



Issue Date: 11 July 2016

Case No.: 2014-DBA-00014

IN THE MATTER OF:

Disputes concerning the payment of prevailing wage rates:

PANATEC CORPORATION,
Prime Contractor,

With respect to laborers, painters, and electricians employed by Panatec Corporation on the installation of solar panels at the Caesar Creek Lake Visitors' Center, 4020 N. Clarksville Rd., Waynesville, Ohio.

Before: JOHN P. SELLERS, III
Administrative Law Judge

DECISION AND ORDER

This matter arises under the Davis-Bacon Act ("DBA"), as amended, 40 U.S.C. § 3141, *et seq.*, the Contract Work Hours and Safety Standards Act ("CWHSSA"), as amended, 40 U.S.C. 3702 *et seq.*, and implementing regulations found at 29 C.F.R. Part 5. The DBA requires that the wages of workers on a Government construction project shall be "not less" than the "minimum wages" specified in a schedule furnished by the Secretary of Labor. *United States v. Binghamton Constr. Co.*, 347 U.S. 171, 172 (1954).

PROCEDURAL HISTORY

Jay Panchal, the sole owner, executive officer, and president of Panatec Corporation ("Panatec"),¹ entered into a contract with the U.S. Army Corps of Engineers ("Army Corps") to have Panatec install a high-efficiency solar electric system at Caesar Creek Lake on the metal roof of a visitor's center in Waynesville, Ohio. (AX 2B; Tr. at 228.) Following an investigation by the U.S. Department of Labor's Wage and Hour Division into Panatec's compliance with the DBA, the Regional Administrator ("Administrator") sent Mr. Panchal a letter on February 26,

¹ In this Decision and Order, the "Respondent" includes both Mr. Panchal and Panatec, as Panatec has no executive officer other than Mr. Panchal. (Tr. at 228.)

2014, informing him of its investigative findings. (ALJX 2.)² The Administrator concluded that Panatec failed to pay its workers prevailing-wage rates, failed to pay its workers for all of the hours they worked, and misclassified its workers. (*Id.*) Moreover, the Administrator found that Panatec violated various recordkeeping requirements, including: (1) failing to keep complete records; (2) failing to maintain payroll records; (3) failing to submit certified payroll records; and (4) submitting falsified payroll records. (*Id.*) Furthermore, the Administrator computed back wages owed to eleven employees as \$16,574.70, for which Panatec had yet to make restitution. The Administrator further advised Panatec that it found reasonable cause to believe that Panatec had disregarded its obligations to employees under Section 3(a) of the DBA, and as such faced debarment action. The letter informed Panatec of its right to request a hearing before the Office of Administrative Law Judges. (*Id.*)

In a letter dated March 3, 2014, Mr. Panchal requested a formal hearing before the Office of Administrative Law Judges. (ALJX 3.) On May 23, 2014, the Office of Administrative Law Judges received from the Wage and Hour Division the Order of Reference in this case. (ALJX 4.)

I held hearings on this case on October 27, 2015, in Dayton, Ohio, and November 18, 2015, in Cincinnati, Ohio. At the hearing, I admitted into evidence ALJX 1-17,³ AX 1-20,⁴ and

² In this Decision and Order, “ALJX” refers to the Administrative Law Judge’s Exhibits, “AX” refers to the Administrator’s Exhibits, “RX” refers to the Respondent’s Exhibits, and “Tr.” refers to the hearing transcript.

³ I admitted the following Administrative Law Judge Exhibits (“ALJX”) at the hearing on October 27, 2015: (1) The Notice of Hearing and Prehearing Order, dated September 22, 2015 (ALJX 1); (2) The letter and summary of investigative findings, dated February 26, 2014, from the Wage and Hour Division’s Regional Administrator to Mr. Panchal, regarding the summary of its investigation (ALJX 2); (3) A letter from Mr. Panchal, dated March 3, 2014, requesting a formal hearing with the Office of Administrative Law Judges (ALJX 3); (4) An Order of Reference, dated May 19, 2014, from the Wage and Hour Division to the Office of Administrative Law Judges (ALJX 4); (5) The Administrator’s response to the Notice of Hearing and Prehearing Order (ALJX 5); (6) A letter from Mr. Panchal, dated June 28, 2014, stating Panatec’s position of the case (ALJX 6); (7) A letter from Mr. Panchal, dated November 7, 2014, stating Panatec’s defense (ALJX 7); (8) A letter from counsel for the Administrator, dated March 6, 2015, in response to a teleconference conducted on March 5, 2015 (ALJX 8); (9) An order dated March 26, 2015, ordering the parties to exchange witness-lists and witness-addresses by May 24, 2015, in order to determine an appropriate hearing location (ALJX 9); (10) The Administrator’s witness list and a letter, dated May 22, 2015, advising the undersigned that Panatec Corporation had exchanged a list of three witnesses without addresses (ALX 10); (11) A letter from Mr. Panchal, dated May 22, 2015, providing the name of three witnesses, but not their locations (ALJX 11); (12) An order dated July 17, 2015, ordering Mr. Panchal to provide the address of his witnesses and ordering the parties to confer on a hearing date (ALJX 12); (13) A letter from counsel for the Administrator, dated August 27, 2015, with his availability for hearing dates and advising that he had sent several emails to Mr. Panchal requesting his availability (ALJX 13); (14) The Administrator’s prehearing exchange, dated October 5, 2015 (ALJX 14); (15) The Administrator’s motion *in limine*, dated October 16, 2015 (ALJX 15); (16) The Administrator’s objection to Respondent’s prehearing exchange, dated October 23, 2015 (ALJX 16); and (17) The Administrator’s motion *in limine*, dated October 13, 2015 (ALJX 17).

⁴ I admitted the following Administrator’s Exhibits (“AX”) at the hearing on October 27, 2015: (1) A declaration from the U.S. Army Corps of Engineers regarding the authenticity of AX 2 (AX 1); (2) Solicitation number W912QR-12-B0004 (AX 2A); Contract number W912QR-12-C-00046 (AX 2B); Contractor’s signature page for Solicitation number W912QR-12-B0004 (AX 2C); (3) A list of employees employed by Panatec (AX 3); (4) Panatec’s first version of its payroll records, dated February 2012 (AX 4); (5) An e-mail from Panatec containing the second version of its payroll records, dated September 2013 (AX 5); (6) An e-mail from Panatec containing the third version of its payroll records, dated November 2013 (AX 6); (7) Danielle Clifton’s notes comparing Panatec’s three

RX 1-12.⁵ (Tr. at 8-20, 131.) Both parties submitted post-hearing briefs, and the record is now closed.

ISSUES

1. Whether the Respondent maintained and submitted weekly certified payroll records, as required by the DBA;
2. Whether the Respondent properly classified its employees, paid them the applicable prevailing wage, and paid them for all of the hours they worked;
3. Whether the Administrator reasonably calculated back wages; and
4. Whether the Respondent should be debarred for disregarding its obligations under the DBA.

(Tr. at 38-39; ALJX 2.)

EVIDENCE

Hearing Testimony

Kevin Jewett

Kevin Jewett testified on behalf of the Administrator on October 27, 2015. (Tr. at 51-139.) He stated that Panatec employed him on the contract from December 2012 until July 2013. (Tr. at 51.) According to Jewett, he initially learned of the job at Caesar Creek Lake through Scott Kellner, who told him that the job was advertised as paying \$15 per hour. (Tr. at 52.) Moreover, he testified that he had a discussion with Panchal, who told him the pay rate was \$15 per hour. (*Id.*) Jewett testified that he was in fact paid \$15 per hour. (Tr. at 104.)

payroll records (AX 7); (8) An e-mail from the Wage and Hour Division to Panatec, dated November 7, 2013, listing initial back wages owed (AX 8); (9) A list of Western Union payments made by Mr. Panchal to Scott Kellner and Kevin Jewett (AX 9); (10) A letter from the U.S. Army Corps of Engineers, dated January 25, 2013, to Mr. Panchal requesting complete certified payroll records (AX 10); (11) An email from the U.S. Army Corps of Engineers, dated July 2, 2013, with a letter entitled “Compliance with Davis-Bacon and Related Acts Contract No. W912QR-12-C-0046,” dated July 1, 2013 (AX 11); (12) Documentation pertaining to a pre-construction meeting on October 3, 2012 (AX 12); (13) A letter from Mr. Panchal to Administrative Law Judge Sellers, dated November 7, 2012 (AX 13); (14) A declaration from Joseph J. Bertolini, the U.S. Army Corps of Engineers supervisor on contract number W912QR-12-C-0046, and e-mails sent from and Army Corps personnel (AX 14); (15) E-mail correspondence between Mr. Panchal and Army Corps personnel in October 2013 (AX 15); (16) E-mail correspondence from Mr. Panchal to Wage and Hour Division personnel (AX 16); (17) Mr. Panchal’s response to interrogatories from the Wage and Hour Division (AX 17); (18) The Wage and Hour Division’s final back wages worksheet (AX 18); (19) The Wage and Hour division’s final summary of back wages owed (AX 19); and (20) A text message that Kevin Jewett forwarded to Danielle Clifton (AX 20).

⁵ I admitted the following Respondent’s Exhibits (“RX”) at the hearing on October 27, 2015: (1) A list of the Respondent’s questions; (2) A list of the Respondent’s witnesses; (3) “Leonard’s Coverup;” (4) “False Reporting of Arnold’s Hours;” (5) “No Knowledge of Breaker Installation;” (6) Panel Installation Facts; (7) Panel Installation Plan; (8) Algorithm for Investigation; (9) Hours Log and Weather Log; (10) Signed Timesheets; (11) Mountain Details; and (12) Expense Report and Proof of No Profit.

