



Issue Date: 19 July 2010

CASE NOS.: 2009-LCA-00044; 2010-LCA-00005

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
Complainant,

vs.

MQ SOLUTIONS LLC,

and

ELLEN ESQUERRA DURMAN,

and

MARK DURMAN,

Respondents.

Decision and Order

The Respondents, Ellen Esquerra Durman, Mark Durman, and their business entity, MQ Solutions, LLC (also collectively “the Durmans”), failed to respond to the Administrator’s January 28, 2010, Motion for Summary Decision,¹² although they were warned that failing to do so would have serious consequences.³ That advice did, however, spur the Durmans to retain a lawyer who filed a notice of

¹The Administrator’s Motion for Summary Decision was served on January 29, 2010, along with declarations to support the motion, and a Request for Judicial Notice. The Administrator’s motion for summary decision was accompanied by a statement of uncontroverted facts. That sort of statement is required in the U.S. District Court for the Central District of California, the District where the facts at issue took place.

² Most of the motions, declarations, and letters the Complainant Administrator filed were accompanied by numbered exhibits. For the sake of brevity and clarity, this Decision and Order uses the abbreviations “Ex.” and “Exs.” in reference to exhibits in the singular and plural, respectively. Wherever a citation to an exhibit or exhibits is included within the same citation clause as a motion, declaration, letter, or other filing, the citation refers to the exhibit (or exhibits) accompanying that document that bears (or bear) that numerical designation.

³ Order Scheduling Briefs for Motion for Summary Decision and Canceling Hearing Date, Feb. 1, 2010.

appearance dated April 19, 2010; he was given the additional time he sought⁴ to respond to the Administrator's dispositive motion. When even that time expired, their lawyer stated in a letter that their response would be mailed "before the end of the month."⁵ Even after the many extensions of the time the Respondents obtained, the evidence the Administrator offered with his motion for summary decision remains unopposed. The Durmans also have admitted facts by their failure to respond to discovery demands the Administrator of the Wage and Hour Division sent them.⁶

The Administrator has alleged and offered proof with his motion papers that the Respondents violated the H-1B visa program for non-immigrant, temporary workers created in the Immigration and Nationality Act.⁷ The Secretary of Labor administers parts of that visa program. This decision enforces obligations the Durmans took on when they applied for visas under the Secretary's regulations.

Titled a motion for summary decision, the Administrator's motion more closely resembles one that seeks judgment on partial findings under Federal Rule of Civil Procedure 52 (e). That rule provides:

If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.⁸

⁴ Letter from Jack W. Kortz, Esq., to Hon. William Dorsey, March 19, 2010 (seeking until June 22, 2010, to file the opposition to the motion for summary decision).

⁵ Letter from Jack W. Kortz, Esq., to Hon. William Dorsey, June 22, 2010.

⁶ Under 29 C.F.R. § 18.20(b), "[e]ach matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request . . . the party to whom the request is directed serves on the requesting party" one of three specific written forms of objection or denial. 29 C.F.R. § 18.20(b). "Any matter admitted under this section is conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission." 29 C.F.R. § 18.20(e). The Durmans failed to respond to any requests for admission so all are admitted by operation of 29 C.F.R. § 18.20(b). See also Fed. R. Civ. P. 36(a)-(b), which has near identical language and results in the same conclusive establishment of facts through requests for admission whether affirmatively admitted or admitted through failure to timely object or deny. Since I have not permitted withdrawal or amendment of these admissions, they are conclusively established under § 18.20(e). Where this Decision and Order notes the Respondents' admitted uncontested facts, the admissions occurred by operation of the aforementioned regulations unless otherwise stated.

⁷ 8 U.S.C. §§ 1101(a)(15)(H)(i)(b) and 1182(n). The H-1B visa program is implemented by regulations published at 20 C.F.R. § 655.700, *et seq.*

⁸ Fed. R. Civ. P. 52(e). The Office of Administrative Law Judges ("OALJ") applies the Federal Rules of Civil Procedure to all proceedings before the "in any situation not provided for or controlled by [the OALJ's procedural] rules." 29 C.F.R. § 18.1(a). This is the case here.

This matter has not proceeded to a trial, but the Respondents have had many opportunities to be heard. The Administrator served Requests for Admission (and other discovery demands) on Respondents MQ Solutions and Ellen Esquerra Durman on October 19, 2009, and on Respondent Mark Durman on December 1, 2009.⁹ Litigants ignore admission requests at their peril. Section 18.20(b) of 29 C.F.R. provides, “[e]ach matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request . . . the party to whom the request is directed serves on the requesting party” one of three specific written forms of objection or denial.¹⁰ The response time elapsed without any response from the Respondents; to date, they have never replied to the requests for admissions. By inaction, the Respondents have admitted pivotal facts in this case. “Any matter admitted under this section is conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission.”¹¹ No such motion has been filed.

The Request for Judicial Notice the Administrator made on January 29, 2010, also is unopposed and granted.

The Administrator’s dispositive motion is granted. The Respondents are ordered to pay \$227,831.45 as back wages to two H-1B non-immigrant aliens and \$750.00 to a third H-1B non-immigrant alien, each of whom they sponsored to work in the United States. They also must pay a civil penalty of \$3,600.00, plus interest on all these amounts. They are debarred from sponsoring additional aliens for admission to the United States as non-immigrant workers under the H-1B visa program for a period of two years.

I. Procedural Background

Under a briefing schedule ordered on February 1, 2010, the Respondents were to respond to the Administrator’s Motion for Summary Decision by February 26, 2010.¹² They didn’t. Instead, after the response was due, they asked for more time in a letter they neglected to send to the Administrator’s lawyer. The Administrator opposed the Respondents’ request, arguing that they knowingly and intentionally failed to participate meaningfully in these proceedings, other than requesting a hearing and making repeated requests for extensions of time.¹³ They

⁹ Declaration of Luis A. Garcia in Support of Complainant Administrator’s Motion for Summary Decision Against Respondents MQ Solutions, LLC, Ellen Esquerra Durman and Mark Durman, Jan. 28, 2010 [hereinafter Decl. of L. Garcia], ¶¶ 2–8, Exs. 1–3. Exhibits 1 through 3 are the actual Request for Admission (“RFAs”) as served on October 19, 2009, and December 1, 2009.

¹⁰ 29 C.F.R. § 18.20(b).

¹¹ 29 C.F.R. § 18.20(e); *see also supra* note 6.

¹² Order Scheduling Briefs for Motion for Summary Decision And Cancelling Hearing Date, Feb. 1, 2010.

¹³ Letter from Administrator to Hon. William Dorsey, Mar. 15, 2010, at 1–5.

had been contacted many times by the Administrator's lawyer by telephone and by letters, seeking to meet and confer about a number of issues, including their failures to answer the Administrator's discovery demands.¹⁴ They never responded.

The declaration the Administrator's lawyer filed with the opposition to extending the time to respond to the summary judgment motion accurately recounted events through early March 2010.¹⁵ Additional time was nevertheless granted to the Durmans. The timeline the Administrator offered, with events through March 2010, is reproduced below.¹⁶

¹⁴ *Id.* at 6.

¹⁵ *See generally* Declaration of Luis A. Garcia in Support of Administrator's Opposition to Respondents' Request for an Extension of Time to Respond to the Administrator's Motion for Summary Decision, Mar. 17, 2010 [hereinafter Mar. 17 Garcia Decl.] (detailing the Administrator's attempted interactions with the Respondents and the Respondents' continual failure to cooperate or respond throughout the discovery process).

