

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: CHAMPION MOTELS INC. dba
MOTEL 6 & DEVAYANI KHANNA,

Citation and Notice of Assessment Nos.
W-152-16 and W-156-16,

OAH Docket No. 02-2016-LI-00037.

NO. 2017-002-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order served on August 5, 2016, having considered the petition for review filed by Champion Motels Inc. dba Motel 6 & Devayani Khanna (the Appellant) with the Director's Office, briefing submitted to the Director's Office, and having reviewed the record created at hearing, issues this Director's Order. This Order intends to resolve the contested issue of whether the Appellant failed to pay all the wages due to Kameo Rivas and Trevor Medlock in violation of the wage payment laws. **The Appellant is ordered to pay wages to Kameo Rivas in the amount of \$89.97 and wages to Trevor Medlock in the amount of \$132.58. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages. The Appellant is ordered to pay the Department a penalty in the amount of \$1,000.**

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

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

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on August 5, 2016, following an administrative hearing.

2. On September 6, 2016, the Appellant timely filed a petition for review with the Director.

3. The parties submitted briefing to the Director. The Appellant provided a Declaration of Appellant Devayani Khanna, with an exhibit. The Director does not admit these documents into evidence, and will not consider new alleged facts that were not submitted at the Office of Administrative Hearing. The Appellant also provided a Response Brief that had three exhibits attached. The Director does not admit the three exhibits and did not consider any new information raised in the brief. However, the Director has considered the arguments raised in these documents to the extent they were not stricken as unadmitted factual assertions.

4. The Director also adopts and incorporates the Initial Order's "Issue" statement, the "Order Summary" and the "Hearing" summary, except the typographical error in the Order Summary at paragraph 2.2 is corrected to read \$9.47 an hour.

5. The Director adopts and incorporates all the Initial Order's Findings of Fact.

6. Devayani Khanna was the governing agent and president of the corporation. She controlled the decisions pertinent to the failure to pay Rivas and Medlock. She ran and controlled the business and managed the hotel. She was responsible for payroll decisions and issued checks to the employees. It was her decision not to pay Rivas and Medlock. Khanna acted directly in the interest of Champion Motels Inc. in relation to Medlock and Rivas. By failing to pay these employees, the Appellant would profit.

II. CONCLUSIONS OF LAW

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

2. The Director has jurisdiction over the subject matter and the parties to this action.

3. The Director adopts and incorporates the Initial Order's Conclusions of Law and Initial Order.

4. The Appellant did not produce adequate payroll records. Washington requires employers to keep records about the hours worked by its employees. RCW 49.46.040, .070; WAC 296-128-010. Special rules apply to evaluating the evidence and the burden of proof when an employer has failed to keep adequate records. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 66 S. Ct. 1187, 90 L. Ed. 1515 (1946); *MacSuga v. Cty. of Spokane*, 97 Wn. App. 435, 445, 983 P.2d 1167 (1999); *see also Pugh v. Evergreen Hosp. Med. Ctr.*, 177 Wn. App. 363, 368, 312 P.3d 665 (2013). Under *Anderson*, although the preponderance of the evidence standard applies, the burden of proof is relaxed when an employer does not keep adequate records. *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1315 (11th Cir. 2013). In its prima facie case, the party seeking wages must (1) prove that the employee has performed work that he or she was not properly compensated for and (2) provide evidence to show the amount of such work by reasonable inference. *Anderson*, 328 U.S. at 687. If the initial burden is met, "The employer must then rebut the inference that the employee worked the number of hours required to accomplish this amount of work." *MacSuga*, 97 Wn. App. at 446.

5. The Appellant did not keep adequate records and *Anderson* applies. The Department met its burden of proof by proving that Rivas and Medlock worked uncompensated hours for the Appellant and by providing evidence to show the work by reasonable inference.

Upon the shifting of the burden, the Appellant did not negate the Department's claims for the reasons stated above, and so the hours claimed by the Department stand.

6. RCW 49.46.010(4) provides that "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." A person that acts directly or indirectly in the interest of the employer in relationship to an employee may be personally liable for wages owed to that employee. Khanna acted directly in the interest of Champion Motels Inc. in taking responsibility for the business and for payroll-related decisions regarding Rivas and Medlock. So Khanna is personally liable for the amounts determined owing.