Jewett testified that during his employment with Panatec he would commute to work with John Bradshaw and Scott Kellner, and they all did similar work. (Tr. at 61.) He stated that he got his work instructions through Panchal. (Tr. at 89.) Although the job was supposed to last three days, Jewett stated it lasted a few months because the first set of solar panels that was installed needed to be replaced. (Tr. at 52-53.)

Prior to working for Panatec, Jewett acknowledged that he did not have experience installing solar panels. (Tr. at 73.) He explained that installing solar panels involved using mounts and assembling brackets. (Tr. at 56.) On the project in question, he stated that he assembled brackets on the ground and in a building. (Tr. at 94.) After mounting the panels, he testified, he would install the panels on the brackets. (Tr. at 57-58.) He testified that Kellner, Bradshaw, “C.J.,”⁶ and Panchal also worked on the roof. (Tr. at 78.)

Jewett testified that he also did electrical work, specifically installing conduit and running wires through the conduit. (Tr. at 58, 124.) When asked whether he made electrical connections where the conduit met the panels, he responded, “Yes, and disconnected one of the panels, [for] which Mr. Panchal gave me the key... .” (Tr. at 59.) Moreover, he stated that he “would connect the panels to panels.” (Tr. at 85.) He did not recall exactly what work he did with the fuse box. (Tr. at 86, 92-93.) According to Jewett, he once received a text message from Panchal with instructions pertaining to the question, “Can u fix junction box by cutting cables short?” (AX 20; Tr. at 129-134.) He stated that he was “100 percent” certain the text message came from Panchal, as he had previously received text messages from him. (Tr. at 134.)⁷

Jewett estimated that twenty percent of his time was spent doing electrical work. (Tr. at 59-60.) He clarified that he only did electrical work when Panchal was present at the work site. (Tr. at 79.) Jewett also testified that ten to fifteen percent of his time was spent painting. (Tr. at 59-60.) He described painting dents or scratches on the roof that were caused by dropped panels, rocks, or shoes. (Tr. at 81-82.) He estimated that the longest scratch he painted was ten inches long. (Tr. at 83.)

Jewett estimated that Panchal was present on the jobsite less than half of the time. (Tr. at 62.) He stated that either Panchal or Kellner would tell him when to show up at the jobsite, and Panchal “kept track” of his hours. (Tr. at 53, 63.) If Panchal was present on the jobsite, he testified, Panchal would pay workers at the end of each workday. (Tr. at 63-64.) If Panchal was not present, he testified, Kellner would normally communicate with Panchal regarding how many hours he had worked. (Tr. at 66.) If Kellner was not present, Jewett testified that he would tell Panchal how many hours he worked. (*Id.*)

According to Jewett, he would typically be paid \$15 multiplied by the number of hours that he worked. (Tr. at 64.) When asked whether Panchal took sympathy on him and paid him more than he was entitled to, Jewett responded, “I deserved every bit of what I made,” and stated that he never got paid for more hours than he actually worked. (Tr. at 65.) He stated that he was not paid for the time it took him to drive to the jobsite. (Tr. at 135.) According to Jewett, he was only paid from the time he arrived at the jobsite until the time he left. (*Id.*) Jewett testified that

⁶ “C.J.” refers to another employee, C.J. Hopkins.

⁷ Panchal denied that he sent the text message. (Tr. at 130-131.)

there was never a day when he sat in his car at the jobsite, not working, while Kellner worked. (Tr. at 126.)

Jewett testified that he typically worked for eight hours, although there were times when he could not start working as soon as he arrived at the job site because he had to wait for the frost or ice to melt on the roof. (Tr. at 53-54, 101.) Jewett explained that on such occasions he would wait until 10:00 a.m. or 11:00 a.m. to start working, depending on sunlight or temperature. (Tr. at 100.) He answered the following questions regarding whether he was free to leave while waiting for the conditions on the roof to improve:

Judge Sellers: All right. Were you free to leave? Were you told, well, it's going to take a couple hours, go home, come back?

Witness: I never heard of going home, no, sir.

Judge Sellers: All right. So you just stayed there?

Witness: Yes.

Judge Sellers: It was your understanding that you were working for Mr. Panchal during the time that you were waiting for the roof to heat up?

Witness: Yes, sir, Your Honor.

Judge Sellers: And you were earning the wage because you were there on the jobsite?

Witness: Yes, Your Honor.

(Tr. at 101-102.) Jewett agreed that Panchal paid him for the hours he spent waiting for the weather to clear. (Tr. at 103.) He testified that he would be “dismissed” if there was snow on the roof. (*Id.*) Furthermore, he testified that he never arrived early or stayed late simply to “hang around” the worksite. (Tr. at 56.)

Gregory Ross

Gregory Ross testified on behalf of the Administrator on October 27, 2015. (Tr. at 140-146.) He testified that he was a journeyman electrician by trade, and trained through an apprenticeship program. (Tr. at 140, 143.) He stated that he had been an electrician for thirty-six years. (Tr. at 141.) At the time of the hearing, he testified that he worked at an operating entity that oversaw three electrical contracting firms, Chapel Electric, Chapel Romanoff Technologies, and Romanoff Electric, and was the President of all three firms. (Tr. at 140-141.) Most of his work experience, he testified, had been in the Dayton-Cincinnati area. (Tr. at 141.)

Ross testified that one of the electrical contracting firms, Chapel Electric, was a signatory to the International Brotherhood of Electrical Workers (“Local 82”), a collective bargaining agreement for organized electricians, which covers seven counties and two townships in Warren County. (Tr. at 142.) Ross stated that he was familiar with Caesar Creek State Park and stated it is within Local 82’s jurisdiction. (*Id.*) However, he made clear that he was not involved in Panatec’s contract regarding the work in question. (Tr. at 143.) He further identified himself as a member of Local 82 and stated that all of Chapel Electric’s jobs in the Dayton area that had

involved installing roof-mounted solar panels had been under Local 82's collective bargaining agreement. (*Id.*)

Ross explained that in his experience solar-panel installation typically involves "ballast mount installation," meaning that the panels were attached to "a rack that is supported by weight or held down by weight...." He added that "DC connections would be made between the panels, gathered up, and then there would be AC connection made to the building source." (Tr. at 144.) He stated that Local 82 electricians perform "[a]ll facets" solar-panel installation. (*Id.*) When asked whether Chapel Electric pays electricians working on jobs involving the installation of solar panels the "full electrician rates specified in the collective bargaining agreement," he responded, "Unless enrolled in [the] apprenticeship program." (Tr. at 145.)

Danielle Clifton

Danielle Clifton testified on behalf of the Administrator on October 27, 2015. (Tr. at 147-219.) She testified that she had been an investigator for the U.S. Department of Labor's Wage and Hour Division for four years. (Tr. at 147.) She testified regarding her training and familiarity with the DBA. (Tr. at 148-149.) She explained that an investigation under the DBA is conducted to "ensure that employees are paid the correct prevailing wage and fringe benefit amounts." (Tr. at 149.) She stated that she had performed the investigation into Panatec's compliance with the DBA. (*Id.*)

Clifton discussed the process for soliciting government contracts. She explained that a solicitation typically states that the DBA will govern the ultimate contract awarded and contains a wage determination. (Tr. at 150-151.) She testified that both pieces of information were included in the Solicitation and the Contract in this particular case. (Tr. at 151-152; AX 2A; AX 2B.)

Clifton explained that a wage determination "sets up classifications of work," denotes whether wages are based on a survey or a union rate (i.e., "whatever is prevailing in the area of practice"), and dictates the hourly fringe benefits that employers must pay workers. (Tr. at 152.) She explained that a wage is based on the type of work being performed and the locality in which the work is being performed. (*Id.*)

Clifton testified that the wage rates listed in the Contract covered "Warren County, where the work was performed." (Tr. at 152; AX 2B at 9.) She agreed that she relied on the wage rates in the Contract in determining whether Panatec was complying with its prevailing wage obligations. (Tr. at 153.) She considered three rates specifically: (1) the electrician's rate (AX 2B at 23); the laborer's rate (AX 2B at 39); and the painter's rate (AX 2B at 44; Tr. at 153.)

Clifton explained that because union work was "prevailing in the area," the electrician's rate for Warren County was based on the Local 82 union rate. (Tr. at 152-153.) According to Clifton, the base hourly rate, or "minimum wage for an electrician" was \$27.00 and the fringe benefit, "the subsequent amount per hour that would have to be paid," was \$15.77. (Tr. at 154; AX 2B at 23.) She explained that employers do not have to pay fringe benefits in cash, but they "have to offer some sort of bona fide benefits, such as insurance, 401(k) plans," meaning, in

other words, that the employer would have to pay the “total base plus fringe per hour in some sort of cash or kind.” (Tr. at 154.) Consequently, she testified, according to the Contract, under the DBA an employer would have to pay an electrician in Warren County \$42.77. (Tr. at 154-155.)

Clifton discussed the laborer’s rate, which was another classification included in the Contract. (Tr. at 155; AX 2B at 39.) She explained that the “group one” laborer’s base rate was \$23.09 and the fringe benefit rate was \$7.45, for a total of \$30.54. (*Id.*) When asked why she chose the “group one” laborer’s rate, she explained that it “seemed to be the most applicable to the type of work” that the workers performed. (Tr. at 155.) Clifton explained that she used the laborer’s rate instead of the electrician’s rate because, based on information she received from a business manager at Local 82, she learned that in some instances electricians were paid a percentage of the full rate if they were not doing electrical work. However, because the DBA “doesn’t offer for percentages,” she thought it would be “more fair” to classify the workers as laborers. (Tr. at 156.)