¹⁶ The Administrator's efforts and the OALJ's patience with the Respondents did not end there. After the Respondents' *ex parte* letter asking for more time, they repeatedly alleged they would respond by a date of their choosing but failed to follow through. Following the *ex parte* letter of March 3, 2010, I issued a Notice of Ex Parte Contact and Warning, dated Mar. 9, 2010. The Administrator's counsel confirmed that he hadn't received the *ex parte* letter. Letter of Luis A. Garcia to Hon. William Dorsey, Mar. 15, 2010. The Administrator's lawyer accompanied that confirmation with a declaration that opposed any extension of the Respondents' time to answer the Administrator's motion for summary decision. Mar. 15 Garcia Decl. at 1. An equivocal letter from Mr. Kortz followed in which he proposed the June 22, 2010, response deadline. Letter from Jack W. Kortz, Esq., to Hon. William Dorsey, Mar. 19, 2010. I then issued the Order for Status Report Regarding Administrator's Motion on April 12, 2010. Mr. Kortz entered his appearance and submitted a responsive letter on April 19, 2010. Letter from Jack W. Kortz, Esq., to Hon. William Dorsey, Apr. 19, 2010. The Administrator requested a status conference on May 5, 2010, but none was scheduled. Letter from Luis A. Garcia, Esq., to Hon. William Dorsey, May 5, 2010. Nothing was heard from the Respondents until June 25, 2010, when Mr. Kortz's letter dated June 22, 2010, explained that he was unable to make the self-selected June 22, 2010, deadline due to the illness of Ellen Esquerria Durman. Letter from Jack W. Kortz, Esq., to Hon. William Dorsey, June 22, 2010. Mr. Kortz represented the Durmans' response would be sent by the "end of the month." *Id.* On June 30, 2010, counsel for the Administrator e-mailed Mr. Kortz, asking him to confirm that the Durmans' response to the Motion for Summary Decision would be sent that day. *See* Exhibit accompanying Letter from Luis A. Garcia, Esq. to Hon. William Dorsey, July 9, 2010. Mr. Kortz again apologized and ultimately explained he planned to send the response by overnight delivery to arrive on Tuesday, July 6, 2010. *Id.* When the response was still not filed on July 7, 2010, the Administrator's counsel contacted Mr. Kortz again, and he provided no time estimate for the document's delivery. Letter from Luis A. Garcia, Esq. to Hon. William Dorsey, July 9, 2010, at 2. The Administrator submitted his letter requesting the prompt resolution of this case on July 9, 2010. *Id.* at 1. At this time, the Respondents' have yet to file a response or any other documents.

A. Chronology Of Significant Litigation Events

Date	Event	Response
September 11, 2009	Administrator's Determination Letter to MQ Solutions, LLC ("MQ") and Ellen Esquerra Durman.	Copy served on MQ and Ellen Esquerra Durman.
September 21, 2009	Letter from Ellen Durman requesting hearing on Determination Letter.	Copy received by the Administrator.
October 1, 2009	Notice of Hearing and Pre-hearing Order.	Initial disclosures are due by October 16, 2009 from MQ and Ellen Esquerra Durman.
October 7, 2009	Phone call to meet and confer about Pre-hearing Order dated October 1, 2009.	No response from MQ or Ellen Esquerra Durman.
October 8, 2009	Phone call to meet and confer about Pre-hearing Order dated October 1, 2009.	No response from MQ or Ellen Esquerra Durman.
October 9, 2009	Letter to meet and confer about Pre-hearing Order dated October 1, 2009.	No response from MQ or Ellen Esquerra Durman.
October 16, 2009	Administrator serves its Initial Disclosures.	Copy served on MQ and Ellen Esquerra Durman.
October 16, 2009	Initial Disclosures are due from MQ and Ellen Esquerra Durman.	No initial disclosures received from MQ or Ellen Esquerra Durman.
October 16, 2009	Administrator's First Set of Interrogatories propounded on MQ and Ellen Esquerra Durman.	No responses received from MQ or Ellen Esquerra Durman.
October 16, 2009	Administrator's First Set of Request for Production of Documents propounded on MQ and Ellen Esquerra Durman.	No responses received from MQ or Ellen Esquerra Durman.

Date	Event	Response
October 19, 2009	Administrator's First Set of Request for Admissions propounded on MQ and Ellen Esquerra Durman.	No responses received from MQ or Ellen Esquerra Durman.
November 3, 2009	Administrator's Determination Letter to Mark Durman.	Copy served on Mark Durman.
November 17, 2009	Letter from Mark Durman requesting hearing on Determination Letter.	Copy received by the Administrator.
November 30, 2009	Notice of Hearing and Pre-hearing Order and Order Consolidating Cases.	Initial disclosures are due from Mark Durman by December 15, 2009.
November 30, 2009	Order Consolidating Cases.	Copy served on Administrator and Respondents.
December 1, 2009	Meet and confer letter sent to MQ and Ellen Esquerra Durman regarding past due responses to interrogatories and request for production of documents.	No response from MQ or Ellen Esquerra Durman.
December 1, 2009	Administrator's First Set of Interrogatories propounded on Mark Durman.	No responses received from Mark Durman.
December 1, 2009	Administrator's First Set of Request for Production of Documents propounded on Mark Durman.	No responses received from Mark Durman.
December 1, 2009	Administrator's First Set of Request for Admissions propounded on Mark Durman	No responses received from Mark Durman.
December 2, 2009	Administrator's serves its Initial Disclosures.	A copy of initial disclosures served on Mark Durman.
December 9, 2009	Letter to Mark Durman regarding continuing discovery cut-off date.	No responses received from Mark Durman.

Date	Event	Response
December 10, 2009	Final meet and confer letter sent to MQ and Ellen Esquerra Durman regarding past due responses to interrogatories and request for production of documents	No response from MQ or Ellen Esquerra Durman.
December 15, 2009	Initial Disclosures are due from Mark Durman.	No initial disclosures received from Mark Durman.
December 15, 2009	Phone call to Ellen Esquerra Durman on Administrator's motion to compel responses to interrogatories and request for production of documents.	No responses from Ellen Esquerra Durman.
December 16, 2009	Second phone call to Ellen Esquerra Durman on Administrator's motion to compel responses to interrogatories and request for production of documents.	No responses from Ellen Esquerra Durman.
December 17, 2009	Motion to Compel Respondent Ellen Esquerra Durman's Initial Disclosure and Responses to Administrator's First Set of Interrogatories and First Set of Request for Production of Documents filed.	No opposition to motion to compel filed by MQ or by Ellen Esquerra Durman or communication to meet and confer.
December 30, 2009	Order Regarding Discovery and Extending Discovery Deadlines.	Ellen Esquerra Durman ordered to respond to Administrator's First Set of Interrogatories and First Set of Request for Production of Documents by January 13, 2010.

Date	Event	Response
January 7, 2010	Meet and confer letter sent to Mark Durman regarding past due responses to interrogatories, request for production of documents and requests for admissions.	No response from Mark Durman or communication to meet and confer.
January 13, 2010	Motion to Compel Respondent Mark Durman's Initial Disclosure and Responses to Administrator's First Set of Interrogatories and First Set of Request for Production of Documents filed.	No response from Mark Durman or communication to meet and confer.
January 13, 2010	Last day for Ellen Esquerra Durman to serve initial disclosures and respond to Administrator's First Set of Interrogatories and First Set of Request for Production of Documents by Court's Order Regarding Discovery and Extending Discovery Deadlines dated 12/30/2009.	No responses received from Ellen Esquerra Durman or communication to meet and confer.
January 15, 2010	Motion for Order Striking Respondent Ellen Esquerra Durman's Request for Hearing for Her failure to Comply with Court's Order to Compel filed.	No response received from Ellen Esquerra Durman or communication to meet and confer.
January 19, 2010	Order Regarding Discovery and Extending Discovery and Pre-Hearing Submission Deadlines.	Mark Durman ordered to respond to Administrator's First Set of Interrogatories and First Set of Request for Production of Documents by January 28, 2010.

Date	Event	Response
January 28, 2010	Last day for Mark Durman to serve initial disclosures and respond to Administrator's First Set of Interrogatories and First Set of Request for Production of Documents by Court's Order Regarding Discovery and Extending Discovery Deadlines dated 12/30/2009.	No responses received from Mark Durman or communication to meet and confer.
January 28, 2010	Motion for Summary Decision by Complainant, Administrator, against Respondents MQ, Ellen Esquerra Durman and Mark Durman filed.	Copy served on Respondents.
February 1, 2010	Order Scheduling Briefs for Motion for Summary Decision and Cancelling Hearing Date.	Last day for Respondents to file opposition to Motion for Summary Decision set for February 26, 2010.
February 26, 2010	Last day for Respondents to serve opposition to Motion for Summary Decision.	No response received from Respondents or communication to meet and confer.
March 3, 2010	Letter from Respondents to OALJ requesting an extension of time to respond to Motion for Summary Decision.	Copy not sent to Administrator's counsel.