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III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Citations and Notices of Assessment are AFFIRMED and the Initial Order is incorporated by reference herein.

1. Payment of wages. See Citations and notices of assessment for payment information and the effect of the failure to pay wages and interest. The Appellant is ordered to pay wages to Kameo Rivas in the amount of \$89.97 and wages to Trevor Medlock in the amount of \$132.58. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages. The Appellant is ordered to make these payments within thirty days of the date of service of this final Director's Order.

2. Payment of Civil Penalty. The Appellant is ordered to pay the Department a penalty in the amount of \$1,000. This penalty shall be paid to the Department within 30 days of the date of service of this final Director's Order. See Citations and notices of assessment for payment information

DATED at Tumwater this 17 day of January, 2017.



JOEL SACKS
Director

SERVICE

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

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by 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 Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 17 day of January, 2017 to the following via U.S. mail, postage prepaid.

Devayani Khanna
Champion Motels dba Motel 6
8125 River Road, Apt 6E
North Bergen, NJ 07047

Heather Leibowitz
Assistant Attorney General
800 Fifth Ave, Suite 2000
Seattle, WA 98104

Kameo Rivas
279 Westbourne Loop
Burbank, WA 99323

Trevor Medlock
279 Westbourne Loop
Burbank, WA 99323

DATED this 17 day of January, 2017, at Tumwater, Washington.

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Champion Motels Inc. dba Motel 6 &
Devayani Khanna,

Appellant.

Docket No. 02-2016-LI-00037

INITIAL ORDER

Agency: Department of Labor and
Industries

Program: Wage Payments

Agency No. W-152-16 and W-156-16

1. ISSUES PRESENTED

- 1.1 Whether the Department's October 26, 2015, Citation and Notice of Assessment holding the Appellant liable for \$89.97 in final wages plus interest owed to Kameo Rivas for 9.5 hours of work at a rate of \$9.47 per hour, should be affirmed or reversed.
- 1.2 Whether the Department's October 26, 2015 Citation and Notice of Assessment holding the Appellant liable for \$132.58 in wages plus interest owed to Trevor Medlock for fourteen (14) hours of work at a rate of 49.47 per hour, should be affirmed or reversed.
- 1.3 Whether the Appellant is liable for a penalty of \$1,000.00 as set forth in the Department's October 26, 2015 Citation and Notice of Assessments, for willfully violating the Washington Wage Payment Act.

2. ORDER SUMMARY

- 2.1 The Department's October 26, 2015, Citation and Notice of Assessment holding the Appellant liable for \$89.97 in final wages plus interest owed to Kameo Rivas for 9.5 hours of work at a rate of \$9.47 per hour, is AFFIRMED.
- 2.2 The Department's October 26, 2015 Citation and Notice of Assessment holding the Appellant liable for \$132.58 in wages plus interest owed to Trevor Medlock for fourteen (14) hours of work at a rate of 49.47 per hour, is AFFIRMED.
- 2.3 The Appellant is liable for a penalty of \$1,000.00 as set forth in the Department's October 26, 2015 Citation and Notice of Assessment, for willfully violating the Washington Wage Payment Act.

3. HEARING

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|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Hearing | July 21, 2016 |
| Administrative Law Judge | Courtney E. Beebe |
| Appellant | Champion Motels, Inc. and Devaynai Khanna |
| Department | Department of Labor and Industries |
| Department Rep. | Heather Leibowitz, Asst. Attorney General |
| Department Witnesses | Sylvia Cardenas, Industrial Relations Agent; Kameo Rivas, Wage Claimant; Trevor Medlock, Wage Claimant; Carmen Miller, Former Employee |
| Exhibits | Department's Exhibits 1 through 12 were admitted. Appellant did not submit exhibits. |

4. FINDINGS OF FACT

The Administrative Law Judge finds the following facts by a preponderance of the evidence:

Wage Claimant Kameo Rivas

- 4.1 Kameo Rivas, wage claimant, began working for Champion Motels Inc. dba Motel 6, owned and operated by Devaynai Khanna, ("Appellant") on or about June 9, 2015. (See Hearing Recording Part I, 00:40:15 - 00:40:25). At that time that she was employed by Appellant, Ms. Rivas was 17 years old (Date of Birth September 24, 1997). (See Hearing Recording Part I, 00:27:25 - 00:27:33; 00:40:10 - 00:40:18). She was hired by the general manager, Cassandra, to be a housekeeper. (See Hearing Recording Part I, 00:27:33 - 00:28:00; 00:40:55-00:40:58).
- 4.2 Appellant agreed to pay Ms. Rivas \$3.00 per room. Ms. Rivas was allowed 10-15 minutes to clean a "stay over" room (the guest was staying over the next night), and 15-20 minutes to clean a "check out" room (the guest had checked out). However, Ms. Rivas often needed additional time beyond the time allotted to clean rooms due to the poor conditions that the rooms were left in by guests. Ms. Rivas never received a set work schedule, but was verbally informed on a day to day basis of when work was available to her, and it was agreed Ms. Rivas would not work on Sundays.
- 4.3 Between the dates of June 13, 2015 and June 17, 2015, Ms. Rivas worked 9.5 regular hours for Appellant at minimum wage of \$9.47 per hour, equaling \$89.97. (Ex. 1, p. 6). Ms. Rivas did not receive a paycheck for the work performed between these dates. (Ex. 1, p. 9). Ms. Rivas quit her employment with Appellant on June 17, 2015.

- 4.4 When Ms. Rivas approached Cassandra regarding the failure to produce a paycheck, Cassandra told Ms. Rivas that she had not yet spoken to the accountant. (See Hearing Recording Part I, 00:47:27 - 00:47:44). When Ms. Rivas approached Cassandra a second time to follow up on the status of the paycheck, Cassandra told Ms. Rivas that she had still not gotten in touch with the accountant and that Ms. Rivas needed to stop coming in to see her. (See Hearing Recording Part I, 00:47:40 - 00:47:49). Eventually, Ms. Rivas came in to see Cassandra a third time, and Cassandra informed Ms. Rivas that she was refusing to pay Ms. Rivas and that Cassandra "didn't have record of anything." (See Hearing Recording Part I, 00:47:48 - 00:48:25).
- 4.5 On July 20, 2015, Ms. Rivas filed a workers right complaint with the Department alleging unpaid final wages for the hours worked from June 13, 2015 through June 17, 2015. (Ex. 1, p. 8).

Wage Claimant Trevor Medlock

- 4.6 Trevor Medlock, wage claimant, began working for Appellant on or about June 9, 2015. (See Hearing Recording Part I, 01:37:35 - 01:37:48). At the time that he was employed by Appellant, Mr. Medlock was 17 years old. (Date of Birth April 19, 1997). (See Hearing Recording Part I, 00:33:58 - 00:34:05; 01:37:30-01:37:35). He was hired by Cassandra, the general manager, to be a housekeeper. (See Hearing Recording Part I, 00:33:50 - 00:33:56; 01:37:48 - 01:39:20).
- 4.7 Appellant agreed to pay Mr. Medlock \$3.00 per room. Mr. Medlock was allowed 10-15 minutes to clean a "stay over" room (the guest was staying over the next night), and 15-20 minutes to clean a "check out" room (the guest had checked out). However, Mr. Medlock often needed additional time beyond the time allotted to clean rooms due to the poor conditions that the rooms were left in by guests. Mr. Medlock never received a set work schedule but was verbally informed on a day to day basis when work was available to him.
- 4.8 Between the dates of June 13, 2015 and June 17, 2015, Mr. Medlock worked fourteen (14) regular hours at the minimum wage rate of \$9.47 per hour, equaling \$132.58. (Ex. 1, p. 6). Mr. Medlock did not receive a paycheck for the work performed between these dates. (Ex. 1, p. 9). Mr. Medlock quit his employment with Appellant on June 17, 2015.
- 4.9 When Mr. Medlock approached Cassandra regarding the failure to produce a paycheck, Cassandra told Mr. Medlock that she had not yet spoken to the owner about it. (See Hearing Recording Part I, 01:58:15 - 01:58:30). Mr. Medlock spoke to Cassandra a second time but was unsuccessful in obtaining his paycheck. (See Hearing Recording Part I, 01:58:30 - 01:58:35, 02:06:30 - 02:06:57; Ex. 4B, p. 2).

- 4.10 On July 20, 2015, Mr. Medlock filed a workers right complaint alleging unpaid final wages for the hours worked from June 13, 2015 through June 17, 2015. (Ex. 1, p. 8).

