

1 IN THE OFFICE OF THE CONTROLLER
2 CITY AND COUNTY OF SAN FRANCISCO

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4 In the Matter of:

5 CITY AND COUNTY OF SAN FRANCISCO
6 OFFICE OF LABOR STANDARDS
7 ENFORCEMENT

8 vs.

9 MARILYN ZEIDAN, AYMAN
10 NESHEIWAT, and FRANK ZEIDAN, as
11 individuals d/b/a RIGHTWAY MARKET &
12 DELI

Case No. MWO-819

**FINDINGS OF FACT FOR THE OFFICE OF
LABOR STANDARDS ENFORCEMENT**

1 **INTRODUCTION**

2 On October 5, 2018, a hearing was conducted between the City and County of San Francisco
3 (the "City"), through its Office of Labor Standards Enforcement ("OLSE") and Respondents Marilyn
4 Zeidan, Ayman Nesheiwat, and Frank Zeidan (collectively "Respondents"). The City alleges that
5 Respondents violated the City's Minimum Wage Ordinance ("MWO") and the California Labor Code
6 by failing to pay the required minimum wage and overtime to Ronal Gonzalez Cinto and Federico
7 Mora while Cinto and Mora worked for Respondents at Rightway Market & Deli ("Rightway"). See
8 S.F. Admin. Code § 12R; see also Cal. Labor Code §§ 218, 510. Respondents dispute that they failed
9 to pay Cinto and Mora the required wages, and Respondent Frank Zeidan additionally disputes that he
10 is an employer at Rightway responsible for payment of wages for any employee.

11 At the October 5 hearing, the parties presented testimony and documentary evidence in support
12 of their contentions. In addition, all parties were permitted to question any witness called by any other
13 party. After the hearing, the parties were permitted to file closing briefs. Respondent Frank Zeidan
14 filed a closing brief on November 2, 2018. The City filed its closing brief on December 21, 2018.
15 Respondents Marilyn Zeidan and Ayman Nesheiwat did not file closing briefs. Having considered the
16 evidence presented by the parties, including the testimony of all witnesses, as well as the factual and
17 legal contentions in the parties' closing briefs, I make the following findings of fact and rulings:

18 **FINDINGS AND RULINGS**

19 **I. Required Wages**

20 1. The MWO requires employers in San Francisco to pay their employees a designated
21 minimum wage and to meet other requirements, including maintaining accurate records of the hours
22 worked by employees. See S.F. Admin. Code §12R. The MWO required employers to pay employees
23 at least \$10.74 per hour in 2014; \$11.05 per hour from January 1, 2015 to April 30, 2015; \$12.25 per
24 hour from May 1, 2015 to June 30, 2016; and \$13.00 per hour from July 1, 2016 through July 1, 2017
25 for all hours worked. *Id.*

26 2. The MWO applies to Respondents' employment of Cinto and Mora at Rightway.

1 3. California Labor Code section 510 requires Respondents to pay one and one-half times
2 the regular rate of pay for any work over eight hours in a day and over forty hours in a workweek, and
3 double the regular rate of pay for “any work in excess of eight hours on any seventh day of a
4 workweek.” *See* Cal. Labor Code §510.

5 4. California Labor Code section 510 applies to Respondents’ employment of Cinto and
6 Mora at Rightway. California Labor Code section 218 and San Francisco Administrative Code section
7 2A.23 authorize the City, through the OLSE, to recover any overtime wages owed under California
8 Labor Code section 510. *See* Cal. Labor Code §§ 218 and 510; *see also* S.F. Admin. Code § 2A.23(a).

9 **II. City’s Investigation of Respondents**

10 5. The City, through the OLSE, conducted an investigation of Respondents for minimum
11 wage and overtime violations pursuant to its authority under the MWO.

12 6. Respondents took numerous steps to stymie the City’s investigation, including:

13 a. Respondents initially claimed, in e-mails as well as declarations filed with the
14 City under the penalty of perjury, that Rightway had no employees since Respondents took control in
15 February 2014.

16 b. Respondents then provided documents they called time and pay records for
17 Cinto and Mora. I question whether these documents are accurate records of pay and hours worked
18 for several reasons. First, the process to create these records was not reliable, as Respondent
19 Nesheiwat would allegedly call Respondent Frank Zeidan and report information about which
20 Respondent Nesheiwat did not have personal knowledge. In addition, many of the alleged records are
21 monthly entries or contain statements like “Work the same with breaks no overtime,” instead of daily
22 entries showing stop and start times. Also, credible evidence in the form of text messages between
23 Mora and Respondent Nesheiwat demonstrate that Mora was working on numerous days that these
24 alleged time and pay records indicate Mora was not working.