II. Uncontroverted Facts¹⁷

1. MQ is a California limited liability company¹⁸ that engaged in software development out of Whittier, California, but no longer conducts business.¹⁹
2. MQ provided software, professional services and education to companies using IBM's message-oriented middleware products to conduct e-commerce.²⁰
3. Since its organization in June 1999, Ellen Esquerra Durman and Mark Durman have been MQ's only members.²¹

¹⁷ In their hearing requests, dated September 21, 2009, and November 17, 2009, Respondents Ellen Esquerra Durman and Mark Durman, respectively, alleged several inaccuracies in the Wage and Hour Division's determination and made various excuses for their actions. Declaration of Eric Williams in Support of Complainant Administrator's Motion for Summary Decision Against Respondents MQ Solutions, LLC, Ellen Esquerra Durman and Mark Durman, Jan. 28, 2010 [hereinafter Decl. of E. Williams], Exs. 19 at 252–53, 21 at 283–84. They never produced any evidence to support these assertions, many of which were legally irrelevant even if proven. Their hearing requests were submitted before the Administrator's Requests for Admission were propounded to the Durmans. The unproven allegations in their requests for hearing do not overcome the facts they admitted through their inaction.

¹⁸ Request for Official Notice in Support of Complainant Administrator's Motion for Summary Decision Against Respondents MQ Solutions, LLC, Ellen Esquerra Durman and Mark Durman, Jan. 28, 2010 [hereinafter Request for Judicial Notice], Nos. 1–5, Exs. 1–5 (*certified* files: SRC-05-151-50349, WAC-02-240-51928, WAC-05-197-50163, WAC-06-217-51886, WAC 04-124-50543); Decl. of E. Williams, ¶¶ 3–4, Exs. 2–3.

¹⁹ Request for Judicial Notice, Nos. 1–5, Exs. 1–5 (*certified* files; SRC-05-151-50349, WAC-02-240-51928, WAC-05-197-50163, WAC-06-217-51886, WAC 04-124-50543); Decl. of E. Williams, ¶¶ 2, 4, 49, 51, Exs. 1, 4, 19, 21 (*admitted*).

²⁰ Request for Judicial Notice, Nos. 1–5, Exs. 1–5 (*certified* files: SRC-05-151-50349, WAC-02-240-51928, WAC-05-197-50163, WAC-06-217-51886, WAC 04-124-50543); Decl. of E. Williams, ¶¶ 2, 4, Exs. 1, 4; Declaration of Nigel St. John Mells in Support of Complainant Administrator's Motion for Summary Decision Against Respondents MQ Solutions, LLC, Ellen Esquerra Durman and Mark Durman, Jan. 28, 2010 [hereinafter Decl. of N. Mells], ¶ 7; Declaration of Renato A. Eleazar in Support of Complainant Administrator's Motion for Summary Decision Against Respondents MQ Solutions, LLC, Ellen Esquerra Durman and Mark Durman, Jan. 28, 2010 [hereinafter Decl. R. Eleazar], ¶ 7.

²¹ Request for Judicial Notice, Nos. 1–5, Exs. 1–5 (*certified* files: SRC-05-151-50349, WAC-02-240-51928, WAC-05-197-50163, WAC-06-217-51886, WAC 04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3, at RFA 1 (*admitted*); Decl. of E. Williams, ¶ 5; Decl. N. Mells, ¶ 16; Decl. of R. Eleazar, ¶ 7. A similar set of Requests for Admission were propounded to each Respondent. The Requests for Admission (“RFAs”) are the three numbered exhibits accompanying Mr. Garcia's January 28, 2010 declaration. Exhibit 1 contains RFAs propounded to MQ Solutions, Exhibit 2 contains RFAs propounded to Ellen Esquerra Durman, and Exhibit 3 contains RFAs propounded to Mark Durman. Each request for admission (e.g. RFA 1) was the same in each set. Pagination within the RFAs as submitted by the Administrator is noted as further “Exhibits” and in some places as “exhibit, page.”

4. Since its organization in June 1999, Ellen Esquerra Durman has been MQ's only manager.²²
5. Since its organization in June 1999, Mark Durman has been MQ's Chief Executive Officer ("CEO") and Chief Training Officer ("CTO").²³
6. Since its organization in June 1999, Ellen Esquerra Durman has been MQ's Chief Operating Officer ("COO") and Chief Financial Officer ("CFO").²⁴
7. There is a written management agreement between MQ and Ellen Esquerra Durman.²⁵
8. Since its organization in June 1999, the Durmans have exclusively managed and controlled MQ.²⁶
9. Since its organization in June 1999, MQ has been undercapitalized.²⁷
10. Since 2001, the Durmans have made no capital contributions to MQ.²⁸
11. Since taxable year 2001, MQ has been insufficiently capitalized to meet its obligations to its creditors.²⁹
12. Since taxable year 2001, MQ has been insolvent.³⁰

Thus, a pinpoint citation to a particular RFA and a further page within the exhibits detailing support for that RFA might appear as follows: Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 25, Ex. 14.

²² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 2, 5 (*admitted*); Decl. of E. Williams, ¶¶ 2–5, Exs. 1–4; Decl. of N. Mells, ¶ 16; Decl. of R. Eleazar, ¶ 7.

²³ Request for Judicial Notice, Nos. 1–5, Exs. 1–5 (*certified* files: SRC-05-151-50349, WAC-02-240-51928, WAC-05-197-50163, WAC-06-217-51886, WAC 04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 3 (*admitted*); Decl. of E. Williams, ¶¶ 2–5, Exs. 1–4; Decl. of N. Mells, ¶ 7; Decl. of R. Eleazar, ¶ 7.

²⁴ Request for Judicial Notice, Nos. 1–5, Exs. 1–5 (*certified* files: SRC-05-151-50349, WAC-02-240-51928, WAC-05-197-50163, WAC-06-217-51886, WAC 04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 4 (*admitted*); Decl. of E. Williams, ¶¶ 2–5, Exs. 1–4; Decl. of N. Mells, ¶ 16.

²⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 6 (*admitted*).

²⁶ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 7 (*admitted*); Decl. of E. Williams, ¶¶ 2–5, Exs. 1–4; Decl. of N. Mells, ¶¶ 7, 16; Decl. of R. Eleazar, ¶ 7.

²⁷ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 8 (*admitted*); Decl. of N. Mells, ¶ 16, Ex. 9.

²⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 9 (*admitted*).

²⁹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 10 (*admitted*).

³⁰ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 11 (*admitted*).

13. From 2001 to and including year 2008, MQ has not paid its California franchise fee.³¹
14. MQ failed to withhold federal income taxes for the wages paid Mells set forth in the Form W-2 Wage and Tax Statement (“W-2”) for year 2005 issued by MQ.³²
15. MQ failed to withhold federal income taxes for the wages paid Mells as set forth in the W-2 for year 2006 issued by MQ.³³
16. MQ failed to withhold federal income taxes for the wages paid Mells as set forth in the W-2 for year 2007 issued by MQ.³⁴
17. MQ did not issue Mells a W-2 for year 2008 for wages paid to him by MQ.³⁵
18. MQ failed to withhold federal income taxes for the wages paid Eleazar as set forth in the W-2 for year 2002 issued by MQ.³⁶
19. MQ failed to withhold California state income taxes for the wages paid Eleazar as set forth in the W-2 for year 2002 issued by MQ.³⁷
20. MQ failed to withhold federal income taxes for the wages paid Eleazar as set forth in the W-2 for year 2003 issued by MQ.³⁸
21. MQ failed to withhold California state income taxes for the wages paid Eleazar as set forth in the W-2 for year 2003 issued by MQ.³⁹
22. MQ failed to withhold federal income taxes for the wages paid Eleazar as set forth in the W-2 for year 2004 issued by MQ.⁴⁰

³¹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 12 (*admitted*).

³² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 25, 27, 87, Ex. 14.

³³ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 28, 30, 88, Ex. 15 (*admitted*).

³⁴ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 31, 33, 89, Ex. 16 (*admitted*).

³⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 34; Decl. of N. Mells, ¶ 25 (*admitted*).

³⁶ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 39, 40, 90, Ex. 17 (*admitted*).

³⁷ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 39, 41, 90, Ex. 17 (*admitted*); Decl. of R. Eleazar, ¶¶ 25–26, Exs. 17, 18.

³⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 42, 43, 91, Ex. 18 (*admitted*).

³⁹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 42, 44, 91, Ex. 18 (*admitted*); Decl. of R. Eleazar, ¶¶ 25–26, Exs. 17, 18.

⁴⁰ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 45, 46, 92, Ex. 19 (*admitted*).

