



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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

October 9, 2024

Via E-mail and U.S. Mail

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Ryan Doss
1250 N Wenatchee Ave Ste H-225
Wenatchee, WA 98801

I & J Graf Enterprises, LLC
dba Little Italy
Attn: Jeffrey Graf
1913 SE 11th Ave
Cape Floral, FL 33990

**RE: Ryan Doss, OAH Docket No. 10-2023-LI-01964
Director No. 2024-012-WPA**

Dear Parties:

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

Sincerely,

Joel Sacks
Director

Enclosures

cc: Judge Lisa Dublin
Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG

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

In re:

RYAN DOSS,

Appellant,

Determination of Compliance No.
DOC-264-23

OAH Docket No. 10-2023-LI-01964

No. 2024-012-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries (Department), having considered the appeal filed by Ryan Doss (Appellant), briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on April 22, 2024.
2. The Director received a timely filed petition for review from the Appellant.
3. The Administrative Law Judge issued a prehearing conference order on November 6, 2023. The order required the Appellant to file and serve his witness lists, exhibit lists, and marked exhibits by February 6, 2024, two weeks before the evidentiary hearing.

NO. 2024-012-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

4. The Appellant did not file a witness list by February 6, 2024, as required by the prehearing conference order. At hearing, the Department moved to exclude the Appellant's proposed witnesses based on the failure to comply with the prehearing conference order. The Administrative Law Judge granted the Department's motion to exclude, finding that the Appellant had not demonstrated good cause for his failure to timely file and serve his witness list.

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. In the Initial Order, the Administrative Law Judge relied on WAC 10-08-140(2) to exclude the Appellant's witnesses. This provision of the Model Rules of Procedure states that the presiding officer may order that "documentary evidence" be submitted sufficiently in advance of hearing to permit study and preparation of cross-examination and rebuttal evidence. WAC 10-08-140(2)(a). When a party fails to timely submit such documentary evidence, the presiding officer may exclude the evidence unless the party demonstrates good cause for their failure to produce the evidence sooner. WAC 10-08-140(2)(b). Because the Appellant did not provide good cause for the failure to file a witness list, the Administrative Law Judge excluded his proposed witnesses under WAC 10-08-140(2).
3. The standard set forth in WAC 10-08-140(2) applies only to documentary evidence to be offered at hearing. It does not apply to witness testimony, and both the Administrative Procedure Act and the Model Rules of Procedure appear silent regarding what standard should govern the exclusion of late-disclosed witness. In general, a tribunal's exclusion of witnesses is reviewed for abuse of discretion. *See, e.g., Jones v. City of Seattle*, 179 Wn.2d 322, 337, 345-46, 314 P.3d 380 (2013), as corrected (Feb. 5, 2014) (trial court abused its discretion in excluding witnesses based

on failure to comply with scheduling order). Because the record reflects that the Administrative Law Judge incorrectly believed his discretion cabined by WAC 10-08-140(2), remand is appropriate for a proper exercise of discretion.¹

4. On remand, the Administrative Law Judge should exercise his discretion to determine whether to exclude the proposed witnesses of the Appellant. In the event the Appellant's witnesses remain excluded, the Administrative Law Judge should issue a new initial order stating the specific reasons for exclusion. If the Administrative Law Judge finds that exclusion of the Appellant's witnesses is inappropriate, new hearing dates should be scheduled for their testimony. In either case, the Administrative Law Judge should issue a new initial order that contains findings of fact and conclusions of law on all disputed issues in the case.

III. DECISION AND ORDER

This matter is remanded to the Office of Administrative Hearings for further proceedings consistent with the above Findings of Fact and Conclusions of Law.

DATED at Tumwater this 9 day of October, 2024.



JOEL SACKS
Director

¹ The Administrative Law Judge also excluded the Appellant's proposed exhibits under WAC 10-08-140(2). The Director perceives no error regarding this ruling. However, nothing in this order limits the Administrative Law Judge's authority to revisit the decision to exclude the Appellant's documentary evidence.

