

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: RIDGEVIEW FARMS, LLC, and
TERRY CISSNE,

Appellants.

Citation and Notice of Assessment Nos. W-
006-18, W-007-18, and W-008-18

OAH Docket No. 10-2017-LI-00607

No. 2019-007-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order served on September 13, 2018, having considered the petition for review filed by Ridgeview Farms, LLC, and Terry Cissne (Appellants) and the 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 Appellants failed to pay all the wages due to Jayce Habich in violation of the wage payment laws. **The Appellants are ordered to pay wages to Jayce Habich in the amount of \$16,837.66. The Appellants are also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages. The Appellants are ordered to pay the Department a penalty in the amount of \$1,683.76.**

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 September 13, 2018. The Initial Order affirmed the Department's Citation and Notice of Assessment No. W-006-18. It dismissed Citation and Notice of Assessment Nos. W-007-18 and W-008-18, which were resolved through a settlement agreement.
2. On October 11, 2018, the Appellants timely filed a petition for review with the Director.
3. The Director adopts and incorporates the Initial Order's Findings of Facts.
4. The Director adopts and incorporates the Initial Order's "Issues" statement, the "Order Summary," the "Hearing" summary, and "Settlement" statement.

II. CONCLUSIONS OF LAW

1. Based on the Department'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 Conclusions of Law.


III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, Citation and Notice of Assessment Nos. W-007-18 and W-008-18 are DISMISSED. Citation and Notice of Assessment No. W-006-18 is AFFIRMED. The Initial Order of September 13, 2018, is incorporated by reference herein.

1. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of failing to pay wages and interest. The Appellants are ordered to pay wages to Jayce Habich in the amount of \$16, 837.66. The Appellants are also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages. The Appellants are ordered to make these payments within thirty days of service of this Director's Order.

2. Payment of Civil Penalty: The Appellants are ordered to pay the Department a penalty in the amount of \$1,683.76. See Citation and Notice of Assessment for payment information.

DATED at Tumwater, Washington this 10 day of June 2019.



JOEL SACKS
Director

SERVICE

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

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by emailing it to directorappeal@lni.wa.gov or by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

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

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

DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 10 day of June 2019, to the following via regular, postage prepaid:

Scott Boyce
Bohrnsen Stocker Smith Luciani Adamson
312 W Sprague Avenue
Spokane, WA 99201

Heather Leibowitz, AAG
Attorney General's Office
800 Fifth Ave., Ste. 2000
Seattle, WA 98104

Jayce Habich
1401 E Nelson Road, Apt #D303
Moses Lake, WA 98837

DATED this 10 day of June, 2019, at Tumwater, Washington.



Lisa Deck

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Ridgeview Farms, LLC
and Terry Cissne,

Appellants.

Docket No. 10-2017-LI-00607

INITIAL ORDER

Agency: Department of Labor and Industries
Program: Wage Payments
Agency Nos. W-006-18, W-007-18 and W-008-18

1. ISSUES

- 1.1. Did Ridgeview Farms, LLC and Terry Cissne fail to pay agreed wages and final wages to Jayce Habich (Citation and Notice of Assessment W-006-18), Trandon Benson (Citation and Notice of Assessment W-007-18) and Blair Collins (Citation and Notice of Assessment W-008-18), in violation of RCW 49.52.050 and RCW 49.48.010, as alleged in the Citations and Notices of Assessment issued July 7, 2017?
- 1.2. If so, what wages and interest are owed?
- 1.3. Are Ridgeview Farms, LLC and Terry Cissne liable for penalties?