23. MQ failed to withhold California state income taxes for the wages paid Eleazar as set forth in the W-2 for year 2004 issued by MQ.⁴¹
24. MQ failed to withhold federal income taxes for the wages paid Eleazar as set forth in the W-2 for year 2005 issued by MQ.⁴²
25. MQ failed to withhold California state income taxes for the wages paid Eleazar as set forth in the W-2 for year 2005 issued by MQ.⁴³
26. MQ failed to withhold federal income taxes for the wages paid Eleazar as set forth in the W-2 for year 2006 issued by MQ.⁴⁴
27. MQ failed to withhold California state income taxes for the wages paid Eleazar as set forth in the W-2 for year 2006 issued by MQ.⁴⁵
28. MQ failed to withhold federal income taxes for the wages paid Nguyen for year 2004.⁴⁶
29. MQ failed to withhold state income taxes for the wages paid Nguyen for year 2004.⁴⁷

A. MQ and the Durmans misrepresented material facts on the LCAs in violation of 20 C.F.R. § 655.730

30. The LCA for ETA Case No. I-05102-1677461 submitted by MQ was signed by Ellen Esquerra Durman on April 14, 2005.⁴⁸
31. The period of employment for the LCA for ETA Case No. I-05102-1677461 was June 1, 2005, to May 31, 2008.⁴⁹

⁴¹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 45, 47, 91, Ex. 19 (*admitted*); Decl. of R. Eleazar, ¶¶ 25–26, Exs. 17, 18.

⁴² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 48, 49, 93, Ex. 20 (*admitted*)

⁴³ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 48, 50, 93, Ex. 20 (*admitted*); Decl. of R. Eleazar, ¶¶ 25–26, Exs. 17, 18.

⁴⁴ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 61, 62, 94, Ex. 21 (*admitted*).

⁴⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 61, 63, 94, Ex. 21 (*admitted*); Decl. of R. Eleazar, ¶¶ 25–26, Exs. 17, 18.

⁴⁶ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 69, 70 (*admitted*).

⁴⁷ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 69, 71 (*admitted*).

⁴⁸ Request for Judicial Notice, No. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 17, 74, Ex. 1 (*admitted*); Decl. of E. Williams, ¶ 9, Ex. 6; Decl. of N. Mells, ¶ 19, Ex. 12.

32. The prevailing wage rate required under the LCA for ETA Case No. I-05102-1677461 was \$110,000.00 per year for Houston, Texas, and Whittier, California.⁵⁰
33. The LCA for ETA Case No. I-02197-0174791 submitted by MQ was signed by Mark Durman on July 19, 2002.⁵¹
34. The period of employment for the LCA for ETA Case No. I-02197-0174791 was July 22, 2002, to June 24, 2005.⁵²
35. The prevailing wage rate required under the LCA for ETA Case No. I-02197-0174791 was \$110,000.00 per year for Santa Clara, California.⁵³
36. The LCA for ETA Case No. I-02197-0174811 submitted by MQ was signed by Mark Durman on July 19, 2002.⁵⁴
37. The period of employment for the LCA for ETA Case No. I-02197-0174811 was July 22, 2002, to June 24, 2005.⁵⁵
38. The prevailing wage rate required under the LCA for ETA Case No. I-02197-0174811 was \$110,000.00 per year for Whittier, California.⁵⁶

⁴⁹ Request for Judicial Notice, No. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 17, 19, 74, Ex. 1 (*admitted*); Decl. of E. Williams, ¶¶ 9, 26, 31, Ex. 6; Decl. of N. Mells, ¶ 19, Ex. 12.

⁵⁰ Request for Judicial Notice, No. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 17, 20, 74, Ex. 1 (*admitted*); Decl. of E. Williams, ¶¶ 9, 26, 31, Ex. 6; Decl. of N. Mells, ¶ 19, Ex. 12

⁵¹ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 35, 76, Ex. 3 (*admitted*); Decl. of E. Williams, ¶¶ 14, 26, 33, 34, Ex. 8; Decl. of R. Eleazar, ¶ 9, Ex. 5

⁵² Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 35, 37, 76, Ex. 3 (*admitted*); Decl. of E. Williams, ¶¶ 14, 26, 33, 34, Ex. 8; Decl. of R. Eleazar, ¶ 9, Ex. 5.

⁵³ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 35, 38, 76, Ex. 3 (*admitted*); Decl. of E. Williams, ¶¶ 14, 26, 33, 34, Ex. 8; Decl. of R. Eleazar, ¶ 9, Ex. 5

⁵⁴ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 80, Ex. 7 (*admitted*); Decl. of E. Williams, ¶¶ 14, 26, 33, 34, Ex. 8.

⁵⁵ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 80, Ex. 7 (*admitted*); Decl. of E. Williams, ¶¶ 14, 26, 33, 34, Ex. 8.

⁵⁶ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 80, Ex. 7 (*admitted*); Decl. of E. Williams, ¶¶ 14, 26, 33, 34, Ex. 8.

39. LCA for ETA Case No. I-05157-1812295 submitted by MQ was signed by Ellen Esquerra Durman on June 13, 2005.⁵⁷
40. The period of employment for the LCA for ETA Case No. I-05157-1812295 was June 24, 2005, to June 24, 2006.⁵⁸
41. The prevailing wage rate under the LCA for ETA Case No. I-05157-1812295 was \$110,000.00 per year for Santa Clara California, and Whittier, California.⁵⁹
42. The LCA for ETA Case No. I-06157-2616207 submitted by MQ was signed by Ellen Esquerra Durman on June 20, 2006.⁶⁰
43. The period of employment under the LCA for ETA Case No. I-06157-2616207 was June 25, 2006, to June 24, 2007.⁶¹
44. The prevailing wage rate under the LCA for ETA Case No. I-06157-2616207 was \$110,000.00 per year for Santa Clara California, and Whittier, California.⁶²
45. The LCA for ETA Case No. I-04042-0952005 submitted by MQ was signed by Ellen Esquerra Durman on February 17, 2004.⁶³
46. The period of employment under the LCA for ETA Case No. I-04042-0952005 was March 28, 2004, to June 22, 2006.⁶⁴

⁵⁷ Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-05-197-50163); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 51, 78, Ex. 5 (*admitted*); Decl. of E. Williams, ¶¶ 15, 26, 33, 34, Ex. 10; Decl. of R. Eleazar, ¶ 14, Ex. 10.

⁵⁸ Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-05-197-50163); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 51, 53, 78, Ex. 5 (*admitted*); Decl. of E. Williams, ¶¶ 15, 26, 33 and 34, Ex. 10; Decl. of R. Eleazar, ¶ 14, Ex. 10.

⁵⁹ Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-05-197-50163); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 51, 54, 78, Ex. 5 (*admitted*); Decl. of E. Williams, ¶¶ 15, 26, 33, 34, Ex. 10; Decl. of R. Eleazar, ¶ 14, Ex. 10.

⁶⁰ Request for Judicial Notice, No. 4, Ex. 4 (*certified* file WAC-06-217-51886); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 56, 79, Ex. 6 (*admitted*); Decl. of E. Williams, ¶¶ 16, 26, 33, 34, Ex. 12; Decl. of R. Eleazar, ¶ 17, Ex. 13.

⁶¹ Request for Judicial Notice, No. 4, Ex. 4 (*certified* file WAC-06-217-51886); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 56, 58, 79, Ex. 6 (*admitted*); Decl. of E. Williams, ¶¶ 16, 26, 33, 34, Ex. 12; Decl. of R. Eleazar, ¶ 17, Ex. 13.

⁶² Request for Judicial Notice, No. 4, Ex. 4 (*certified* file WAC-06-217-51886); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 56, 59, 79, Ex. 6 (*admitted*); Decl. of E. Williams, ¶¶ 16, 26, 33, 34, Ex. 12; Decl. of R. Eleazar, ¶ 17, Ex. 13.

⁶³ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 64, 81, Ex. 8 (*admitted*); Decl. of E. Williams, ¶¶ 19, 26, Ex. 15.

47. The prevailing wage rate required under the LCA for ETA Case No. I-04042-0952005 was \$117,000.00 for Whittier, California.⁶⁵

B. MQ and the Durmans failed to pay the prevailing wages to the H-1B nonimmigrant workers in violation of 20 C.F.R. § 655.731

1. Nigel St. John Mells

48. MQ sent Nigel St. John Mells (“Mells”) an offer letter of employment dated April 10, 2001, (“Offer Letter”) with the terms of his employment.⁶⁶

49. Mells agreed to all of the terms set forth in the Offer Letter.⁶⁷

50. Mells and Ellen Esquerra Durman signed the Offer Letter, and Mells commenced employment with MQ on May 1, 2001.⁶⁸

51. Mells’ H-1B visa was transferred to MQ, and he was employed by MQ as a Senior Middleware Consultant at the prevailing wage of \$110,000.00 per year.⁶⁹

52. Mells’ H-1B visa was extended by MQ from September 7, 2001, to January 21, 2004.⁷⁰

53. Mells worked for MQ from May 1, 2001 to December 31, 2001, and there was no benching or unproductive time during 2001.⁷¹

54. Pursuant to the Form W-2 Wage and Tax Statement (“W-2”) issued to Mells by MQ for year 2001, Mells was paid \$67,222.32.⁷²

⁶⁴ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 64, 66, 81, Ex. 8 (*admitted*); Decl. of E. Williams, ¶¶ 19, 26, 36, Ex. 15.