Finally, Ms. Clifton discussed the painter’s rate for Warren County, which was also included in the Contract. (Tr. at 156; AX 2B at 44.) She used the “group two” wage rate because it involved spray paint and, through her interviews investigating the project, she learned that Panatec’s “employees were using spray cans to do paint work and touch-ups.” (Tr. at 157; AX 2B at 44.)

Clifton testified that she requested certified payroll records from Panchal when she started investigating Panatec, but she never received any. (Tr. at 158.) She did receive “Excel spreadsheets showing hours and ... notations on if wages were paid in cash or with Western Union, and ... one printout of Western Union payments that were made to employees.” (Tr. at 158.) Clifton testified that her investigation revealed that Panchal did not pay any fringe benefits. (Tr. at 155.)

Clifton testified that AX 4 is a record that she received from the Army Corps after she asked for certified payroll records or documentation pertaining to Panatec. (Tr. at 158; AX 4.) Clifton stated that she spoke with Panatec’s employees as part of her investigation and the \$15 per hour rate shown on AX 4 was consistent with what she learned from the employees. (Tr. at 158-159.) Clifton testified that, on average, AX 4 shows that employees worked “around four to eight hours a day.” (Tr. at 159.)

Clifton testified that AX 5 includes her initial request for records from Panchal, and the response she received from Panchal. (Tr. at 159.) She provided the following testimony regarding the differences between the first spreadsheet (AX 4) and the second spreadsheet (AX 5):

Mr. Scheff: Is there any variation in information that’s presented between Exhibit 4 and Exhibit 5 for dates that are both shown?
Witness: Yes. If you look at the hours on Exhibit 5 for the dates in December, the hours have been reduced by half.

Mr. Scheff: And what effect, if any, would that have on the rate that was paid?

Witness: Well, the hourly or the amounts paid remained the same, so it increased the hourly rate to \$30 an hour.

Mr. Scheff: Did you ask Mr. Panchal why he submitted you a payroll record that was different than a previous payroll record?

Witness: When I asked about the dates and the changes in hours, he said that he paid \$15 an hour but that he had paid more hours than they had actually worked, so they were paid at \$30 an hour. That was the explanation I received.

Mr. Scheff: Did you accept that contention?

Witness: No.

Mr. Scheff: What was your basis for not accepting that contention?

Witness: My investigation disclosed that employees weren't paid for inflated hours. They were paid for hours worked.

(Tr. at 160-161.) When asked about Panchal's assertion on AX 5, in which he stated that "[a]ll employees were paid \$30 per hour David Bacon wage," Ms. Clifton noted that \$30 per hour was still "54 cents below the lowest wage classification" that was considered in this case, that of a laborer. (*Id.*)

Clifton testified that AX 6 is an e-mail she received from Panchal with "updated information about the hours worked and a wage spreadsheet." (Tr. at 161.) She noted that the dates had changed, there were "additional dates," the hours worked had "fluctuated," and "some of the cash amounts ... listed as amounts paid changed." (Tr. at 162.) When asked whether she received an explanation for the changes, she said Panchal told her that the new information reflected how "much time an employee should have spent working" and how much "Panatec was considering as time worked." (*Id.*) She explained that, as an investigator, she looks at "actual hours worked ... under the regulations." (*Id.*)

Clifton discussed how she calculates work hours when an employee presents to work, but has to wait before beginning work. She explained that she examines whether the employee is "engaged to wait or waiting to be engaged." (Tr. at 162-163.) To illustrate her approach, she provided the following example:

So if an employee is told to be at work and be ready to work at a certain time but the employer is not furnishing them with work and they're waiting, they're engaged to wait. If they're showing up a half an hour early to get coffee and read the paper and talk with their co-workers, they're waiting to be engaged. That's kind of a basic example.

(Tr. at 163.) She explained that if an employee is engaged to wait, the time is compensable. (*Id.*) In contrast, she testified, if an employee is waiting to be engaged, the time is not compensable. (*Id.*) She concluded that in Panatec's case, based on her interviews, employees were "engaged to

wait” on bad-weather days because they were asked to show up to work even though weather conditions either delayed or prevented them from performing their primary duties. (*Id.*)

Clifton explained that EX 7 is a document she made “to keep track of ... variations between the various records” that she had received regarding how many hours each Panatec employee had worked on the project. (Tr. at 169.) She clarified that the “DOL” column lists hours that she projected that each employee worked based on records that she had received or statements regarding an average work day. (Tr. at 169-170.) She answered the following questions about how she determined how many hours each employee worked:

Mr. Scheff: So looking at the first page, Mr. Hopkins’ page, so for the first date the records provided by Panatec have indicated either six hours worked, three hours worked, or five hours worked, and you selected six hours worked; is that correct?

Witness: Correct.

Mr. Scheff: And what was the basis for that selection?

Witness: I went with the hours that were originally asserted as hours worked.

Mr. Scheff: And what was your rationale for that decision?

Witness: My rationale would be that those would be the most accurate records because there was no back and forth or adjustment for I paid twice as many hours or I’m only going to justify X amount of hours based on time spent working, which were the subsequent arguments I received based on changes in hours and payroll.

Mr. Scheff: So in cases where you had the second record or time shown for a date on the second record but not the first record, for example, March 22nd, how did you handle that situation?

Witness: I doubled the hours that the employer had on the record because he seemed to have cut all of the other hours in half.

Mr. Scheff: Were there any instances where you found that an employee worked on a particular day, even though none of the three payroll records showed the employee working that day?

Witness: Yes.

Mr. Scheff: What was your rationale for doing that?

Witness: I requested any records that the Army Corps of Engineers had that would have indicated employees were working, type of work being performed, if the inspectors had been out and documented any work, and I received emails that either Mr. Panchal had sent to the site manager saying we have people on sites, or they had sent internally that would have said we have people working on site, requesting an inspector to look at the work, or just notifying people that work was being performed.

Mr. Scheff: So your last column “DOL Notes,” is that generally identifying if you relied on some source other than the payroll

records?

Witness: Yes.

(Tr. at 170-172.) Clifton provided a specific example pertaining to C.J. Hopkins. She explained that she relied on an e-mail from Panchal to Joseph Bertolini, the Park Manager, to conclude that Hopkins was working on February 25, 2013. (Tr. at 173-174; AX 14 at 11.) The e-mail stated, in part, “Hello, Team. Scott and C.J. are currently working at site, needs updated drawings,” and was sent at 10:50 a.m. on February 25, 2013. (Tr. at 173-174; AX 7 at 1; AX 14 at 11.)

When asked what she would do if she had an e-mail indicating that Panatec employees were working, but not identifying which ones, she stated that she referred to statements by employees regarding “the timeframe they were working, if they worked with other workers.” (Tr. at 174.) She testified that she also “took into consideration” the changes Panchal made in his third payroll record. (*Id.*)

To determine how many hours employees worked on days when their attendance was not reflected in the payroll records, Clifton testified that she “used eight hours as an average based on statements” she received “throughout the investigation from employees because that was the best evidence” she had at the time. (Tr. at 173.) She clarified that she had not received any additional evidence since then. (*Id.*)

Clifton explained that AX 9 was a list of Western Union payments that Panchal had made to the employees. She testified that, after speaking with Panchal, she was under the impression that even if a payment was only made to one person, the money may have been for more than one person, depending on who worked that day. (Tr. at 176.)

Clifton testified that AX 18 represents the back wages that she calculated.⁸ (Tr. at 177.) She understood that employees worked “on average” from 8:00 a.m. until 4:00 or 4:30 p.m. (Tr. at 185.) She explained that she based the hours worked on the spreadsheets she received from Panchal or an eight-hour work day, unless an e-mail indicated that an employee only worked for half of a day, in which case she attributed to the employee only four hours of work. (Tr. at 189.) She calculated a paid hourly rate of \$15 “because that was what was indicated both by the employer and by employees.” (*Id.*) She explained that AX 19 is the amount that the Administrator is asserting that Panatec owes under the DBA. (Tr. at 192.)

When asked how she determined how to classify Jewett, she explained that she based her determination on his interview statement and his hours as a whole. (Tr. at 179.) Because she got the impression that he did not spend a lot of time painting, she estimated that he spent five percent of his time painting. She stated it “seemed like he was primarily doing a lot of work that involved moving panels, setting them in place with brackets.” (*Id.*) She noted that although “electricians claim all of this work, because the business manager said some of the work might have been paid at a scale, I considered it laborer’s work.” (*Id.*) She explained that if she “had a statement that gave clear enough information” allowing her to determine that workers worked in multiple classifications, she categorized them as “mixed.” (Tr. at 180.) If she did not have

⁸ Ms. Clifton testified that the column on AX 18 entitled “Workweek Ending,” actually lists the days each employee performed work. (Tr. at 189.)

evidence of that nature, she categorized them as laborers. (Tr. at 180.) Ms. Clifton explained that the work she “considered ... the full electricians’ rate would have been things like hooking up panels, running wire through conduit, [and] working with electrician boxes.” (Tr. at 180-181.)

