

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Lakeville Motor Express, Inc.,
LME, Inc., Finish Line Express, LLC, Wren
Equipment, LLC, Roger Wilsey, and Shari
Taylor Wilsey

**NOTICE AND ORDER FOR HEARING
AND PREHEARING CONFERENCE**

TO: LME, Inc., Wren Equipment, LLC, Roger Wilsey, and Shari Taylor Wilsey through their attorney, Jason Asmus, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; Finish Line Express, LLC through its attorneys, Joseph Dreesen and Brian Benkstein, 150 South Fifth Street, Suite 3500, Minneapolis, MN 55402.

RESPONDENTS ARE HEREBY NOTIFIED that Ken B. Peterson, Commissioner, Minnesota Department of Labor and Industry ("Complainant" or "Commissioner"), by service of this Notice and Order for Hearing and Prehearing Conference ("Notice and Order"), commences contested case proceedings under Minn. Stat. §§ 177.27, subd. 4 and 14.57-.69 to determine whether respondents violated Minn. Stat. § 181.13, as described in this Notice and Order, which amends and supersedes the Second Amended Compliance Order issued to respondents on February 24, 2017 ("Compliance Order," attached hereto as Exhibit A). Pursuant to respondents' timely objection to the Penalty Order, Complainant commences this contested case as set forth in Minn. Stat. § 177.27, subd. 4.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to the Honorable Perry Wilson, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620. Parties may contact the Administrative Law Judge by mail or by calling or emailing the judge's legal assistant, Sheena Denny, at 651-361-7881; sheena.denny@state.mn.us.

IT IS HEREBY ORDERED that a prehearing teleconference shall be held Tuesday, April 25, 2017, at 9:30 a.m. To join the teleconference, the parties should dial 1-888-742-5095 and enter conference code number 569 972 5740#. The purpose of the prehearing conference is to set a schedule for the contested case proceedings and consider such other matters that may be necessary or advisable. The Administrative Law Judge will set the time, date, and place for hearing following the prehearing conference.

These contested case proceedings will be conducted pursuant to the procedures set forth in chapter 14 of Minnesota Statutes and the Rules of the Office of Administrative Hearings, Minn. R. 1400.5100-.8500. These statutes and rules are accessible free of charge at www.revisor.mn.gov/statutes/?id=14 and www.revisor.mn.gov/rules/?id=1400, or copies may be purchased from the Minnesota Book Store by calling 651-297-3000. The Office of Administrative Hearings maintains participants' guides to contested case hearings and other proceedings, which are available online at mn.gov/oah/administrative-law/videoguide and

mn.gov/oah/administrative-law/ContestedCases. Persons without internet access may call 651-361-7900 for assistance in obtaining these guides.

At the close of the contested case hearing in this matter, the Administrative Law Judge shall file with the Commissioner a report that fulfills the requirements of Minn. Stat. § 14.50 ("Report"). The Report shall constitute the Administrative Law Judge's recommendation, not a final decision. After reviewing the record, the Commissioner shall make a final decision adopting, rejecting, or modifying the findings of fact, conclusions, and recommendations contained in the Report. Pursuant to Minn. Stat. § 14.61, subd. 1, the Commissioner's final decision shall not be made until the Report has been made available to the parties to the proceeding for at least ten days and each party adversely affected by the Report has received an opportunity to file exceptions and present argument to the Commissioner. Parties should contact Ken B. Peterson, Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, Minnesota 55455 to ascertain the procedure for filing exceptions or presenting argument.

Complainant is represented in this matter by Assistant Attorney General Jonathan D. Moler. He may be contacted by mail at 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127; by telephone at 651-757-1330; or by email at jonathan.moler@ag.state.mn.us to discuss discovery or informal disposition of the matter.

