

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM ) Case No. 2298-2015  
OF RONEL D. WEBER, )

Claimant, )

vs. )

**FINAL AGENCY DECISION**

RICHARD HARPEL, individually, )  
d/b/a CYNRICK LTD, LLC, a dissolved )  
Montana limited liability company, )  
a/k/a GRAVES HOTEL/LOUNGE, )

Respondent. )

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**I. INTRODUCTION**

Hearing Officer Caroline A. Holien conducted a telephone hearing in this matter on March 28, 2016 and March 31, 2016. Ronel Weber, Cindy Weber, Betty Hanson, Chuck Bennett, Sharon Bennett, Twyla Wise, Mark Miller, Tracey Pinger, and Richard Harpel presented sworn testimony. Attorney Jeffrey A. Simkovic represented Weber. Attorney Jack R. Stone represented Richard Harpel, individually, d/b/a Cynrick LTD, LLC, a dissolved Montana limited liability company, a/k/a Graves Hotel/Lounge.

The parties stipulated to the admission of Documents 5 through 7; 9 through 19; and 44 through 46, which were included in the administrative record compiled by the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit). The parties also stipulated to the admission of Exhibit 1, which included copies of Weber's W-2 Wage and Tax Statements for 2013 through 2015. The hearing closed on March 28, 2016 and was set to continue on March 31, 2016 in order to allow counsel an opportunity to review and to confer about what documents submitted by respondent may be subject to stipulation. When the hearing reconvened on March 31, 2016, neither attorney was able to or willing to direct the Hearing Officer's attention to any specific document or series of documents.

The parties were asked to provide post-hearing briefing on the issue of the admissibility of the documents submitted by the respondent. Upon the filing of the final brief on April 22, 2016, the record was closed and the case was deemed submitted. Based upon the evidence and argument adduced at hearing, the Hearing Officer makes the following findings of fact, conclusions of law, and final agency decision.

## **II. ISSUE**

Whether Richard Harpel, individually, d/b/a Cynrick LTD, LLC, a dissolved Montana limited liability company, a/k/a Graves Hotel/Lounge, owes wages for work performed, as alleged in the complaint filed by Ronel D. Weber and owes penalties or liquidated damages, as provided by law.

## **III. FINDINGS OF FACT**

1. Richard Harpel, individually, d/b/a Cynrick LTD, LLC, a dissolved Montana limited liability company, a/k/a Graves Hotel/Lounge (Harpel) employed Ronel D. Weber as a laborer beginning in 2000.

2. Weber worked approximately eight hours per day and was paid the minimum wage at the time when he worked for Harpel as a laborer.

3. Weber began working as a bar and restaurant manager for Harpel approximately eight years ago. Harpel paid Weber a monthly salary of \$1,200.00 during the last several years of his employment.

4. Weber worked as a bar and restaurant manager from approximately 10:00 a.m. to 10:00 p.m., Monday through Saturday. Weber worked from approximately 1:00 p.m. to 10:00 p.m. on Sundays.

5. Weber was responsible for managing the daily operations of the business, which included opening and closing the bar and restaurant each day; cleaning and stocking; serving customers; and arranging for vendors and servicemen to service the business. Weber was also responsible for managing the financial aspects of the business, which included maintaining the business' gaming machines; paying bills; and ensuring deposits were made.

6. Weber's wife, Cindy Weber, often brought Weber his lunch and ran errands for him, such as buying supplies and making deposits.

7. Neither party kept records as to the hours per week Weber worked.

8. The respondent and Weber never entered into a written agreement authorizing respondent to withhold Weber's wages.

9. On or about April 28, 2015, Weber stopped working for Harpel after he took the checkbook away and removed ordering duties from Weber's responsibilities.

10. On June 5, 2015, Weber filed a claim with the Wage and Hour Unit alleging Harpel owed him \$20,817.60 in overtime wages during the period beginning June 1, 2013 through April 28, 2015. Harpel timely responded and argued Weber was owed no additional wages.

11. On September 24, 2015, the Wage and Hour Unit issued a determination finding respondent owed Weber \$51,549.31 in unpaid minimum and overtime wages. The Wage and Hour Unit imposed a 55% penalty amounting to \$28,352.12 provided respondent submitted payment no later than October 9, 2015. Respondent failed to submit payment within the time provided in the determination.

12. On October 5, 2015, Harpel, by and through his attorney, Jack Stone, filed a Request for Appeal of Determination.

13. Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (Hearings) on December 9, 2015.