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 9 day of October 2024, to the following via regular, postage prepaid:

Heather Klein Leibowitz, AAG
Department of Labor and Industries
800 Fifth Avenue Suite 2000
Seattle, WA 98104
Heather.Leibowitz@atg.wa.gov
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Ryan Doss
1250 N Wenatchee Ave Ste H-225
Wenatchee, WA 98801

I & J Graf Enterprises, LLC
dba Little Italy
Attn: Jeffrey Graf
1913 SE 11th Ave
Cape Floral, FL 33990

DATED this 9 day of October, 2024, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Ryan Doss,

Appellant/Wage Claimant.

Docket No. 10-2023-LI-01964

INITIAL ORDER

Agency: Labor and Industries

Program: Wage Payments

Agency No. DOC - 264-23

1. ISSUES:

- 1.1. Whether Ryan Doss can prove, by a 'preponderance of the evidence' I & J Graf Enterprises, LLC, dba Little Italy failed to pay him minimum wages, failed to pay overtimes and failed to pay final wages, for alleged work performed between September 8, 2020 and December 4, 2021, in violation of Revised Code of Washington (RCW) 49.46.010, RCW 49.46.130 and RCW 49.48.010?
- 1.2. Should the Department's 'Determination of Compliance No. 264-23', be affirmed, modified or set aside?

2. INITIAL ORDER SUMMARY:

- 2.1. Ryan Doss **did not prove**, by a 'preponderance of the evidence', I & J Graf Enterprises, LLC, dba Little Italy failed to pay him minimum wages, failed to pay overtimes and failed to pay final wages, for alleged work performed between September 8, 2020 and December 4, 2021, in violation of RCW 49.46.010, RCW 49.46.130 and RCW 49.48.010.
- 2.2. The Department's 'Determination of Compliance No. 264-23', is **affirmed**.

3. EVIDENTIARY HEARING:

- 3.1. Hearing Date: February 20 & 21, 2024
- 3.2. Admin. Law Judge: TJ Martin
- 3.3. Appellant: Ryan Doss
 - 3.3.1. Representative: The Appellant represented himself.
 - 3.3.2. Witnesses: The Appellant did not call any witnesses.

[Continued]

- 3.4. Agency: Department of Labor and Industries
- 3.4.1. Representative: Heather Leibowitz, Assistant Attorney General
- 3.4.2. Witnesses: Jeff Graf, I & J Enterprises, LLC, dba Little Italy Owner
Paul Moseley, Property Manager
David Eichler, Longtime Customer
Jerei Bargabus, Department Industrial Relations Agent
Timothy St. Germain, Former Little Italy Chef
- 3.5. Exhibits: The Appellant did not present any exhibits.
Department's Exhibits 1 through 36 were admitted.
- 3.6. Observers: Wendy Barcelona, Assistant Attorney General
- 3.7. Court Reporter: Evelyn Adrean, Court Reporter, Capitol Reporting

4. FINDINGS OF FACT:

The following 'Findings of Facts' are established by a 'preponderance of the evidence':

Jurisdiction-

4.1. On June 29, 2023, the Department of Labor Industries (Department) issued 'Determination of Compliance No. 264-23' (Determination). The Department's Determination found I&J Graf Enterprises, LLC, doing business as (dba) Little Italy (Employer/Little Italy) did not owe Ryan Doss (Appellant/Wage Claimant/Doss) \$69,928.00 in unpaid, minimum wage, agreed, final, overtime, wages, tips, deductions, and unpaid sick leave, for work performed, from September 8, 2020 to December 4, 2021. *Exhibit (Ex.) 1.*

4.2. On July 17, 2024, Appellant Doss appealed the Department's Determination. *Ex. 2.*

Evidentiary Ruling on Appellant's Untimely Request to Call Witnesses-

4.3. At the start of the Appellant's case, Doss stated he planned to call several witnesses he had not previously disclosed. The Department objected to the Appellant calling such witnesses.

4.4. At the Prehearing Conference, held on November 1, 2023, the Appellant, Ryan Doss, was given until Tuesday, February 6, 2024, to submit his witness and exhibit lists and exhibits, in advance of the evidentiary hearing, scheduled for Tuesday, February 20, 2024 to Thursday, February 22, 2024. He agreed to the deadline. However, he failed to file either a witness list or exhibit list, by the February 6, 2024 deadline, or at all.