With the exception of Shawn Arnold and Charles Cantrell, Clifton agreed that she used the same methodology for calculating back wages for each employee. (Tr. at 188-189.) Regarding Arnold, Clifton testified that the calculations for him were the same as Cantrell’s because Panchal hired both employees for a flat fee of \$1,200 to do electrical work. (Tr. at 187.) She also explained that a portion of their work involved inspecting, which is not covered by the DBA. (Tr. at 188.) However, she noted that “there were no records.” (*Id.*) She calculated their wages “based on statements and information that was presented that they worked together approximately 80 hours.” (Tr. at 187.) To her recollection, Cantrell earned \$1,700. (Tr. at 188.) She stated that Arnold indicated he did not work as much as Mr. Cantrell, and, to her recollection, he only worked for twenty hours. (*Id.*)

Jaydip Panchal

Jaydip C. Panchal, the Respondent, testified on November 18, 2015. (Tr. at 228-316.) He is the owner and president of Panatec, and is responsible for Panatec’s daily operations. (Tr. at 228.) Panchal testified that the Contract with the Army Corps was his first contract of any sort since he started Panatec in 2009. (Tr. at 302.) He has a degree in electrical engineering. (Tr. at 311.)

Panchal testified that he recognized the Solicitation, AX 2A, and he agreed he placed his bid based on the information contained in the Solicitation. (Tr. at 229; AX 2A.) When asked whether he read the portion of the Solicitation that stated, “Wage determination: Compliance with Davis-Bacon and related Acts as the work performed under this task order will be subject to the above Acts. Prevailing wage will be required and should be considered,” he responded “Yes.” (Tr. at 230; AX 2-A at 4.) Furthermore, Panchal stated that he recognized the Contract, AX 2B, that he entered into with the Army Corps. (Tr. at 230; AX 2-B at 4.) He agreed that the Contract stated, “Wage Determination: Compliance with Davis-Bacon and related Acts as the work performed under this task order will be subject to the above Acts. Prevailing wage will be required and should be considered.” (Tr. at 230-231; AX 2-B at 4.) Moreover, Panchal testified that AX 12 includes notes from a preconstruction conference, which he signed on October 30, 2012. (Tr. at 231; AX 12 at 11.) He agreed the document contained a “Work Relations” clause that stated, “Each employee shall be paid not less than the minimum basic hourly wage for his classification as determined by the wage rate decisions issued with the contract award.” (Tr. at 233; AX 12 at 5.)

Panchal also agreed that he received AX 10, a letter from the Army Corps of Engineers (“Army Corps”), sometime after January 25, 2013. (Tr. at 233.) He agreed the letter requested that he submit certified payroll records and explained that the certified payroll was his “certification that each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalence for the classification of work performed as specified in the applicable wage determination incorporated into the contract.” (Tr. at 234; AX 10.) Moreover, he agreed the letter warned, “Should you fail to submit this information in a timely

manner, you will be notified of the withholding of funds on your contract to cover the amount as may be considered necessary to pay all laborers and mechanics.” (Tr. at 234; AX 10.) Finally, Panchal agreed that the letter advised that his “failure to submit the required records may be grounds for termination of the contract and debarment as a federal contractor.” (Tr. at 234-235; AX 10.) In response to the Army Corps’s request, Panchal testified that he submitted AX 4, which he alleged was a contemporaneous record. (Tr. at 235, 240, 242, 245.)

Panchal’s testimony regarding Panatec’s payroll recordkeeping practices varied significantly. In one instance, he testified that he kept records in an Excel spreadsheet and would record when each employee arrived and left work. (Tr. at 236-237.) Later, he testified that he would simply write down the amount of hours each employee claimed to have worked each day. (Tr. at 237-238.) According to Panchal, he would then populate the spreadsheet, including the comments section, each night after work was completed. (Tr. at 246, 247.) He also testified that when he was present at the job site, he would observe workers arrive and leave, and base his payroll records on those observations. (Tr. at 248, 253.) When he was not present at the job site, he stated that he relied on what people told him they worked. (*Id.*) He later explained that he estimated how many hours each person worked based on how much work was completed and a “consensus from the group.” (Tr. at 258.)

Panchal submitted a second spreadsheet, AX 5, around September 2013. (Tr. at 239, 246, 259.) He testified that he “reformatted” the data, but did not change anything. (Tr. at 249.) Counsel for the Administrator responded, “Well, you did change things; you changed all the times?” Panchal replied “I didn’t change any times.” (Tr. at 249-250.) When questioned regarding a specific example pertaining to Bradshaw’s work hours on December 14, 2012, Panchal testified that he changed the start time from 8:00 a.m. to 9:00 a.m. because the “building was not even open[] at 8:00 [a.m.]” (Tr. at 250; AX 5 at 6; AX 4 at 1.) When asked why he changed the end time, from 2:00 p.m. to 12:00 p.m., he responded, “Because based on whatever I observed, I had a record that, okay, the guy didn’t work [...]we didn’t have enough work for, like, eight hours for this given day. That was my point, that, okay, there was no work, there was nobody after 1:00 p.m.” (Tr. at 252, 253; AX 5 at 6; AX 4 at 1.) He implied that the employee was taking lunch from 12:00 p.m. until 2:00 p.m., which is why he changed the hours worked from the first spreadsheet to the second. (Tr. at 253.)

When asked which version of the spreadsheet he wanted the undersigned to accept as true, Panchal stated the “last one,” meaning AX 6, and he requested that the undersigned disregard the first two, AX 4 and AX 5. (Tr. at 259.) The most recent version, AX 6, was produced in November 2013. (Tr. at 260.) When asked, “And in some cases, the hours worked by somebody are different on Exhibit 6 versus Exhibit 5, correct?” he responded, “Could be, yeah. I didn’t check it totally...” (*Id.*)

Counsel for the Administrator questioned Panchal about AX 7, which contains Clifton’s notes comparing all three spreadsheets of record. (Tr. at 260-261.) When asked whether he had “any disagreement with” how the investigator transcribed the information, he responded, “Yes, I have disagreement, because at first I mentioned that the first was based on ... what we call contemporary records. And second, all this other is adjusted according to the ... weather condition as well as canceling the lunch break.” (Tr. at 261.) He elaborated as follows:

Q: So [] your testimony is that between September 2013 and November 2013 you went through each of these days with Mr. Hopkins and he told you how many hours he worked, and that's what all these adjustments are between the second and the third record?

A: Absolutely, because that's how like, I repeatedly asked her, like, what is certified records? He [sic] said, like, it should be 100 percent accurate. Talked with employee and that's how I spoke with them and they had record.

(Tr. at 263.) Panchal later testified that he wanted "to be double accurate," so he spoke with his employees regarding the accuracy of the records and made changes accordingly. (Tr. at 266.) He agreed that between September and November 2013, he spoke with Kellner, Jewett, and Bradshaw, and adjusted his records based on their statements regarding how long they worked. (Tr. at 268-270.) He testified that Kellner had the most reliable records. (Tr. at 270.) Panchal later testified that he might have additional payroll records on his computer. (Tr. at 273.)

Although in his most recent payroll record, Panchal alleged that two employees, Kellner and Hopkins, falsely reported that they worked on February 25, 2013, he did not dispute that an e-mail, dated February 25, 2013, states, "Hello team, Scott [Kellner] and C.J.[Hopkins] currently working currently working at site. Needs updated drawings." (AX 6 at 3, 6; AX 14 at 11; Tr. at 296-297.) He later agreed that on that date, the employees were entitled to be paid because they were engaged to be at work. (Tr. at 310.) He later characterized the incongruity between his final payroll record, which stated that Kellner and Hopkins falsely reported that they worked on February 25, 2013, and the e-mail confirming their work on that date, as a "genuine" recordkeeping error on his part. (Tr. at 311.)

Panchal agreed that he hired all of his employees through Craigslist. (Tr. at 284.) When asked what the job advertisement said, he responded that it said he was looking for "general labor with some roofing experience," that "the rate will be \$15 per hour," and it was a "federal government job." (*Id.*) He testified that the advertisement did not say anything about solar panels as he "didn't need anybody with solar panel experience" because he "just needed general laborer." (*Id.*) When asked why he did not submit the Craigslist advertisement in response to the Administrator's request for production of documents, AX 17 at 7, Panchal stated, "Maybe I missed it," and later stated he did not look through his e-mails "at that time." (Tr. at 286-287.)

As to the work his employees performed, Panchal testified that none of them installed panels. (Tr. at 257, 300.) Rather, he stated that of the 216 panels installed as part of the Contract, he, his brother, and Kellner each installed seventy-two. (*Id.*)

Regarding what he paid his employees, Panchal testified that even if an employee only worked "for two hours," he "usually paid him \$120 for whole day." (Tr. at 239, 243.) He later agreed, however, that he paid his employees \$15 an hour. (Tr. at 313.) He did not recall how he decided to pay his workers \$15 per hour. (Tr. at 289.) He explained that his employees told him \$15 was a good wage because they were making \$10 for the same work elsewhere. (Tr. at 290.)

Panchal testified that he did not pay any benefits, such as health insurance or a 401(K). (Tr. at 298.)

Panchal testified that he did not know that the DBA applied to the Contract until halfway through the project, and that he did not completely grasp that he was required to pay the prevailing wage. (Tr. at Tr. at 291-292, 304-307.) He stated that he never looked carefully at the prevailing wage determination in the Contract. (Tr. at 293.) According to Panchal, he did not intend to deprive his employees of wages, but he “struggled” to get the correct information and “persisted [in] making the mistake of paying at \$15 maybe out of lack of my understanding and lack of information.” (Tr. at 301.) He testified that although, at some point in April, he learned that the prevailing wage was closer to \$30 an hour, he nonetheless felt as though he overpaid his workers based on the hours that they actually worked, and that it was his impression that his workers were content with the amount they earned. (Tr. at 306-308.) He testified that he tried to ask the government and his accountant the meaning of a “certified payroll record.” (Tr. at 309.) When asked whether he acknowledged that his employees were entitled to be paid \$30.54 per hour, he stated, “Yeah, I acknowledge that.” (Tr. at 313.)

