022. Taylor Testimony; Ex. 3.
- 4.24. As a result of Ms. Taylor's investigation, the Department issued Citation and Notice of Assessment W-296-23 as to Mr. Castro's wage complaint, finding unpaid overtime wages of at least \$9,506.25, interest as of that date of \$1,457.82, and a penalty of at least \$1,000.00, and W-297-23 as to Ms. Alapai, finding unpaid overtime wages of at least \$3992.60, interest as of that date of \$633.63, and a penalty of at least \$1,000.00. Ex. 1.

#### *Overtime Hours Worked*

- 4.25. Kona Poke hired Mr. Castro and Ms. Alapai as salaried employees because Kona Poke's consultants recommended it and because a representative from the Department of Labor and Industries told Ms. Raisdanai that the responsibilities Mr. Castro and Ms. Alapai would exercise were consistent with salaried employment. Raisdanai Testimony.

- 4.26. Kona Poke treated Mr. Castro and Ms. Alapai as salaried employees but “still tracked the hours worked to measure performance on the job and planning for bonuses/incentives/additional staffing needs.” Ex. 16, p. 1.
- 4.27. Mr. Castro asserted in his wage complaint that he and Ms. Alapai worked 65 to 75 hours a week for at least 3 months. Ex. 4, p. 3.
- 4.28. Kona Poke did not pay Mr. Castro any overtime. See Ex. 7.
- 4.29. Mr. Castro completed a calendar of hours on a Department form, asserting the number of hours he worked each day beginning March 3, 2022, through July 3, 2022. Ex. 6. Mr. Castro signed this calendar of hours on July 29, 2022. Ex. 6.
- 4.30. In an email to Ms. Taylor dated July 29, 2022, Mr. Castro wrote that he relied on Ms. Alapai’s time records from March through May because they worked the same hours and then he estimated his hours beginning May 13, 2022, “based on the shop hours as [he knew he] started work at least an hour before opening to prep and an hour after closing to clean” Ex. 3, p. 2.
- 4.31. However, the store hours varied from day to day depending upon how busy it was. Raisdanai Testimony; Abouelmagd Testimony; Ex. C. Exhibit C reflects the operating hours, as opposed to public hours. Raisdanai Testimony. More specifically, Exhibit C reflects when the Kona Poke’s POS system was engaged. Raisdanai Testimony. Operating hours were the hours that were staffed in order to operate the restaurant, including prep and cleaning. Raisdanai Testimony. However, public hours were the hours Kona Poke was open to customers. Raisdanai Testimony.
- 4.32. The operating hours were driven by the public hours. Raisdanai Testimony. The hours varied depending upon whether coverage was available and how much business there was. Raisdanai Testimony. Mr. Castro and Ms. Alapai would sometimes close early if business was slow, sometimes with Ms. Raisdanai’s permission and sometimes strictly on their own initiative. Raisdanai Testimony.
- 4.33. Based on Mr. Castro’s calendar, Ms. Taylor calculated that Mr. Castro worked 253.5 overtime hours. Taylor Testimony; Ex. 8.
- 4.34. Ms. Alapai asserted in her wage complaint that Kona Poke owed her 194 hours of unpaid overtime. Ex. 9.
- 4.35. Ms. Alapai submitted to the Department her record of her hours worked. Taylor Testimony; Ex. 11.
- 4.36. Based on Ms. Alapai’s record of her hours worked, Ms. Taylor calculated that Ms. Alapai worked 214.8 overtime hours. Taylor Testimony; Ex. 14.

