



Issue Date: 03 April 2013

Case Nos.: 2013-LCA-00003
2013-LCA-00004

In the Matter of:

LIFE NUTRITIONALES, LLC
d/b/a LIFE NUTRITIONALES,
Respondent.

In the Matter of:

ASAP AMERICA, LLC,
Respondent.

**ORDER GRANTING MOTION TO WITHDRAW HEARING REQUEST AND
AFFIRMING ADMINISTRATOR'S DETERMINATIONS**

On March 11, 2013, I issued an order canceling the hearing in the above-captioned consolidated matters, then scheduled to begin on March 19, 2013 in Orlando, Florida. At that time, I had received two pleadings: (1) a document from Respondents purporting to withdraw their requests for a hearing, and (2) a motion by the Administrator of the Wage and Hour Division to affirm the Administrator's determination. In that Order, I invited the parties to submit written briefs regarding Respondents' right, if any, to withdraw their hearing request and the legal effect of allowing them to do so. The parties have submitted their briefs, and are in agreement that under Rule 18.39 of the Rules of Practice and Procedure Before the Office of Administrative Law Judges, a request for hearing may be deemed abandoned if certain prerequisites are met. Those prerequisites include a failure to appear at a scheduled hearing, and a failure to show cause thereafter why the request should not be deemed abandoned. Those prerequisites have not been met in these cases. Insisting that they be met, however, would elevate form over substance in this instance; Respondents have represented that they do not wish to expend resources in a hearing, and that they do not intend to oppose the Administrator's motion to affirm the determination. Their representations are the functional equivalent of abandonment of their request for hearing. Accordingly, their motion to withdraw their hearing request will be granted, and the Administrator's motion to affirm the determination will likewise be granted.

ORDER

Based on the foregoing, IT IS ORDERED:

1. The Respondents' motion for leave to withdraw their request for hearing is GRANTED;

2. The Administrator's motion to affirm the determination is GRANTED;
3. The Administrator's determination of October 30, 2012, reference number 1632154 is the final order of the Secretary with respect to Life Nutritionales, LLC, Respondent in Case Number 2013-LCA-003; and
4. The Administrator's determination of October 30, 2012, reference number 1647196 is the final order of the Secretary with respect to ASAP America, LLC, Respondent in Case Number 2013-LCA-004.

SO ORDERED.

PAUL C. JOHNSON, JR.
Associate Chief Administrative Law Judge