AGENCY AUTHORITY AND CONTROLLING STATUTES

1. Minnesota Statutes section 181.13 requires an employer to pay wages to a discharged employee upon demand of the employee. Section 181.13 provides for a penalty equal to the amount of the employee's average daily earnings at the employee's regular rate of pay for each day, up to 15 days, that the employer is in default. The Commissioner may enforce and order compliance with Minn. Stat. ch. 181 and may order the payment of penalties, back wages and gratuities, and damages. Minn. Stat. § 177.27, subds. 4, 7.

ALLEGATIONS

1. Lakeville Motor Express, Inc. ("Lakeville") is an employer with employees working in Minnesota. Lakeville's registered office address with the Minnesota Secretary of State is 500 W. County Road D, New Brighton, Minnesota 55112. Its principal executive office address is 2975 Partridge Road, Roseville, Minnesota 55113.

2. Like Lakeville, LME, Inc.'s registered office address with the Minnesota Secretary of State is 500 W. County Road D, New Brighton, Minnesota 55112. LME, Inc.'s principal executive office address is 955 Summit Avenue, St. Paul, Minnesota 55105. LME, Inc. is an employer with employees working in Minnesota.

3. Like Lakeville, Wren Equipment, LLC ("Wren Equipment") has a registered office address of 2975 Partridge Road, Roseville, Minnesota 55113 and a Principal Executive

Office address of 500 W. County Road D, New Brighton, Minnesota 55112. Wren Equipment is an employer with employees working in Minnesota.

4. Finish Line Express, LLC's ("Finish Line") registered office address is 23540 Osmium Street NW, St. Francis, MN 55070. Finish Line is an employer with employees working in Minnesota.

5. Roger Wilsey ("Wilsey") and Shari Taylor Wilsey ("Taylor Wilsey") (jointly referred to as "the Wilses") are married and reside at 955 Summit Avenue, St. Paul, Minnesota 55105. The Wilses own and operate LME, Inc. and Wren Equipment.

6. LME, Inc., Wren Equipment, Finish Line, and the Wilses are collectively referred to herein as "respondents."

7. On November 19, 2016 Lakeville closed its business location at 2975 Partridge Road, Roseville, MN 55113 without notifying employees prior to the closure. Employees were not paid their wages due for hours worked between November 7, 2016 and November 19, 2016. Employees were also not paid for vacation, sick, or holiday time accrued.

8. On or around November 21 and 22, 2016, many of Lakeville's employees sent letters to Lakeville demanding payment of wages, as required by Minn. Stat. § 181.13.

9. On or around November 29, 2016, DLI received complaints from employees alleging violations of Minnesota Statutes chapter 181 by Lakeville and respondents. DLI subsequently initiated an investigation.

10. Between November 30, 2016 and December 9, 2016, DLI staff sent letters to Lakeville requesting that it pay all employees for wages earned and unpaid.

11. As of December 20, 2016, Lakeville and respondents had not complied with Minn. Stat. § 181.13 by paying employees all wages earned within twenty-four hours of the demand for wages.

12. Lakeville filed for chapter 7 bankruptcy on January 20, 2017. A meeting of creditors pursuant to 11 U.S.C. § 341 ("creditors meeting") occurred on February 17, 2017.

13. DLI's investigation showed that LME, Inc., Wren Equipment, Finish Line, and Lakeville were essentially one entity controlled by the Wilses. The information that led DLI to reach this conclusion includes, but is not limited to:

- a. At all times between 2009 and the present, the Wilses have been the de facto owners and operators of Lakeville, LME, and Wren Equipment.
- b. Kevin Deming ("Deming") purportedly bought Lakeville from the Wilses in 2015. In 2014, Lakeville's gross revenues were approximately \$124,000,000. Despite that fact, the Wilses agreed to transfer Lakeville, its parent company, and another subsidiary to Deming for approximately \$750,000, with no money down. Deming testified at the creditors meeting

that he agreed to pay the Wilseys \$5,000 per month out of Lakeville's business income beginning January 2016. There was no other consideration for the alleged sale.