2. ORDER SUMMARY

- 2.1. Citations and Notices of Assessment W-007-18 and W-008-18 are DISMISSED.
- 2.2. The Department's Notice of Citation and Assessment W-006-18 is AFFIRMED. Ridgeview Farms, LLC and Terry Cissne violated RCW 49.48.010 and RCW 49.52.050 by failing to pay Jayce Habich wages for hours worked. Ridgeview Farms and Terry Cissne are liable for \$16,837.66 in unpaid wages to Jayce Habich pursuant to Chapter 49.48 RCW.
- 2.3. Ridgeview Farms and Terry Cissne shall pay interest in the amount of 1% of the unpaid wages for each month these wages are unpaid and to accrue at the rate of 1% for each month that the interest is unpaid. The Department shall calculate the interest accordingly.
- 2.4. Assessment of penalties in the amount of \$1,683.76 is AFFIRMED. Ridgeview Farms and Terry Cissne are liable for payment of penalties of \$1,683.76.
- 2.5. The Department of Labor and Industries pay impose personal liability upon Terry Cissne and Spouse, and the Marital Community Thereof, as an Individual, for the unpaid wages, interest, and penalty recited above.

3. HEARING

- 3.1. Hearing Date: July 16, 2018

- 3.2. Administrative Law Judge: Debra H. Pierce
- 3.3. Appellant: Ridgeview Farms, LLC and Terry Cissne
- 3.3.1. Representative: Scott G. Boyce
- 3.3.2. Witnesses:
- 3.3.2.1. Stephen Brown
- 3.3.2.2. Riley Cissne
- 3.3.2.3. Elizabeth Olsen
- 3.4. Agency: Department of Labor and Industries
- 3.4.1. Representative: Heather Leibowitz
- 3.4.2. Witnesses:
- 3.4.2.1. Blair Collins
- 3.4.2.2. Jayce Habich
- 3.4.2.3. Trandon Benson
- 3.4.2.4. Brandon Benson
- 3.4.2.5. Samantha Shaflett
- 3.4.2.6. Dalton Shaflett
- 3.4.2.7. Ana Sanchez, Industrial Relations Agent
- 3.5. Exhibits: Exhibits 1 through 20 were admitted for the Department of Labor and Industries; Exhibits I-VI (except pages 45-47) were admitted for Appellants/Employer, Ridgeview Farms, LLC and Terry Cissne.
- 3.6. Other: Central Court Reporting and Video¹ provided professional stenographic court reporting services upon arrangement of the Attorney General's Office.

4. FINDINGS OF FACT

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

Jurisdiction

- 4.1. Under RCW 49.48.083, the Department of Labor and Industries ("L&I" or "the Department") issued Citations W-006-18, W-007-18, and W-008-18 to the party employer, Ridgeview Farms, LLC and Terry Cissne on July 7, 2017.
- 4.2. Employer filed an appeal from those citations on August 2, 2017.

¹ Telephone: 509-582-6858

- 4.3. Under RCW 49.48.084, the Office of Administrative Hearings assigned an administrative law judge to conduct a *de novo* adjudicative hearing in accordance with RCW 34.05, and issue an initial order resolving the issues presented.

Employer's operations and personnel

- 4.4. Terry Cissne and his spouse, Diana Cissne, are the sole members and shareholders of Ridgeview Farms, LLC, a Washington limited liability corporation. Terry Cissne is the sole governing member. Exhibit 20, page 235 and 288-308.
- 4.5. In 2015, Terry and Diane Cissne applied to Washington State Liquor and Cannabis Board ("WSLCB") to license Ridgeview Farms, LLC as a Tier 3 marijuana producer/processor. Exhibit 20.
- 4.6. The proposed licensed location was Mr. Cissne's property at 6726 Road S SE, Warden, Grant County, WA 98857. Exhibit 20, page 277.
- 4.7. Terry Cissne lacked experience growing and producing marijuana when he applied for a marijuana producer/processor license. However, his younger brother, Stephen Brown, successfully operated a 100-plant marijuana grow in his own home with his friend, Blair Collins.
- 4.8. Stephen Brown and Blair Collins formed a friendship through their high school years and into young adulthood. They began growing medical marijuana together in 2014.
- 4.9. Jayce Habich, the Wage Claimant, worked with Stephen Brown and Blair Collins in their grow operation. He was a friend of Blair Collins.
- 4.10. Jayce Habich helped build the grow facility in Stephen Brown's home. He trimmed and sold the marijuana through his contacts on the Washington coast.
- 4.11. The 100-plant grow was so successful, both Stephen Brown and Blair Collins had cash income of \$4,000 to \$6,000 every eight to ten weeks. They paid Jayce Habich for his work, approximately \$1,500 to \$2,000 every eight to ten weeks, with no set rate. *Testimony of Stephen Brown.*
- 4.12. Stephen Brown and Blair Collins continued their personal grow operations until March 30, 2016 when law enforcement officers seized the plants and arrested Mr. Brown. *Testimony of Stephen Brown.*
- 4.13. Since he lacked experience with the marijuana industry, Mr. Cissne needed his brother and Blair Collins to plan and execute the build-out, property preparation and electronics installations on his property, so he could get his marijuana license. *Testimony of Terry Cissne.*
- 4.14. In October, 2015, Blair Collins and Stephen Brown agreed to design, build and develop the marijuana grow facility in compliance with WSLCB licensing rules and