Panchal stated he was “willing to pay” back wages to prevent debarment. (Tr. at 309, 312.) However, he testified that he does not believe he owes any back wages. (Tr. at 314.)

Snehal Panchal

Snehal C. Panchal (“Snehal”), the Respondent’s brother, testified on behalf of Panatec on November 18, 2015. (Tr. at 318-356.) Snehal is an electrical engineer and works in information technology. (Tr. at 323.)

Snehal discussed Panatec’s Panel Installation Plan, which included three sections containing approximately seventy panels each. (Tr. at 319-320; RX 7 at 3.2.) According to Snehal, he worked on Section A and partially on Section B. (Tr. at 319.) He testified that Hopkins mounted panels on Section B and Kellner mounted panels on Section C. (Tr. at 319-320.) Other than Hopkins and Kellner, he did not recall that any other employees mounted panels. (Tr. at 321, 331.) He testified that for Section A, no other employees were doing electrical work or mounting panels, but other employees would “sit there and wait” to see if he needed anything, such as bringing panels up to the roof. (Tr. at 330-332.) Snehal agreed that it was helpful to have employees on the ground to assist him if he needed something. (*Id.*)

Snehal testified that he was physically on the work site for approximately twelve days. (Tr. at 339.) He agreed that when he worked a full day, he would typically work until 5:00 or 6:00 in the evening. (Tr. at 342.) He testified that in the first couple of weeks of the project, when he was doing electrical work, he was mostly working alone. (Tr. at 335.)

When asked whether he was paid for his work, he replied, “This is a family,” and then clarified that he was not paid for his work. (Tr. at 344.) He testified that when he worked on Sundays, he was the only person working. (*Id.*)

Snehal stated that he did not keep records of who was working on what days or for how many hours. (Tr. at 348.) Although he observed people arriving at different times, he did not pay attention to their arrival times. (Tr. at 355.) He stated lunches were “[a]bout 45 minutes, hour.” (*Id.*)

Snehal explained the process involved in mounting and installing panels. First, he would install channels or rails on the roof using bolts. (Tr. at 350-351.) Then, he would place panels on top of the rails and use clamps to hold down the panels. (*Id.*) He explained that “mounting” a panel includes both mounting the rail and putting a clamp and panel on it. (Tr. at 351.) He clarified that “[w]iring is a separate thing.” (*Id.*) Snehal testified that he would not start wiring the panels until he was finished mounting them. (Tr. at 352.) He stated that each panel had wires coming out of it, and each panel would be connected to another panel. (*Id.*) He explained that he did the wiring for all of the sections. (Tr. at 330, 354.) Snehal stated he did not instruct any of the other employees to connect wires. (Tr. at 354.) Moreover, he did not observe any other employees working with wires, connecting plugs, or painting. (*Id.*) He recalled scraping the roof in order to repaint it, but he testified he did not personally recall other employees doing that type of work. (Tr. at 355.)

Scott Kellner

Scott Kellner testified on behalf of Panatec on November 18, 2015. (Tr. at 357-413.) He testified that he learned about the job at Panatec through Craigslist, and the job description “had something to do with [] metal or with roofing.” (Tr. at 357-358.) He stated that he also called the U.S. Army Corps, who “said something about a solar panel install.” (Tr. at 358, 411.)

Kellner testified that his job involved “panel installation.” (Tr. at 359.) When asked whether he installed rails, Kellner replied, “Basically I did... everything, I mean, as far as installing the panels on the roof.” (*Id.*) Kellner testified that he worked on section “B1” and he did not see any other employees installing solar panels. (Tr. at 360-362.) He stated that he would be on the roof for approximately half of each workday. (Tr. at 387.) He replied, “Yes,” when asked if other people would bring him things or help lift panels on the roof while he was working on the roof. (*Id.*) Although Kellner testified that Bradshaw and Jewett did not work on the roof, he stated that they sometimes went on the roof. (Tr. at 388.) Kellner testified that he did not touch, connect, plug, or unplug any wires. (Tr. at 405.) He also stated that he had no interaction with the circuit box and did not paint. (*Id.*)

According to Kellner, he commuted to work with Jewett and Bradshaw, and he would submit to Panchal the hours that they worked. (Tr. at 376.) When asked what would happen if there was not enough work for Jewett or Bradshaw, Kellner responded that they would “pretty much go sit in the car.” (Tr. at 375.)

Kellner testified that he started working when it was safe to walk on the roof. (Tr. at 364.) He explained that the roof was metal and he agreed that it was not possible to walk on it if it had frost or snow on it. (Tr. at 365.) He stated that 10:00 a.m. was “usually” his starting time, noting that was “when the sun hit” the side of the roof he was working on. (Tr. at 364, 369.)

Kellner agreed that he was paid \$15 per hour. (Tr. at 366, 395.) He stated that there were “some days” when he was “paid for a full day’s work” even though he “only showed up for four hours.” (Tr. at 365.) On days when he only worked for two or three hours, he stated that he would add the hours he worked over the course of multiple days. (Tr. at 366.) However, he also agreed that if he worked for four hours, he was paid \$120 cash. (Tr. at 367.) Kellner stated that he agreed with ninety percent of the payroll statements made in AX 6. (Tr. at 371-372.) In his opinion, the men who were not working on the roof were free to leave. (Tr. at 372.) He also stated that whoever “showed up on site” on a day when Panchal was present “was getting paid.” (Tr. at 406.)

Kellner testified that Jewett and Bradshaw worked for him, because he answered the advertisement in Craigslist and he directed their work. (Tr. at 383.) However, he later clarified that they did not “necessarily” work for him, and he stated that Panatec paid them. (Tr. at 384.) He agreed that when Panchal was on the work site, Panchal would direct them. (*Id.*) He also agreed that it was his decision to request pay for someone who did not really do any work. (Tr. at 407.) He responded, “Yes” when asked if he would “ever just put their hours into [his] hours and settle up afterwards.” (Tr. at 408.)

Although Kellner testified that he kept contemporaneous records of his arrival and departure times, he said he no longer has those records. (Tr. at 385.) Although he would get on the roof at approximately 10:00 a.m., he stated he typically arrived between 8:00 a.m. and 10:00 a.m. (*Id.*) He stated that Panchal did not dictate his arrival time. (*Id.*) He testified he had to be off of the job site at 4:30 p.m., because that is when the “gates close[d].” (Tr. at 370, 386.) He explained that if he only worked until noon or 2:00 p.m. it was “[w]eather permitting.” (Tr. at 386.) If the weather was acceptable, he testified, he would work until 4:30 p.m. (*Id.*)

Kellner gave somewhat conflicting testimony regarding whether Panchal paid him for double the amount of hours that he worked. (Tr. at 409.) He initially agreed that if he added all of the wages he was paid, it would not be accurate to say that he was paid for double the number of hours he worked. (Tr. at 390.) He testified he would not count time spent waiting to work in the hours he billed to Panchal. (Tr. at 391.) He specified that he did not think he should be paid to wait around to get onto the roof, but he did think payment for gas money was appropriate. (Tr. at 392.) He later testified that he was not paid double “a hundred percent of the time.” (Tr. at 409.) He further stated, “I’d say we were paid correctly, I’d say, probably, you know, 90 percent of the time, 85, 90 percent of the time.” (Tr. at 410.) He later clarified that he meant that he “got paid more than \$15 an hour 90 percent of the time.” (Tr. at 412.)

Kellner stated that Panchal treated him “with more respect than a lot of employers” he has worked for. (Tr. at 379.) He testified that Panchal paid for his flight to Ohio for the hearing. (Tr. at 380.) He further testified that Panchal agreed to pay him his lost wages for one day, approximately \$250, and meals and lodging in return for testifying at the hearing. (Tr. at 399-400.)

LAW AND ANALYSIS

1. THE RESPONDENT FAILED TO MAINTAIN AND SUBMIT WEEKLY CERTIFIED PAYROLL RECORDS AS REQUIRED BY THE DBA

The regulation governing Panatec's recordkeeping obligations under the DBA provides, *inter alia*, that a contractor must keep payrolls and basic records that include the "name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid." 29 C.F.R. § 5.5(a)(3)(i).

Moreover, 29 C.F.R. § 5.5(a)(3)(ii)(A) provides that a contractor "shall submit weekly for each week in which any contract work is performed a copy of all payrolls...." The contractor must sign and certify that the payroll submission complies with the regulations, and that each laborer or mechanic "has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract." 29 C.F.R. § 5.5(a)(3)(ii)(B).

Both the Solicitation that the Army Corps used to solicit bids and the Contract that Mr. Panchal entered into stated that Panatec was required to comply with the DBA. (AX 2A; AX 2B.) The overwhelming evidence of record reveals that Panchal violated the regulations by failing to maintain and submit accurate payroll records. The record contains three conflicting versions of Panatec's payroll records, which contain inconsistent information regarding the hours employees worked and the wages they were paid.

Specifically, Panchal submitted his first payroll spreadsheet in response to a letter from the Army Corps, dated January 25, 2013, which reminded him of his obligation to fulfill the requirements of the DBA and requested that he submit to the Army Corps certified payroll records. (AX 10; Tr. at 214, 233.) Panchal submitted to the Army Corps a payroll spreadsheet that listed a pay rate of \$15 per hour. (AX 4; Tr. at 170, 190.)