Investigation of Wage Claim

- 4.11 The Department investigated both wage complaints submitted by Ms. Rivas and Trevor Medlock. The Department contacted Ms. Rivas and Mr. Medlock to obtain more information about the circumstances of the wage claim. (Ex. 3A, p. 1-3). (Ex. 3A, p. 1-2).
- 4.12 Ms. Rivas had kept track of her hours during the week of June 13, 2015 through June 17, 2015, by writing the information down because she became suspicious of Appellant's employment practices. Ms. Rivas provided Ms. Cardenas with the information regarding hours worked verbally during a phone conversation on August 20, 2015. (Ex. 4A, p. 1).
- 4.13 Mr. Medlock kept track of the hours he worked on his phone and provided Ms. Cardenas with the information verbally on August 20, 2015. Ex. 4A, p. 3; See Hearing Recording Part I, 01:55:23 - 01:55:40). Mr. Medlock confirmed he worked 14 hours during the period of June 13, 2015 through June 17, 2015.
- 4.14 The Department attempted to contact Appellant by phone during the investigatory period. (See Hearing Recording Part I, 00:29:33 – 00:30:06; see Hearing Recording Part I, 00:30:06 - 00:30:11). The Department was not successful in receiving a response from either Cassandra specifically, or the Appellant in general. (Id.)
- 4.15 During the investigatory period, the Department issued letters to the Appellant requesting information regarding Ms. Rivas' and Mr. Medlock's employment. (See Hearing Recording Part I, 00:30:50 - 00:31:30; Ex. 5, p. 1-2; Ex. 6, p. 1-2). Appellant did not submit any written responses or documentation during the investigatory period. (See Hearing Recording Part 2, 00:55:50 – 00:56:03). Because the Department never received a response from Appellant, the Department relied on the information provided by Ms. Rivas and Mr. Medlock. (See Hearing Recording Part I, 00:30:50 – 00:33:11; Hearing Recording Part 2, 00:31:00 – 00:32:25; Ex. 5, p. 1-2; Ex. 6, p. 1-2).
- 4.16 In June 2015, Ms. Khanna was living in New Jersey and taking care of her mother. (See Hearing Testimony Part 2, 01:15:54 - 01:16:04, 00:56:30 – 00:57:00). Ms. Khanna relied on oversight by ground staff to ensure accuracy around tracking the work completed by the staff, "check writing and distribution of payroll". (Ex. 2, p. 2). Ms. Khanna also reviewed all the published rosters (or schedules) for the employee's workweek. (See Hearing Recording Part 2, 01:27:35 – 01:28:12).

- 4.17 However, Ms. Khanna wrote the checks for employees. (See Hearing Recording Part 2, 01:23:30 – 01:23:47). Ms. Khanna did not produce any record of paying Ms. Rivas and Mr. Medlock for their work during the period of June 13, 2015 through June 17, 2015.
- 4.18 However, after the conclusion of the investigation, Ms. Khanna produced a number of housekeeping documents and provided the information to the Department. (Ex.9). The documents were used by the all the housekeeper employees (Alyssa, Sonia, Lupe, Myra, Mariella, Ms. Miller, Ms. Rivas, and Mr. Medlock) to track the rooms cleaned and the payment due each housekeeper. (Id.) The documents produced, however, reflect a series of inconsistent and highly suspect information.
- 4.19 On the housekeeping sheet for Sonia dated June 17, 2015, Sonia's name is written a considerable distance above the "Name" line. (Ex. 2, p. 43). This occurs again on Lupe's housekeeping sheet for June 17, 2015. (Ex. 2, p. 45). This occurs again on Alyssa's housekeeping sheet for June 17, 2015. (Ex. 2, p. 46). It is clear that the names originally written on the "Name" line have been obliterated.
- 4.20 On the housekeeping sheet for Lupe dated June 17, 2015, he is identified as "HK3" or housekeeper number three. (Ex. 2, p. 45). However, on the housekeeping summary sheet dated for June 17, 2015, Lupe is listed as "HK4" or housekeeper number four. (Ex. 2, p. 34). On the same housekeeping summary sheet, Alyssa is listed as "HK3". (Ex. 2, p. 34). However, Lupe was a maintenance man, not a housekeeper, and therefore had no reason to be listed on a housekeeping sheet or be assigned rooms to clean. (See Hearing Recording 00:59:00-00:59:10).
- 4.21 On the housekeeping sheet for Alyssa dated June 17, 2015, she is identified as "HK4" or housekeeper number four. (Ex. 2, p. 46). However, on the housekeeping summary sheet dated June 17, 2015, Alyssa is listed as "HK3" or housekeeper number three. (Ex. 2, p. 34). On the same housekeeping summary sheet, Lupe is listed as "HK4". (Ex. 2, p. 34).
- 4.22 On the housekeeping summary dated for June 17, 2015, it appears that Ms. Rivas and Mr. Medlock were originally listed as housekeepers 4 and 5 respectively, but that their first names were crossed out, written over, and substituted with Myra and Mariella's names. (Ex. 2, p. 69).
- 4.23 On the housekeeping time formula sheet dated for June 17, 2015, it appears that Ms. Rivas and Mr. Medlock were originally listed. (Ex. 2, p. 82). The formula credited Ms. Rivas with 2.5 hours worked. (Ex. 2, p. 82). The formula also credited Mr. Medlock with 3.83 hours worked, but the number is crossed out and a handwritten "2.5" was noted in its place. (Ex. 2, p. 82). Furthermore, someone