- c. Deming has held himself out to own Lakeville, but based on his testimony, Deming appears to have little knowledge of how Lakeville operated. Deming testified that he ceded most control of Lakeville to LME, Inc. directly and through Karen Vanney ("Vanney"), an employee of LME, Inc.
- d. LME, Inc. was responsible for Lakeville's billing, accounts receivable, customer service, and safety programs. Vanney had check signing authority for Lakeville. Deming testified that he made little to no inquiry into how the finances of Lakeville were maintained or who Vanney transferred Lakeville funds to.
- e. Lakeville leased equipment, including its trucks and trailers, from Wren Equipment. There was no agreement regarding the price for the lease. Deming testified that he made no effort to obtain more favorable lease terms from a different company or to verify that the lease terms with Wren Equipment constituted a fair value. Deming indicated he accepted the lease terms offered to him by Wren Equipment.
- f. Lakeville received all of its cartage business through a cartage contract with LME, Inc. LME, Inc. cancelled the cartage contract in November 2016. Deming did no due diligence to ensure Lakeville's cartage agreement with LME was for fair value. Deming made no effort to obtain business for Lakeville from any person or entity other than LME, Inc.
- g. In the two months prior to Lakeville ceasing operations, it sold over \$100,000 in office equipment, parts, and fuel to LME, Inc. for a discounted price of approximately \$35,000. Lakeville also sold over \$77,000 in equipment to Wren Equipment. The depreciation report obtained from Lakeville placed the original value of the \$77,000 worth of equipment at around \$2,000,000.
- h. In the two months prior to Lakeville ceasing operations, Vanney signed checks transferring significant funds from Lakeville to Wren Equipment and LME, Inc.
- i. Before, during, and after November 2016, Finish Line picked up freight and delivered it on behalf of Lakeville. Deming was aware that Finish Line was holding itself out as Lakeville, but took no action to stop it.
- j. Lakeville markings appear on trucks and equipment purportedly owned and operated by LME, Inc. and Finish Line.

- k. The email address for contacts listed on the Safety Measurement System Carrier Registration for LME, Inc. and Lakeville refer to the same email address.
- l. Lakeville's online application form included positions for both Lakeville and LME, Inc.
- m. Within days of Lakeville closing, many of its managers and non-union employees began working for Finish Line or LME, Inc., including Deming, Lakeville's purported owner. Twenty-six other employees worked for at least two of the originally named respondents in this matter (Lakeville, LME, Inc., and Finish Line) between June and December 2016.
- n. Vanney signed checks transferring over \$400,000 to LME, Inc. from Lakeville between November 2016 and January 2017, after Lakeville had ceased operations and refused to pay its employees their final wages.
- o. After Lakeville ceased operations, Lakeville cell phones were transferred to employees of Finish Line. Lakeville has produced no record of their sale from Lakeville to Finish Line.
- p. Lakeville appears to be operating in concert with LME, Inc., Wren Equipment, and Finish Line. The companies have, collectively, failed to observe corporate formalities.

14. On February 24, 2017, the Commissioner issued the Compliance Order in this matter. The Commissioner found that Lakeville's employees had not been paid \$177,301.14. The Commissioner ordered liquidated damages pursuant to Minn. Stat. § 177.27, subd. 7 in the amount of \$177,301.14. The Commissioner ordered statutory penalties in the amount of \$284,224.33 pursuant to Minn. Stat. § 181.13 and \$87,000 in statutory penalties pursuant to Minn. Stat. § 177.27, subd. 7. The Commissioner determined that Lakeville, LME, Inc., Wren Equipment, Finish Line, and the Wilseys are all liable for the back wages, liquidated damages, and statutory penalties.

15. Lakeville failed to timely object to the Compliance Order in this matter and the Compliance Order became a final order of the Commissioner with regard to Lakeville.

16. All other respondents timely objected to the Compliance Order.

ISSUES

1. Whether LME, Inc., Finish Line Express, LLC, Wren Equipment, LLC, or the Wilseys are liable for back wages, liquidated damages, and statutory penalties owed by Lakeville to its former employees.

2. Whether the Department correctly calculated the back wages, liquidated damages, and statutory penalties pursuant to Minn. Stat. §§ 177.27 and 181.13.