regulatory requirements. Mr. Brown and Mr. Collins agreed to grow and produce the marijuana once Mr. Cissne received his license. Terry Cissne agreed to pay each 15% of net revenue from the farm, while he retained 70%. *Testimony of Blair Collins, Stephen Brown and Terry Cissne.* Mr. Brown and Mr. Collins contributed their expertise and labor for a 15% equity interest.

- 4.15. The marijuana licensing application of Ridgeview Farms, LLC lists Stephen Brown and Blair Collins as team or staff members. Exhibit 20, page 48. They were not applicants, and not listed as true parties of interest or financiers on the Ridgeway Farms, LLC application. WSLCB vetted neither as financiers nor as true parties of interest. Exhibit 20.
- 4.16. Terry Cissne advised Stephen Brown and Blair Collins of WSLCB requirements for approval of the site plan and grow facility. They devised plans to meet those requirements and performed the work. *Testimony of Blair Collins and Stephen Brown.*
- 4.17. Mr. Cissne relied on Stephen Brown and Blair Collins to build suitable facilities for growing marijuana and provide expertise in growing, processing and producing marijuana and marijuana products. Mr. Cissne did not direct or exercise control of the work, but did collaborate on build-out and preparation for WSLCB licensing inspection. He limited work on the grow facility as financing required. *Testimony of Terry Cissne.*
- 4.18. Mr. Cissne thought Mr. Collins and Mr. Brown “over-built” the grow, anticipating much profit. *Testimony of Terry Cissne.* Mr. Cissne did not stop them from “over-building.”
- 4.19. Terry Cissne alone paid the expense of the build-out and preparation for WSLCB licensing. Financial decisions for all activities of Ridgeview Farms, LLC were made by Terry Cissne alone.
- 4.20. Terry Cissne held complete control of the operations of Ridgeview Farms, LLC, but delegated preparation of the facility and grow operations to Stephen Brown and Blair Collins, his equity partners. They managed Ridgeview Farms, LLC start-up and licensing compliance. *Testimony of Stephen Brown and Terry Cissne.*
- 4.21. In late October or early November 2015, Stephen Brown and Blair Collins began work on clearing a building and the property to begin the build-out. *Testimony of Blair Collins.*
- 4.22. The project required more manpower and work hours to accomplish the work required to pass the licensing inspection before growing season began in 2016. The expectation of a 2016 profit depended on beginning to grow marijuana in Spring, 2016.

- 4.23. Stephen Brown and Blair Collins recruited Jayce Habich and Trandon Benson to help perform the work of preparing the buildings and property to facilitate licensing and grow marijuana.

