

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: CRUISER DRIVING ACADEMY
LLC and KENN BISHOP

Citation and Notice of Assessment Nos.
W-213-16

OAH Docket No. 04-2016-LI-00103

No. 2017-006-WPA-2

DIRECTOR'S SECOND ORDER

RCW 49.48.084(4); RCW 34.05

On December 11, 2017, the Director's office received a motion for reconsideration of the Director's Order. The Appellant asks the Director to adopt the federal approach to calculating the wages owed here. Federal law does not apply when Washington law has not adopted a similar provision. *Drinkwitz v. Alliant Techsys., Inc.*, 140 Wn.2d 291, 298, 306, 996 P.2d 582 (2000). Washington law requires an hourly wage for hourly workers like James Huss. The Fair Labor Standards Act standard does not apply because that statute, unlike the Washington Minimum Wage Act, explicitly references workweek. 29 U.S.C. § 206(a); RCW 49.46.020.

The motion is denied.

DATED on this 9 day of February 2018.



JOEL SACKS
Director

SERVICE

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

APPEAL RIGHTS

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, declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S SECOND ORDER was mailed on the 9 day of February 2018, to the following via U.S. mail, postage prepaid:

Adam R. Pechtel
Pechtel Law PLLC
21 N. Cascade Str.
Kennewick, WA 99336

Cruiser Driving Academy, LLC and
Kenn Bishop
1418 S. Pioneer Way, Ste. A
Moses Lake, WA 98837

Christina K. Dallen
Assistant Attorney General
Attorney General's Office
P.O. Box 40121
Olympia, WA 98504

James Huss
2420- 6103 N. Airport Road
Ellensburg, WA 98926

DATED this 9 day of February 2018, at Tumwater, Washington.



DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: CRUISER DRIVING ACADEMY
LLC and KENN BISHOP

Citation and Notice of Assessment Nos.
W-213-16

OAH Docket No. 04-2016-LI-00103

No. 2017-006-WPA-2

DIRECTOR'S SECOND 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 July 14, 2017, having considered the petition for administrative review filed by Cruiser Driving Academy, LLC, and Kenn Bishop (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 Second Order for further proceedings.

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 Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on July 14, 2017.
2. On August 4, 2017, the Appellant timely filed a petition for administrative review with the Director.
3. The parties filed briefs, and the record closed with the Director on November 15, 2017, the date the Appellant's brief was due.

4. The Director adopts and incorporates the Initial Order's paragraphs 1.1 through 5.9 and Attachment to Initial Order on Remand.

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Director adopts and incorporates the Initial Order's paragraphs 6.1 through 7.2.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Initial Order dated July 14, 2017 (incorporated by reference) is AFFIRMED and the Citation and Notice of Assessment dated December 18, 2015 is AFFIRMED as modified.

1. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of failing to pay wages and interest. The Appellant is ordered to pay wages to James Huss in the amount of \$1,760.46 in regular wages and \$407.06 in overtime wages. The Company is also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages. The Company is ordered to make these payments within thirty days of service of this Director's Order.

DATED at Tumwater this 1 day of December 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

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or 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).

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 Second 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, declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 1 day of December 2017, to the following via U.S. mail, postage prepaid:

Adam R. Pechtel
Pechtel Law PLLC
21 N. Cascade Str.
Kennewick, WA 99336

Cruiser Driving Academy, LLC and
Kenn Bishop
1418 S. Pioneer Way, Ste. A
Moses Lake, WA 98837

Christina K. Dallen
Assistant Attorney General
Attorney General's Office
P.O. Box 40121
Olympia, WA 98504

James Huss
2420- 6103 N. Airport Road
Ellensburg, WA 98926

DATED this 1 day of December 2017, at Tumwater, Washington.



**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 04-2016-LI-00103

Cruiser Driving Academy LLC and Ken Bishop,

INITIAL ORDER ON REMAND

Appellant.

Agency: Department of Labor and Industries
Program: Wage Payments
Agency No. W-213-16

1. ISSUES PRESENTED

- 1.1 Whether the Department of Labor and Industries' December 18, 2015, Citation and Notice of Assessment determining that Cruiser Driving Academy LLC and Kenneth Bishop owes wage claimant James Huss wages for work performed between October 30, 2014 and July 18, 2015, plus interest, should be affirmed.
- 1.2 Whether Cruiser Driving Academy LLC and Kenneth Bishop are liable for a penalty of \$1,000.00 for failing to pay wage claimant James Huss wages owed.