14. On December 11, 2015, a Notice of Hearing and Telephone Conference was sent to the parties setting the date and time for the telephone scheduling conference.

15. On January 14, 2016, a telephone scheduling conference was held at which the matter was set for a telephone hearing.

16. On February 2, 2016, Stone provided Harpel with a legal memorandum, a copy of which was sent to the Gambling Control Division Great Falls Field Office, indicating that, in his legal opinion, Weber had engaged in illegal activity in his role as a bar and restaurant manager.

17. On or about February 16, 2016, Harpel met with Wheatland County Sheriff James Rosenberg over concerns he had with Weber.

18. As of the date of hearing, no charges have been filed against Weber for any alleged criminal activity related to his employment with Harpel.

19. The minimum wage during the period of Weber's wage claim was \$7.80 in 2013; \$7.90 effective January 1, 2014; and \$8.05 effective January 1, 2015.

20. Weber's regular hourly rate was \$6.92, which was less than the applicable minimum wage during the period of his claim ( $\$1,200.00 \times 12 \text{ months} / 52 \text{ weeks} / 40 \text{ hours} = \$6.92$ ).

21. Overtime is calculated at a rate of 1 and  $\frac{1}{2}$  times the applicable minimum wage. Weber's rate of pay for hours worked in excess of 40 hours per week was \$11.70 in 2013; \$11.85 in 2014; and \$12.08 in 2015.

22. Weber is due \$34,727.83 in minimum wages and \$16,821.48 in overtime wages for work performed from the week ending May 5, 2013 through week ending May 3, 2015 for a total of \$51,549.31.

23. A penalty of 110% of wages owed to Weber is appropriate as Harpel failed to pay the amount found to be owed to Weber within the time frame prescribed by the determination dated September 24, 2015.

24. Penalty on the unpaid minimum and overtime wages equates to \$56,704.24 ( $\$51,549.31 \times 1.10 = \$56,704.24$ ).

#### IV. DISCUSSION<sup>1</sup>

##### A. Admissibility of Respondent's Exhibits Aa through E

Although a hearing involving a wage and hour claim is to be held pursuant to the Montana Administrative Procedures Act (MAPA), the Hearing Officer is not bound by ". . . statutory or common-law rules of evidence." Mont. Code Ann. § 39-3-301(3).

Montana Code Ann. § 2-4-604(4) provides:

In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and

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<sup>1</sup> Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

“Although the Rules of Evidence are generally more relaxed in an administrative proceeding than in a court of law, they are not to be relaxed to the point of disregarding due process of law and the fundamental rights of the individual.” In re Renewal of the Teaching Certificate of Thompson (1995), 270 Mont. 419, 893 P.2d 301, 306, (1995), quoting Hert v. J.J. Newberry Co. (1978), 178 Mont. 355, 364, 584 P.2d 656, 661.

The Montana Supreme Court has outlined what considerations must be made when determining the admissibility of evidence in an administrative proceeding. In Bean v. Montana Bd. of Labor Appeals, 290 Mont. 496, 502, 965 P.2d 256, 260 (1998), the court held that an agency’s findings “. . . must be supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion or, stated another way, enough evidence to justify a refusal to direct a verdict on a factual issue in a jury trial. That is, the decision must be supported by credible, admissible evidence.” The court went on to explain that “. . . substantial evidence must consist of admissible evidence. Consequently, testimony that is inadmissible hearsay may not be considered in determining whether substantial evidence exists to support an agency’s findings. Rather, there must be some admissible evidence to establish the foundation of substantial evidence.” Id.

1. Respondent’s Exhibits Aa through C are inadmissible.

Respondent argues Exhibits Aa through C, which includes things such as receipts, handwritten notes, and ledgers, support a finding that it is due an offset against any wages that may be found to be due Weber. Respondent argues Exhibits Aa through C show the following:

Net Cash available after business expenses paid:	\$75,605.31
Salary Mr. Weber reported to accountant:	(\$27,600.00)
Income Mr. Weber received over and above	
Salary reported from partial pays and money unaccounted for:	\$48,005.31

MT Wage & Hour Determination showed  
Mr. Harpel owing Mr. Weber: \$51,549.31

Difference between what Mr. Weber received  
in compensation over [s]alary paid and amount  
owed to Mr. Weber: (\$3,544.00)

Respondent contends Weber must have received the \$48,005.31 it claims to have lost because it was never received by Harpel.

