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Issue Date: 25 July 2008

Case No.: 2007-LCA-00026

In the Matter of:

Administrator, Wage and Hour Division,

Complainant,

v.

Integrated Informatics, Inc.,

Respondent *(pro se).*

DECISION AND ORDER

This action was brought by the Administrator of the Wage and Hour Division ("Complainant," or "government") under the H-1B provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §1101 *et seq.* The case originated with a complaint to the Administrator by Mr. Kunal Vyas, concerning his employment by Integrated Informatics, Inc. ("Respondent" or "Integrated") in 2006. A hearing was held on April 17-18, 2008 in Atlanta, Georgia. Dr. Kapali Eswaran and Mr. Ashish Kulkarni, Chief Executive Officer and Vice-President, respectively, represented Integrated and testified as witnesses.

Post-hearing briefs were originally scheduled for submission on June 20, 2008. On June 12, 2008, Integrated requested an extension, which was granted. The parties submitted their initial post-hearing briefs on July 8, 2008. Reply briefs were submitted on July 18, 2008.

Forty-six Administrative Law Judge Exhibits (ALJX) were assembled before the hearing. On April 22, 2008, Integrated filed three post-hearing motions. Integrated's brief in support of those motions, the government's reply brief, and my ruling on the post-hearing motions have been marked ALJX 47, 48, and 49, respectively. Exhibits submitted at the hearing by the Complainant and Respondent are abbreviated CX and RX.

I. STATUTORY FRAMEWORK

The H-1B visa program permits employers to employ non-immigrants temporarily to fill specialized jobs in the United States. The Act requires that an employer pay an H-1B worker the higher of its actual wage or the locally prevailing wage. Under the Act, an employer seeking to hire an alien in a specialty occupation on an H-1B visa must receive permission from the U.S. Department of Labor ("DOL") before the alien may obtain an H-1B visa.

The Act defines a "specialty occupation" as an occupation requiring the application of highly specialized knowledge and the attainment of a bachelor's degree or higher. 8 U.S.C. §1184(i)(1). To receive permission from the DOL, the Act requires an employer seeking permission to employ an H-1B worker to submit a Labor Condition Application (LCA) to the DOL. See 8 U.S.C. §1182(n)(1).

Only after the employer receives the Department's certification of its LCA may the INS approve an alien's H-1B visa petition. 8 U.S.C. § 1101(a)(15)(H)(1)(B); 20 C.F.R. § 655.700. The Act provides that the LCA filed by the employer with the Department must include a statement to the effect that the employer is offering to an alien status as an H-1B non-immigrant, that wages for H1-B visa holders are at least equal to the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is higher, based on the best information available at the time of filing the application. 8 U.S.C. §1182(n)(1)(A).

The Act directs the DOL to review the LCA only for completeness or obvious inaccuracies. Unless the Department finds that the application is incomplete or obviously inaccurate, the Department shall provide the certification described by the Act within seven days of the date of the filing of the application. 8 U.S.C. § 1182 (n)(1) and 20 C.F.R. § 655.740.

The Department has promulgated regulations which provide detailed guidance regarding the determination, payment, and documentation of the required wages. *See* 20 C.F.R. Part 655 Subpart H. The remedies for violations of the statute or regulations include payment of back wages to H-1B workers who were underpaid, debarment of the employer from future employment of aliens, civil money penalties, and other relief that the Department deems appropriate. 20 C.F.R. §655.810 and §655.855.

II. BACKGROUND

A. MR. VYAS' EMPLOYMENT HISTORY

Mr. Vyas is a citizen of the Republic of India. He was recruited by Integrated in the spring of 2005, while he was completing a post-graduate degree at the University of Alabama. He signed a contract to work as a software engineer on July 12, 2005 (CX 21). That contract included the following terms:

> For a period of 1 year after approval of the H1B visa date, the Company will not terminate the employment of the Candidate for any reasons including non-performance except for causes such as illegal and/or unethical activities and repeated tardiness;
>
> For a period of 1 year after approval of the H1B visa date, the Candidate will not leave the employment of the Company except in the case that the Company does not meet its payroll obligation for the Candidate.