25 c. The City offered evidence that Respondent Frank Zeidan offered Cinto money
26 for Cinto to withdraw his wage claim and stop cooperating with the City’s investigation.

1 d. A friend of Respondent Nesheiwat approached Cinto at work and told Cinto that
2 he would receive five thousand dollars if he withdrew his wage claim, but threatened that Cinto would
3 spend the rest of his life in a wheelchair if he testified against Respondents.

4 7. At the October 5 hearing in this matter, Respondents did not offer credible explanations
5 for their efforts to hinder the City’s investigation. Based on the Respondents’ incredible testimony
6 and their efforts to obstruct the City’s investigation, I do not credit the testimony of Respondents on
7 any issue.

8 **III. Respondents Status as Employers**

9 8. Respondents assumed control of Rightway in February 2014. Respondents retained
10 control through December 3, 2016 – the end of OLSE’s investigative period.

11 9. Respondents Marilyn Zeidan and Ayman Nesheiwat do not dispute that they are
12 “employers” as that term is defined in the MWO and California Labor Code. Therefore, I find that
13 they were each employers of Cinto and Mora at Rightway from February 2014 through December
14 2016.

15 10. Respondent Frank Zeidan also exercised sufficient control over wages, hours, and
16 working conditions that I find he was an employer of Cinto and Mora at Rightway from February 2014
17 through December 2016, as the term “employer” is defined in the MWO and California Labor Code.

18 11. Respondent Frank Zeidan was an employer based on the following factual findings:

19 a. Respondent Frank Zeidan contacted Mora in February 2015 to talk to Mora
20 about coming to work at Rightway.

21 b. Respondent Frank Zeidan, along with Respondent Nesheiwat, informed Cinto
22 when his schedule changed in 2015 from having every other Saturday off to having every Saturday
23 off.

24 c. Respondent Frank Zeidan offered Cinto money in exchange for Cinto not
25 testifying against Respondents.

1 d. Respondent Frank Zeidan was involved in managing Rightway, including
2 coming to the store several times each week to collect cash and drop off goods.

3 e. Respondent Frank Zeidan took out a loan on his home to purchase Rightway,
4 and subsequently paid down \$60,000.00 of the balance on the loan from store revenue.

5 f. Respondent Frank Zeidan negotiated the sale of Rightway to two buyers. As
6 part of the sale, he took control of a store on Geneva Avenue.

7 g. Respondent Frank Zeidan held himself out as managing Rightway. He told
8 Cinto and Mora that Rightway was “his store,” and when OLSE Compliance Officers visited
9 Rightway and asked to speak to the owner, the store manager called Respondent Frank Zeidan who
10 spoke to OLSE on behalf of Rightway.

11 h. Respondent Frank Zeidan represented Rightway with the City and other
12 government agencies. He met with OLSE’s Compliance Officers to discuss the pay and recordkeeping
13 practices at the store, and paid \$1000.00 out of his own personal funds for penalties assessed against
14 Rightway. When Rightway had to go before the State’s workers’ compensation agency, Respondent
15 Frank Zeidan appeared on behalf of the store while Respondents Marilyn Zeidan and Ayman
16 Nesheiwat did not.

17 **IV. Employment of Cinto and Mora**

18 12. Because Respondents failed to maintain accurate records and because I find Cinto and
19 Mora’s testimony to be consistent and credible, I credit the testimony of Cinto and Mora regarding
20 their hours and wages. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946); *Brock*
21 *v. Seto*, 790 F.2d 1446, 1447–48 (9th Cir. 1986); *Hernandez v. Mendoza*, 199 Cal.App.3d 721, 727
22 (1988).

23 13. Cinto worked for Respondents at Rightway from February 2014 through December
24 2016.

25 14. From February 2014 until approximately mid 2015, Cinto started work at about 1:00
26 p.m., and finished at approximately midnight every day, except when he was off every other Saturday.

1 b. Within 30 days of entry of this order, Respondents are ordered to pay Federico
2 Mora \$3,202.20 in back wages, \$983.95 in interest, and \$65,350.00 in penalties.

3 c. Within 30 days of entry of this order, Respondents are ordered to pay the City
4 and County of San Francisco \$10,000 in penalties.

5 d. Respondents are jointly and severally liable for all of the back wages, interest,
6 and penalties.

7 e. Respondents are ordered to deliver these payments to the San Francisco Office
8 of Labor Standards Enforcement, City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San
9 Francisco, California 94102.

10 **IT IS SO ORDERED**

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13 Dated: December 31, 2018



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15 ROBERT HIRSCH
16 Hearing Officer
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