- 4.37. Ms. Alapai asserted in a memo to Ms. Taylor that she and Mr. Castro “always worked past closing time in order to clean up, put away food on the line, sweep, mop, take out trash, dishes, normal closing duties.” Ex. 13, p. 1.
- 4.38. However, most closing duties were performed by non-management employees. Raisdanai Testimony; Abouelmagd Testimony. At most, Mr. Castro would shut down the grill and Ms. Alapai would close out the POS system or put away salads. Raisdanai Testimony; Parker Testimony. Moreover, if business was slow, most closing chores would be done before Kona Poke closed for the day. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony. Kona Poke often kept only one employee after public hours to perform closing chores. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony. There was no food to put away because it was stored constantly in the refrigerator. Raisdanai Testimony. When food was cooked, only what was needed was removed from refrigeration. Raisdanai Testimony. Further, the only dishes that needed to be washed were the utensils used to grill the food. Raisdanai Testimony.
- 4.39. Non-management employees each had a key to Kona Poke so that they could enter alone to perform “prep” and exit alone after performing “closing duties”. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony.
- 4.40. Kona Poke did not pay Ms. Alapai or Mr. Castro any overtime. Raisdanai Testimony; see Exs. 9, 12.
- 4.41. Mr. Castro and Ms. Alapai never complained to Ms. Raisdanai that they were working more hours than they were paid for. Raisdanai Testimony. Rather, they offered to work more hours to make up for the times they took off to handle their affairs. Raisdanai Testimony. But Ms. Raisdanai did not allow that because she wanted to give them an opportunity to reset their lives. Raisdanai Testimony. Kona Poke did not deduct from their wages when they were absent. Raisdanai Testimony.
- 4.42. When Ms. Alapai quit in mid-May 2022, and Mr. Castro quit on July 1, 2022, neither of them said that Kona Poke owed them overtime wages. Raisdanai Testimony.
- 4.43. Meaningfully, months after Mr. Castro filed his wage complaint against Kona Poke and Ms. Raisdanai, Mr. Castro texted Ms. Raisdanai asking for his job back. Raisdanai Testimony.
- 4.44. Mr. Castro and Ms. Alapai would leave in the middle of a shift, without informing Ms. Raisdanai, much less asking permission. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony. Ms. Raisdanai would learn of this from the non-management employees. Raisdanai Testimony. At times, Ms. Raisdanai would have to rush to the restaurant because it lacked sufficient

coverage when Mr. Castro and Ms. Alapai would leave. Raisdanai Testimony. This worsened in June after Ms. Alapai returned to Hawaii, leaving Mr. Castro behind. His mid-shift disappearances were supplemented by no-shows, and he completely stopped appearing for work in July 2022. Raisdanai Testimony. Part of that time, Ms. Raisdanai was out of town, receiving calls from non-management employees regarding Ms. Castro's absences. Raisdanai Testimony. Mr. Castro did not respond to text messages, emails, and phone calls. Raisdanai Testimony. Ultimately, he quit – by text message. Raisdanai Testimony.

- 4.45. Ms. Raisdanai submitted a calendar of employees' hours worked. Taylor Testimony; Raisdanai Testimony; Exs. 16-18. Although Exhibit 17 suggests that Ms. Raisdanai created and filled out the employee shift calendar that comprises Exhibit 18, on August 22, 2022, that is not so. Raisdanai Testimony. Rather, that date represents the date that Ms. Raisdanai downloaded an Excel version from the original document saved on OneDrive. Raisdanai Testimony. The calendar was created in February of 2022. Raisdanai Testimony. Ms. Raisdanai did not create, adjust, or "backfill" the contents of the calendar in response to the investigation of the wage complaints at issue here. Raisdanai Testimony.
- 4.46. The document that is Exhibit 18 served as Kona Poke's calendar and work schedule. Raisdanai Testimony. This document was available online to the employees. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony. Employees could enter vacations, school finals, medical appointments, family plans, and other events or conflicts months in advance. Raisdanai Testimony. Employees could verify their daily and weekly schedule as needed. Raisdanai Testimony. In addition to online access, Ms. Raisdanai posted a printed version above the sink where employees washed their hands. Raisdanai Testimony.
- 4.47. The calendar was updated if work hours were changed – with two exceptions. Raisdanai Testimony. One, if the restaurant closed early, Ms. Raisdanai would typically pay the non-management employees the hours that were promised to them, nevertheless. Raisdanai Testimony. Two, the calendar does not reflect when Mr. Castro or Ms. Alapai would simply walk off the job for personal reasons. Raisdanai Testimony. Payroll was produced in reliance on the calendar. Raisdanai Testimony. The calendar lists an employee's start time, end time, and mandatory break time<sup>1</sup>, and then the total hours actually worked. Raisdanai Testimony. If an employee took a longer meal break, the meal break time on the calendar was not updated but the total hours worked reflected that