Wage Claimant, Jayce Habich's, employment

- 4.24. Wage Claimant agreed to perform the work and delay pay for the work he performed until Ridgeview Farms, LLC had a marijuana harvest. He knew Terry Cissne did not have money to pay employees for the work before making a profit. No specific rate of pay was agreed.
- 4.25. Wage Claimant began work at Ridgeview Farms, LLC when he reached age twenty-one on December 7, 2015. He stopped work there on June 8, 2016, one week after WSLCB issued Ridgeview Farms, LLC its Tier 3 marijuana producer/processor's license.
- 4.26. He also continued work at the marijuana grow in the Brown home a few evenings a week for a few hours until March 30, 2016. His pay from Stephen Brown and Blair Collins for that work continued. *Testimony of Stephen Brown.*
- 4.27. At Ridgeview Farms, LLC, Jayce Habich put up stud walls and drywall or sheeting, painted, installed and set 64 surveillance cameras, and helped install required privacy screening on professionally installed fencing. He assisted others in setting a transformer and running electrical lines. He ran pipes and drains, cutting concrete and trenching to install the lines. He performed general labor cleaning the property and buildings.
- 4.28. Wage Claimant's pay from Stephen Brown and Blair Collins for his work on the home grow continued as it had before he began work for Ridgeview Farms, LLC. *Testimony of Stephen Brown.*
- 4.29. Terry Cissne knew Jayce Habich was on the property with Stephen Brown and Blair Collins. He saw Wage Claimant there and spoke to him as he visited the property and observed the progress of the work.
- 4.30. Since he holds a used vehicle dealer's license, he helped Jayce Habich purchase used vehicles wholesale so Mr. Habich could resell them for a profit as he continued to work for Ridgeview Farms, LLC. He interacted with Jayce Habich about vehicles and equipment.
- 4.31. Mr. Cissne regularly spoke to Stephen Brown and Blair Collins about the work as it progressed. *Testimony of Terry Cissne.* Jayce Habich accompanied Terry Cissne, Stephen Brown and Blair Collins to purchase supplies no less than weekly. *Testimony of Jayce Habich and Blair Collins.*
- 4.32. Stephen Brown admitted Jayce Habich at least worked setting up cameras for about a month, at about forty hours per week. Testimony that Terry Cissne did not

know Jayce Habich was performing work benefitting Ridgeview Farms, LLC from December, 2015 through June, 2016 is inconsistent with logic and reason, and with the undisputed facts. It is not credible.

- 4.33. Terry Cissne was aware Jayce Habich was performing work for the benefit of Ridgeview Farms, LLC. He also knew the work was uncompensated.
- 4.34. Ridgeview Farms, LLC was unable to pay any employees because of limited financing during licensing and startup. *Testimony of Terry Cissne.* Because of its impecunity, Ridgeview Farms, LLC and Terry Cissne agreed to pay for all of the work performed by Stephen Brown, Blair Collins, Jayce Habich and Trandon Benson during the build-out, licensing and start-up when their labors resulted in a marijuana harvest.
- 4.35. Testimony of Jayce Habich, Blair Collins and Trandon Benson that Terry Cissne agreed to pay Jayce Habich after Ridgeview Farms, LLC harvested a marijuana crop is credible. Stephen Brown's testimony that he and Blair Collins, personally, were paying Jayce Habich, and that pay included his work at Ridgeview Farms, LLC is not credible, and not consistent with established, undisputed fact.
- 4.36. Jayce Habich was accustomed to waiting for a marijuana harvest to be paid, but he did not volunteer to perform the work at Ridgeview Farms, LLC in addition to his work at the Brown home without additional compensation.
- 4.37. No one filled out time cards or kept track of hours worked for Ridgeview Farms, LLC. No one paid Wage Claimant for the hours worked or the work performed for Ridgeview Farms, LLC. Neither Blair Collins nor Trandon Benson were paid, either. All expected pay when Ridgeview Farms, LLC harvested its marijuana crop.

Hours worked

- 4.38. Wage Claimant's work hours varied. Stephen Brown and Blair Collins picked him up most days for the forty-five minute commute to work and transported him home from work. Wage Claimant often worked twelve to fifteen hours a day. Sometimes, he did not leave work until late evening or even early morning. He usually worked Monday through Saturday. He worked some Sundays.
- 4.39. Since Ridgeview Farms, LLC failed to create and keep time records, Wage Claimant estimated his hours of work from December 7, 2015 through June 8, 2016. He constructed a spreadsheet with his estimates. Exhibit 4.
- 4.40. Photographs of the work performed as it was done confirm Wage Claimant's description of the work performed. Exhibit 5, Exhibit 6, Exhibit 19, Exhibit 20. The testimony of Blair Collins and Trandon Benson supports Jayce Habich's description of work performed and his estimates of work hours. Jayce Habich's testimony about

the work performed and his written estimate of hours worked for Ridgeway Farms are credible.