- 4.5. Washington Administrative Code (WAC) 10-08-140(2)(a)&(b) mandates all evidence, including witness lists, must be disclosed sufficiently in advance of the evidentiary hearing. Evidence not submitted in advance of the proceeding may only be provided if the party establishes a clear showing he had 'good cause' for failure to produce such evidence earlier. WAC 10-08-140(2)(b).
- 4.6. In the present case, the Appellant could not provide 'good cause' or reason for the failure to disclose his witness and exhibit lists and exhibits were not provided sufficiently in advance of the evidentiary hearing. As a result, the Department's objection to the Appellant's untimely calling, at the evidentiary hearing, of undisclosed witnesses was **sustained**.

Ryan Doss and Little Italy-

- 4.7. A genuine dispute of material fact exists in the present case. Based on this dispute of fact, a credibility finding is warranted. Based on the testimony and the exhibits admitted into the record, the undersigned administrative law judge finds the Department's version of the events more convincing than the Appellant's, for the following reasons:
- a. Doss painted murals at Little Italy prior to the restaurant's opening, but never worked as an employee for Little Italy or for Jeffry Graf, as evidenced by a lack of records, such as timecards, paystubs or W-2's, which the Appellant/Wage Claimant, Ryan Doss, failed to provide, which would have helped establish an employer-employee relationship;
 - b. As a part of Department's investigation of Doss' Wage Complaint, Department Industrial Relations Agent Jerei Bargabus interviewed numerous witnesses, who confirmed Doss had only painted murals at Little Italy, but never worked as an employee;
 - c. At the evidentiary hearing, Doss asserted 'It was just me and Jeff [Graf] in the beginning' of the restaurant opening. However, numerous witnesses dispelled the Appellant's version of events and the amount of help he alleged to have assisted with in opening up the restaurant;
 - d. Doss also asserted he got the restaurant ready to open and clean every day, often for eight hours per day. However, numerous witnesses contradicted Doss' assertion since they didn't know him nor ever see him working there;
 - e. Doss also claimed to have worked 'non-stop' getting menus out, making smoothies as a part of his work at Little Italy. However, numerous witnesses confirmed otherwise. Most of the witnesses, who recalled Doss, only remember him painting murals at the restaurant;

- f. Doss also claimed to help Graf install the wood pizza oven, but then later said Graf wasn't even there for the oven delivery. However, numerous witnesses disclaimed this version of events. Photo evidence also shows the oven was not made of wood, but metal;
 - g. Doss also claimed every day he did the kitchen food prep, made dough and organized food items to be ordered. However, several witnesses, including the Little Italy's chef, Timothy St. Germain, contradicted Doss' claim;
 - h. At the evidentiary hearing, several witnesses all conformed the Department's version of events that Doss had only painted murals at the restaurant, but never worked there as a chef, server, did any cleaning nor worked the register;
 - i. Based on this credibility finding, the following facts are established by a 'preponderance of the evidence' (more likely than not):
- 4.8. The Employer, I & J Graf Enterprises, LLC, owned and operated Little Italy, located in Wenatchee, Washington. Jeff Graf (Graf) served as I & J Graf Enterprises' Registered Agent and as one of its Governors. *Testimony of Jerei Bargabus (Testimony of Bargabus) and Ex. 34.*
- 4.9. In 2019, Graf met Doss, who went by 'Fam', while Graf owned and operated G's Tees, a shirt shop, in Wenatchee, Washington. Doss would come into the shop a couple of times a week. Graf paid Doss, an artist, a commission on some shirts he painted. G's Tees would close later, during the Covid-19 pandemic, due to not being an 'essential business'. *Testimony of Jeff Graf (Testimony of Graf).*
- 4.10. While Graf owned and operated G's Tees, he became friends with Doss. *Testimony of Graf and Testimony of Doss.*
- 4.11. Graf gave Doss a bulk discount on shirts so Doss could paint on them and sell them. *Testimony of Doss.*
- 4.12. When Graf moved out of his G's Tees store, it took him two days to clear out the store, with several people helping, but Doss was not one of them. *Testimony of Graf.*
- 4.13. Doss is disabled and uses a cane to walk. He also uses wraps and a lumbar wrap to assist him with his mobility. *Testimony of Ryan Doss (Testimony of Doss).*
- 4.14. Paul Moseley (Moseley) is the property manager of the Cascadia Apartments and commercial space in Wenatchee, Washington. The building consists of 84 apartments with five commercial spaces located on the street level of the building. *Testimony of Paul Moseley (Testimony of Moseley).*
- 4.15. In October 10, 2020, Graf signed a lease with Moseley to rent a commercial space in the building to open the Little Italy pizza restaurant. *Testimony of Moseley.*