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<sup>1</sup> The break that the employee was supposed to take to comply with labor laws. Raisdanai Testimony; Abouelmagd Testimony. Employees generally, and Mr. Castro and Ms. Alapai specifically, were fully relieved from duty when taking such breaks. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony

longer meal break. Abouelmagd Testimony. The total hours worked was recorded by Ms. Raisdanai after receiving input from the employees reporting their hours worked. Raisdanai Testimony; Abouelmagd Testimony; Parker Testimony. Sometimes, employees would report changes in their hours worked to Mr. Castro, who would in turn tell Ms. Raisdanai. Abouelmagd Testimony; Parker Testimony.

- 4.48. The hours in green print on the calendar represent the public hours each day, i.e., the time that Kona Poke was open to serve customers. Raisdanai Testimony; Abouelmagd Testimony. The entries in pale blue were generally adjusted hours. Raisdanai Testimony. However, using blue was not constantly observed. Raisdanai Testimony.
- 4.49. Ms. Alapai was expected to create a timecard system in conjunction with Kona Poke's POS system but she could not get it to work. Raisdanai Testimony. So, Kona Poke used the calendar instead. Raisdanai Testimony.
- 4.50. Duvall Police Officer Parker Gunnhild visited Kona Park up to two or three times a week in the evenings and never saw Ms. Alapai there. Gunnhild Testimony. Officer Gunnhild only saw Ms. Alapai at Kona Poke at lunch time. Gunnhild Testimony.
- 4.51. Officer Gunnhild saw Mr. Castro at Kona Poke during the evening no more than two or three times a month. Gunnhild Testimony. On those occasions he was preparing to leave or simply hanging out. Gunnhild Testimony.
- 4.52. Officer Gunnhild would often drop by again at approximately 10:00 PM, when Kona Poke was closed and its employees were cleaning. Gunnhild Testimony. Officer Gunnhild cannot remember ever seeing Mr. Castro or Ms. Alapai at Kona Poke at that time. Gunnhild Testimony.
- 4.53. Kona Poke tracked 31 overtime hours for Mr. Castro. Ex. 18.
- 4.54. Kona Poke tracked 5 overtime hours for Ms. Alapai. Ex. 18.
- 4.55. Mr. Castro's hourly rate for calculating the value of unpaid overtime is \$37.50<sup>2</sup>. See also, Ex. 8.
- 4.56. The value of Mr. Castro's unpaid overtime based on employer tracking is \$1162.50.<sup>3</sup>

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<sup>2</sup> Calculated as \$52,000 annual salary divided by 52 weeks per year divided by 40 hours per week equals \$25.00 regular hourly rate times 1.5 equals \$37.50 overtime hourly rate.

<sup>3</sup> Calculated as 31 hours times \$37.50 per hour equals \$1162.50.

4.57. Ms. Alapai's hourly rate for calculating the value of unpaid overtime is \$27.41.<sup>4</sup>

4.58. The value of Ms. Alapai's unpaid overtime based on employer tracking is \$137.05.<sup>5</sup>

## 5. CONCLUSIONS OF LAW

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

### *Jurisdiction*

5.1. I have jurisdiction to hear and decide this matter under Revised Code of Washington (RCW) 49.48.084 and Chapter 34.05 RCW.