Weber argues Exhibits Aa through C are inadmissible as the evidence is not relevant; constitutes hearsay; and has not properly been authenticated.

While not bound by the Montana Rules of Evidence, the rules do provide guidance as to the admissibility of contested evidence. "Hearsay is not admissible except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state." M.R.Evid. 802. Records kept in the course of a regularly conducted business activity are an exception to the prohibition against hearsay. M.R.Evid. 803(6). Authentication or identification of documentary evidence is generally required except under limited circumstances. M.R.Evid. 901 and 902.

"Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant." M.R.Evid. 401. "All relevant evidence is admissible, except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state. Evidence which is not relevant is not admissible." M.R.Evid. 402.

A cursory review of the documents offered by the respondent shows the documents appear to be of the nature that would be kept during the course of a regularly conducted business activity. However, those documents have been altered from their original state by the inclusion of written notes offering conclusions as to what the documents purport to show. Respondent offered nothing by way of authentication or identification of the documents and Harpel's testimony suggests the documents were reviewed, collated, and altered by a third party during the course of an audit in preparation of his filing a report of theft with the Wheatland County Sheriff's Office and after the filing of Weber's wage and hour claim, which undercuts the trustworthiness of the documents. M.R.Evid. 803(6).

Respondent argued the documents showed it was due an offset of whatever wages were found to be owed to Weber. Respondent's counsel had been warned on

several occasions, including at the time of hearing, that the Hearing Officer lacks the authority to order an offset. See Wage Claim of Frith, 2004 ML 3341; 2004 Mont. Dist. LEXIS 3327 quoting Christianson v. Taylor Brothers, Inc. (1987), 225 Mont. 318, 732 P.2d 841 (“employers cannot deduct an employee’s wages to cover expenses incurred by the employer”).

Upon further review, Exhibits Aa through C include no specific information regarding the days and hours Weber worked for respondent. Despite being given additional time after the first day of hearing to identify those documents that specifically addressed what days and hours Weber worked during the period of his wage and hour claim, respondent’s counsel was not prepared to identify those documents when the hearing was reconvened.

Exhibits Aa through C contain hearsay and have not been properly authenticated or identified by respondent. Further, Exhibits Aa through C are neither relevant nor probative of the issue before the Hearing Officer, which was identified repeatedly for the parties: whether respondent owed Weber additional wages for work performed during the period of his wage claim. Therefore, Exhibits Aa through C are inadmissible pursuant to M.R.Evid. 402 and 802 and will not be considered.

2. Respondent’s Exhibit D is inadmissible.

Respondent submitted additional documents with its post-hearing brief that included a two-page legal memorandum dated February 2, 2016 prepared by Stone that was addressed to respondent and copied to the Gambling Control Division; an unsworn statement dated January 31, 2015 signed by Brandy Tyler; and copies of Mont. Code Ann. §§ 23-5-162; 23-5-157, 23-5-156, 23-5-161.

None of the documents marked as Exhibit D are relevant or probative of the issue of whether respondent owed Weber additional wages for work performed during the period in question. Again, the documents pertain only to the issue of whether respondent is owed an offset of whatever wages may be found to be due Weber, which the Hearing Officer is not authorized to order.

The documents may be potentially relevant if respondent is contending it properly withheld wages to cover the value of an alleged theft. Montana Code Ann. § 39-3-205(3) provides:

When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee’s work, the employer may

withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

- (a) the employee agrees in writing to the withholding; or
- (b) the employer files a report of the theft with the local law enforcement agency within 7 business days of the separation from employment subject to the following conditions:

- (i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 30 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 30-day period.

- (ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest.

Respondent discharged Weber on or about April 28, 2015. There was no written agreement allowing for the withholding of wages. There is no evidence showing respondent filed a report of theft with a local law enforcement agency within seven days of Weber's separation from employment. There is no evidence showing charges have been filed against Weber in a court of competent jurisdiction. Therefore, Exhibit D is inadmissible pursuant to M.R.Evid. 402 and 802 and will not be considered.

3. Respondent's Exhibit E is admissible.

Exhibit E purports to be a record prepared by the Wheatland County Sheriff's Office documenting the date and time of contact made by Harpel.