CONTESTED CASE HEARING: ADDITIONAL NOTICE

1. Respondents' failure to appear at the hearing or any settlement conference or prehearing conference may result in findings that respondents are in default, that the Department's allegations contained in this Notice and Order are accepted as true, and that the Department's proposed action is upheld. The same result may obtain if respondents fail to comply with any order of the Administrative Law Judge.

2. Any party intending to appear at the hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on Complainant's attorney. A blank Notice of Appearance form is enclosed with this Notice and Order.

3. If any party has good cause for requesting a delay of the hearing or any prehearing conference, it must make that request in writing to the Administrative Law Judge at least five days before the hearing or prehearing conference. A copy of the request must be served on the other party.

4. At the hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled to the issuance of subpoenas to compel witnesses to attend the contested case hearing. At the contested case hearing, the parties will have the opportunity to be heard orally, to present evidence and cross-examine witnesses, and to submit evidence and argument. Ordinarily, the contested case hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the contested case hearing should bring all evidence bearing on the case, including any records or other documents. If data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2.

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the contested case hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other party. A subpoena request form is available at mn.gov/oah/administrative-law/forms or by calling 651-361-7900.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly.

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

9. Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the administrative law judge must be promptly notified. To arrange for an accommodation or an interpreter, please contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Signed this 28 day of March, 2017



JOHN AIKEN, Director, Division of Labor
Standards and Apprenticeship, Minnesota
Department of Labor and Industry

STATE OF MINNESOTA
Department of Labor and Industry
Division of Labor Standards and Apprenticeship

In the Matter of Lakeville Motor Express,
Inc., LME, Inc., Finish Line Express, LLC,
Wren Equipment, LLC, Roger Wilsey,
individually, and Shari Taylor Wilsey,
individually

**SECOND AMENDED
COMPLIANCE ORDER**

File No.: 12340-120616

To: Lakeville Motor Express, Inc.
2975 Partridge Road
Roseville, MN 55113

Lakeville Motor Express, Inc.
500 W Co Rd D
New Brighton, MN 55112

LME, Inc.
2975 Partridge Road
Roseville, MN 55113

LMF, Inc.
500 W Co Rd D
New Brighton, MN 55112

Finish Line Express, LLC
23540 Osmium St. NW
St. Francis, MN 55070

Finish Line Express, LLC
10001 89th Avenue North
Maple Grove, MN 55369

Wren Equipment, LLC
2975 Partridge Road
Roseville, MN 55113

Wren Equipment, LLC
500 W Co Rd D
New Brighton, MN 55112

Roger Wilsey
955 Summit Ave.
St. Paul, MN 55105

Shari Taylor Wilsey
955 Summit Ave.
St. Paul, MN 55105

**NOTICE: THE ATTACHED EXHIBIT ("Exhibit 1") CONTAINS DATA CLASSIFIED
AS PRIVATE OR CONFIDENTIAL**

On December 20, 2016, the Commissioner ("Commissioner") of the Minnesota Department of Labor & Industry ("Department") served an Amended Compliance Order ("December 20, 2016 Order") on Lakeville Motor Express, Inc., LME, Inc., and Finish Line Express, LLC. The Commissioner hereby VACATES the December 20, 2016 Order and, in accordance with Minn. Stat. § 177.27, subds. 4 and 7, issues the following Second Amended Compliance Order ("Order") against Lakeville Motor Express, Inc., LME, Inc., Finish Line Express, LLC, Wren Equipment, LLC, Roger Wilsey, individually, and Shari Taylor Wilsey, individually (hereinafter collectively "Respondents")

I. ORDER

1. Respondents are ordered to CEASE AND DESIST from violating the law cited in the "Conclusions of Law" section of this Order. Specifically, Respondents are ordered to cease and

desist from the failure to pay earned and unpaid wages to employees.

2. Respondents are ordered to take affirmative steps that will bring them into compliance with the law cited in the "Conclusions of Law" section of this Order. Specifically, Respondents are ordered to COMPLY with Minn. Stat. § 181.13.