Thereafter, in September 2013, Clifton, the investigator for the Wage and Hour Division, e-mailed Panchal and asked him to submit payroll documentation and answer various questions. In response, Panchal sent Clifton a second payroll spreadsheet, which listed an hourly pay rate of \$30 per hour. (Tr. at 170; AX 5.) In addition to giving Clifton a payroll spreadsheet that differed from the one he submitted to the Army Corps, Panchal attested that "[a]ll employees were paid \$30/Hour David Bacon wage." (AX 5 at 4.)

Approximately two months later, in November 2013, Panchal sent Clifton yet another payroll spreadsheet, which was distinct from both the first and second payroll spreadsheets he had previously submitted. (Tr. at 170; AX 6.) The hourly pay rate listed in the third payroll spreadsheet was \$30.54. (AX 6 at 3.) When asked at the hearing, "And in some cases, the hours worked by somebody are different on Exhibit 6 versus Exhibit 5, correct?" Mr. Panchal responded, "Could be, yeah. I didn't check it totally..." (Tr. at 260.)

Clifton testified that other than receiving “Excel spreadsheets showing hours and ... notations ... if wages were paid in cash or with Western Union, and ... one printout of Western Union payments that were made to employees,” she did not receive any certified payroll records from Panchal. (Tr. at 158.) Although Panchal acknowledged that he received AX 10, a letter from the Army Corps of Engineers (“Army Corps”), requesting certified payroll records, the record reflects that all he submitted in response to the Army Corps’ inquiry was AX 4, his first payroll spreadsheet. (Tr. at 233, 235, 240, 242, 245.)

Although the record contains three distinct payroll spreadsheets submitted by Panchal, all of which differ from one another, there is no record that Panchal submitted weekly payroll records that included the information required by 29 C.F.R. § 5.5. Therefore, based on the overwhelming evidence of record, I find that Panchal failed to maintain and submit weekly certified payroll records as required by the DBA.

2. THE RESPONDENT FAILED TO PROPERLY CLASSIFY ITS EMPLOYEES, PAY THEM THE APPLICABLE PREVAILING WAGE RATES, OR PAY THEM FOR ALL OF THE HOURS THEY WORKED

Under the DBA, advertisements for certain federal contracts involving construction, alteration, or repair of public buildings, which require employing mechanics or laborers, shall state the minimum wages to be paid various classes of laborers and mechanics. 40 U.S.C. § 3142(a). The DBA also requires that the minimum wage must be based on wages the Secretary of Labor deems prevailing for corresponding laborers and mechanics employed on similar projects “in the civil subdivision of the State in which the work is to be performed....” 40 U.S.C. § 3142(b).

At the hearing, Clifton explained that a wage determination sets guidelines for employers regarding how to pay their employees. (Tr. at 152.) She explained that a wage is determined based on the type of work being performed and the locality in which the work is being performed. (*Id.*) She relied on the wage determinations in the Contract that pertained to Warren County, where the job was located, in determining whether Panatec was complying with its prevailing-wage obligations. (Tr. at 152-153; AX 2B at 9.) Following her investigation, Clifton concluded that three prevailing wage rates were applicable to the work that Panatec’s employees performed: (1) the electrician’s rate (AX 2B at 23); the laborer’s rate (AX 2B at 39); and the painter’s rate (Tr. at 153; AX 2B at 44.)

The Contract reflects that the laborer’s rate, \$30.54 per hour, is the lowest wage classification of the three at issue in this case. (Tr. at 160-161; AX 2B at 23, 39, 44.) Therefore, according to the Contract, Panchal was required to pay his employees at least \$30.54 per hour. The overwhelming evidence of record suggests that Panchal paid his employees \$15 per hour, which is below even the lowest applicable prevailing wage. As previously discussed, Panchal’s first payroll spreadsheet listed a pay rate of \$15 per hour. (AX 4; Tr. at 170, 190.) Jewett testified that the job was advertised as paying \$15 per hour, and he had a conversation with Panchal, who told him the pay rate was \$15 per hour. (Tr. at 52.) Similarly, during his testimony, Kellner agreed that he was paid \$15 per hour. (Tr. at 366, 395.) Finally, Clifton testified that she spoke

with employees as part of her investigation, and the \$15 per hour rate shown on Panatec's first payroll spreadsheet was consistent with what she learned from employees during her investigation. (Tr. at 158-159.)

Perhaps the most damaging evidence against Panchal is his own testimony. He admitted that he advertised the job on Craigslist as paying \$15 per hour, and later agreed that he paid his employees \$15 an hour. (Tr. at 243, 313.) Although he did not recall how he decided to pay his workers \$15 per hour, he testified that his employees told him \$15 was a good wage because they were making \$10 for the same work elsewhere. (Tr. at 289-290.) Although Panchal argued that he paid his employees for twice the number of hours they worked, and/or that he paid them \$120 for the whole day even when they only worked for two hours, he has failed to produce convincing evidence in support of his testimony. (Tr. at 239, 243; AX 6 at 2.) Although he produced revised timesheets purporting to show that, based on the number of actual hours worked, he paid his employees \$30 per hour—still below the prevailing wage for laborers—his attempt at revision, factoring in recreated variables such as weather delays, etc., was completely unpersuasive and only underscored the necessity to keep accurate contemporaneous records.

Ultimately, I find that Panchal did not classify or pay his employees according to any prevailing wage rate. Moreover, consistent with the Administrator's findings, I find that Panchal did not pay fringe benefits, as he testified as much. (Tr. at 298.)

3. THE ADMINISTRATOR'S METHOD OF CALCULATING BACK WAGES WAS REASONABLE

The Administrator argues that its reconstruction of how many hours Panatec's employees worked and what type of work they performed is reasonable. Panchal testified that he does not believe that he owes any back wages because he paid his workers for more hours than they actually worked. (Tr. at 312-314.)

The Administrative Review Board ("Board") has applied the burden shifting principles articulated in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946) in Davis-Bacon Act cases, as well as those in the context of LCA claims. *See, e.g., Pythagoras Gen. Contracting Corp. v. Adm'r*, ARB Nos. 08-107, 09-007; ALJ No. 2005-DBA-014, slip op. at 5 (ARB Feb. 10, 2011) (as reissued Mar. 1, 2011), *aff'd*, 926 F. Supp. 2d 490 (S.D.N.Y. 2013); *Cody-Zeigler, Inc., v. Adm'r, Wage & Hour Div.*, ARB Nos. 01-014, 01-015; ALJ No. 1997-DBA-017, slip op. at 8 (ARB Dec. 19, 2003); *Adm'r, Wage & Hour Div. v. Greater Missouri Medical Pro-Care Providers*, ARB No. 12-015, ALJ No. 2008-LCA-026 (Jan. 29, 2014).

The Administrator, as the party bringing the Order of Reference, has the initial burden of proving that Panatec improperly compensated its employees. *See e.g., Zeigler, Inc.*, ARB Nos. 01-014, 01-015; *Pythagoras*, ARB Nos. 08-107, 09-007; *Mt. Clemens Pottery Co.*, 328 U.S. 680. "When the employer has kept proper and accurate records, the employee may easily discharge his burden by securing the production of those records." *Mt. Clemens*, 328 U.S. at 687. However, "where an employer's records are inaccurate or incomplete, employees are not to be penalized by denying them back wages simply because the precise amount of uncompensated work cannot be proved." *Cody-Zeigler*, ARB Nos. 01-014, -015, slip op. at 8; *Mt. Clemens*, 328 U.S. at 687. If an employer fails to supply accurate records, the administrative law judge must draw reasonable

inferences from whatever evidence the Administrator produces. *Pythagoras*, ARB Nos. 08-107, 09-007; slip op. at 13.

Once the Administrator satisfies its initial burden, the burden shifts to the employer to present evidence that negates the inference drawn from the Administrator's proof and, if the employer fails to present such evidence, an administrative law judge may award damages even if the calculations are only approximate. *Mt. Clemens*, 328 U.S. at 688. The Supreme Court in *Mt. Clemens* reasoned that an "employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the [statutory] requirements." *Id.*

If ever there was a case in which the logic of *Mt. Clemens* applied, it is this one. Here, Panchal failed to maintain records establishing when and how long his employees worked. As previously discussed, the record contains three payroll spreadsheets that contain conflicting information pertaining to wages, hours worked, and days worked. Moreover, Panchal's testimony regarding how he kept records varied widely. In one instance, he testified that he would input the times each employee arrived and left work in an Excel spreadsheet; however, he later stated that he would populate the spreadsheet each night after work was completed. (Tr. at Tr. at 236-237, 246-247.) When he was not present at the job site, he stated that he relied on what people told him they worked. (*Id.*) His testimony changed once again when he stated he estimated how many hours each person worked based on how much work was completed and a "consensus from the group." (Tr. at 258.) Because Panchal did not keep accurate records, he has failed to discharge his burden of proof. He may not argue that he is disadvantaged because he does not have the information he was obligated by law to maintain. As Panchal failed to produce accurate payroll records, I must consider whether the Administrator's back wage calculations are reasonable.

a. THE ADMINISTRATOR REASONABLY CALCULATED HOW MANY HOURS EACH EMPLOYEE WORKED

Clifton, who investigated Panatec, testified at length regarding the Administrator's back wage calculations. She explained that she found compensable the time employees spent waiting to begin working in the morning because, based on her interviews, employees were asked to show up to work and work conditions prevented them from performing their primary duties. (Tr. at 162-163.) Consistent with Clifton's findings, Kellner explained that the roof was metal, and he agreed it was not possible to walk on it if it had frost or snow on it. (Tr. at 365.) Therefore, he started working when it was safe to walk on the roof. (Tr. at 364.) Jewett similarly testified that occasionally he would have to wait for the frost conditions on the roof to "clear up." (Tr. at 53-54.) In those situations, he started working at 10:00 a.m. or 11:00 a.m., depending on sunlight or temperature. (Tr. at 100.) Based on the evidence and testimony of record, I find reasonable Clifton's conclusion that the time employees spent waiting for conditions on the roof to improve was compensable time. Moreover, I note that it was entirely within Panchal's control to tell his employees not to appear for work until 10:00 a.m. or 11:00 a.m. There is no evidence to suggest that any of the employees arrived on their own accord just to wait around for the conditions on the roof to improve.