- 4.16. Prior to signing the lease, Graf did not have access to the commercial space, contrary to Doss' assertion he went into the space before the lease was signed. *Testimony of Graf.*
- 4.17. Moseley assisted Graf in moving into the commercial space, including helping with the heavy equipment, and setting up the space for the restaurant. Moseley did not recall Doss ever being there, except later to paint murals in the restaurant. *Testimony of Moseley.*
- 4.18. Moseley, as property manager, went to the property every day. He did recall telling Doss to stop smoking marijuana in the entry way when Doss took breaks from painting murals. *Testimony of Moseley.*
- 4.19. Moseley did not recall ever seeing Doss cleaning or working. *Testimony of Moseley.*
- 4.20. Soon after, Graf opened the restaurant for 'take out' only, since Covid-19 restrictions were still in place. *Testimony of Graf.*
- 4.21. With Covid-19 pandemic restrictions lifting and the restaurant preparing to open for 'dine in' customers, Graf asked Doss how much he would charge to paint a mural in Little Italy behind the bar. Graf agreed to pay Doss \$400 in cash and \$400 in marijuana for the mural. *Testimony of Graf.*
- 4.22. Graf bought and supplied Doss' painting supplies. *Testimony of Doss.*
- 4.23. Graf never hired Doss as an employee or agreed to pay him \$21.00 per hour. *Testimony of Graf.*
- 4.24. At the end of October 2020, Doss started painting the murals in the restaurant. However, he never helped to get the restaurant ready since he is disabled and uses a cane to assist with walking. *Testimony of Graf.*
- 4.25. When the 1,000 pound metal pizza oven was moved into the restaurant, Graf, along with five people, moved it in. Doss did not help. *Testimony of Graf.*
- 4.26. If Graf wasn't at the restaurant, he occasionally asked Doss, who was painting two murals, to direct where deliveries were to be placed. *Testimony of Graf and Testimony of Doss.*
- 4.27. Graf offered Doss a key to the restaurant so he could get inside and 'warm up' from the cold weather and to paint, whenever he wanted. *Testimony of Graf.*
- 4.28. In painting the murals, Doss could come and go as he pleased with no set hours. *Testimony of Graf.*
- 4.29. Since Doss did not have a car, Graf, as his friend, drove him around, including to various marijuana stores. *Testimony of Graf.*

- 4.30. While Doss talked about wanting to set up a smoothie station in Little Italy, it never happened. *Testimony of Graf.*
- 4.31. Doss occasionally made smoothies for people, who called him on his personal cellphone. They would also buy the supplies for him to make the smoothies. Doss would then deliver the smoothies to them. *Testimony of Doss.*
- 4.32. Doss also talked about teaching art classes in the corner of the restaurant, but it never happened. *Testimony of Graf.*
- 4.33. Doss never set up a smoothie station inside Little Italy. *Testimony of Graf.*
- 4.34. Graf saw Doss as a 'friend', so he tried to help him out. However, Doss was never an employee nor paid salary or hourly. *Testimony of Graf.*
- 4.35. When Doss wasn't painting murals, he was doing his own thing, since he was not working at the restaurant. *Testimony of Graf.*
- 4.36. Doss never cleared tables, swept floors after closing or did any cleaning. He also never worked as a cook server, or at the register or delivered pizzas since he didn't have a car. *Testimony of Graf.*
- 4.37. Little Italy employees were required to log their hours into the business computer. Doss never did since he was not an employee nor was he on the business' payroll. *Testimony of Graf.*
- 4.38. On March 20, 2021, Graf opened Little Italy for customers. *Testimony of Graf.*
- 4.39. David Eichler (Eichler), a retired, disable veteran, visited Little Italy on the first day it opened. He met Graf on the first day. Since he lived upstairs in the Cascadia Apartments, Eichler went to Little Italy daily, since it was like 'going to a friend's house'. *Testimony of David Eichler (Testimony of Eichler).*
- 4.40. Eichler visited Little Italy daily, often staying there for hours, often until closing. He knew all of the Little Italy staff, but did not recall Doss. *Testimony of Eichler.*
- 4.41. Doss never sold smoothies from Little Italy, especially since Graf, and his wife, had concerns about Doss selling smoothies which contained THC, which required a special license to do so. *Testimony of Graf.*
- 4.42. Graf bought Doss a blender, cups, straws and a cooler, to help his friend, Doss, to set up his business. *Testimony of Graf.*
- 4.43. Graf's wife helped Doss to get his food handler's license so he could start up his smoothie business. *Testimony of Graf.*
- 4.44. Once the restaurant opened, Moseley never saw Doss selling smoothies or conducting art classes. *Testimony of Moseley.*