### *Worker Rights Complaint (wage complaint)*

5.2. An employee's written assertion that the employer violated one or more wage payment requirements is called a wage complaint. RCW 49.48.082(11). Accordingly, Mr. Castro's Worker Rights Complaint at issue here and Ms. Alapai's Worker Rights Complaint at issue here are wage complaints.

5.3. If an individual files a wage complaint, the Department must investigate. RCW 49.48.083(1). Therefore, the Department was required to investigate the wage complaints filed by Mr. Castro and Ms. Alapai.

5.4. The Department relies upon Chapters 49.52, 49.46, and 49.48 RCW, as well as regulations augmenting those statutes in Chapter 296-126 Washington Administrative Code (WAC).

### *Kona Poke was required to pay overtime wages to Mr. Castro and Ms. Alapai*

5.5. "Except as otherwise provided in this section, no employer shall employ any of his or her employees for a work week longer than forty hours unless such employee receives compensation for his or her unemployment in excess of the hours above specified at a rate not less than one and one-half time the regular rate at which he or she is employed." RCW 49.46.130(1).

5.6. Kona Poke and Ms. Raisdanai did not argue that any of the exceptions to the foregoing authority apply. Rather, the crux of this case is whether the overtime hours reported by Mr. Castro and Ms. Alapai were actually worked. In considering the evidence to that effect, the following authority applies.

5.7. All employers subject to the provisions of Chapter 49.46 (formerly known as the Minimum Wage Act) must make, keep, and preserve records regarding its

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<sup>4</sup> Calculated as \$38,000 annual salary divided by 52 weeks per year divided by 40 hours per week equals \$18.27 regular hourly rate time 1.5 equals \$27.41 overtime hourly rate.

<sup>5</sup> Calculated as 5 hours times \$27.40 per hour equals \$137.05.

employees, including but not limited to hours worked and wages paid. RCW 49.46.040(3); RCW 49.46.070.

- 5.8. When interpreting and applying the Minimum Wage Act, Washington courts may consider decisions produced under the Fair Labor and Standards Act (FLSA) to be persuasive, although not mandatory, authority. *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 298, 996 P.2d 582 (2000).
- 5.9. Under the FLSA, the employee “has the burden of proving that he performed work for which he was not properly compensated.” *Anderson v. Mt. Clemons Pottery Co.*, 328 U.S. 680, 686-687, 66 S. Ct. 1187, 90 L.Ed. 1515 (1946). However, given that the FLSA requires employers to keep records, wages, and hours, and given that employees seldom keep such records, much less trustworthy ones, “a proper and fair standard must be erected for the employee to meet in carrying out his burden of proof”. *Id.* at 687. Accordingly, “an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he provides sufficient evidence to show the amount and extent of that work as a matter of *just and reasonable inference*.” *Id.* (emphasis added).
- 5.10. More than 40 years later, an appellate court employed the concept of just and reasonable inference in another FLSA case. See, *McLaughlin v. Ho Fat Seto*, 850 F.2d 586 (9<sup>th</sup> Cir. 1988). The employer kept records of hours and wages, but the trial court found them to be false. *Id.* The appellate court upheld the trial court’s decision to rely on testimony from five of the 28 effected employees as sufficiently representative. *Id.* at 588. It found those five witnesses to be more credible than the four witnesses offered by the employer as to hours worked. *Id.* Even though those five witnesses were “inconsistent in terms of exact days and hours of overtime worked, [they] established ‘as a matter of just and reasonable inference,’ that all of the employees regularly worked over eight hours on weekdays and over six hours on many Saturdays.” *Id.* at 589. (citation omitted).
- 5.11. “[I]f the employer fails to keep records, the burden is on the employer to prove that hours claimed were not worked. However, the employee must first show *by reasonable inference* the number of hours worked to shift the burden onto the employer to prove otherwise. The worker can shift the burden of proof to the employer by proving some quantum of work actually performed. The employer must then rebut the inference that the employee worked the number of hours required to accomplish this amount of work.” *MacSuga v. County of Spokane*, 97 Wn.App. 435, 445-446, 983 P.2d 1167 (1999) (citing *Anderson v. Mt. Clemons*) (emphasis added).
- 5.12. Here, Mr. Castro provided hours worked on the L&I form created for that purpose. He reconstructed them after he separated from employment. He relied