The Administrator had the difficult task of attempting to determine which of Panchal's payroll spreadsheets was the most accurate. Clifton testified that she created a document, EX 7, "to keep track of changes ... between the various records" that she received. (Tr. at 169.) She calculated how many hours each employee worked by using the records she received from Panatec and statements employees made regarding their average workday. (Tr. at 169-170.) She testified she thought the "most accurate records" were those Panchal submitted to the Army Corps, AX 4, because "there was no back and forth or adjustment" for hours he paid or hours employees spent working. (Tr. at 170-171.) Given how widely the three spreadsheets varied, I find reasonable Clifton's assumption that the first record is the most accurate. After all, it was not until Clifton inquired about Panatec's compliance with the DBA that Panchal submitted modified payroll spreadsheets purportedly showing that his employees worked for fewer hours than he initially alleged and that he paid them double the hourly rate he initially alleged – thus, conveniently bringing him closer to the prevailing wage. (AX 4, AX 5, AX 6.)

Clifton explained that when the second or third payroll spreadsheet listed a work date that was not included on the first payroll spreadsheet, she "doubled the hours that the employer had on the record because he seemed to have cut all of the other hours in half." (Tr. at 171.) I find that Clifton's testimony is consistent with the evidence of record. For example, Panatec's first spreadsheet, AX 4, reveals that on December 14, 2012, Kellner worked from 8:00 until 14:00, or for six hours. (AX 4 at 1.) Panatec's second spreadsheet, AX 5, shows that on December 14, 2012, Kellner worked from 9:00 until 12:00, or for three hours (which is half of the hours reflected on the first spreadsheet). (AX 5 at 13.) Finally, Panatec's third spreadsheet, AX 6, shows that on December 14, 2012, Kellner worked from 9:00 until 14:00, or for five hours. (AX 6 at 6.) The records are similarly modified for Panatec's other employees. Therefore, I find entirely reasonable Clifton's decision to double the number of hours an employee worked when Panchal recorded that employee as working on the second or third payroll spreadsheet, but not on the first spreadsheet.

Clifton also testified that there were instances where she concluded that an employee had actually worked, even though there was no record of such work on any of Mr. Panchal's spreadsheets. (Tr. at 171.) She explained that she requested records from the Army Corps pertaining to which employees were working, what type of work they were doing, and whether inspectors documented their work. (Tr. at 170-172.) She also requested internal Army Corps e-mails and e-mails between Panchal and the Army Corps's site manager referencing individuals on site. (*Id.*) Based on this evidence, she was able to surmise that certain employees worked on dates that were not reflected on Panchal's spreadsheet. Clifton gave a specific example in reference to an e-mail from Panchal to Joseph Bertolini, the Park Manager, to conclude that Hopkins was working on February 25, 2013. (Tr. at 173-174.) The record reveals that the e-mail states:

Hello Team:
Scott and CJ currently working at site needs updated drawings.
I was wondering if you can print and give it to him.
Thanks you so much for your help.
Jay Panchal

(AX 14 at 11.) As can be seen, the e-mail is dated February 25, 2013, and references two employees, Scott Kellner and C.J. Hopkins, who were “currently working” at the job site. (*Id.*) In contrast, Panatec’s first two payroll spreadsheets do not even list February 25, 2013 as a date on which any employee worked. (AX 4; AX 5.) On Panatec’s third payroll spreadsheet, Panchal wrote the following in Hopkins’s time entry for February 25, 2013: “NO Work was done – False Reporting by CJ.” (AX 6 at 3.) Similarly, Panchal wrote the following in Kellner’s time entry for February 25, 2013: “No Work was done – False Reporting by Scott. No employee ever worked on Monday because Jay was not on site.” (AX 6 at 6.) I find the e-mail evidence indicating that Hopkins and Kellner worked on February 25, 2013 to be far more credible than Panchal’s third payroll spreadsheet. Panchal even conceded, at the end of the hearing, that the inconsistency between his final payroll spreadsheet and the e-mail was a “genuine” recordkeeping error on his part. (Tr. at 311.) In this context, I find entirely reasonable Clifton’s decision to credit documentary evidence over Panchal’s discredited payroll spreadsheet when calculating how many hours each employee worked.

To determine how many hours employees worked on days when their attendance was not reflected on Mr. Panchal’s spreadsheets, Clifton testified that she “used eight hours as an average based on statements” she received “throughout the investigation from employees.” (Tr. at 173.) If an e-mail of record indicated that employees only worked for half of a day, she only attributed to that employee four hours of work. (Tr. at 189.) Consistent with Clifton’s findings, Jewett testified that he typically worked for eight hours, although sometimes he would have to wait for the frost conditions on the roof to “clear up.” (Tr. at 53-54.) Kellner testified that he typically arrived at work between 8:00 a.m. and 10:00 a.m., and he had to leave by 4:30 p.m. because that is when the park’s “gates close.” (Tr. at 370, 385-386.) He explained that if he only worked until noon or 2:00 p.m. it was due to the weather. (Tr. at 386.) If the weather was acceptable, he testified he would work until 4:30 p.m. (*Id.*) Once again, based on the evidence of record and the hearing testimony, I find entirely reasonable Clifton’s approach to calculating how many hours per day each employee worked, particularly considering Panchal’s conflicting evidence and testimony.

As previously noted, Panchal failed to produce accurate payroll records and his testimony was inconsistent at best. The Administrator has met its burden to present sufficient evidence to allow for a reasonable inference that Panatec’s employees performed work for which they were not adequately paid. Moreover, although not all of Panatec’s employees testified at the hearing, “*Mt. Clemens* specifically permits an award of back wages to non-testifying employees based on the representative testimony of a small number of employees.” *Pythagoras*, ARB Nos. 08-107, 09-007, slip op. at 12. I find reasonable the Administrator’s calculation of how many hours each of Panatec’s employees worked given that the three versions of the worksheets submitted by Panatec were the product of extremely suspect revision.

b. THE ADMINISTRATOR REASONABLY CLASSIFIED EMPLOYEES AS LABORERS, PAINTERS, AND/OR ELECTRICIANS

Because Panchal did not maintain records of what type of work each employee performed, the Administrator had to determine how to classify his employees in order to calculate back wages. The Contract contained wage rates and fringe benefits for various

classifications of workers in Warren County. (AX 2B.) The Administrator concluded that Panatec should have paid its employees according to one or all of the following prevailing wage rates: (1) the electrician's rate: \$42.77 (\$27.00 base wage + \$15.77 fringe benefit); (2) the painter's rate: \$31.93 (\$23.60 base wage + \$8.33 fringe benefits); and (3) laborer's rate: \$30.54 (\$23.09 base wage + \$7.45 fringe benefit.) (AX 2B at 23, 39, 44.)

Clifton agreed that, with the exception of Arnold and Cantrell, she used the same methodology for calculating back wages for each employee. (Tr. at 188-189.) Clifton testified that her approach to calculating Arnold's back wages was the same as Cantrell's because Panchal hired them for a flat fee of \$1,200 to do electrical work. (Tr. at 187.) Evidence from Panchal is consistent with her testimony. For example, in response to Clifton's e-mail dated September 12, 2013, Panchal wrote that Arnold "was hired as a sub-contractor to complete work at a fixed rate of \$1200." (AX 5 at 5.) Moreover, attached to an e-mail dated November 6, 2013, Panchal wrote, "Electrical work was outsourced to Shawn Arnold's company which was validated for 12 hours only." (AX 6 at 2.)

Both Clifton's testimony and the written statements from Panchal indicate that Panchal hired Arnold and Cantrell to perform electrical work. Because Panchal did not keep records, Clifton was required to rely on her interviews with the two men to determine how many hours they worked. Her interviews revealed that they worked together for approximately eighty hours. (Tr. at 187) To her recollection, Cantrell earned \$1,700, while Arnold indicated that he did not work as much as Cantrell. (Tr. at 188.) Clifton recalled Arnold stated that he worked for twenty hours. (*Id.*) Thus, in calculating back wages, she concluded that Arnold worked for a total of twenty hours and Cantrell worked for a total of forty-two hours, and all of their work was electrical work. (AX 18 at 1, 4.) I find that the Administrator reasonably estimated how many hours Arnold and Cantrell worked.

For the remaining nine employees, the Administrator classified Spencer Donovan, Ed Huffman, Charles Lindsay, and Gabriel North as laborers, Eric Faye as an electrician, and Bradshaw, Hopkins, Jewett, and Kellner as electricians, laborers, and/or painters. (AX 18.)