- 4.45. Eichler did not recall Little Italy ever having a juice bar or art classes being hosted by Doss. *Testimony of Eichler.*
- 4.46. In April 2021, Timothy St Germain (St. Germain) began working as Little Italy's chef. He usually worked Monday through Fridays, from 9:00 a.m. or 10:00 a.m. to 5:00 or 6:00 p.m. There were six employees, but Doss was never one of the employees. *Testimony of Timothy St. Germain (Testimony of St. Germain).*
- 4.47. St. Germain would have seen Doss if he worked at Little Italy as an employee. *Testimony of St. Germain.*
- 4.48. St. Germain did not recall Doss ever making smoothies or conducting art classes at Little Italy. *Testimony of St. Germain.*
- 4.49. St. Germain did recall Doss coming into Little Italy one time to ask Graf for money. *Testimony of St. Germain.*
- 4.50. On October 24, 2021, Graf's wife died and Graf spent six weeks in a coma and six months in the hospital. By Thansksgiving, Graf's children had come and started to close down the business since Graf could no longer run it. *Testimony of Graf.*
- 4.51. In December 2021, Little Italy closed due to Graf getting Covid. *Testimony of Moseley.*
- 4.52. Doss received a 'Grants for Artist's Progress (GAP) in 2021. *Testimony of Bargabus and Ex. 35.*

Department Investigation-

- 4.53. On February 16, 2023, Doss filed a wage complaint with the Department. In his wage complaint, Doss alleged he worked for I & J Graf Enterprises, LLC, dba Little Italy, as a full-time Art Installer/Murals & Sales Associate Manager, at a rate of pay of \$21.00 per hour, from September 10, 2020 to November 13, 2021, for a total of 3,650 hours. Doss believed he was owed \$76,650 in wages, minus \$800 previously paid. *Testimony of Bargabus and Ex. 4.*
- 4.54. On the same day, February 16, 2023, the Department acknowledged receipt of the Appellant's wage complaint and notified him the Department would be investigating his complaint. *Testimony of Bargabus and Ex. 5.*
- 4.55. From February 21, 2023, to May 12, 2023, Department Industrial Relations Agent Jerei Bargabus (Department Agent Bargabus) investigated the Appellant's Wage Complaint. *Ex. 3.*
- 4.56. On March 7, 2023, Department Agent Bargabus sent an email to Doss, requesting a reconstruction of hours worked, copies of paystubs, employment contract, and to fill out a Department questionnaire. *Testimony of Bargabus and Ex. 6.*