4.41. Between December 7, 2015 and May 31, 2016, Jayce Habich worked 1,722 hours for Ridgeview Farms, LLC and Terry Cissne. He was not paid.

4.42. Between June 1, 2016 and June 6, 2016, Jayce Habich worked 56 hours. He was not paid for these hours worked for Ridgeview Farms, LLC and Terry Cissne.

Wage Complaint and Investigation

4.43. Jayce Habich filed a Worker Rights Complaint on January 25, 2017. He alleged he worked for Ridgeview Farms, LLC from December 7, 2015 to June 5, 2016 and was not paid wages.

4.44. L&I assigned investigation of the wage complaint to Industrial Relations Agent Yesenia Sabedra. Ms. Sabedra investigated the claim and determined that the Appellant Employer, Ridgeview Farms, LLC and Terry Cissne, violated the Wage Payment Act, RCW 49.48.083, specifically, by violating RCW 49.52.050 in failing to pay agreed or minimum wages and RCW 49.48.010 by failing to provide a final paycheck.

4.45. Ridgeview Farms, LLC and Terry Cissne denied they employed Mr. Habich. Stephen Brown wrote a letter denying Jayce Habich worked at Ridgeview Farms, LLC. Exhibit 14. He admitted he "lied," and that Jayce Habich worked for Ridgeview Farms, LLC. *Testimony of Stephen Brown.*

4.46. Because the Department determined Ridgeview Farms, LLC and Terry Cissne unlawfully failed to pay wages to Jayce Habich, it issued Citation W-006-18, ordering Ridgeview Farms, LLC and Terry Cissne and Spouse, individually, to pay Jayce Habich wages of \$16,837.66, plus interest at one percent of the unpaid wage amount per month to Jayce Habich.

4.47. L&I determined Terry Cissne and Ridgeview Farms, LLC willfully violated wage payment requirements. Appellant Employer, Ridgeview Farms, LLC and Terry Cissne were also ordered to pay a penalty of \$1,683.76, ten percent of the total unpaid wages.

5. SETTLEMENT: Citation and Notice of Assessment W-007-18 (Trandon Benson) and Citation and Notice of Assessment W-008-18 (Blair Collins) are settled by Written Release and Settlement Agreement. Based on the fully executed agreement, no further issues exist for adjudication by the Office of Administrative Hearings with respect to these Citations, and appeal of Citations and Notices of Assessment W-007-018 and W-008-18 are DISMISSED without further consideration.

6. CONCLUSIONS OF LAW

Based upon the facts above, I make 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.

Department of L&I Wage Complaints

- 6.2. The Wage Payment Act (*WPA"), Chapter 49.48 RCW, authorizes the Department to investigate when an employee files a wage complaint. RCW 49.48.083(1). If the Department finds the employer has violated one or more wage payment requirements, it should issue a citation and notice of assessment, which may include ordering the employer to pay all wages owed plus 1% interest per month on all unpaid wages. RCW 49.48.083(2). If the Department determines the employer has complied with the law, the Department issues a Determination of Compliance. RCW 49.48.083(1).
- 6.3. If a party disagrees with the decision issued pursuant to RCW 49.48.083, that party may appeal by filing a notice of appeal with the director within thirty days of the Department's decision. An administrative law judge with the Office of Administrative Hearings then conducts an adjudicative hearing de novo in accordance with Chapter 34.05 RCW, the Administrative Procedures Act.
- 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.
- 6.5. 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.
- 6.6. The Department may extend the time by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period. RCW 49.48.083.
- 6.7. 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).