Clifton discussed how she categorized workers who performed work in more than one wage classification. She explained that if she "had a statement that gave clear enough information" allowing her to determine that a worker worked in multiple wage classifications, she categorized that worker as "mixed." (Tr. at 180.) If she did not have evidence of that nature, she categorized that worker as a laborer. (*Id.*) Ms. Clifton explained that she considered "hooking up panels, running wire through conduit, working with electrician boxes" to be electrical work. (Tr. at 180-181.) She considered all other work, such as mounting panels and setting panels in place with brackets, laborer's work. Although Ross, a member of Local 82 who has been an electrician for thirty-six years, testified that Local 82 electricians perform all of the work involved in mounting solar panels, and are paid at the full electrician's rate, Clifton explained that another source she spoke to at Local 82 indicated that electricians were sometimes paid a percentage of the full electrician's rate when they were not doing electrical work. (Tr. at 156.) Because the only way to pay a percentage rate under the DBA is if someone is "a bona fide apprentice," Ms. Clifton concluded it was more "fair" to categorize Panatec's employees who mounted panels as laborers as opposed to electricians. (Tr. at 144-145, 156.)

I find reasonable Clifton's approach to classifying each worker, particularly given the minimal evidence Panchal provided her and the inconsistent nature of the evidence that he did provide. Although Ross's testimony suggests that the Administrator could have classified as electricians all of the employees who mounted and installed solar panels, any error on the Administrator's part in classifying employees as laborers is an error that benefits Panatec.

In addition to reasonably determining the type of work each employee performed, I find that the Administrator used the correct prevailing wage rates. Clifton testified that she used the electrician's rate for Warren County, Wayne Township, which was listed in the Contract. (Tr. at 152.) The base hourly rate, or "minimum wage for an electrician" was \$27.00, and the fringe benefit was \$15.77. (Tr. at 154; AX 2B at 23.) Therefore, I find that Panchal was required to pay all employees classified as electricians \$42.77 per hour. (Tr. at 154-155.)

As for the laborer's rate, Clifton explained that she used the "group one" laborer's rate for Warren County because it "seemed to be the most applicable to the type of work" that the employees performed. (Tr. at 155.) The "group one" laborer's base rate was \$23.09, and the fringe benefit rate was \$7.45. (Tr. at 155; AX 2B at 39.) Therefore, I find that Panchal was required to pay all employees classified as laborers \$30.54 per hour.

Regarding the painter's rate applicable in Warren County, Clifton testified that she used the "group two" wage rate because it involved spray paint, and through her interviews she learned that "employees were using spray cans to do paint work and touch-ups." (Tr. at 157; AX 2B at 44.) Again, I find her conclusions to be entirely reasonable based on the evidence and testimony of record. The "group two" painter's base rate was \$23.60, and the fringe benefit rate was \$8.33. (AX 2B at 44.) Therefore, I find that Panchal was required to pay all employees classified as painters \$31.93 per hour.

In conclusion, I find that the Administrator used a reasonable approach to calculating back wages and classifying workers according to the prevailing wage rates listed in the Contract. As previously discussed, the Supreme Court explained in *Mt. Clemens* that "it is the employer who has the duty under [the governing law] to keep proper records of wages, hours and other conditions and practices of employment and who is in position to know and to produce the most probative facts concerning the nature and amount of work performed." *Mt. Clemens*, 328 U.S. at 687. In this case, Panchal failed to keep accurate records concerning when his employees worked and what type of work they performed. The evidence Panchal did submit and the testimony he provided was inconsistent and unreliable. Clifton testified that she relied on employee interviews, e-mails, documents from the Army Corps, and documents from Panchal to make calculations regarding when employees worked and what type of work they performed. The Administrator established a prima facie case of a pattern of violations. Panchal has not presented any evidence to rebut the occurrence of the violations. Consequently, I find that Panchal owes his employees \$16,478.29 in back wages, as calculated by the Administrator. (AX 19.)

4. PANATEC AND PANCHAL MUST BE DEBARRED FOR DISREGARDING THE OBLIGATIONS IMPOSED BY THE DBA

The Administrator argues that both Panatec and Panchal should be debarred. Panchal stated he was “willing to pay” back wages to prevent debarment, but he does not believe that he owes any back wages. (Tr. at 309, 312, 314.)

The DBA provides that persons or firms who “have disregarded their obligations to employees and subcontractors” are subject to debarment (i.e. they are restricted from receiving government contracts for three years). 40 U.S.C. § 3144(b). Moreover, the regulations governing debarment under the Davis Bacon-related Acts (“DBRA”) provides:

Whenever any contractor or subcontractor is found by the Secretary of Labor to be in *aggravated or willful violation* of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years....

29 C.F.R. § 5.12(a)(1)(emphasis added).

At issue in this case is what action or inaction constitutes “disregard” of Panchal’s obligations under the DBA. The Board has held that “to support a debarment order, the evidence must establish a level of culpability beyond negligence.” *See e.g. In re Sundex, Ltd.*, ARB No. 98-130, ALJ No. 94-DBA-058, slip op. at 6 (ARB Dec. 30, 1999). Other Board cases have clarified that an employer’s disregard of its obligations under the DBA must involve “some element of intent.” *See e.g. In re Thomas & Sons Bldg. Contractors*, slip op. at 3; *In re Structural Concepts, Inc.*, WAB No. 95-02, slip op. at 3 (Nov. 30, 1995). For example, underpaying prevailing wages coupled with falsifying payroll records has constituted “disregard” of an employer’s obligations. *See e.g. In re Star Brite Constr. Co.*, ARB No. 98-113, ALJ No. 97-DBA-012, slip op. at 6 (ARB, June 30, 2000) (underpaying prevailing wages coupled with submitting certified payroll records “falsified to feign compliance with the DBA prevailing wage requirements” requires debarment); *In re Sundex, Ltd.*, at 6-7 (underpaying wages coupled with failing to keep accurate records and submitting falsified payroll records to conceal that prevailing wages were not paid constitutes “serious violations of law, fully justifying debarment.”)

In *In re NCC Electrical Services, Inc.*, ARB No. 13-097, slip op. at 8 (Sept. 30, 2015), the Board stated that “when an employer falsifies documents, it is disregarding its obligations. But an employer’s acts need not be the equivalent of intentional falsification to qualify as a disregard of its DBA obligations.” The Board in *NCC* concluded that “if an employer must act with an ‘element of intent,’ that act need not rise to the level of a willful violation contemplated in the debarment standard under the DBRA; intentional failure to look at the law is sufficient. Intentional disregard of obligations may therefore include acts that are not willful attempts to *avoid* the requirements of the DBA.” *Id.* at 9. The Board further concluded that “the regulation does not allow contractors and subcontractors to ignore the rules and regulations applicable to

DBA contracts, pay their employees less than prevailing wages, and avoid debarment by asserting that they did not intentionally violate the DBA because they were unaware of the Act's requirements. *Id.*; *see also Ray Wilson Co.*, ARB No. 02-086, ALJ No. 2000-DBA-14 (ARB Feb. 27, 2004).

Based on the evidence of record, I find that Panchal's actions justify debarment. In this case, Panchal testified that he read the portions of the Solicitation and Contract specifying that the DBA applied to the Caesar Creek Lake job, but he ignored the regulations he was required by law to follow. Panchal is not permitted to avoid debarment by asserting that because he was unaware of the DBA's requirements, he did not intentionally violate the DBA.

Moreover, the evidence suggests that after the Wage and Hour Division began its investigation, Panchal changed his payroll spreadsheets. Although Panchal testified that he "didn't change any times," the discrepancies in his payroll spreadsheets are undeniable. (Tr. at 249-250.) As previously discussed, his first payroll spreadsheet reported that he paid his employees \$15 per hour, his second reported that he paid his employees \$30 per hour, and his third reported that he paid his employees \$30.54 per hour. (AX 4; AX 5; AX 6.) The Board has routinely affirmed debarment in cases where employers have falsified records, failed to keep accurate records, and submitted inaccurate records to conceal the fact that they did not pay their employees the prevailing wage. Although Panchal testified that he thought he was paying his employees a good wage, and often paid them for more hours than they actually worked, I find that he nonetheless modified his records in an effort to make it appear that he was complying with the DBA. Consequently, pursuant to 40 U.S.C. § 3144(b), Panatec and Panchal, as the sole owner and operator of Panatec, must be debarred for a period of three years.

ORDER

Based on the foregoing, I find that the Respondent failed to: (1) classify its workers as laborers, painters, and/or electricians; (2) pay its workers the applicable prevailing wage rates; (3) pay its workers for all of the time they worked; and (4) maintain and submit accurate payroll records. Consequently, it is hereby **ORDERED** that:

1. Panatec Corporation owes eleven employees a total of \$16,478.29 in unpaid wages, as itemized in Administrator's Exhibit 19;
2. Panatec Corporation, is subject to debarment for three years; and
3. Jaydip C. Panchal, as Panatec Corporation's sole owner and president, is subject to debarment for three years.

JOHN P. SELLERS, III
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within forty (40) days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. § 6.34. The Petition must refer to the specific findings of fact, conclusions of law, or order at issue. *See* 29 C.F.R. § 6.34.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party’s supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party’s legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within

such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

When a Petition is timely filed with the Board, the administrative law judge's decision is inoperative until the Board either (1) declines to review the administrative law judge's decision, or (2) issues an order affirming the decision. *See* 29 C.F.R. § 6.33(b)(1).

At the time you file the Petition with the Board, you must serve it on the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. *See* 29 C.F.R. § 6.34.