- 4.57. On March 9, 2023, Doss acknowledged receiving the Department request and responded he would gather the information, as requested by the Department. Department Agent Bargabus also notified Doss she would be contacting the Employer to discuss his wage complaint. *Testimony of Bargabus and Exs. 7 & 8.*
- 4.58. On March 15, 2023, Doss returned provided a reconstruction of his hours worked, along with the Department questionnaire and a news article. *Testimony of Bargabus, Testimony of Doss and Ex. 9.*
- 4.59. In his 'Hours Worked and Wage Computation Sheet', Doss listed he worked eight hours per day, Monday through Saturday, at a rate of \$21.00 per hour, from September 12, 2020 to December 4, 2021. He alleged he was owed \$70,152 minus \$872 paid, for a total amount of \$69,280 owed to him. *Testimony of Bargabus, Testimony of Doss and Ex. 9.*
- 4.60. Department Agent Bargabus converted Doss' handwritten 'Hours Worked and Wage Computation Sheet', into a type-written format. *Testimony of Bargabus and Ex. 32.*
- 4.61. On March 29, 2023, Department Agent Bargabus notified I&J Graf Enterprises, LLC dba Little Italy, informing the employer a Worker Rights Complaint had been filed against the company. Bargabus requested all of the employer's records regarding Ryan Doss. *Testimony of Bargabus and Ex. 10.*
- 4.62. On the same day, March 29, 2023, Department Agent Bargabus notified Doss she had contacted his former employer, Little Italy and Graf, regarding his wage complaint. *Testimony of Bargabus and Exs. 11 & 12.*
- 4.63. On the same day, Graf emailed Department Agent Bargabus, denying Doss had ever worked at Little Italy. Therefore, he and Little Italy had no records regarding Doss. *Testimony of Bargabus and Ex. 13.*
- 4.64. On March 30, 2023, Graf followed up his previous emails by stating he had been friends with Doss, but no employer-employee relationship existed. *Ex. 14.*
- 4.65. Department Agent Bargabus and Graf continued to communicate as part of the Department's investigation of Doss' wage complaint. Graf also provided the names and contact information for various witnesses who could confirm Doss was never employed at Little Italy. *Testimony of Bargabus and Exs. 15, 16, 18, 19, 21, 23 & 24.*
- 4.66. On April 7, 2023, Department Agent Bargabus notified Doss and Graf that additional time would be needed to complete the Department's investigation. *Testimony of Bargabus and Ex. 17.*
- 4.67. On April 15, 2023, Graf provided Department Agent Bargabus with various photographs of the Little Italy staff, which did not include Doss. *Testimony of Bargabus and Ex. 20.*

- 4.68. On April 17, 2023, Graf 'Employer's Answer to Claim for Wages', asserting Doss had never worked for Little Italy, so no employment records existed. *Ex. 22.*
- 4.69. On April 21, 2023, Department Agent Bargabus contacted Tabitha Stilwater, a witness mentioned by Graf, who might have information regarding whether Doss was employed by Graf at Little Italy. *Ex. 25.*
- 4.70. On April 28, 2023, Department Agent Bargabus contacted Doss, notifying him of the Graf's response, on behalf of Little Italy. Bargabus requested Doss provide any additional documents, including any time records, paystubs, and/or W-2's, he had which would support his wage complaint. *Ex. 26.*
- 4.71. On May 4, 2023, Doss provided a handwritten list of witnesses, along with written statements by several individuals, who saw him painting murals in the restaurant. Doss also included his Washington State Food Worker Card. *Testimony of Bargabus and Ex. 27.*
- 4.72. Between May 10, 2023 and May 18, 2023, Doss asserted to Department Agent Bargabus that Graf had given him a key to the restaurant and had paid for his food handlers license. He also provided cellphone screenshots of pictures of the various murals he painted within the restaurant. *Testimony of Doss and Exs. 28-30.*
- 4.73. A food handlers license does not mean a person worked as an employee. *Testimony of Bargabus.*
- 4.74. Department Agent Bargabus interviewed Condly Mulholland (Mulholland), who resides in the Cascadia Apartments. Mulholland remembered Doss painting the murals, but nothing else. *Testimony of Bargabus.*
- 4.75. Department Agent Bargabus also interviewed Tabitha Stilwater (Stilwater), a Little Italy employee, who had never met Doss, except one time. *Testimony of Bargabus.*
- 4.76. Department Agent Bargabus also interviewed Julie Sickels (Sickels), who had also filed a Wage Complaint against Little Italy. Sickels confirmed Doss had been asked to paint murals at the restaurant. After the restaurant opened, Doss no longer came around and never worked as an employee. *Testimony of Bargabus.*
- 4.77. Department Agent Bargabus also interviewed witnesses provided by Graf and Doss, including Jason Fawnville, Stacy Jones and Reggie Williams. Each recalled Doss painting murals at Little Italy, but never working as an employee there. *Testimony of Bargabus and Ex. 3.*
- 4.78. Based on her investigation, including contacting numerous witnesses, Department Industrial Relations Agent Bargabus determined Doss had not presented any evidence establishing he actually worked at Little Italy, beyond painting commissioned murals. *Testimony of Bargabus and Ex. 3.*