⁶⁵ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 64, 67, 81, Ex. 8 (*admitted*); Decl. of E. Williams, ¶¶ 19, 26, 36, Ex. 15.

⁶⁶ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 83, Ex. 10 (*admitted*); Decl. of E. Williams, ¶ 7; Decl. of N. Mells, ¶¶ 7–8, Ex. 4.

⁶⁷ Decl. of N. Mells, ¶ 8, Ex. 4.

⁶⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 83, Ex. 10 (*admitted*); Decl. of E. Williams, ¶¶ 7–8; Decl. of N. Mells, ¶ 8, Ex. 4.

⁶⁹ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of E. Williams, ¶¶ 7, 8, 29, 30, Exs. 5, 17; Decl. of N. Mells, ¶¶ 8–9, Ex. 5.

⁷⁰ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of E. Williams, ¶¶ 7–8, Ex. 5; Decl. of N. Mells, ¶¶ 6–9, Ex. 5.

⁷¹ Decl. of E. Williams, ¶¶ 29–30, Ex. 17; Decl. of N. Mells, ¶¶ 10–11.

55. Based on the prevailing wage rate for 2001, MQ should have paid Mells \$73,333.28.⁷³
56. Mells worked for MQ during all of 2002, and there was no benching time during 2002.⁷⁴
57. Pursuant to W-2 Mells received for 2002 from MQ, Mells was paid \$82,500.12.⁷⁵
58. Based on the prevailing wage rate for 2002, MQ should have paid Mells \$110,000.00.⁷⁶
59. Mells worked for MQ during all of 2003, and there was no benching time during 2003.⁷⁷
60. Pursuant to W-2 Mells received for 2003 from MQ, Mells was paid \$105,049.92.⁷⁸
61. Based on the prevailing wage rate for 2003, MQ should have paid Mells \$110,000.00.⁷⁹
62. In 2002, MQ and the Durmans borrowed \$30,000.00 from Mells and his spouse Ellen as evidenced by a Secured Promissory Note dated April 22, 2002 (“Note”).⁸⁰
63. The Note was repaid by the Durmans.⁸¹

⁷² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 84, Ex. 11 (*admitted*); Decl. of E. Williams, ¶¶ 29–30, Ex. 17; Decl. of N. Mells, ¶ 10, Ex. 6.

⁷³ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of E. Williams, ¶¶ 7, 8, 29, 30, Exs. 5, 17; Decl. of N. Mells, ¶¶ 10–11, Ex. 6.

⁷⁴ Decl. of E. Williams, ¶¶ 29–30, Ex. 17; Decl. of N. Mells, ¶¶ 12–13, Ex. 7.

⁷⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 85, Ex. 12 (*admitted*); Decl. of E. Williams, ¶ 29–30, Ex. 17; Decl. of N. Mells, ¶¶ 12–13, Ex. 7.

⁷⁶ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of E. Williams, ¶¶ 7, 8, 29, 30, Exs. 5, 17; Decl. of N. Mells, ¶¶ 12–13, Ex. 7.

⁷⁷ Decl. of E. Williams, ¶¶ 29–30, Ex. 17; Decl. of N. Mells, ¶¶ 14–15, Ex. 8.

⁷⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 86, Ex. 13 (*admitted*); Decl. of E. Williams, ¶¶ 29–30, Ex. 17; Decl. of N. Mells, ¶¶ 14–15, Ex. 8.

⁷⁹ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of E. Williams, ¶¶ 7, 8, 29, 30, Exs. 5, 17; Decl. of N. Mells, ¶¶ 14–15, Exs. 8.

⁸⁰ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 96, Ex. 23 (*admitted*); Decl. of N. Mells, ¶¶ 16–17, Exs. 9–10.

⁸¹ Decl. of N. Mells, ¶¶ 16–17, Exs. 9–10.

64. As part of the Offer Letter, MQ agreed to sponsor an extension of Mells' H-1B visa to continue to work for MQ, but failed to do so.⁸²
65. Mells' H-1B visa expired on January 21, 2004, and he and his spouse departed the United States on April 9, 2004.⁸³
66. On April 14, 2005, MQ submitted a Petition for a Nonimmigrant Worker to re-employ Mells signed by Ellen Esquerra Durman.⁸⁴
67. The period of employment for Mells was June 1, 2005, to May 31, 2008.⁸⁵
68. Mells worked for MQ from October 6, 2005 to December 31, 2005, and there was no benching time during 2005.⁸⁶
69. Mells received a W-2 from MQ for 2005.⁸⁷
70. In 2005, Mells actually received \$19,458.29 in wages and other payments from MQ.⁸⁸
71. MQ did not pay Mells the wages set forth in the W-2 for year 2005 issued by MQ to Mells.⁸⁹
72. MQ did not pay Mells the prevailing wage rate under the LCA for ETA Case No. I-05102-1677461 during year 2005.⁹⁰
73. Mells worked for MQ for all of 2006, and there was no benching time during 2006.⁹¹

⁸² Decl. of E. Williams, ¶ 8; Decl. of N. Mells, ¶ 18, Ex. 4.

⁸³ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of E. Williams, ¶ 8; Decl. of N. Mells, ¶ 18.

⁸⁴ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 18, 75, Ex. 2 (*admitted*); Decl. of E. Williams, ¶ 9, Ex. 6.

⁸⁵ Request for Judicial Notice, Nos. 1, Ex. 1 (*certified* file SRC-05-151-50349); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 17, 19, 75, Ex. 2 (*admitted*); Decl. of E. Williams, ¶ 9, Ex. 6; Decl. of N. Mells, ¶ 9, Ex. 12.

⁸⁶ Decl. of E. Williams, ¶¶ 9, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 19–21, Ex. 13.

⁸⁷ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 25, 87, Ex. 14 (*admitted*); Decl. of N. Mells, ¶ 21, Ex. 13.

⁸⁸ Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–33, Exs. 12, 18, 19.

⁸⁹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 25, 26, 87, Ex. 14 (*admitted*); Decl. of N. Mells, ¶¶ 21, 33, Exs. 12, 13, 18, 19.

⁹⁰ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 21, 25, 26, 74, 87 (*admitted*), Exs. 1, 14; Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–33, Exs. 12, 18, 19.

74. Mells received a W-2 from MQ for 2006.⁹²
75. MQ did not pay Mells the wages set forth in the W-2 for year 2006 issued by MQ to Mells.⁹³
76. In 2006, Mells actually received \$67,647.47 in wages and other payments from MQ.⁹⁴
77. MQ did not pay Mells the prevailing wage rate under the LCA for ETA Case No. I-05102-1677461 during year 2006.⁹⁵
78. Mells worked for MQ for all of 2007, and there was no benching time during 2007.⁹⁶
79. Mells received a W-2 from MQ for 2007.⁹⁷
80. MQ did not pay Mells the wages set forth in the W-2 for year 2007 issued by MQ to Mells.⁹⁸
81. In 2007, Mells actually received \$68,000.00 in wages and other payments from MQ.⁹⁹
82. MQ did not pay Mells the prevailing wage rate under the LCA for ETA Case No. I-05102-1677461 during year 2007.¹⁰⁰
83. On April 23, 2008, Mark Durman sent Mells and an e-mail message that included an e-mail message dated April 22, 2008, from MQ's

⁹¹ Decl. of E. Williams, ¶¶ 9, 29, and 31, Ex. 17; Decl. of N. Mells, ¶ 22, Ex. 14.

⁹² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 28, 88, Ex. 15 (*admitted*); Decl. of N. Mells, ¶ 22, Ex. 14.

⁹³ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 28, 29, 88, Ex. 15 (*admitted*); Decl. of N. Mells, ¶¶ 22, 34, Exs. 12, 14, 18, 19.

⁹⁴ Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–32, 34, Exs. 12, 18, 19.

⁹⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 22, 28, 29, 74, 88, Exs. 1, 14 (*admitted*); Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–32, 34, Exs. 12, 18, 19.

⁹⁶ Decl. of E. Williams, ¶¶ 9, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 23, 14, Exs. 15–16.