upon Ms. Alapai's record of hours for March through mid-May and his memory from that point through July. Ms. Alapai provided a typed list of dates and hours worked. Neither of them appeared at the evidentiary hearing to provide testimony subject to cross-examination about the nature and reliability of their records of hours. Kona Poke and Ms. Raisdanai, on the other hand, provides Kona Poke's work calendar, and testimony both from Ms. Raisdanai and from Kona Poke employees, that consistently explained the calendar's purpose, function, and design. Moreover, Kona Poke and Ms. Raisdanai provided evidence that demonstrated that Kona Poke did not always maintain its posted hours of operation, closing early or opening late if staffing was unavailable or business was slow. Further, Kona Poke and Ms. Raisdanai provided testimony that refuted the assertions from Ms. Castro and Ms. Alapai that they consistently worked both before and after the hours Kona Poke was open to the public, much less that they performed the duties associated with those additional hours. Also, Mr. Castro and Ms. Alapai apparently never reported their "extra" hours to Ms. Raisdanai nor ever complained that they were not being paid for overtime worked. Finally, months after Mr. Castro quit, while the wage complaints at issue here were subject to this appeal, he called Ms. Raisdanai to seek re-employment. It seems unlikely that a person who believes his former employer owes him several thousand dollars in unpaid wages would seek re-employment with that employer. Therefore, I hold that Ms. Castro and Ms. Alapai have failed to meet their burden to establish, *as a matter of just reasonable inference*, that they worked the amount of overtime hours they claimed in their worker complaints.

- 5.13. Nevertheless, in reliance on Kona Poke's records, I find and hold that Kona Poke failed to pay Mr. Castro \$1162.50 for 31 hours of overtime, and that Kona Poke failed to pay Ms. Alapai \$137.05 for 5 hours of overtime.
- 5.14. Accordingly, I hold that Kona Poke and Ms. Raisdanai violated RCW 49.46.130(1).

*Interest on unpaid wages*

- 5.15. Unpaid wages may accrue interest at the rate of 1% interest per month on all wages owed until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083(2).
- 5.16. Thus, the Department is correct to assess 1% interest per month on all wages Kona Poke and Ms. Raisdanai owe to Mr. Castro and/or Ms. Alapai. I leave the calculation of interest to the Department.

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*The penalties for willful violation should be affirmed*

- 5.17. "If the department determines that the violation of the wage payment requirement was a willful violation, the department may also order the employer to pay the department a civil penalty" of ten percent of the total unpaid wages or \$1,000, whichever is more, but not more than \$20,000. RCW 49.48.083(3).
- 5.18. Here, Kona Poke and Ms. Raisdanai violated RCW 49.46.130(1). At issue is whether that violation was willful.
- 5.19. RCW 49.48.082(13) defines "willful" as a "knowing and intentional action that is neither accidental nor the result of a bona fide dispute . . ." See also, *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 159-60, 961 P.2d 371 (1998)(willful means the result of a knowing and intentional action); *Morgan v. Kingen*, 166 Wn.2d 526, 534, 210 P.3d 995 (2009) (willful means volitional, knowledgeable, intentional).
- 5.20. Here, Kona Poke and Ms. Raisdanai knowingly, intentionally, and purposely, failed to pay overtime wages owed to Mr. Castro and Ms. Alapai. They knew or should have known that Mr. Castro and Ms. Alapai were not overtime exempt. Apparently, Ms. Raisdanai talked about overtime status with the Department. But it is unclear when that call occurred, what Department staff was involved, and the specifics of the conversation. Accordingly, I cannot find that this conversation contributed to Kona Poke's and Ms. Raisdanai's conduct or deflected their responsibility to know and understand wage laws in Washington. Therefore, I find their failure to be "willful" as contemplated by the foregoing authority.
- 5.21. Thus, Kona Poke and Ms. Raisdanai are liable to the payment of two \$1,000 penalties.