2. ORDER SUMMARY

- 2.1 The Department of Labor and Industries' December 18, 2015, Citation and Notice of Assessment determining that Cruiser Driving Academy LLC and Kenneth Bishop owes wage claimant James Huss \$1,760.46 in regular wages and \$407.06 in overtime wages for work performed between October 30, 2014 and July 18, 2015, plus interest, is **AFFIRMED AS MODIFIED**.
- 2.2 Cruiser Driving Academy LLC and Kenneth Bishop are not liable for a penalty of \$1,000.00 for failing to pay wage claimant James Huss wages owed. The Department's December 18, 2015, Citation and Notice of Assessment is **REVERSED** as to the penalty assessed.

3. HEARING

Hearing	August 31, 2016
Administrative Law Judge	Courtney E. Beebe
Appellant	Cruisers Driving Academy and Ken Bishop
Appellant Rep.	Adam Pechtel, Attorney at Law
Appellant Witnesses	Ken Bishop, Appellant; Keenan Bishop, Employee
Department	Department of Labor and Industries
Department Rep.	Rebecca Echols, Asst. Attorney General
Department Witnesses	James Huss, Wage Claimant; Yesenia Sabedra, Industrial Relations Agent.
Exhibits	Department's Exhibits 1 through 20 and the Appellant's Exhibits A through D were admitted.

4. COURSE OF PROCEDURE

- 4.1 The Department of Labor and Industries (“Department”) investigated and evaluated James Huss’ (“Wage Claimant”) wage claim and created a “Wage Transcription Sheet” and issued a Citation and Notice of Assessment on December 18, 2015, concluding that Cruiser Driving Academy LLC and Ken Bishop (“Appellant”) owed the Wage Claimant \$1,943.36 in wages, plus interest. The Department also assessed the Appellant a \$1,000.00 penalty.
- 4.2 The Appellant filed a request for hearing on January 19, 2016.
- 4.3 The matter was forwarded to the Office of Administrative Hearings on April 7, 2016.
- 4.4 The parties appeared for hearing on August 31, 2016. The Administrative Law Judge issued an Initial Order on October 27, 2016. The Administrative Law Judge concluded that the Appellant owed the Wage Claimant regular and overtime wages in the amount of \$2,838.00 for work performed between October 30, 2014 and July 18, 2015, plus interest, and affirmed as modified the Department’s December 18, 2015, Citation and Notice of Assessment.
- 4.5 The Appellant filed a Petition for Review on November 17, 2016. The Director of the Department issued a Director’s Order Remanding Case to Office of Administrative Hearing on April 17, 2017. The Director’s Order directed this tribunal to “recalculate the wages and overtime due consistent with this Order and the record” and to make “corrections noted on page 10 of the Department’s February 21, 2017 brief.” Director’s Order, p.4.
- 4.6 The parties appeared for a status conference on April 26, 2017. The Administrative Law Judge allowed each party to submit briefing regarding the recalculation of wages by June 1, 2017. The Department submitted a “Brief Regarding Recalculation of Wages Owed.” The Appellant submitted an “Appellant’s Brief Recalculating Wages Due.”

5. FINDINGS OF FACT

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

- 5.1 Cruisers Driving Academy LLC dba Cruisers Driving Academy is owned and operated by Kenneth Bishop (“Appellant”). The Appellant provides driver’s education training and conducts DOL skills tests. The Appellant provides these services in Moses Lake, Ephrata, Othello, and Ellensburg, Washington.