3. Respondents are ordered to pay to employees BACK WAGES of \$177,301.14, PENALTIES of \$284,224.33, and LIQUIDATED DAMAGES of \$177,301.14, as listed on Exhibit 1, in the TOTAL AMOUNT of \$638,826.61, as described in paragraphs 4 and 5. Respondents are also ordered to pay any BACK WAGES due to employees not listed on Exhibit 1, but who are owed for any wages earned and unpaid through November 19, 2016.

4. Respondents are ordered to PAY BACK WAGES to each individual listed in Exhibit 1 and to any employees not listed who are owed for any wages earned and unpaid. Back wages consist of earned but unpaid back pay, gratuities and compensatory damages, including the gross back wages listed in Exhibit 1. The total amount of gross back wages due is estimated to be not less than \$177,301.14. Respondents shall submit to the Department:

- a. An individual check payable to each employee listed in Exhibit 1 for the gross amount of BACK WAGES due that employee less applicable FICA, Federal, and State withholdings;
- b. An individual check payable to each employee not listed in Exhibit 1, to whom Respondents owe back wages, for the gross amount of BACK WAGES due that employee less applicable FICA, Federal, and State withholdings;
- c. An earning statement for each employee set forth in Exhibit 1 and any other affected employees; and
- d. A full alphabetical list of all employees entitled to BACK WAGES with their current addresses and phone numbers.

The checks and documents shall be mailed or delivered to the Commissioner at:

Minnesota Department of Labor and Industry
Division of Labor Standards and Apprenticeship
ATTN: Sara Ellstra
443 Lafayette Road N.
St. Paul, MN 55155

They must be received by the Department on or before 4:30 PM on March 13, 2017.

5. Respondents are ordered to pay PENALTIES to employees in the amount of \$284,224.33. The PENALTY payable to each employee is calculated at 15 days of the average daily earnings of each individual listed in Exhibit 1. Respondents are also ordered to PAY LIQUIDATED DAMAGES to employees in the amount of \$177,301.14. The gross liquidated damages payable to each employee are equal to the gross back wages payable to each employee as indicated in Exhibit 1. The total penalty and liquidated damages due to each employee is listed on Exhibit 1 as the TOTAL PENALTY AND DAMAGES for that employee. Respondents

shall submit to the Department a second check payable to each employee listed in Exhibit 1 for the gross amount of the TOTAL PENALTY AND DAMAGES due to that employee along with a 1099 form to each employee for the total penalty and damages amount. Checks and 1099 forms shall be mailed or delivered to the Department at the same time as the checks and documents in Paragraph 4 above.

6. Respondents have been found to have willfully violated Minn. Stat. § 181.13 and are therefore ordered to PAY TO THE DEPARTMENT A CIVIL PENALTY of \$87,000 pursuant to Minn. Stat. § 177.27, subd. 7. Respondents shall mail or deliver a check for \$87,000, payable to the Minnesota Department of Labor and Industry, to the Department at the same time as the checks and documents in Paragraph 4 above.

The Commissioner takes the above action based upon the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Respondent Lakeville Motor Express, Inc. ("Lakeville") is a Minnesota corporation with a registered office address of 500 W. County Road D, New Brighton, Minnesota 55112 and a Principal Executive Office address of 2975 Partridge Road, Roseville, Minnesota 55113. At all times relevant to this matter, Lakeville has operated as a cartage business. During the 2014 year, Lakeville generated income of approximately \$124,000,000.

2. Respondent Roger Wilsey ("Wilsey") and Respondent Shari Taylor Wilsey ("Taylor Wilsey") (jointly referred to as "the Wilses") are married to each other and reside at 955 Summit Avenue, St. Paul, Minnesota 55105. They purchased Lakeville in 2009.