Montana R. Evid. 803(8) provides:

To the extent not otherwise provided in this paragraph, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; (iv) factual findings

resulting from special investigation of a particular complaint, case, or incident; and (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

Exhibit E is not an investigative report and includes no factual findings. Exhibit E merely documents the date and time Harpel made a report of an alleged theft by Weber. Such a report is a regular and common activity performed by a law enforcement agency and there is nothing to suggest the report is untrustworthy. Therefore, Exhibit E is admissible under M.R.Evid. 803(8) and will be considered to the extent it shows the date and time Harpel made contact with the Wheatland County Sheriff's Office.

#### B. Wages Owed to Weber

An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680; *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to “show the extent and amount of work as a matter of just and reasonable inference.” *Id.* at 189, 562 P.2d at 476-77, citing *Anderson*, 328 U.S. at 687, and *Purcell v. Keegan* (1960), 359 Mich. 571, 103 N.W. 2d 494, 497; see also, *Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that the lower court properly concluded that the plaintiff's wage claim failed because she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract). As the Montana Supreme Court has long recognized, it is the employer's duty to maintain accurate records of hours worked, not the employee's. *Smith v. TYAD, Inc.*, 2009 MT 180, ¶46, n.3, 351 Mont. 12, 209 P.3d 228.

Once an employee has shown as a matter of just and reasonable inference that he or she is owed wages, “the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee, and if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation' . . . .” *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, quoting *Purcell v. Keegan*, *supra*, 359 Mich. at 576, 103 N.W. 2d at 497.

##### I. Weber has shown he is owed minimum and overtime wages.

Neither party offered any documentary evidence regarding the number of hours Weber worked each week during the period of his wage claim. Weber testified

he typically worked from 10:00 a.m. to 10:00 p.m., Monday through Saturday, and 1:00 p.m. to 10:00 p.m. on Sundays. Weber provided detailed testimony about his daily duties, which included preparing for a local coffee klatch that met in the morning and in the afternoon on most days, cleaning, stocking, and managing the business' daily operations. Five witnesses appeared who all testified they regularly saw Weber at the business at various times throughout the week.

Harpel argued Weber spent much of the workday conducting personal business and Weber was not always at the business as he claimed. Harpel offered no substantial and credible evidence in support of his argument and it is not clear in his testimony that he was regularly present at the business to monitor Weber's activities. Harpel offered no evidence showing the precise amount of work performed by Weber or that negated the reasonableness of the inference drawn from Weber's testimony.

The Montana Supreme Court provided guidance as to the analysis required in a situation such as this where neither party has maintained adequate records of an employee's hours. In *Arlington v. Miller's Trucking, Inc.*, 2015 MT 68, 378 Mont. 324, 343 P.3d 1222 (2015), the court held overtime hours claimed by an employee may be reduced to the extent supported by credible evidence offered by the employer but not reduced below the amount established by the employer. The court reasoned:

In short, when an employer has failed to maintain adequate records of an employee's hours, it is expected that the employee will not be able to offer convincing substitutes for the employer's records. Moreover, whatever evidence the employee does produce can be expected to be 'untrustworthy'. The solution in such situations, however, is not to penalize the employee for his inability to accurately prove his hours by denying his claims in their entirety.

*Arlington*, 378 Mont. 324, 331, 343 P.3d 1222, 1229.

Weber produced sufficient evidence through his own sworn testimony, as well as the sworn testimony of his witnesses, to meet his burden of showing he performed work for respondent during the period of June 1, 2013 through April 28, 2015 for which he has not been compensated. Respondent failed to meet its burden by failing to produce any evidence showing the precise amount of work Weber performed during the period of his wage claim or evidence to negate the reasonableness of the inference to be drawn from Weber's evidence. *Id.* quoting *Anderson*, 328 U.S. 680, 687. Therefore, Weber has shown he is owed additional wages for work performed during the period of his wage claim.

Employers are required to pay each employee not less than the applicable minimum wage. Mont. Code Ann. § 39-3-404(1). Employers are required to pay overtime at a rate of not less than 1 and ½ times the hourly wage rate when a worker works more than 40 hours in one work week. Mont. Code Ann. § 39-3-405(1).

Admin. R. Mont. 24.16.501 defines workweek as being:

. . . a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not coincide with the calendar week - it may begin any day of the week and any hour of the day. Each workweek stands alone. Employment for two or more workweeks cannot be averaged out for the sake of figuring overtime or minimum wages . . .

Admin. R. Mont. 24.16.2512(2)(d)(ii) provides:

Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semimonthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above . . .