wrote over Ms. Rivas' name with the name "Myra" and Mr. Medlock's name with the name "Mariella". (Ex. 2, p. 82).

- 4.24 On the housekeeping sheet dated June 16, 2015, it identifies Myra as "HK 5" or housekeeper number five. (Ex. 2, p. 83). However, on the housekeeping summary dated for June 16, 2015, Myra is listed as "HK 4" or housekeeper number four. (Ex. 2, p. 69). On the housekeeping sheet, it appears that Mr. Medlock's name was written over, and substituted with Myra's. (Ex. 2, p. 83).
- 4.25 On the housekeeping sheet dated June 16, 2015, it identifies Mariella as "HK 4" or housekeeper number four. (Ex. 2, p. 83). However, on the housekeeping summary dated for June 16, 2015, Mariella is listed as "HK 5" or housekeeper number five. (Ex. 2, p. 69). On the housekeeping sheet, it appears that Ms. Rivas' name was written over, and substituted with Mariella's name. (Ex. 2, p. 83).
- 4.26 On the second housekeeping sheet dated for June 16, 2015, the name "Ashley" appears to have been hand-written and subsequently crossed out on the line at the top left-hand side of the page for another person's name. (Ex. 2, p. 84). Unlike other housekeeping sheets that credit rooms cleaned to particular individuals (identified by both name and housekeeper number), this sheet credits almost three-quarters of the rooms cleaned to just "HK". (Ex. 2, p. 84). For almost three-quarters of the rooms scheduled to be cleaned on this page, no employee was credited. (Ex. 2, p.84).

Credibility Findings

- 4.27 Based upon the testimony presented, and having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony, and the totality of the circumstances presented, the Administrative Law Judge finds that Ms. Rivas' and Mr. Medlock's testimony regarding the hours worked for Appellant to be credible, and that the documentary evidence presented by the Appellant lacks sufficient credibility.
- 4.28 During the hearing, Ms. Rivas' and Mr. Medlock's testimonies were consistent with their individual statements to the Department during the investigation of the wage claims. (Ex. 3A, p. 1; Ex. 4A, p. 1). Moreover, their statements were consistent with each other and their testimony was corroborated by that of Ms. Miller with respect to (1) the timeline of the events that took place, (2) the conditions of the rooms they had to clean, (3) the process of cleaning and the time allocated for cleaning, (4) details regarding paperwork and timesheets, (5) the conversations they had with Cassandra regarding failure to produce a paycheck, and (6) the names, job titles, and descriptions of individuals who worked at this establishment.

4.29 Conversely, the Appellant's only witness, Ms. Khanna, had no personal knowledge of the events that took place, save for the information in the housekeeping and timesheets she received from Cassandra. Given the inconsistent and highly suspect nature of the documents and Ms. Khanna's lack of personal knowledge of the events, it must be found that the Appellant's evidence lacks sufficient credibility.