⁹⁷ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 31 and 89, Ex. 16 (*admitted*); Decl. of N. Mells, ¶¶ 23–24, Exs. 15–16.

⁹⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 31, 32, 89, Ex. 16 (*admitted*); Decl. of N. Mells, ¶¶ 24, 35, Exs. 12, 16, 18, 19.

⁹⁹ Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–32, 35, Exs. 12, 18, 19.

¹⁰⁰ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 23, 31, 32, 74, 89, Exs. 1, 16 (*admitted*); Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–32, 35, Exs. 12, 18, 19.

immigration attorney, John Taussig, discussing Mells' employment with MQ, the failure of MQ to pay Mells the prevailing wage of \$110,000.00 per year for years 2006 and 2007, as well as MQ's efforts to renew Mell's H-1B visa, which MQ failed to do.¹⁰¹

84. Mells worked for MQ from January 1, 2008, to May 31, 2008, and there was no benching during 2008.¹⁰²
85. Mells did not receive a W-2 from MQ for 2008.¹⁰³
86. Mells actually received \$8,000.00 in wages and other payments from MQ.¹⁰⁴
87. MQ did not pay Mells the prevailing wage rate under the LCA for ETA Case No. I-05102-1677461 during year 2008.¹⁰⁵
88. There was no unproductive time during Mells employment with MQ.¹⁰⁶
89. Mells was not terminated by MQ prior to the expiration of his H-1B visas.¹⁰⁷
90. MQ did pay for Mells' transportation back to the United Kingdom when his H-1B visa expired on May 31, 2008.¹⁰⁸

2. Renato A. Eleazar

91. In July 2002, Renato A. Eleazar accepted a position with MQ as a Software Engineer working out of his home in Santa Clara, California and MQ's business office in Whitter, California.¹⁰⁹
92. On July 19, 2002, MQ submitted a Petition for a Nonimmigrant Worker signed by Mark Durman to employ Eleazar.¹¹⁰

¹⁰¹ Decl. of E. Williams, ¶ 10, Ex. 7, Decl. of N. Mells, ¶ 25, Ex. 17.

¹⁰² Decl. of E. Williams, ¶¶ 9, 29, 31, Ex. 17; Decl. of N. Mells, ¶ 25, Ex. 17.

¹⁰³ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 34 (*admitted*); Decl. of N. Mells, ¶ 25.

¹⁰⁴ Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–32, 36, Exs. 12, 18, 19.

¹⁰⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 24, 74, Ex. 1 (*admitted*); Decl. of E. Williams, ¶¶ 28, 29, 31, Ex. 17; Decl. of N. Mells, ¶¶ 30–32, 35, Exs. 12, 18, 19.

¹⁰⁶ Decl. of E. Williams, ¶ 9; Decl. of N. Mells, ¶ 27.

¹⁰⁷ Decl. of N. Mells, ¶ 28.

¹⁰⁸ Decl. of N. Mells, ¶ 29.

¹⁰⁹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 35, 37, 76, 80, Exs. 3, 7 (*admitted*); Decl. of E. Williams, ¶ 14, Exs. 8–9; Decl. of R. Eleazar, ¶¶ 7–9, Ex. 5–6.

93. On July 24, 2002, Eleazar's H-1B visa was transferred to MQ, and he was employed by MQ as a Software Engineer at the prevailing wage was \$110,000.00 per year.¹¹¹
94. Eleazar's H-1B visa was extended by MQ from February 5, 2003, to June 24, 2005.¹¹²
95. Eleazar worked for MQ from August 5, 2002, to December 31, 2002, and there was no benching time during 2002.¹¹³
96. Eleazar received a W-2 from MQ for 2002.¹¹⁴
97. Eleazar worked for MQ for all of 2003, and there was no benching time during 2003.¹¹⁵
98. Eleazar received a W-2 from MQ for 2003.¹¹⁶
99. Eleazar worked for MQ for all of 2004, and there was no benching time during 2004.¹¹⁷
100. Eleazar received a W-2 from MQ for 2004.¹¹⁸
101. Eleazar's H-1B visa was extended by MQ from June 25, 2005, to June 24, 2006.¹¹⁹

¹¹⁰ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 36, 77, Ex. 4 (*admitted*); Decl. of E. Williams, ¶ 14, Ex. 8; Decl. of R. Eleazar ¶ 10, Ex. 6 .

¹¹¹ Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 35, 37, 38, 76, 77, 80, Exs. 3, 4, 7 (*admitted*); Decl. of E. Williams, ¶ 14, Exs. 8–9; Decl. of R. Eleazar, ¶¶ 7–9, Exs. 5–6.

¹¹² Request for Judicial Notice, No. 2, Ex. 2 (*certified* file WAC-02-240-51928); Decl. of E. Williams, ¶¶ 14, Ex. 9; Decl. of R. Eleazar ¶ 10, Ex. 6.

¹¹³ Decl. of E. Williams, ¶¶ 14, 33–34, Ex. 17; Decl. of R. Eleazar, ¶ 11.

¹¹⁴ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 39, 90, Ex. 17 (*admitted*); Decl. of R. Eleazar, ¶ 11, Ex. 7.

¹¹⁵ Decl. of E. Williams, ¶¶ 14, 33–34, Ex. 17; Decl. of R. Eleazar, ¶ 12, Ex. 8.

¹¹⁶ Decl. of L. Garcia, ¶s 2-8, Exs. 1-3, Req. for Admission Nos. 42 and 91, Ex. 18 - *admitted*; Decl. of R. Eleazar, ¶ 12, Ex. 8.

¹¹⁷ Decl. of E. Williams, ¶s 14, 33 and 34, Ex. 17; Decl. of R. Eleazar, ¶ 13, Ex. 9.

¹¹⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 45, 92, Ex. 19 (*admitted*); Decl. of R. Eleazar, ¶ 13, Ex. 9.

¹¹⁹ Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-05-197-50163); Decl. of E. Williams, ¶ 15, Exs. 10–11; Decl. of R. Eleazar ¶¶ 14–15, Exs. 10–11.

102. In 2005, Eleazar was employed by MQ as a Software Engineer at the prevailing wage was \$110,000.00 per year.¹²⁰
103. Eleazar worked for MQ all of 2005, and there was no benching time during 2005.¹²¹
104. Eleazar received a W-2 from MQ for 2005.¹²²
105. Eleazar's H-1B visa was extended by MQ from June 25, 2006, to June 24, 2007.¹²³
106. In 2006, Eleazar was employed by MQ as a Software Engineer at the prevailing wage was \$110,000.00 per year.¹²⁴
107. Eleazar worked for MQ from January 1, 2006 to September 18, 2006, and there was no benching time during 2006.¹²⁵
108. Eleazar received a W-2 from MQ for 2006.¹²⁶
109. MQ did not pay Eleazar the wages set forth in the W-2 for year 2006 issued by MQ to Eleazar.¹²⁷
110. In 2006, according to the W-2 issued by MQ, Eleazar received \$59,583.29 in wages and other payments from MQ.¹²⁸
111. MQ did not pay Eleazar the prevailing wage rate under the LCA for ETA Case No. I-05157-1812295 during year 2006.¹²⁹

¹²⁰ Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-05-197-50163); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 51–55, 78, Ex. 5 (*admitted*); Decl. of E. Williams, ¶ 15, Exs. 10–11; Decl. of R. Eleazar, ¶¶ 14–15, Exs. 10–11.

¹²¹ Decl. of E. Williams, ¶¶ 14, 33–34, Ex. 17; Decl. of R. Eleazar, ¶ 16, Ex. 12.

¹²² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 48, 93, Ex. 20 (*admitted*); Decl. of R. Eleazar, ¶ 16, Ex. 12.

¹²³ Request for Judicial Notice, No. 4, Ex. 4 (*certified* file WAC-06-217-51886); Decl. of E. Williams, ¶ 16, Ex. 12–13; Decl. of R. Eleazar ¶¶ 17–18, Exs. 13–14.

¹²⁴ Request for Judicial Notice, No. 4, Ex. 4 (*certified* file WAC-06-217-51886); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 56–59, 79, Ex. 6 (*admitted*); Decl. of E. Williams, ¶ 16, Exs. 12–13; Decl. of R. Eleazar, ¶¶ 17–18, Exs. 13–14.

¹²⁵ Decl. of E. Williams, ¶¶ 16, 17, 33–34, Ex. 17; Decl. of R. Eleazar, ¶ 19, Ex. 15.