3. The Secretary of State's website lists Kevin Deming ("Deming") as Lakeville's Chief Executive Officer. Wilsey was listed as Lakeville's Chief Executive Officer on the annual corporate renewals filed in 2010 through 2014. Deming was listed as Lakeville's Chief Executive Officer on the renewals filed September 22, 2015 and June 20, 2016. Deming is related to the Wilses through the marriage of Taylor Wilsey's son to Deming's daughter.

4. Deming and the Wilses signed a document dated July 31, 2015, and titled "Stock Purchase Agreement" (hereinafter "Stock Purchase Agreement"). Under the Stock Purchase Agreement, Deming allegedly agreed to pay the Wilses \$750,000 for Lakeville's parent company and all subsidiaries, including Lakeville, with no money down. Deming allegedly entered into an oral agreement with the Wilses, which was not reflected in the Stock Purchase Agreement. This alleged oral agreement required Deming to pay the Wilses installments of \$5,000 per month out of Lakeville's business income beginning in January 2016. There was no other consideration for the alleged sale.

5. Deming has stated that, beginning in January 2016, he made a total of 8 or 9 monthly payments of \$5,000 to the Wilses from the Lakeville business income. The total payments equal \$40,000 or \$45,000. No further payments were made for Deming's alleged purchase of Lakeville. The Wilses have not taken any legal action against Deming for breach of the alleged

oral agreement. The Commissioner can find no evidence that any shares of Lakeville were ever transferred from the Wilseys to Deming.

6. Respondent LME, Inc. ("LME") is a Minnesota corporation with a registered office address of 500 W. County Road D, New Brighton, MN 55112. LME was purchased by the Wilseys in 2009. The Wilseys' residence at 955 Summit Avenue, St. Paul, Minnesota, 55105 is listed on the Secretary of State's website as the Principal Executive Office address for LME. Taylor Wilsey is the Chief Executive Officer of LME.

7. Since the Wilseys purchased LME and Lakeville in 2009, LME has operated synonymously with the name "Lakeville Motor Express." Lakeville holds the registered trademark "LME."

8. In 2009, the Wilseys also purchased Wren Equipment, LLC ("Wren Equipment"). Wren Equipment is a Minnesota limited liability company with a registered office address of 2975 Partridge Road, Roseville, Minnesota 55113 and a Principal Executive Office address of 500 W. County Road D, New Brighton, Minnesota 55112. Wilsey is listed on the Secretary of State's website as the Manager of Wren Equipment.

9. Deming received wages from both LME and Lakeville in 2014-15 and received wages from Lakeville in 2012-13 and 2016. Deming has stated that he is currently a consultant for LME. He receives approximately \$1100 per week from LME for between three to six hours of work per week.

10. Wilsey received wages from Lakeville from 2004 through 2014. Beginning in 2015, Wilsey received wages from LME.

11. Under the terms of the Stock Purchase Agreement, LME is responsible for Lakeville's billing, accounts receivable, customer service, and safety programs. Lakeville's finances are managed by Karen Vanney ("Vanney"), an LME employee, who has check-signing authority for Lakeville. Deming admits that he made little or no inquiry into how the finances of Lakeville were maintained.

12. Lakeville leased equipment, including trucks and trailers, from Wren Equipment. There is no agreement regarding the price for the lease. On behalf of Lakeville, Vanney paid Wren Equipment. Deming did no due diligence to ensure Lakeville's lease agreements were for fair value. Lakeville employees also performed repairs on trucks and trailers allegedly owned by Wren Equipment. Lakeville received no remuneration for these services.

13. Lakeville received all of its cartage business through a cartage contract with LME. LME cancelled the cartage contract in November 2016. Deming did no due diligence to ensure Lakeville's cartage agreement with LME was for fair value. Deming made no effort to obtain business for Lakeville from any person or entity other than LME. Deming claims to have tried to get rid of Lakeville equipment by selling it to Wren Equipment and/or LME before LME said that it was cancelling the cartage contract.

14. Since 2009, Lakeville, LME, and Wren Equipment operated as one trucking business under the direction and control of the Wilseys.