Admin. R. Mont. 24.16.2512(2)(a)(i) provides:

For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a \$2 hours rate will bring, for an employee who works 46 hours, a total weekly wage of \$98 (46 hours at \$2 plus 6 at \$1). In other words, the employee is entitled to be paid an amount equal to \$2 an hour for 40 hours and \$3 an hour for the 6 hours of overtime, or a total of \$98.

Weber was paid a monthly salary of \$1,200.00 throughout the period of his wage claim. Weber's workweek began on Monday and ended on Sunday. Weber's regular hourly rate was \$6.92 ( $\$1,200.00 \times 12 \text{ months} / 52 \text{ weeks} / 40 \text{ hours}$ ), which was less than the applicable minimum wage during the years in question. The evidence shows Weber worked 40 regular hours and 41 overtime hours each week beginning the workweek ending June 1, 2013 through the workweek ending April 25, 2015. It is therefore determined that the Wage and Hour Unit correctly found respondent owes Weber \$51,549.31 in unpaid minimum and overtime wages. The

figures relied upon by the Wage and Hour Unit are hereby incorporated into this decision and are reflected in Addendum A.

## 2. Penalty On Amounts Owed.

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. Imposition of the penalty is mandatory. *Id.* For cases involving minimum wage and overtime claims, a penalty of 110% will be imposed where a determination has been made that overtime wages are owed and the employer fails to pay the amounts due within the time frame prescribed by the determination. Admin. R. Mont. 24.16.7561. The sole exception to this rule is where none of the special circumstances described in Admin. R. Mont. 24.16.7556 apply. In those cases, a reduced penalty in the amount of 55% may be imposed.

In this case, the determination from which respondent appealed found the respondent owed Weber both minimum and overtime wages and ordered respondent to pay the amount owed no later than October 9, 2015. Respondent failed to submit payment to the Wage and Hour Unit within the time provided. Applying the penalty provisions of Admin. R. Mont. 24.16.7561, the Hearing Officer finds respondent owes a penalty of 110% penalty in the amount of \$56,704.24.

## V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. An employee may recover wages and penalties for a period of two years prior to the date of the employee's last date of employment. Mont. Code Ann. § 39-3-207(2).

3. Richard Harpel, individually, d/b/a Cynrick LTD, LLC, a dissolved Montana limited liability company, a/k/a Graves Hotel/Lounge, owes Ronel D. Weber \$51,549.31 in minimum and overtime wages.

4. A 110% penalty amounting to \$56,704.24 is due on the unpaid minimum and overtime wages. Admin. R. Mont. 24.16.7561.

**VI. ORDER**

Richard Harpel, individually, d/b/a Cynrick LTD, LLC, a dissolved Montana limited liability company, a/k/a Graves Hotel/Lounge, is hereby ORDERED to tender a cashier's check or money order in the amount of \$108,253.55, representing \$51,549.31 in unpaid minimum and overtime wages and \$56,704.24 in penalty, made payable to Ronel D. Weber, and mailed to the **Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503**, no later than 30 days after service of this decision. Richard Harpel, individually, d/b/a Cynrick LTD, LLC, a dissolved Montana limited liability company, a/k/a Graves Hotel/Lounge, may deduct applicable withholding from the wage portion, but not the penalty portion, of the amount due.

DATED this 17th day of May, 2016.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN  
CAROLINE A. HOLIEN  
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.

Addendum A

Work Week Ending	Regular Hours	Overtime Hours	Regular Wages Earned <sup>2</sup>	Overtime Wages Earned <sup>3</sup>	Total Wages Earned <sup>4</sup>	Wages Paid
05/05/2013	40	41	631.80	159.90	791.70	
05/12/2013	40	41	631.80	159.90	791.70	
05/19/2013	40	41	631.80	159.90	791.70	
05/26/2013	40	41	631.80	159.90	791.70	1,200.00
06/02/2013	40	41	631.80	159.90	791.70	
06/09/2013	40	41	631.80	159.90	791.70	
06/16/2013	40	41	631.80	159.90	791.70	
06/23/2013	40	41	631.80	159.90	791.70	
06/30/2013	40	41	631.80	159.90	791.70	1,200.00
07/07/2013	40	41	631.80	159.90	791.70	
07/14/2013	40	41	631.80	159.90	791.70	
07/21/2013	40	41	631.80	159.90	791.70	

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<sup>2</sup>\$7.80 minimum wage effective January 1, 2013.