Burden of Proof

- 6.8. Under the WPA, the Department has the initial burden of showing *prima facie* evidence of a wage payment law violation. See, *Anderson v. Mt. Clemens Pottery Co.*, 328 US. 680, 687-688, 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). A preponderance of the evidence must support the *prima facie* showing.
- 6.9. 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).
- 6.10. “If the employer fails to keep records, the burden is on the employer to prove the claimed hours were not worked.” *MacSuga v. County of Spokane*, 97 Wn. App. 435, 445, 983 P.2d 1167 (1999). If the employee shows by “reasonable inference” the number of hours worked, then the burden shifts to the employer. *Id.* at 445 (citing *Anderson v. Mt. Clemens Pottery Co.*, 328.U.S. 680, 66 S. Ct. 1187, 90 L.Ed 1515 (1946)).

Applicable Laws and Analysis

- 6.11. RCW 49.52.050(2) provides that willfully withholding an agreed wage is unlawful, including withholding 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.
- 6.12. WAC 296-126-023 requires employers to pay their employees in pay intervals not to exceed a one-month time between established paydays. An agreement that an employee will be paid at some uncertain future date, such as “upon harvest” is unlawful. WAC 296-126-023.
- 6.13. A marijuana license must be issued in the names of the true parties of interest. WAC 314-55-035. For limited liability companies like Ridgeview Farms, LLC, true parties in interest include all members and their spouses, all managers and their spouses, any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business in exchange for a monetary loan or expertise (exclusive of financial institutions). *Id.* It also includes any entity or person who exercises control over the licensed business in exchange for money or expertise.

- 6.14. Without dispute, Stephen Brown and Blair Collins were managers of the grow operation and build-out at Ridgeview Farms, LLC. Each had a right to receive a percentage of the net profit from the licensed business in exchange for their expertise. Stephen Brown and Blair Collins were true parties of interest in Ridgeview Farms, LLC. They acted for Ridgeview Farms, LLC in engaging labor to accomplish the task of building the Ridgeview Farms, LLC marijuana grow facilities and compliance for licensure.
- 6.15. An “employee” includes “any individual employed by an employer.” RCW 49.46.010(5). To “employ,” in turn, means “to permit to work.” RCW 49.46.010(3).
- 6.16. Initially, Terry Cissne and Stephen Brown stated Jayce Habich never performed work for Ridgeview Farms, LLC. Denial of Mr. Habich’s employment is not credible. That Jayce Habich was engaged to work for Ridgeview Farms, LLC by equity partners managing licensing compliance and performing the build-out and development of the marijuana grown is undisputed. A preponderance of evidence establishes Wage Claimant’s work was directed by equity partners Stephen Brown and Blair Collins. A preponderance of evidence establishes Terry Cissne knew Jayce Habich worked for Ridgeview Farms, LLC, under Stephen Brown and Blair Collins, and at their direction. A preponderance of evidence establishes Jayce Habich was employed by Ridgeview Farms, LLC from December 7, 2015 through June 6, 2018, when he quit.
- 6.17. 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.
- 6.18. RCW 49.46.020 requires employers to pay at least a minimum hourly wage to all employees performing work in Washington. The minimum hourly wage is set annually. In 2015 and 2016, the statewide minimum wage was \$9.47 per hour.
- 6.19. Jayce Habich had no agreed wage rate. He must therefore be compensated for hours worked at Ridgeview Farms, LLC at the applicable minimum wage rate, and \$9.47 per hour.
- 6.20. Hours worked means all hours that 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). It includes all work required, suffered, permitted or allowed by the employer. It is the employer’s responsibility to ensure no employee performs work the employer does not want performed. *Id.* This could include travel time, training, and meeting time, wait time, on-call time, and time for putting on and taking off uniforms and may include meal periods. RCW 49.48, 49.46 and 49.52.