15. Respondent Finish Line Express, LLC ("Finish Line") is a Minnesota limited liability company with a registered office address of 23540 Osmium St NW, St. Francis, Minnesota 55070. Finish Line is owned by two married couples: Mike and Nancy Sanford, and Travis and Jennifer Hoeschen. Finish Line was registered with the Minnesota Secretary of State on May 5, 2016.

16. Mike Sanford and Travis Hoeschen were both high-ranking former employees of Lakeville or LME. Mike Sanford is the former Vice President of Operations at LME or Lakeville. Travis Hoeschen is a former terminal manager at LME or Lakeville.

17. Travis Hoeschen received wages from both LME and Lakeville in the third quarter of 2016, after the founding of Finish Line.

18. Mike Sanford received wages from Lakeville through 2012, and then began being paid by LME through the third quarter of 2016, after the founding of Finish Line.

19. During and after November 2016, Finish Line picked up freight and delivered it on behalf of Lakeville.

20. Prior to November 2016, some Lakeville employees including at least four managers began working for Finish Line. Some of these employees worked simultaneously for Lakeville and Finish Line. Days after November 19, 2016, other Lakeville employees, including at least three managers, began working for Finish Line.

21. On November 19, 2016, employees arrived at Lakeville's premises in Roseville, Minnesota to discover that its doors were padlocked. After discovering the doors padlocked, Lakeville employees were informed by Deming that "effective [November 19, 2016] Lakeville Motor Express Inc. shall cease all operations, close its business office and terminate all employees. Lakeville is out of cash and has no reserves to pay any amounts owed to employees or vendors at this time."

22. On November 23, approximately 87 Lakeville employees did not receive their regular paychecks. Specifically, these employees were not paid their wages for hours worked from November 7, 2016 through November 19, 2016. The unpaid wages included overtime that Lakeville employees were required to work between November 7, 2016 and November 19, 2016. At the time Lakeville closed, it owed employees at least an estimated \$177,301.14 in back wages.

23. On or about November 21 and 22, 2016, many employees sent letters to Lakeville demanding payment of wages, as required by Minn. Stat. § 181.13.

24. On or about November 29, 2016, the Department received several complaints alleging violations of Minnesota Statutes, Chapter 181 that resulted in an investigation being

initiated by the Department.

25. On November 30, 2016 through December 9, 2016, the Department sent letters to Lakeville requesting that Lakeville pay all employees for wages earned and unpaid. On December 9, 2016 the Department received a response from Thomas J. Flynn of Larkin, Hoffman Daly & Lindgren, Ltd., counsel for Lakeville. The response did not state any plan or intention of paying employees their earned and unpaid wages.

26. Lakeville has siphoned funds and dissipated assets to LME, Finish Line, and Wren Equipment. Lakeville began dispersing its assets before November 19, 2016, when it locked out employees, and continued dispersing its assets after November 19, 2016. For example:

- a. Vanney signed checks transferring over \$400,000 to LME from Lakeville between late November 2016 and January 2017.
- b. In the months preceding the November 19, 2016 lock-out, Vanney signed checks transferring significant funds from Lakeville to Wren Equipment.
- c. In September 2016, Lakeville transferred office equipment to LME that Lakeville's records indicate were originally purchased for \$125,853. Lakeville sold the equipment to LME for a depreciated value of \$35,000.
- d. In September 2016, Lakeville transferred equipment to Wren Equipment that Lakeville's records indicate was at one time worth as much as \$2,000,000. Lakeville sold the equipment to Wren Equipment for a depreciated value of \$77,000.
- e. Lakeville purchased trucks from Rihm Kenworth in 2016, before Lakeville began dispersing assets. These trucks were observed at Finish Line after Lakeville locked out its employees. There is no record of their sale from Lakeville to Finish Line.
- f. After Lakeville locked out its employees, Lakeville cell phones were transferred to employees of Finish Line. There is no record of their sale from Lakeville to Finish Line.

27. LME appears to be operating in concert with Lakeville and Wren Equipment, is indistinguishable from Lakeville and Wren Equipment as a corporate entity, and has failed to observe corporate formalities.