- 4.79. Based on the evidence, Department Industrial Relations Agent Bargabus determined Doss had only been friends with Graf, who gave him rides and provided painting materials to paint several murals at Little Italy. No employer/employee relationship existed. *Testimony of Bargabus.*
- 4.80. Employee records, such as timecards, paystubs, and W-2's would have supported Doss worked as an employee. However, no such records were provided by either Doss or by Little Italy or Graf. *Testimony of Bargabus.*
- 4.81. Department Industrial Relations Agent Bargabus determined while Doss may have painted murals, as an independent commissioned contractor, no records needed to be kept, unlike if Doss had worked as an employee. *Testimony of Bargabus.*
- 4.82. On May 12, 2023, Department Agent Bargabus issued a 'Determination of Compliance Agent Summary', finding no wages were owed to Doss since he had not been a Little Italy employee. *Testimony of Bargabus and Ex. 33.*
- 4.83. On June 29, 2023, the Department, based on Agent Bargabus' investigation, issued 'Determination of Compliance No. 264-23'. The Department's Determination found I & J Graf Enterprises, LLC, dba Little Italy did not owe Ryan Doss \$69,928.00 in unpaid, minimum wage, agreed, final, overtime, wages, tips, deductions, and unpaid sick leave, for work, from September 8, 2020 to December 4, 2021. *Testimony of Bargabus and Ex. 1.*

5. CONCLUSIONS OF LAW:

Based upon the above 'Findings of Fact', the following 'Conclusions of Law' are made:

Jurisdiction-

- 5.1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of the present case based on Revised Code of Washington (RCW) 49.48.084(3) and Chapters 34.05 RCW.

Burden and Standard of Proof Challenging a 'Determination of Compliance'

- 5.2. In contesting a 'Determination of Compliance', the appealing party has the burden, to establish by a 'preponderance of the evidence', a 'more likely than not' standard of proof, the Department's 'Determination of Compliance' is in error. *MacSuga v. County of Spokane*, 97 Wn. App. 435, 445-446, 983 P.2d 1167 (1999).
- 5.3. In the present case, the Appellant/Wage Claimant, Ryan Doss, has the burden to prove, by a 'preponderance of the evidence', the Department's 'Determination of Compliance No. No. 264-23' is in error.

Department Requirement to Investigate Doss' Wage Complaint-

- 5.4. If an employee files a wage complaint, the Department is required to investigate. RCW 49.48.083(1) and WAC 296-128-820.
- 5.5. In the present case, on February 16, 2023, Ryan Doss filed a 'Worker Rights Complaint' with the Department, alleging his former employer, I & J Graf Enterprises, dba Little Italy, failed to pay \$21.00 per hour, from September 10, 2020 to November 13, 2021, for total wages of \$76,650 minus \$800 paid. As a result, the Department investigated Doss' wage complaint.