¹²⁶ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 61, 94, Ex. 21 (*admitted*); Decl. of R. Eleazar, ¶ 19, Ex. 15.

¹²⁷ Decl. of E. Williams, ¶¶ 28, 33, 34, Ex. 17; Decl. of R. Eleazar ¶¶ 20–21, Ex. 15.

¹²⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 61, 94, Ex. 21 (*admitted*); Decl. of E. Williams, ¶¶ 28, 33, 34, Ex. 17; Decl. of R. Eleazar, ¶¶ 19–20, Ex. 15.

112. MQ did not pay Eleazar the prevailing wage rate under the LCA for ETA Case No. I-06157-2616207 during year 2006.¹³⁰
113. There was no unproductive time during Eleazar's employment with MQ.¹³¹
114. Eleazar was not terminated by MQ prior to the expiration of his H-1B visas.¹³²
115. Eleazar voluntarily resigned from MQ because MQ continually bounced payroll checks, did not pay medical benefits and owed back pay for productive work performed during my employment.¹³³

3. Trung Q. Nguyen

116. In April 2001, Trung Q. Nguyen ("Nguyen") accepted a position with MQ as a Senior Middleware Consultant, at the prevailing wage rate under the LCA at \$110,000.00 per year, working out MQ's business office in Whitter, California.¹³⁴
117. Nguyen's H-1B visa was transferred to MQ, and it was valid from July 18, 2001, to March 27, 2004.¹³⁵
118. On February 17, 2004, MQ submitted a Petition for Nonimmigrant Worker signed by Ellen Esquerra Durman to employ Nguyen and extend Nguyen's H-1B visa in 2004.¹³⁶
119. Nguyen's H-1B visa was extended by MQ from March 28, 2004, to June 22, 2006.¹³⁷

¹²⁹ Request for Judicial Notice, No. 3, Ex. 3 (*certified* file WAC-05-197-50163); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 51, 54, 55, 78, Ex. 5 (*admitted*); Decl. of E. Williams, ¶¶ 28, 33, 34, Ex. 17; Decl. of R. Eleazar, ¶ 20, Ex. 15.

¹³⁰ Request for Judicial Notice, No. 4, Ex. 4 (*certified* file WAC-06-217-51886); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 56, 59, 60, 79, Ex. 6 (*admitted*); Decl. of E. Williams, ¶¶ 28, 33, 34, Ex. 17; Decl. of R. Eleazar, ¶ 20, Ex. 15.

¹³¹ Decl. of R. Eleazar, ¶ 22.

¹³² Decl. of R. Eleazar, ¶ 23.

¹³³ Decl. of E. Williams ¶ 17; Decl. of R. Eleazar ¶ 20.

¹³⁴ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 95, Ex. 22 (*admitted*); Decl. of E. Williams, ¶ 18, Ex. 14.

¹³⁵ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of E. Williams, ¶ 18, Ex. 14.

¹³⁶ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 65, 82, Ex. 9 (*admitted*); Decl. of E. Williams, ¶ 19, Ex. 15.

120. MQ did not pay Nguyen the prevailing wage rate under the LCA for ETA Case No. I-04042-0952005 during year 2004.¹³⁸
121. Nguyen resigned his position with MQ in July 2004 because MQ continually missed payroll and owed him back pay for productive work performed during his employment.¹³⁹
- C. MQ and the Durmans failed to provide notice of the filing of the LCAs in violation of 20 C.F.R. § 655.734**
122. MQ did not post notice of LCA filings for 10 days in two conspicuous locations at each place where the H-1B nonimmigrant workers were employed.¹⁴⁰
- D. MQ and the Durmans required and / or accepted from H-1B nonimmigrant workers payment or remittance of the additional petition fee incurred in filing an H-1B petition in violation of 20 C.F.R. § 655.731(c)(10)(ii)**
123. In 2004, Nguyen paid MQ a portion of the petition fee for the filing and processing of his H-1B visa in the amount of \$750.00.¹⁴¹
- E. MQ and the Durmans failed to maintain documentation as required by 20 C.F.R. §§ 655.731(b), 655.738(e), 655.739(i), and 655.760(c)**
124. MQ did not maintain time records for its H-1B nonimmigrant workers.¹⁴²
125. MQ did not maintain payroll records for its H-1B nonimmigrant workers.¹⁴³

¹³⁷ Request for Judicial Notice, No. 5, Ex. 5 (*certified* file WAC-04-124-50543); Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 65, 66, 82, Ex. 9 (*admitted*); Decl. of E. Williams, ¶ 19, Ex. 15.

¹³⁸ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFAs 68, 81, Ex. 8 (*admitted*); Decl. of E. Williams, ¶ 20.

¹³⁹ Decl. of E. Williams ¶ 17.

¹⁴⁰ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 73 (*admitted*); Decl. of E. Williams, ¶ 39; Decl. of N. Mells, ¶ 26; Decl. R. Eleazar, ¶ 24.

¹⁴¹ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 72 (*admitted*); Decl. of E. Williams, ¶¶ 41, 49, 51, Exs. 19, 21 (*admitted*).

¹⁴² Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 13 (*admitted*); Decl. of E. Williams, ¶¶ 22, 23, 29, 33, 35, 43.

126. MQ did not maintain employment records for its H-1B nonimmigrant workers.¹⁴⁴
127. MQ did not maintain a public access file for its H-1B nonimmigrant workers.¹⁴⁵
128. MQ's business records were destroyed after MQ failed to pay storage costs.¹⁴⁶

F. MQ and the Durmans failed to cooperate in the investigation in violation of 20 C.F.R. § 655.800(c)

129. On October 3, 2008, Mells filed complaint against MQ alleging MQ violated the Immigration and Nationality Act H-1B visa program ("Act" or "INA") by failing to pay him the prevailing wage rate under the LCAs during his periods of employment with MQ (05/01/2001 to 01/01/2004 and 06/01/2005 to 05/31/2008).¹⁴⁷
130. MQ's violations of the Act occurred within the requisite "12-month window" from the date the complaint was filed by Mells (10/08/2007 through 10/08/2008).¹⁴⁸
131. Wage and Hour's period of investigation was extended to include 01/01/2001 to 10/08/2008.¹⁴⁹
132. On January 13, 2009, the Wage Hour Investigator, Eric Williams ("WHI") held an initial conference was held with MQ's manager, Ellen Esquerra Durman.¹⁵⁰
133. After the initial conference, MQ and the Durmans failed to cooperate in Wage and Hour's investigation of the complaint by failing to: (1) return numerous phone calls placed by the WHI; (2) produce additional

¹⁴³ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 14 (*admitted*); Decl. of E. Williams, ¶¶ 22, 23, 29, 33, 35, 43.

¹⁴⁴ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 15 (*admitted*); Decl. of E. Williams, ¶¶ 22, 23, 29, 33, 35, 43.

¹⁴⁵ Decl. of L. Garcia, ¶¶ 2–8, Exs. 1–3 at RFA 16 (*admitted*); Decl. of E. Williams, ¶¶ 22, 23, 29, 33, 35, 43.

¹⁴⁶ Decl. of E. Williams, ¶ 22, 41, 49, 51, Exs. 19, 21 (*admitted*).

¹⁴⁷ Decl. of E. Williams, ¶¶ 6, 10.

¹⁴⁸ Decl. of E. Williams, ¶ 10–11, Ex. 7.

¹⁴⁹ Decl. of E. Williams, ¶ 12.

¹⁵⁰ Decl. of E. Williams, ¶ 22.

documentation that the WHI repeatedly requested after the initial conference on January 13, 2009; and (3) failing to attend the final conference held by the WHI on August 24, 2008.¹⁵¹

134. On September 11, 2009, a determination letter was sent to MQ and to Ellen Esquerra Durman.¹⁵²
135. On September 21, 2009, Ellen Esquerra Durman responded to the determination letter and requested a hearing.¹⁵³
136. On November 3, 2009, a determination letter was sent to Mark Durman.¹⁵⁴
137. On November 17, 2009, Mark Durman responded to the determination letter and requested a hearing.¹⁵⁵

III. Conclusions Of Law

1. This matter arises under the Immigration and Nationality Act H-1B visa program (the “Act” or “INA”).¹⁵⁶
2. The Act requires an employer seeking to hire aliens as employees under the H-1B visa program to submit a Labor Condition Application (“LCA”) to the U.S. Department of Labor, Employment and Training Administration (“ETA”).¹⁵⁷ The employer’s LCA includes enforceable assurances that:
 - (A) The employer—
 - (i) is offering and will offer during the period of authorized employment to aliens admitted or provided states [as an H-1B non-immigrant] wages that are at least:

¹⁵¹ Decl. of E. Williams, ¶¶ 23, 24, 44, 46.