28. Wren Equipment appears to be operating in concert with Lakeville and LME, is indistinguishable from Lakeville and LME as a corporate entity, and has failed to observe the formalities of a limited liability company.

29. Finish Line appears to be operating in concert with Lakeville and LME, is indistinguishable from Lakeville and LME as a business entity, and has failed to observe the formalities of a limited liability company.

30. At all times between 2009 and the present, the Wilseys have been the de facto owners and operators of Lakeville, LME and Wren Equipment.

31. Lakeville filed for Chapter 7 bankruptcy on January 20, 2017, in the United States Bankruptcy Court for the District of Minnesota. Lakeville's declaration of bankruptcy lists 83 individuals as unsecured creditors who are owed wages, in the total amount of \$178,722.83. Lakeville's declaration of bankruptcy also lists a liability of \$90,092,302.70 to the pension group for Lakeville employees.

32. As of February 24, 2017, Respondents have not fully complied with Minnesota Statutes Chapter 181. Respondents failed to pay wages earned to all employees within 24 hours of demand for the wages.

III. CONCLUSIONS OF LAW

The Commissioner takes the above action based upon the following conclusions of law:

1. Respondents violated Minn. Stat. § 181.13 by failing to pay all wages earned and unpaid to employees.
2. Respondents' violations of Minn. Stat. § 181.13 were willful.

IV. DETERMINATION OF CIVIL PENALTY AMOUNT

In determining the amount of the \$87,000 civil penalty payable to the Department, the Commissioner considered the size of Respondents' businesses and the gravity of Respondents' violations. Pursuant to Minn. Stat. § 177.27, subd. 7, the Commissioner may fine Respondent up to \$1,000 for each violation for each employee.

V. CONTESTING THIS ORDER

Pursuant to Minn. Stat. § 177.27, subd. 4, Respondents shall have 15 calendar days from the date this Order was served to contest this Order by filing a written notice of objection specifically stating the reasons for the objection. A notice of objection must be in writing and must be received by the Commissioner at the following address or fax number by the deadline.

Minnesota Department of Labor and Industry
Division of Labor Standards and Apprenticeship
ATTN: Sara Ellstra
443 Lafayette Road North
St. Paul, MN 55155
Fax number: (651) 284-5740

If the notice of objection is delivered to the above address or faxed to the above fax number, it must be received no later than 4:30 p.m. on the last day permitted for filing the notice of objection.

If Respondents file a timely notice of objection, a contested case hearing shall be held in accordance with Minn. Stat §§ 14.57 to 14.69, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.8510 to 1400.8612, and Minn. Stat. § 177.27, subd. 4. The

Commissioner may also order Respondents to reimburse the litigation and hearing costs expended by the Department in preparation for and in conducting the contested case proceeding, or a percentage thereof, pursuant to Minn. Stat. § 177.27, subd. 7.

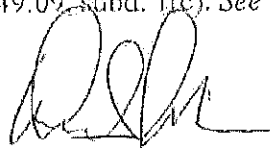
VI. EFFECT OF FINAL ORDER

If Respondents do not file a timely notice of objection, this Order shall become a final order of the Commissioner. *See* Minn. Stat. § 177.27, subd. 4.

The \$87,000 penalty imposed upon Respondents by this Order is due and payable on the date this Order becomes final.

When this Order becomes final, the Commissioner may take any further action permitted by law including, but not limited to, bringing an action in an appropriate district court to enforce or require compliance with this Order. *See* Minn. Stat. § 177.27, subd. 5. The Commissioner may file and enforce any unpaid portion of the penalty as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. § 16D.17. Additionally, interest shall accrue on and be added to the unpaid balance from the date this Order is signed until it is paid at an annual rate computed in accordance with Minn. Stat. § 549.09, subd. 1(c). *See* Minn. Stat. § 177.27, subd. 7.

Dated: February 24, 2017.



John Aiken, Director
Division of Labor Standards and Apprenticeship
Minnesota Department of Labor and Industry