- 5.2 James Huss ("Wage Claimant") began working for Cruisers Driving Academy, in September 2015. The Wage Claimant was initially hired at a pay rate of \$12.50 per hour for non-travel hours, but the Appellant raised the hourly rate to \$13.50 per hour for non-travel hours on May 1, 2015. The Wage Claimant lives in Ellensburg. When the Wage Claimant submitted his "Driver Training School Instructor License Application" to the Department of Licensing, he identified that he would perform work at "Cruisers Driving Academy Moses Lake, Ephrata, Othello, and Ellensburg." *Id.*
- 5.3 The Wage Claimant worked Monday through Friday, and began his shift sometime between 8:00 a.m. and 10:00 a.m., depending on the number of students scheduled and the location he was assigned to work. The Wage Claimant would work until the end of the last student's scheduled lesson concluded.
- 5.4 Initially, the Wage Claimant only worked in Ellensburg and he walked or biked to the Appellant's location from his house. Beginning in October 2014, the Appellant asked the Wage Claimant to perform work in Moses Lake in addition to performing work in Ellensburg. The Wage Claimant agreed to perform the work in Moses Lake at same rate of pay for work performed in Ellensburg and both parties agreed that the Wage Claimant would drive to Moses Lake in the Appellant's vehicle because it was convenient for both. The parties agreed that the Appellant would not pay the Wage Claimant for travel time.
- 5.5 The Wage Claimant would walk or bike to the Appellant's Ellensburg location, obtain one of the Appellant's cars at approximately one hour prior to the Wage Claimant's shift, and then he would drive the Appellant's car approximately one (1) hour to the Appellant's location in Moses Lake and begin work. The Wage Claimant would work through his scheduled shift, and then drive the Appellant's car back to Ellensburg for approximately one (1) hour and leave the vehicle at the Appellant's Ellensburg location.
- 5.6 Between October 30, 2014 and July 18, 2015, the Wage Claimant accounted for the hours worked on his time sheets, excluding breaks. However, the Wage Claimant did not record any work time for the time expended driving from Ellensburg to Moses Lake and from Moses Lake to Ellensburg in the Appellant's vehicle. The Appellant did not pay the Wage Claimant for the time the Wage Claimant spent driving from Ellensburg and Moses Lake and back in the Appellant's vehicle.
- 5.7 The Wage Claimant filed a Worker's Rights Complaint on August 12, 2015, seeking wages for the time expended driving from Ellensburg to Moses Lake and from Moses Lake to Ellensburg in the Appellant's vehicle.
- 5.8 The Wage Claimant provided an accounting of the days he worked for Appellant in Moses Lake between October 30, 2014 and July 18, 2015 (Exhibit 9). The

Wage Claimant and the Appellant also provided copies of the Wage Claimant's time cards (Exhibit 20). Based on the Wage Claimant's time cards and the days the Wage Claimant identified he worked in Moses Lake, it is found that the Wage Claimant would have driven for two (2) additional hours per day in the Appellant's car from Ellensburg to Moses Lake and then back to Ellensburg. *See Attachment to this Order.* Between October 20, 2014 and July 18, 2015, the Wage Claimant worked 186.5 regular hours and 21.5 overtime hours that he was not compensated for.

- 5.9 The Wage Claimant's overtime pay rate when he earned \$12.50 per hour was \$18.75 per hour. The Wage Claimant's overtime pay rate when he earned \$13.50 per hour was \$20.25. For the period of October 30, 2014 through December 31, 2014, the minimum wage rate of pay was \$9.32 per hour. For the period of January 1, 2015 through July 18, 2015, the minimum wage rate of pay was \$9.47 per hour.

6. CONCLUSIONS OF LAW

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

Jurisdiction

- 6.1 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

- 6.2 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.
- 6.3 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).

Applicable Law

- 6.4 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.

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

6.6 Wage payment requirements are those “set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.” RCW 49.48.082(10). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. RCW 49.48.082(12).

6.7 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.

6.8 RCW 49.46.010(7) defines “wage” as:

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

RCW 49.46.010(7).

6.9 An employer is required to pay overtime when an employee works over 40 hours in a work week. RCW 49.46.130(1). The overtime rate is not less than one and a half times the regular rate at which the worker is employed. *Id.*

6.10 Hours worked means all hours which the worker is authorized or required by the business to be on the premises or at a prescribed work place. WAC 296-126-002(8). This could include travel time, training, and meeting time, wait time, on-call time, and time for putting on and taking off uniforms and also may include meal periods. RCW 49.48, 49.46 and 49.52.

6.11 The Department’s interpretive guidelines are persuasive authority. *See Fiore v.*

PPG Industries, 169 Wn. App 325, 335, 279 P.3d 972 (2012) citing *Stevens v. Brink's Home Sec., Inc.*, 162 Wn2d 42, 54, 169 P.3d 473 (2007). Here, the Department of Labor and Industries' Administrative Policy ES.C.2 provides:

Time spent driving a company provided vehicle during an employee's ordinary travel, when the employee is not on duty and performs no work while driving between home and the first or last job site of the day is not considered hours worked. Time spent driving a company provided vehicle from the employer's place of business to the job site is considered hours worked.