*Kona Poke and Ms. Raisdanai are not entitled to a credit for other monies paid*

- 5.22. Kona Poke and Ms. Raisdanai argued that they are entitled to credit against any unpaid overtime for money already paid, relying on RCW 49.46.090(1).
- 5.23. "Any employer who pays any employee less than the amounts to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount due to such employee under this chapter, less any amount actually paid to such employee by the employer". RCW 49.46.090(1) (in relevant part).
- 5.24. In their argument for credit, Kona Poke and Ms. Raisdanai refer specifically to the money paid to Mr. Castro and Ms. Alapai to relocate. However, the statute that they recite refers to reducing the employer's liability to the *full amount* due to the employee by operation of Chapter 49.46 RCW "less any amount *actually*

paid" to the employee. I am not persuaded that this provision applies to any and all monies paid to the employee. Rather, it is limited to monies paid for the same purpose as is reached by the liability. In other words, if I determined that Kona Poke and Ms. Raisdanai had paid overtime to Mr. Castro and Ms. Alapai in the past, and overtime liability at issue here included some of those same hours, I would reduce the liability by those monies already paid. That is not the case here. Similarly, there is also evidence in this record that Ms. Raisdanai was generous in providing to Mr. Castro and Ms. Alapai rent-free living space and the use of a car, as well as advances upon future wages. None of those circumstances apply here either, for the same reason. Thus, I hold that Kona Poke and Ms. Raisdanai are not entitled to any credit or reduction by operation of RCW 49.46.090(1).<sup>6</sup>

*The Department may impose liability on Ms. Raisdanai*

- 5.25. Kona Poke and Ms. Raisdanai did not argue that she is not personally liable for any wages, interest, and/or penalties owing to Mr. Castro and/or Ms. Alapai by operation of their wage complaints. Nevertheless, it is apt that I address that issue.
- 5.26. Here, Kona Poke violated RCW 49.46.130(1).
- 5.27. For purposes of the wage requirements expressed in RCW 49.46.130, "employer" has the meaning provided in RCW 49.46.010. RCW 49.46.082(6).
- 5.28. "Employer" includes 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).
- 5.29. Here, Ms. Raisdanai was and remains an owner of Kona Poke. During the times relevant here, she had partners. The record demonstrated that two of those partners are apparently no longer active. But that does not distract from the fact that Ms. Raisdanai was and remains an owner who participated and participates in the daily operation of Kona Poke, including but not limited to hiring and firing of employees, and determining rate of pay and executing payment of wages. Accordingly, I hold that Ms. Raisdanai is personally liable for any wages, interest, and/or penalties upheld in this action, jointly and severally with Kona Poke.

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<sup>6</sup> In addition, at least as to Mr. Castro, he may not be liable for repayment of the \$5000 relocation fee unless and until sued for breach of contract. Regardless, I am not aware of any opportunity in actions under the Administrative Procedures Act for counterclaims or cross claims.

*The Citations and Notice of Assessment at issue here should be modified*

- 5.30. Citation and Notice of Assessment No. W-296-23 should be modified to wages owed of \$1162.50, interest to be calculated by the Department, and a penalty of \$1,000.00.
- 5.31. Citation and Notice of Assessment No W-297-23 should be modified to wages owed of \$137.05, interest to be calculated by the Department, and a penalty of \$1,000.00.