- 6.21. It is the employer's responsibility to keep records regarding employee hours. Employers shall "make, keep, and preserve such records of the persons employed and of the wages, hours, and other conditions and practices of employment. RCW 49.46.040(3).
- 6.22. When the employee does not keep records, the Department allows for reasonable reconstruction of hours. "[T]he employee must first show by reasonable inference the number of hours worked to shift the burden onto the employer to provide otherwise." *MacSuga v. Cy. of Spokane*, 97 Wn. App. 435, 445, 983 P.2d 1167 (1999). The employee need not prove the precise extent of uncompensated work.
- 6.23. Ridgeview Farms, LLC did not keep contemporaneous records, in violation of RCW 49.48.010.
- 6.24. A preponderance of evidence establishes Jayce Habich reasonably reconstructed his hours worked at Ridgeview Farms, LLC.
- 6.25. The burden of proof to show the precise hours worked, shifted to Ridgeview Farms, LLC. Ridgeview Farms, LLC did not establish, by a preponderance of the evidence that Jayce Habich's precise hours of work, or that reconstruction of his hours worked was unreasonable. That Wage Claimant also sold used vehicles he bought at auction with Terry Cissne's help, worked in the marijuana grow at Stephen Brown's home, and picked beans for another farm does not show Mr. Habich's reconstruction of his work hours at Ridgeview Farms is unreasonable. Stephen Brown's testimony that Mr. Habich only worked for one month, forty hours per week is not credible, and Mr. Cissne's testimony that he did not even know Mr. Habich was working for Ridgeview Farms, LLC is equally incredible.
- 6.26. When the employment relationship ceases, an employer is required to pay wages due because of the employment at the end of the established pay period. RCW 49.48.010.
- 6.27. Undisputed evidence establishes Wage Claimant, Jayce Habich was not paid for any hours worked at Ridgeview Farms, LLC, at any time.
- 6.28. A preponderance of evidence establishes Jayce Habich worked 1,722 hours for Ridgeview Farms, LLC and Terry Cissne between December 7, 2015 and May 31, 2016. At the rate of \$9.47 per hour, Jayce Habich is owed \$16,307.34 for those hours worked. Between June 1, 2016 and June 6, 2016, Jayce Habich worked 56 hours. He is owed \$530.32 for this work at \$9.47 per hour.

Interest on Unpaid Wages

- 6.29. 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.

- 6.30. The Department correctly calculated interest up to the time it issued Citation and Notice of Assessment No.: W-006-18. Interest will continue to accrue at the same rate until such time as Ridgeview Farms, LLC pays the unpaid wages.

Penalty

- 6.31. "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" of ten percent of the total unpaid wages or \$1,000.00, whichever is more, but not more than \$20,000.00. RCW 49.48.083(3).
- 6.32. RCW 49.48.082(11) 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).
- 6.33. In violation of WAC 296-126-023, Terry Cissne and Ridgeview Farms, LLC knowingly and intentionally agreed to pay Jayce Habich for work done at Ridgeview Farms, LLC when the marijuana was harvested. He was not paid for any of his work in at least monthly intervals as required by that regulation. He was not paid final wages in violation of RCW 49.48.010. He was not paid at all. Terry Cissne and Ridgeview Farms, LLC knew Jayce Habich performed work for Ridgeview Farms, LLC, but knowingly and intentionally failed to pay him, in violation of RCW 49.48.082. The Department properly assessed the penalty of \$1,683.76 for Citation and Notice of Assessment No.: W-006-18.

Personal Liability of Terry Cissne

- 6.34. RCW 49.52.050 imposes personal liability for wage claim violations. Liability is imposed on employers, officers, vice principals or agents of any employer for violation of wage payment laws, including the violations at issue here. An "employer" includes "any person or group of persons acting directly or indirectly in the interest of any employer." RCW 49.46.010(4). A vice principal or agent must have the authority to make decisions regarding the payment of wages, and that person must have acted pursuant to that authority in withholding the wages to which the worker is lawfully entitled or individual liability cannot be imposed. *Ellerman v. Centerpoint Prepress Inc.*, 143 Wn.2d 514, 22 P.3d 795 (2001).
- 6.35. Mr. Cissne is the owner and sole managing member of Ridgeview Farms, LLC. He alone controlled all financial decisions and had access to funds held by and for the corporate entity. He was the source of funding for the business. He is the WSLCB licensed member of the corporate entity. He decided to save some costs