<sup>3</sup>Calculation for overtime wages: 41 hours x \$3.90

<sup>4</sup>(40 hours x \$7.80)+(41 hours x \$3.90)= Total Wages Earned

Addendum A

<b>Work Week Ending</b>	<b>Regular Hours</b>	<b>Overtime Hours</b>	<b>Regular Wages Earned</b>	<b>Overtime Wages Earned</b>	<b>Total Wages Earned</b>	<b>Wages Paid</b>
07/28/2013	40	41	631.80	159.90	791.70	1,200.00
08/04/2013	40	41	631.80	159.90	791.70	
08/11/2013	40	41	631.80	159.90	791.70	
08/18/2013	40	41	631.80	159.90	791.70	
08/25/2013	40	41	631.80	159.90	791.70	1,200.00
09/01/2013	40	41	631.80	159.90	791.70	
09/08/2013	40	41	631.80	159.90	791.70	
09/15/2013	40	41	631.80	159.90	791.70	
09/22/2013	40	41	631.80	159.90	791.70	
09/29/2013	40	41	631.80	159.90	791.70	1,200.00
10/06/2013	40	41	631.80	159.90	791.70	
10/13/2013	40	41	631.80	159.90	791.70	
10/20/2013	40	41	631.80	159.90	791.70	
10/27/2013	40	41	631.80	159.90	791.70	1,200.00
11/03/2013	40	41	631.80	159.90	791.70	
11/10/2013	40	41	631.80	159.90	791.70	

Addendum A

Work Week Ending	Regular Hours	Overtime Hours	Regular Wages Earned	Overtime Wages Earned	Total Wages Earned	Wages Paid
11/17/2013	40	41	631.80	159.90	791.70	
11/24/2013	40	41	631.80	159.90	791.70	1,200.00
12/01/2013	40	41	631.80	159.90	791.70	
12/08/2013	40	41	631.80	159.90	791.70	
12/15/2013	40	41	631.80	159.90	791.70	
12/22/2013	40	41	631.80	159.90	791.70	
12/29/2013	40	41	631.80	159.90	791.70	1,200.00
01/05/2014 <sup>5</sup>	40	41	637.50 <sup>6</sup>	161.54	799.04 <sup>7</sup>	
01/12/2014	40	41	639.90	161.95	801.85	
01/19/2014	40	41	639.90	161.95	801.85	
01/26/2014	40	41	639.90	161.95	801.85	1,200.00
02/02/2014	40	41	639.90	161.95	801.85	

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<sup>5</sup> Minimum Wage \$7.90 effective January 1, 2014.

<sup>6</sup>  $\$187.20 + \$450.30 = \$637.50/81 \text{ hours} = \text{Weighted hourly rate of } \$7.87$

<sup>7</sup>  $(40 \text{ hours} \times \$7.90) + (41 \text{ hours} \times \$3.95) = \text{Total Wages Earned}$

Addendum A

<b>Work Week Ending</b>	<b>Regular Hours</b>	<b>Overtime Hours</b>	<b>Regular Wages Earned</b>	<b>Overtime Wages Earned</b>	<b>Total Wages Earned</b>	<b>Wages Paid</b>
02/09/2014	40	41	639.90	161.95	801.85	
02/16/2014	40	41	639.90	161.95	801.85	
02/23/2014	40	41	639.90	161.95	801.85	1,200.00
03/02/2014	40	41	639.90	161.95	801.85	
03/09/2014	40	41	639.90	161.95	801.85	
03/16/2014	40	41	639.90	161.95	801.85	
03/23/2014	40	41	639.90	161.95	801.85	
03/30/2014	40	41	639.90	161.95	801.85	1,200.00
04/06/2014	40	41	639.90	161.95	801.85	
04/13/2014	40	41	639.90	161.95	801.85	
04/20/2014	40	41	639.90	161.95	801.85	
04/27/2014	40	41	639.90	161.95	801.85	1,200.00
05/04/2014	40	41	639.90	161.95	801.85	
05/11/2014	40	41	639.90	161.95	801.85	
05/18/2014	40	41	639.90	161.95	801.85	