Doss did not work as a Little Italy Employee so No Wages are Owed-

- 5.6. The Department of Labor & Industries is responsible for implementing and enforcing the provisions of Chapters 49.46, 49.48 and 49.52 of the RCW and Title 296 Washington Administrative Code (WAC), pertaining to wages, for the purpose of protecting the immediate and future health, safety, and welfare of the people of the State of Washington.
- 5.7. The Department's authority includes enforcing wage payments such as:
(a) Payment of minimum wages (RCW 49.46.020 and Chapter 296-128 WAC);
(b) Payment of overtime wages in excess of more than 40 hours of work in a week (RCW 49.46.130); (c) Payment of final wages (RCW 49.48.010); and (d) Withholding of lawful deductions from wages (RCW 49.52.060); and (e) Enforcement of any wages as authorized by statute, ordinance, and/or contract (RCW 49.52.050).
- 5.8. Under the State of Washington's Minimum Wage Requirements and Labor Standards Act (MWA), an 'employee' is defined as 'any individual employed by an employer'. RCW 49.46.010(3).
- 5.9. Washington has adopted the economic dependence test for determining whether a worker is an 'employee' for purposes of the Washington State Minimum Wage Act, RCW 49.46. See *Anfinson v. FedEx Ground Package System, Inc.*, 159 Wn. App. 35, 244 P.3d 32 (2010), affirmed on appeal, Supreme Court of Washington, En Banc, July 19, 2012. This test considers the following factors:
- a. The degree of control exerted by the alleged employer over the worker;
 - b. The worker's opportunity for profit or loss depending upon the worker's managerial skill;
 - c. The worker's investment in equipment or materials required for the task, or employment of helpers;
 - d. Whether the service the worker renders requires a special skill;
 - e. The degree of permanence of the working relationship; and
 - f. Whether the services rendered is an integral part of the alleged employer's business.

5.10. In the present case, the evidence established the Appellant, Ryan Doss, was not an employee of Little Italy or Jeffrey Graf, for the following reasons:

- a. Graf commissioned Doss to paint murals inside Little Italy;
- b. Graf gave Doss a key to the restaurant so Doss could come and go as he pleased, while he painted murals inside the restaurant;
- c. Doss was not required, nor did he clock in or out from his work painting murals at the restaurant;
- d. Graf did not control Doss' mural painting work and left it up to Doss to complete the murals, without direction;
- e. Doss' mural painting was not related or in any way connected to Little Italy's profits or losses as a restaurant;
- f. Graf provided all of the materials for Doss to paint his murals;
- g. While Doss has experience as an artist, his painting services were separate and distinct from the operations of the Little Italy business; and
- h. Doss only painted murals inside the restaurant, He was not hired as an employee or worked alongside other Little Italy paid employees.

5.11. The Appellant, Ryan Doss, **did not prove**, by a 'preponderance of the evidence', I & J Graf Enterprises, LLC, dba Little Italy, failed to pay him minimum wages, failed to pay overtimes and failed to pay final wages, for alleged work performed between September 8, 2020 and December 4, 2021, in violation of RCW 49.46.010, RCW 49.46.130 and RCW 49.48.010.

5.12. The Department's 'Determination of Compliance No. 264-23', is **affirmed**.

6. INITIAL ORDER:

THIS ADMINISTRATIVE TRIUBUNAL ORDERS;

6.1. Ryan Doss **did not prove**, by a 'preponderance of the evidence', I&J Graf Enterprises, LLC, dba Little Italy, failed to pay him minimum wages, failed to pay overtime and failed to pay final wages, for alleged work performed between September 8, 2020 and December 4, 2021, in violation of RCW 49.46.010, RCW 49.46.130 and RCW 49.48.010.

6.2. The Department's 'Determination of Compliance No. 264-23', is **affirmed**.

Issued from Olympia, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

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

Mailing Address:

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

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

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

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

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

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

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

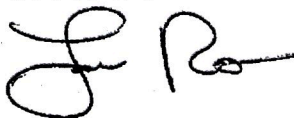
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 10-2023-LI-01964

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

| | |
|---|--|
| Ryan Doss 1250 N Wenatchee Ave Ste H-225 Wenatchee, WA 98801 <i>Appellant Wage Claimant</i> | <input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail |
| Heather Klein Leibowitz, AAG Department of Labor and Industries 800 Fifth Avenue Suite 2000 Seattle, WA 98104 <i>Agency Representative</i> | <input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Heather.Leibowitz@atg.wa.gov Eileen.West@atg.wa.gov Iniseaeservice@atg.wa.gov |
| I & J Graf Enterprises, LLC dba Little Italy 140 N James Ave Wenatchee, WA 98801 <i>Intervenor Employer</i> | <input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail |
| I & J Graf Enterprises, LLC dba Little Italy Attn: Jeffrey Graf 1913 SE 11th Ave Cape Floral, FL 33990 <i>Intervenor Employer</i> | <input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail |

Date: Monday, April 22, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson
Legal Assistant 2