- 6.12 A worker is "on duty" for purposes of WAC 296-126-002(8) based on the extent to which the employer controls and restricts its workers' personal activities. *Stevens*, 162 Wn.2d at 48, 169 P.3d at 476.
- 6.13 The "hours worked" definition in WAC 296-126-002(8) and the Department's Administrative Policy ES.C.2 apply to determine the meaning of "hours worked" for the purposes of the Minimum Wage Act, RCW 49.46. Under the Minimum Wage Act, WAC 296-126-002(8) and Administrative Policy ES.C.2., time spent driving a company provided vehicle from the employer's place of business to another business location or jobsite is hours worked. For purposes of RCW 49.59.020(2), the agreed wage provision, however, the parties may agree as to whether the employer will pay travel time as a term of the employment contract, provided that this agreement does not produce wages lower than Minimum Wage Act requirements or violate other laws. RCW 49.46.090. The Department may only enforce an agreed wage if the employer willfully withheld the wages. RCW 49.52.050(5).
- 6.14 Where an employee performs work at more than one rate in a given week the "regular rate" is calculated using the weighted average. ES.A.8.2. To reach the weighted average, the total earnings at all wage rates are divided by the total number of hours worked that work week. WAC 296-128-550.

Analysis

- 6.15 The Appellant is correct that the parties did not agree in October 2014 that the Appellant would pay the Wage Claimant for the time spent driving to and from Moses Lake and the parties acted in accordance with this non-agreement between October 30, 2014 and July 18, 2015. Wage Claimant did not request payment for the time spent driving to and from Ellensburg and Moses Lake and the Appellant did not pay the Wage Claimant for the hours driving between the two locations.
- 6.16 However, the Wage Claimant obtained the Appellant's vehicle at the Appellant's place of business in Ellensburg and drove the vehicle one hour to the Appellant's place of business in Moses Lake, and then drove one hour back to the

Appellant's place of business in Ellensburg on the days the Wage Claimant was assigned to work in Moses Lake. The Wage Claimant, then, drove from one work location to another work location.

- 6.17 The Wage Claimant, then, drove from one work location to another work location in the Appellant's vehicle for the sole purpose of performing work for the Appellant. Applying the Department's policy and the relevant statutes and rules, it must be concluded that the Wage Claimant was "on duty" when he drove to Moses Lake from Ellensburg and from Moses Lake to Ellensburg and that the travel time is considered compensable "hours worked."
- 6.18 There is no dispute that the Wage Claimant received an hourly wage of \$12.50 per hour between October 30, 2014 and April 30, 2015, for non-travel hours worked. There is no dispute that the Wage Claimant received an hourly wage of \$13.50 between May 1, 2015 and July 18, 2015, for non-travel hours worked.
- 6.19 However, the parties did not agree on a rate of pay for travel time. Because the parties did not agree on a rate of pay for travel time and because, as concluded below, there is a bona fide dispute regarding whether the hours worked were compensable travel time and therefore there was no willful violation of RCW 49.52.050(2), RCW 49.48.082(12) and RCW 49.48.083(2), the Appellant owes the Wage Claimant minimum wage for the unpaid travel hours. There is no dispute that the minimum wage rates for travel hours were \$9.32 per hour from October 31, 2014 through December 31, 2014 and \$9.47 per hour for January 1, 2015 through June 19, 2015.
- 6.20 The Wage Claimant's respective overtime rates of pay would be weighted average rates and would vary by the week and the number of travel and non-travel hours worked.
- 6.21 The Department's December 18, 2015, Citation and Notice of Assessment, incorrectly calculates the number of hours worked by the Wage Claimant. It is clear from Exhibit 9 and Exhibit 20 that on the days the Wage Claimant drove from Ellensburg to Moses Lake and back, the Wage Claimant worked an additional two hours because the drive each way was one (1) hour. After comparing the Wage Claimant's account of the days he drove between Ellensburg and Moses Lake (Exhibit 9) and the time cards with the number of hours worked by the Wage Claimant (Exhibit 20), it must be concluded that the Wage Claimant worked an additional 186.5 regular hours and 21.5 overtime hours between October 30, 2014 and July 18, 2015. (See Attachment to this Order).
- 6.22 Given the circumstances and evidence presented, it is concluded that the Department has produced sufficient evidence to persuade a fair-minded person by a preponderance of the evidence that the Wage Claimant's time spent driving to and from Moses Lake from Ellensburg in the Appellant's vehicle is

compensable "hours worked." The Department's December 18, 2015 Citation and Notice of Assessment must be affirmed as modified by the Attachment to this Order. See RCW 49.48.084(4). The Wage Claimant is owed \$1,760.46 for the regular hours worked and \$407.06 for overtime hours worked.