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## 6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Department of Labor and Industries, action is **MODIFIED**.
- 6.2. Citations and Notice of Assessment Nos. W-296-23 and W-297-23 are **MODIFIED**.
- 6.3. Kona Poke House, LLC dba Kona Poke and Orchideh Raisdanai violated RCW 49.46.130(1) as to Pedro Castro and Chanell Alapai by failing to pay overtime wages. Kona Poke House, LLC dba Kona Poke and Orchideh Raisdanai owe unpaid overtime wages to Pedro Castro in the amount of \$1162.50 and to Chanell Alapai in the amount of \$137.05. Accordingly, Kona Poke House, LLC dba Kona Poke and Orchideh Raisdanai are jointly and severally liable for those unpaid wages.
- 6.4. Kona Poke House, LLC dba Kona Poke shall pay interest in the amount of 1% of the unpaid wages for each month those wages were and remain unpaid and to accrue at the rate of 1% for each month that the wages and interest are and remain unpaid – all calculated accordingly by the Department of Labor and Industries.
- 6.5. Kona Poke House, LLC dba Kona Poke willfully violated wage payment requirements of Chapter 49.46 and are liable for penalties totaling \$2,000.00.
- 6.6. The Department of Labor and Industries may impose personal liability upon Orchideh Raisdanai and her marital community for the payment of unpaid wages, interest, and the penalties.

6.7. The manner and timing of the collection of the unpaid wages, interest, and penalties shall be determined by the Department of Labor and Industries.

Issued from Olympia, Washington on the date of mailing.



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Terry A. Schuh  
Administrative Law Judge  
Office of Administrative Hearings

**CERTIFICATE OF SERVICE ATTACHED**

## APPEAL RIGHTS

### 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.<sup>7</sup> You may e-mail your Petition for Review to the Director at [directorappeal@lni.wa.gov](mailto: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.<sup>8</sup>

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

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<sup>7</sup> RCW 49.48.084 and RCW 34.05.464.

<sup>8</sup> RCW 49.48.084 and Chapter 34.05 RCW.

## CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 11-2023-LI-02000

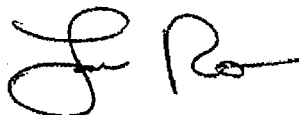
I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by Email.

Kona Poke House, LLC dba Kona Poke 27610 NE 140th Ct Duvall, WA 98019 <b><i>Appellant Employer</i></b>	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Orchideh Raisdanai 14030 Main St NE, Suite A Duvall, WA 98019 <b><i>Appellant Employer</i></b>	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
John Follis & Grant Follis Anderson Hunter Law Firm, P.S. 2707 Colby Avenue Suite 1001 Everett, WA 98201 <b><i>Appellant Representatives</i></b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:JFollis@andersonhunterlaw.com">JFollis@andersonhunterlaw.com</a> <a href="mailto:GFollis@andersonhunterlaw.com">GFollis@andersonhunterlaw.com</a> <a href="mailto:KRooney@andersonhunterlaw.com">KRooney@andersonhunterlaw.com</a>
Scott E. Michael, AAG Office of the Attorney General Labor & Industries Division PO Box 40121 Olympia, WA 98504 <b><i>Agency Representative</i></b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:Scott.Michael@atg.wa.gov">Scott.Michael@atg.wa.gov</a> <a href="mailto:Daisy.Logo@atg.wa.gov">Daisy.Logo@atg.wa.gov</a> <a href="mailto:Iniolyeservice@atg.wa.gov">Iniolyeservice@atg.wa.gov</a>
Pedro Castro 73-4398 Kalaoa St Kailua Kona, HI 96740 <b><i>Intervenor Wage Claimant</i></b>	<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>Pedro Castro 2651 Wyandott St Las Vegas, NV 89102 <b><i>Intervenor Wage Claimant</i></b></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>Chanell Alapai 73-4398 Kalaoa St Kailua Kona, HI 96740 <b><i>Intervenor Wage Claimant</i></b></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>

Date: Tuesday, August 20, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson  
Legal Assistant 2