Jurisdiction

- 4.30 Appellant is located at 1520 N Oregon Ave. Pasco, WA 98301-4256. (Ex. 12, p. 3). Ms. Rivas and Mr. Medlock were employed at this location in June 2015. (See Hearing Recording Part I, 01:37:35 – 01:37:48, 00:40:15 - 00:40:25; Ex. 1, p. 6).
- 4.31 Ms. Khanna was the agent and governing officer for this business at the time that the events took place. (Ex. 12, p. 4-6).
- 4.32 Ms. Rivas and Mr. Medlock both lived at 279 Westbourne Loop in Burbank, WA 99323 at the time that the events at issue in this hearing took place. (Ex. 3B, p. 1; Ex. 4B, p. 1).
- 4.33 On October 26, 2015, the Department issued two Citations and Notices of Assessment to Appellant Champion Motels dba Motel 6 and Devanyni Khanna, assessing wages owed to Ms. Rivas and Mr. Medlock, as well as penalties and interest. (Ex. 1, p. 8-12; Ex. 4A, p.1).
- 4.34 On November 18, 2015, Appellant filed with the Department a Notice of Appeal requesting a hearing. (Ex.2.)
- 4.35 On February 10, 2016, the matter was forwarded to the Office of Administrative Hearings for further proceedings.

5. CONCLUSIONS OF LAW

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

Jurisdiction

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

Burden of Proof

5.2 Under the WPA, the wage claimant has the initial burden of showing *prima facie* evidence of a wage payment law violation. See, *Anderson v. Mt. Clemens*

Pottery Co., 328 US. 680, 687-688, S.Ct. 1187, 90 L.Ed. 1515 (1946) (federal minimum wage law under Fair Labor & Standards Act); *MacSuga v. County of Spokane*, 97 Wn.App. 435, 445-446, 983 P.2d 1167 (1999). The *prima facie* showing must be supported by a preponderance of the evidence.

- 5.3 A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighed against the evidence in opposition thereto. *Yamamoto v. Puget Sound Lbr. Co.*, 84 Wash. 411, 146 Pac. 861 (1915).
- 5.4 Substantial evidence must be presented and must be "sufficient to persuade a fair-minded person of the truth or correctness of the matter." *Ongom v. Dept. of Health*, 124 Wn App. 935, 948-49, 104 P.3d 29 (2005), *reviewed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005).

Applicable Law

- 5.5 The Fair Labor Standards Act of 1938 ("FLSA") deals with overtime and minimum wage requirements for employees. The Washington Minimum Wage Act ("WMWA"), RCW 49.46 and the Wage Payment Act, RCW 49.48 ("WPA") are based on the FLSA. The Wage Claimant seeks wages as per the WMWA and WPA.
- 5.6 Wage Payment Act, RCW 49.48 (WPA) authorizes administrative enforcement of wage payment requirements. Upon receipt of a wage complaint that alleges a violation of a wage payment requirement, the Department "shall investigate" and, unless otherwise resolved, "shall" issue either a citation (when finding a wage law violation) or a determination of compliance (when finding no violation) within sixty days. RCW 49.48.083. The Department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period. (Id.)
- 5.7 Wage payment requirements are those "set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department." RCW 49.48.082(10). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. RCW 49.48.082(12).
- 5.8 RCW 49.52.050(2) provides that it is unlawful to willfully withhold an agreed wage, which includes any wage an "employer is obligated to pay such employee by any statute, ordinance, or contract." The provisions of RCW 49.52.050(2) include oral or written agreements for hourly wages in excess of the minimum wage.
- 5.9 RCW 49.46.010(7) defines "wage" as:

[C]ompensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules by director.

RCW 49.46.010(7).

- 5.10 An employer is required to pay overtime when an employee works over 40 hours in a work week. RCW 49.46.130(1). The overtime rate is not less than one and a half times the regular rate at which the worker is employed. *Id.*
- 5.11 Hours worked means all hours which the worker is authorized or required by the business to be on the premises or at a prescribed work place. WAC 296-126-002(8). This could include travel time, training, and meeting time, wait time, on-call time, and time for putting on and taking off uniforms and also may include meal periods. RCW 49.48, 49.46 and 49.52.
- 5.12 “When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him or her on account of his or her employment shall be paid to him or her at the end of the established pay period . . . It shall be unlawful for any employer to withhold or divert any portion of an employee’s wages unless” the deduction meets the requirements of RCW 49.48.010 and WAC 269-126-025. RCW 49.48.010.