Interest

- 6.23 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.
- 6.24 The Wage Claimant is entitled to interest at a rate of 1% from October 30, 2014. The Department's December 18, 2015, Citation and Notice of Assessment should be affirmed as to interest.

Penalty

- 6.25 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.

- 6.26 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).
- 6.27 In this case, there was a bona fide dispute with regards to whether the hours worked by Wage Claimant were compensable and the amount of compensation owed, given the agreement between the parties, the conduct of the parties between October 2014 and July 2015, and the Department's unsupported wage calculation. Given this specific set of circumstances, it is concluded that while a violation occurred, the violation was not "willful." Therefore, the Department's assessment of a \$1,000.00 penalty in the December 18, 2015 Citation and Notice of Assessment, must be reversed.

7. INITIAL ORDER

- 7.1 The Department of Labor and Industries' December 18, 2015, Citation and Notice of Assessment is **AFFIRMED AS MODIFIED**. Cruiser Driving Academy LLC dba Cruiser Driving Academy and Kenneth Bishop and Spouse owe James Huss \$1760.46 in regular wages and \$407.06 in overtime wages, plus interest in the amount of 1% beginning October 30, 2014, as set forth in the Attachment to this Order.
- 7.2 The Department of Labor and Industries' assessment of penalties as set forth in the December 18, 2015, Citation and Notice of Assessment is **REVERSED**.

ISSUED from Tacoma, Washington on the date of mailing.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

PETITION FOR REVIEW

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

Mailing Address:

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

Physical Address:

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.

ATTACHMENT TO INITIAL ORDER ON REMAND – Cruiser Driving Academy LLC dba Cruiser Driving Academy

Docket No. 04-2015-LI-00103

<u>DATE</u>	<u>HOURS REPORTED ON TIME CARD</u>	<u>TRAVEL HOURS</u>	<u>TOTAL HOURS WORKED</u>	<u>TOTAL UNPAID HOURS</u>	<u>REGULAR UNPAID HOURS</u>	<u>OVERTIME UNPAID</u>	<u>MINIMUM WAGE</u>	<u>WEIGHTED AVG OT RATE</u>	<u>WAGES DUE</u>
7/18/2015	4	N	4						
7/17/2015	7	N	7						
7/16/2015	6	Y +2 hours	8						
7/15/2015	8	Y +2 hours	10						
7/14/2015	8	Y +2 hours	10						
		TOTAL WEEKLY	39	6	6	0	\$9.47	\$19.20	\$56.82
7/10/2015	6	Y +2 hours	8						
7/9/2015	8	Y +2 hours	10						
7/8/2015	8	Y +2 hours	10						
7/7/2015	8	Y +2 hours	10						
7/6/2015	8	N	8						
		TOTAL WEEKLY	46	8	2	6	\$9.47	\$19.20	\$134.14
7/3/2015	6.5	N	6.5						
7/2/2015	6	N	6						
7/1/2015	8	Y +2 hours	10						
6/30/2015	8	Y +2 hours	10						
6/29/2015	5	N	5						
		TOTAL WEEKLY	37.5	4	4	0	\$9.47		\$37.88
6/26/2015	6	Y +2 hours	8						
6/25/2015	8	Y +2 hours	10						
6/23/2015	7	Y +2 hours	9						