¹⁵² Decl. of E. Williams, ¶ 48, Ex. 18.

¹⁵³ Decl. of E. Williams, ¶ 49, Ex. 19.

¹⁵⁴ Decl. of E. Williams, ¶ 50, Ex. 29.

¹⁵⁵ Decl. of E. Williams, ¶ 51, Ex. 20.

¹⁵⁶ 8 U.S.C. § 1101(a)(15)(H)(i)(b) and 1182(n), and the implementing regulations found at 20 C.F.R. Part 655, Subparts H and I, and 20 C.F.R. § 655.700, *et seq.*

¹⁵⁷ 8 U.S.C. § 1182(n)(1).

(I) the actual wage level paid by the employer to all other individual with similar experiences and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based o the best information available at the time of filing the application.

...

...

(D) The application shall contain specification of the number of workers sought, the occupational classification in which the worker will be employed, and the wage rate and conditions under which they will be employed.¹⁵⁸

3. The Act authorizes the Administrator to investigate violations of the H-1B provision of the Act. Violations include that an employer:
 - a. Filed a LCA with ETA that misrepresents a material fact, which violates 20 C.F.R. § 655.730;
 - b. Failed to pay all the wages 20 C.F.R. § 655.731 requires (including failing to pay wages to the nonimmigrant worker during certain kinds of nonproductive time);
 - c. Failed to provide notice of the filing of the LCA, which 20 C.F.R. § 655.734 requires;
 - d. Required or accepted from an H-1B nonimmigrant worker payment of fees the employer incurs when it files an H-1B petition with INS, which 20 C.F.R. § 731(c)(10)(ii) prohibits;
 - e. Failed to maintain the documentation that 20 C.F.R. §§ 655.731(b), 655.738(e), 655.739(i), 655.760(c) requires of the employer; and
 - f. Failed to cooperate in the Administrator's investigation of potential violations of 20 C.F.R. §§ 655.800(c), or 655.801(a)(1),(2),(5),(11),(15) and (16).

¹⁵⁸ 8 U.S.C. § 1182(n)(i)(A)(D).

4. MQ misrepresented the prevailing wage rate on its LCA in ETA Case No. I-05102-1677461 for the occupation in the area of intended employment; it thereby violated 20 C.F.R. § 655.730.
5. MQ misrepresented the prevailing wage rate on its LCA in ETA Case No. I-02197-0174791 for the occupation in the area of intended employment; it thereby violated 20 C.F.R. § 655.730.
6. MQ misrepresented the prevailing wage rate on its LCA in ETA Case No. I-02197-0174811 for the occupation in the area of intended employment; it thereby violated 20 C.F.R. § 655.730.
7. MQ misrepresented the prevailing wage rate on its LCA in ETA Case No. I-05157-1812295 for the occupation in the area of intended employment; it thereby violated 20 C.F.R. § 655.730.
8. MQ misrepresented the prevailing wage rate on its LCA in ETA Case No. I-05157-2616207 for the occupation in the area of intended employment; it there by violated 20 C.F.R. § 655.730.
9. MQ misrepresented the prevailing wage rate on its LCA in ETA Case No. I-04042-0952005 for the occupation in the area of intended employment; it thereby violated 20 C.F.R. § 655.730.
10. The Act authorizes the Administrators to assess civil penalties up to \$1,000.00 for non-willful violations of the Act, such as a failure to pay wages.¹⁵⁹
11. MQ's violations of 20 C.F.R. § 655.805(a)(1) are numerous and substantial. The Administrator reasonably assessed Civil Money Penalties ("CMPs") in the amount of \$1,800.00 for violations pertaining to H-1B nonimmigrant workers Mells and Eleazar.¹⁶⁰
12. The prevailing wage rate shown on each LCA was the wage that MQ was required to pay each of the three H-1B nonimmigrant workers. 8 U.S.C. § 1182(n)(1)(A); 20 C.F.R. § 655.731.
13. During the investigation period for H-1B nonimmigrant worker Mells (January 1, 2002, to June 1, 2008), MQ failed to pay the prevailing wages for productive work and owes H-1B nonimmigrant worker Mells \$209,497.91 for non-payment of the prevailing wage rate.

¹⁵⁹ 8 U.S.C.A. § 1182(n)(2)(C)(i)-(ii); 20 C.F.R. § 655.8100(b)(1)-(2)(i)-(iii).

¹⁶⁰ 20 C.F.R. § 655.810(b)(2)(iii),(c); *Administrator v. Kutty, et al.*, Case Nos. 01-LCA-10 through 01-LCA-0255 (ALJ Oct. 9, 2002), *aff'd*. ARB Case No. 03-022 (May 31, 2005).

14. During the investigation period for H-1B nonimmigrant worker Eleazar (August 5, 2002, to September 18, 2006), MQ failed to pay the prevailing wages for productive work and owes H-1B nonimmigrant Eleazar for productive work \$18,333.54 for non-payment of the prevailing wage rate.
15. No back wages are owed to H-1B nonimmigrant worker Nguyen for failing to pay prevailing wages. MQ nonetheless owes Nguyen \$750.00 because MQ received and accepted that amount from Nguyen as additional petition fees MQ incurred when it filed to his renew his H-1B visa.
16. MQ failed to provide notice of the filing of the LCAs for 10 days in two conspicuous locations at each place of employment where its three H-1B nonimmigrant workers were employed. It thereby violated 20 C.F.R. § 655.734.
17. The payment or remittance of H-1B petition fees by H-1B nonimmigrant workers is strictly prohibited. The fees must be paid by the person or entity that seeks to obtain an H-1B visa to admit an alien to work for it in the United States. MQ required or accepted from H-1B nonimmigrant worker Nguyen payment or remittance of the additional petition fee MQ incurred in filing an H-1B petition. It thereby violated 20 C.F.R. § 655.731(c)(10)(ii).
18. MQ failed to maintain the documents required by 20 C.F.R. §§ 655.731(b), 655.738(e), 655.739(i) and 655.760(c). The missing documents include copies of completed LCAs, necessary information about actual wages, necessary documents that pertain to the prevailing wage, and complete payroll records.
19. The Administrator reasonably assessed civil monetary penalties in the amount of \$900.00 for MQ's violations of 20 C.F.R. § 655.805(a)(15).
20. MQ failed to cooperate in the Administrator's investigation, and it impeded the investigation. That conduct violates 20 C.F.R. § 655.800(c).
21. The Administrator reasonably assessed civil monetary penalties in the amount of \$900.00 for MQ's violations of 20 C.F.R. § 655.805(a)(16).
22. MQ is the *alter ego* of the Durmans because the Durmans admitted:
 - a. that they have been MQ's only members and have exclusively managed and controlled MQ since MQ's organization in June 1999;

- b. that since MQ was organized in 1999, they have made no capital contributions to MQ;
 - c. that since 2001, MQ was insufficiently capitalized to meet its obligations to its creditors and has been insolvent;
 - d. that MQ is no longer conducting business;
 - e. that MQ failed to withhold federal and state income taxes for the wages paid to its H-1B non-immigrant workers; and
 - f. that failing to hold the Durmans individually liable for MQ's violations of the Act would be unjust.
23. Each of the Durmans therefore is held individually liable as an employer with the meaning of the Act for MQ's violations of the Act and its implementing regulations.
24. This Decision and Order is entered in the Administrator's favor.
25. The Respondents shall pay back wages totaling \$227,831.45 for their failure to pay the required wages to the following persons:
- | | |
|----------------------|---------------------|
| Nigel St. John Mells | \$209,497.91 |
| Renato A. Eleazar | \$18,333.54 |
| Total: | \$227,831.45 |
26. The Respondents shall pay Trung Q. Nguyen \$750.00. This reimburses Nguyen the amount he paid to MQ when MQ petitioned to renew his H-1B visa.
27. Respondents shall pay civil money penalties totaling \$3,600.00 to the Wage and Hour Division.
28. Each of the Respondents is individually disqualified from filing new H-1B petitions for a period of two years from the date of this order.

29. The Respondents are liable for interest on all these amounts at the rate specified in the Debt Collection Improvement Act of 1996 from the date of the Administrator's Determination. That date is September 11, 2009, for MQ and Ellen Esquerra Durman, and November 2, 2009, for Mark Druman.

So Ordered.

A

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

NOTICE OF APPEAL RIGHTS:

To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) calendar days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 655.845(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).