Analysis

- 5.13 While the Department did not have the benefit of the documentation from the Appellant when it originally issued the October 26, 2015 Citations and Notices of Assessment, the subsequent submission of the documents and Ms. Khanna’s do not bear negatively on the Department’s ultimate determination given the documents’ suspected accuracy and Ms. Khanna’s lack of personal knowledge about the events.
- 5.14 Ms. Rivas and Mr. Medlock kept contemporaneous and credible records of the hours worked for the employer, and consistently and credibly testified regarding the hours worked. Their testimony is corroborated by Ms. Miller’s testimony. Therefore, substantial evidence has been presented establish that the Appellant owes Ms. Rivas and Mr. Medlock wages for working 9.5 and 14 hours respectively.
- 5.15 It is not possible, however, to calculate the rate of pay based on the parties’ agreement of \$3.00 per room because 1) Ms. Rivas and Mr. Medlock needed additional time to clean rooms beyond the time allotted, and 2) because the highly suspect records do not account for the number of rooms cleaned by either of the wage claimants.

- 5.16 Because of the lack of information regarding the number of rooms cleaned and the demands of the WMWA, the rate of pay assessed must be calculated at least minimum wage of \$9.47. per hour, instead of by the per room rate agreed upon by the parties. Based on application of minimum wage, it is concluded that Ms. Rivas is owed \$89.97 in total wages for 9.5 hours of work. It is also concluded that Mr. Medlock is owed \$132.58 for 14 hours of work.
- 5.17 The Department's substantial and credible evidence, when fairly considered, produces the stronger impression and has the greater weight and is more convincing that the wage claimants Ms. Rivas and Mr. Medlock are owed the wages claimed. The October 26, 2015 Citations and Notices of Assessment must be affirmed.

Interest

- 5.18 Unpaid wages may accrue interest at the rate of 1% of the unpaid wage amount until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083.
- 5.19 Because the wages owed to both Ms. Rivas and Mr. Medlock have not been paid by Appellant, the wage claimants are entitled to interest at a rate of 1% from June 17, 2015.

Penalties

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

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

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

- 5.21 A willful violation is defined in RCW 49.48.082(13) as a "knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.53.050(2)." RCW 49.48.082(13).

- 5.22 Given the failure to pay Ms. Rivas and Mr. Medlock the final wages owed and the failure to participate in the investigation and present any admissible evidence that would establish a bona fide dispute exists, it must be concluded that the Appellant acted willfully and a penalty is appropriate.
- 5.23 Consistent with the Department's August 21, 2015, Citations and Notices of Assessment, the Appellant is liable for a penalty of \$1,000.00 as per RCW 49.48.083.

6. INITIAL ORDER

- 6.1 The Department of Labor and Industries' October 26, 2015, Citation and Notice of Assessment regarding Kameo Rivas is AFFIRMED.
- 6.2 The Department of Labor and Industries' October 26, 2016, Citation and Notice of Assessment regarding Trevor Medlock is AFFIRMED.
- 6.3 The Department of Labor and Industries' assessment of interest and penalties as set forth in the October 26, 2016, Citation and Notice of Assessment is AFFIRMED.

Dated: Friday August 5, 2016.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING IS ATTACHED

PETITION FOR REVIEW

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

Mailing Address:

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

Physical Address:

Director
Department of Labor and Industries
7273 Linderson Way SW
Tumwater, WA 98501

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

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

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

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

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 02-2016-LI-00037

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

| | |
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| <p>Champion Motels Inc. dba Motel 6 Devayani Khanna 8125 River Rd. Apt 6E North Bergen, NJ 07047 Annellant 91 7199 9991 7036 9384 0709</p> | <p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p> |
| <p>Department of Labor and Industries Heather Leibowitz, AAG 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 Agency Representative</p> | <p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p> |
| <p>Kameo rivas 279 Westbourne Loop Burbank, WA 99323 Wage Claimant 91 7199 9991 7036 9384 0693</p> | <p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p> |
| <p>Trevor Medlock 279 Westbourne Loop Burbank, WA 99323 Wage Claimant 91 7199 9991 7036 9384 0686</p> | <p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p> |

Date: Friday, August 05, 2016

OFFICE OF ADMINISTRATIVE HEARINGS

Julie Wescott

Julie Wescott
 Legal Assistant 2