ATTACHMENT TO INITIAL ORDER ON REMAND

Docket No. 04-2015-LI-00103

8500-OAH

OAH: (800) 583-8271

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6/22/2015	7	Y +2 hours	9	8	8	0	\$9.47		\$75.76
		TOTAL WEEKLY	36	8	8	0	\$9.47		
6/19/2015	7	N	7						
6/18/2015	8	Y +2 hours	10						
6/17/2015	9	Y +2 hours	11						
6/16/2015	7	Y +2 hours	9						
		TOTAL WEEKLY	37	8	8	0	\$9.47		\$56.82
6/12/2015	5	Y +2 hours	7						
6/11/2015	8	Y +2 hours	10						
6/10/2015	8	Y +2 hours	10						
6/9/2015	8	Y +2 hours	10						
6/8/2015	6	Y +2 hours	8						
		TOTAL WEEKLY	45	10	5	5	\$9.47	\$18.90	\$141.85
6/5/2015	7	Y +2 hours	9						
6/3/2015	6	Y +2 hours	8						
6/2/2015	8	Y +2 hours	10						
		TOTAL WEEKLY	27	6	6	0	\$9.47		\$56.82
5/30/2015	6	Y +2 hours	8						
5/28/2015	8	Y +2 hours	10						
5/27/2015	8	Y +2 hours	10						
5/26/2015	7	Y +2 hours	9						
		TOTAL WEEKLY	37	8	8	8	\$9.47		\$75.76
5/22/2015	7	Y +2 hours	9						
5/20/2015	7	Y +2 hours	9						
5/19/2015	9	Y +2 hours	11						
5/18/2015	8	N	8						
		TOTAL WEEKLY	37	6	6	0	\$9.47		\$56.82

5/16/2015	8	Y +2 hours	10									
5/15/2015	8	Y +2 hours	10									
5/13/2015	8	Y +2 hours	10									
5/12/2015	6	Y +2 hours	8									
5/11/2015	5	Y +2 hours	7									
		TOTAL WEEKLY	45	10	5	5	\$9.47	\$18.90	\$141.85			
5/9/2015	9	Y +2 hours	11									
5/8/2015	8	Y +2 hours	10									
5/7/2015	3	N	3									
5/6/2015	6	N	6									
5/5/2015	8	Y +2 hours	10									
5/4/2015	2.5	N	2.5									
		TOTAL WEEKLY	42.5	6	3.5	2.5	\$9.47	\$19.40	\$81.65			
4/29/2015	5	Y +2 hours	7									
4/29/2015	1	N	1									
4/28/2015	10	Y +2 hours	12									
4/27/2015	7	Y +2 hours	9									
		TOTAL WEEKLY	29	6	6	0	\$9.47	\$19.40	\$81.65			
4/25/2015	1	N	1									
4/24/2015	8	Y +2 hours	10									
4/23/2015	3	N	3									
4/23/2015	2.5	N	2.5									
4/22/2015	8	Y +2 hours	10									
4/21/2015	6	Y +2 hours	8									
		TOTAL WEEKLY	34.5	6	6	0	\$9.47		\$56.82			
4/17/2015	8	Y +2 hours	10									
4/16/2015	1	N	1									

4/16/2015	1	N	1							
4/15/2015	8	Y +2 hours	10							
		TOTAL WEEKLY	22	4	4	0	\$9.47		\$37.88	
4/10/2015	6	Y +2 hours	8							
4/8/2015	1	N	1							
4/7/2015	2.5	N	2.5							
4/6/2015	3.5	N	3.5							
		TOTAL WEEKLY	15	2	2	0	\$9.47		\$18.94	
4/3/2015	6	Y +2 hours	8							
4/1/2015	6	Y +2 hours	8							
3/31/2015	8	Y +2 hours	10							
		TOTAL WEEKLY	26	6	6	0	\$9.47		\$56.82	
3/27/2015	6	Y +2 hours	8							
3/25/2015	8	Y +2 hours	10							
3/24/2015	8	Y +2 hours	10							
		TOTAL WEEKLY	28	6	6	0	\$9.47		\$56.82	
3/20/2015	8	Y +2 hours	10							
3/18/2015	8	Y +2 hours	10							
3/17/2015	7	Y +2 hours	9							
3/16/2015	3	N	3							
		TOTAL WEEKLY	32	6	6	0	\$9.47		\$56.82	
3/13/2015	8	Y +2 hours	10							
3/12/2015	4	N	4							
3/11/2015	7	Y +2 hours	9							
3/10/2015	7	Y +2 hours	9							
3/9/2015	5.5	N	5.5							
		TOTAL WEEKLY	37.5	6	6	0	\$9.47		\$56.82	