Addendum A

<b>Work Week Ending</b>	<b>Regular Hours</b>	<b>Overtime Hours</b>	<b>Regular Wages Earned</b>	<b>Overtime Wages Earned</b>	<b>Total Wages Earned</b>	<b>Wages Paid</b>
05/25/2014	40	41	639.90	161.95	801.85	1,200.00
06/01/2014	40	41	639.90	161.95	801.85	
06/08/2014	40	41	639.90	161.95	801.85	
06/15/2014	40	41	639.90	161.95	801.85	
06/22/2014	40	41	639.90	161.95	801.85	
06/29/2014	40	41	639.90	161.95	801.85	1,200.00
07/06/2014	40	41	639.90	161.95	801.85	
07/13/2014	40	41	639.90	161.95	801.85	
07/20/2014	40	41	639.90	161.95	801.85	
07/27/2014	40	41	639.90	161.95	801.85	1,200.00
08/03/2014	40	41	639.90	161.95	801.85	
08/10/2014	40	41	639.90	161.95	801.85	
08/17/2014	40	41	639.90	161.95	801.85	
08/24/2014	40	41	639.90	161.95	801.85	
08/31/2014	40	41	639.90	161.95	801.85	1,200.00
09/07/2014	40	41	639.90	161.95	801.85	

Addendum A

<b>Work Week Ending</b>	<b>Regular Hours</b>	<b>Overtime Hours</b>	<b>Regular Wages Earned</b>	<b>Overtime Wages Earned</b>	<b>Total Wages Earned</b>	<b>Wages Paid</b>
09/14/2014	40	41	639.90	161.95	801.85	
09/21/2014	40	41	639.90	161.95	801.85	
09/28/2014	40	41	639.90	161.95	801.85	1,200.00
10/05/2014	40	41	639.90	161.95	801.85	
10/12/2014	40	41	639.90	161.95	801.85	
10/19/2014	40	41	639.90	161.95	801.85	
10/26/2014	40	41	639.90	161.95	801.85	1,200.00
11/02/2014	40	41	639.90	161.95	801.85	
11/09/2014	40	41	639.90	161.95	801.85	
11/16/2014	40	41	639.90	161.95	801.85	
11/23/2014	40	41	639.90	161.95	801.85	
11/30/2014	40	41	639.90	161.95	801.85	1,200.00
12/07/2014	40	41	639.90	161.95	801.85	
12/14/2014	40	41	639.90	161.95	801.85	
12/21/2014	40	41	639.90	161.95	801.85	
12/28/2014	40	41	639.90	161.95	801.85	1,200.00

Addendum A

Work Week Ending	Regular Hours	Overtime Hours	Regular Wages Earned	Overtime Wages Earned	Total Wages Earned	Wages Paid
01/04/2015 <sup>8</sup>	40	41	646.65 <sup>9</sup>	165.03	811.68 <sup>10</sup>	
01/11/2015	40	41	652.05	165.03	817.08	
01/18/2015	40	41	652.05	165.03	817.08	
01/25/2015	40	41	652.05	165.03	817.08	1,200.00
02/01/2015	40	41	652.05	165.03	817.08	
02/08/2015	40	41	652.05	165.03	817.08	
02/15/2015	40	41	652.05	165.03	817.08	
02/22/2015	40	41	652.05	165.03	817.08	1,200.00
03/01/2015	40	41	652.05	165.03	817.08	
03/08/2015	40	41	652.05	165.03	817.08	
03/15/2015	40	41	652.05	165.03	817.08	
03/22/2015	40	41	652.05	165.03	817.08	
03/29/2015	40	41	652.05	165.03	817.08	1,200.00

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<sup>8</sup> Minimum wage \$8.05 effective January 1, 2015

<sup>9</sup> \$284.40+\$362.25+\$646.65/81 hours=Weighted hourly rate of \$7.98

<sup>10</sup> (40 hours x \$8.05)+(41 hours x \$4.03)=Total Wages Earned

Addendum A

<b>Work Week Ending</b>	<b>Regular Hours</b>	<b>Overtime Hours</b>	<b>Regular Wages Earned</b>	<b>Overtime Wages Earned</b>	<b>Total Wages Earned</b>	<b>Wages Paid</b>
04/05/2015	40	41	652.05	165.03	817.08	
04/12/2015	40	41	652.05	165.03	817.08	
04/19/2015	40	41	652.05	165.03	817.08	
04/26/2015	40	41	652.05	165.03	817.08	1,200.00
05/03/2015	24		193.20		193.20	279.92

**TOTAL:      \$66,658.05      \$16,821.48      \$83,029.23      \$31,479.92**