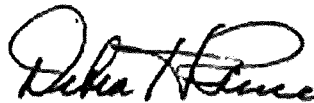
of licensing compliance and start-up by agreeing to pay all who labored in that endeavor from the first harvest. He did not have money to pay employees. He went to the grow site often as it was developed by Stephen Brown, Blair Collins, Jayce Habich and Trandon Benson. He frequently accompanied these men to purchase supplies and building material. While he delegated design and construction of the build-out and management of the start-up marijuana grow to Stephen Brown and Blair Collins, he was the final decision maker because he controlled all finances. Thus, for purposes of RCW 49.48.010, Mr. Cissne was an employer. The Department may impose personal liability on Mr. Cissne for wages owed to Jayce Habich. Citation and Notice of Assessment W-006-18 should be affirmed.

7. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 7.1. Citations and Notices of Assessment W-007-18 and W-008-18 are DISMISSED.
- 7.2. The Department's Notice of Citation and Assessment W-006-18 is AFFIRMED. Ridgeview Farms, LLC and Terry Cissne violated RCW 49.48.010 and RCW 49.52.050 by failing to pay Jayce Habich wages for hours worked. Ridgeview Farms and Terry Cissne are liable for \$16,837.66 in unpaid wages to Jayce Habich pursuant to Chapter 49.48 RCW.
- 7.3. Ridgeview Farms and Terry Cissne shall pay interest in the amount of 1% of the unpaid wages for each month these wages are unpaid and to accrue at the rate of 1% for each month that the interest is unpaid. The Department shall calculate the interest accordingly.
- 7.4. Assessment of penalties in the amount of \$1,683.76 is AFFIRMED. Ridgeview Farms and Terry Cissne are liable for payment of penalties of \$1,683.76.
- 7.5. The Department of Labor and Industries pay impose personal liability upon Terry Cissne and Spouse, and the Marital Community Thereof, as an Individual, for the unpaid wages, interest, and penalty recited above.

Issued from Tacoma, Washington on the date of mailing.



Debra H. Pierce
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.² 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:

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.³

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

² RCW 49.48.084 and RCW 34.05.464.

³ RCW 49.48.084 and Chapter 34.05 RCW.

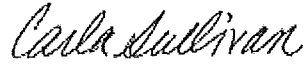
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 10-2017-LI-00607

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

Ridgeview Farms, LLC and Terry Cissne 4270 Frontier Road Pasco, WA 99301 Appellant/Employer 91 7199 9991 7037 7417 1623	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 91 7199 9991 7037 7417 1623 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile
Scott G. Boyce Bohrnsen Stocker Smith Luciani Adamson PLLC 312 W Sprague Avenue Spokane, WA, 99201 Appellant Representative 91 7199 9991 7037 7417 1630	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 91 7199 9991 7037 7417 1630 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile
Office of the Attorney General MS: TB-14 800 Fifth Ave., Ste. 2000 Seattle, WA 98104 Agency Representative	<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
Blair Collins 712 S. Lakeland Dr. Moses Lake, WA 98837 Wage Claimant 91 7199 9991 7037 7417 1647	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 91 7199 9991 7037 7417 1647 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile
Trandon Benson 4595 Rd 13.6 SW Royal City, WA 99357 Wage Claimant 91 7199 9991 7037 7417 1654	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 91 7199 9991 7037 7417 1654 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile
Jayce Habich 6510 203rd Avenue SE Snohomish, WA 98290 Wage Claimant 91 7199 9991 7037 7417 1661	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 91 7199 9991 7037 7417 1661 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile

Date: Thursday, September 13, 2018

OFFICE OF ADMINISTRATIVE HEARINGS

A handwritten signature in cursive script that reads "Carla Sullivan".

Carla Sullivan
Legal Assistant 2