3/6/2015	7	Y +2 hours	9							
3/5/2015	6.5	N	6.5							
3/4/2015	9	Y +2 hours	11							
3/3/2015	9	Y +2 hours	11							
3/2/2015	5.5	N	5.5							
		TOTAL WEEKLY	43	6	3			\$9.47		\$8.77
2/27/2015	4	Y +2 hours	6							
2/27/2015	2	N	2							
2/26/2015	6	Y +2 hours	8							
2/26/2015	1	N	1							
2/25/2015	7	Y +2 hours	9							
2/24/2015	5.5	N	5.5							
2/23/2015	2	N	2							
2/23/2015	2.5	N	2.5							
		TOTAL WEEKLY	36	6	6			\$9.47		\$56.82
2/20/2015	6	Y +2 hours	8							
2/20/2015	1	N	1							
2/19/2015	6	Y +2 hours	8							
2/19/2015	1	N	1							
2/18/2015	7	Y +2 hours	9							
2/17/2015	4.5	N	4.5							
		TOTAL WEEKLY	31.5	6	6			\$9.47		\$56.82
2/12/2015	7	Y +2 hours	9							
2/11/2015	7	Y +2 hours	9							
		TOTAL WEEKLY	18	4	4			\$9.47		\$37.88
2/5/2015	6	Y +2 hours	8							
2/4/2015	2	Y +2 hours	4							

1/30/2015	3	TOTAL WEEKLY	12	4	4	0	\$9.47	\$37.88
		Y +2 hours	5					
1/29/2015	7	Y +2 hours	9					
1/28/2015	8	Y +2 hours	10					
		TOTAL WEEKLY	27	6	6	0	\$9.47	\$56.82
1/23/2015	8	Y +2 hours	10					
1/22/2015	7	Y +2 hours	9					
1/21/2015	8	Y +2 hours	10					
		TOTAL WEEKLY	29	6	6	0	\$9.47	\$56.82
1/16/2015	6	Y +2 hours	8					
1/15/2015	4	Y +2 hours	6					
1/14/2015	7	Y +2 hours	9					
1/12/2015	6	Y +2 hours	8					
		TOTAL WEEKLY	31	8	8	0	\$9.47	\$75.76
1/8/2015	7	Y +2 hours	9					
1/7/2015	7	Y +2 hours	9					
		TOTAL WEEKLY	18	4	4	0	\$9.47	\$37.88
12/19/2014	7.5	Y +2 hours	9.5					
12/18/2014	7	Y +2 hours	9					
12/17/2014	6	Y +2 hours	8					
12/15/2014	8	Y +2 hours	10					
		TOTAL WEEKLY	36.5	8	8	0	\$9.32	\$74.56
12/12/2014	7	Y +2 hours	9					
12/11/2014	6	Y +2 hours	8					
12/10/2014	6	Y +2 hours	8					
		TOTAL WEEKLY	25	6	6	0	\$9.32	\$55.92
12/5/2014	7	Y +2 hours	9					

12/4/2014	5	Y +2 hours	7							
12/1/2014	4	Y +2 hours	6							
12/1/2014	5.5	N	5.5							
		TOTAL WEEKLY	27.5	6	6	0	\$9.32		\$55.92	
11/26/2014	5	Y +2 hours	7							
11/24/2014	8	Y +2 hours	10							
		TOTAL WEEKLY	17	4	4	0	\$9.32		\$37.28	
11/20/2014	8	Y +2 hours	10							
		TOTAL WEEKLY	10	2	2	0	\$9.32		\$18.64	
11/14/2014	7	Y +2 hours	9							
11/13/2014	2	N	2							
11/11/2014	6	Y +2 hours	8							
		TOTAL WEEKLY	19	4	4	0	\$9.32		\$37.28	
11/6/2014	5	Y +2 hours	7							
11/5/2014	5	Y +2 hours	7							
		TOTAL WEEKLY	14	4	4	0	\$9.32		\$37.28	
10/31/2014	7	Y +2 hours	9							
10/30/2014	6	Y +2 hours	8							
		TOTAL WEEKLY	17	4	4	0	\$9.32		\$37.28	
		TOTAL WAGES							\$2167.52	

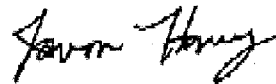
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<p>Adam Pechtel Pechtel Law PLLC 21 N. Cascade St. Kennewick, WA 99336 Appellant Representative 91 7199 9991 7037 7280 8200</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile E-mail</p>
<p>Christina K. Dallen, AAG Office of the Attorney General MS: TB-14 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
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Date: Friday, July 14, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Javon Harvey
Legal Assistant 2