In anticipation of employing Mr. Vyas, Integrated filed a petition for an H-1B visa for him on June 6, 2005 (RX 42). Integrated paid the $1,500.00 fee for the petition by three checks, numbered 2414, 2415, and 2416 and dated June 5, 2005. Page 13 of RX 42 contains copies of those checks.

In his original complaint to the Wage and Hour Division (RX 6, ALJX 1), Mr. Vyas stated:

> On 06/05/05, Dr. Kapali [Eswaran] applied for my H1B visa and he asked me for visa processing fee 1500$. I asked him that while giving offer they told me that they will sponsor my visa. He replied that if you will stick with us for six months then we will return back your money. Since I was recently passed out from university, I didn't had such huge amount of money. So I requested him that I will pay in installment so he agreed and asked me to give postdated cheque. I gave him three postdated cheque of 500$ each that he withdrew on 8/17, 9/26 and 10/17 respectively.

The H-1B regulations prohibit an employer from receiving, or the employee from paying, the filing fee for the visa. 20 C.F.R. §655.731(c)(10)(ii). Integrated contends that it did not require such a payment from Mr. Vyas and that it loaned him $1,500.00, which he indicated was for the purchase of a car. It provided a promissory note for this amount dated July 15, 2005 (CX 3). The dispute over whether Integrated loaned Mr. Vyas $1,500.00 or charged him that amount to reimburse it for the H-1B filing fee is one of many factual disputes between the parties that will be discussed below.

Mr. Vyas found many of the conditions of his employment unsatisfactory. In his original complaint he alleged, among other things, that he was required to work uncompensated overtime, that he was denied a promised pay raise, and that Integrated repeatedly delayed the promised repayment of the H-1B filing fee that it had required him to pay.

In November and December of 2005, Mr. Vyas took voluntary unpaid leave to return to India to get married. His wife joined him in Georgia on February 14, 2006. It is undisputed that he took February 14 and 15 off for personal reasons in order to help his wife get settled. His wife was not employed, so with both of them depending on his earnings he found his pay and working conditions even more unsatisfactory.

On Friday, February 17, 2006, Mr. Vyas gave notice of his resignation by email (CX 19). In that email he said that his resignation would be effective two weeks later, on Friday, March 3, 2006.

After giving notice, he met with both Mr. Kulkarni and Dr. Eswaran in an attempt to resolve the situation. During these meetings Dr. Eswaran asked where he was going to be working. Mr. Vyas gave the name of another information technology company at which he said that he had an interview. He later acknowledged (RX 6) that this was a lie and that he did not have an interview with that company. He stated that he felt pressure from Dr. Eswaran to give him the name of a company.

There is a dispute over his work attendance after he gave notice. It is undisputed, however, that on Tuesday, February 28, 2006 he travelled to Phoenix, Arizona with Mr. Kulkarni and Mr. Prashant Pathak, another employee of Integrated, for the installation of a project on which he had been working.

While in Arizona he continued to discuss his employment situation with Mr. Kulkarni in person and with Dr. Eswaran by telephone. He states that on March 1, 2006 he asked Dr. Eswaran about the $1,500.00 for the visa application and was told that Dr. Eswaran was discussing it with his lawyer. In a telephone conversation on Friday, March 3, 2006 Dr. Eswaran read him a letter (CX 20). This letter stated that Dr. Eswaran had discovered that Mr. Vyas did not have a job offer from the company that he had earlier identified. It stated that Integrated had filed a lawsuit in state court against Mr. Vyas for breach of his employment contract and "any money that is owed to you or owed by you will be settled when the Court makes a determination."

After hearing this letter read to him Mr. Vyas was, unsurprisingly, not motivated to work further on the Arizona project and requested to fly back to Atlanta on March 3, rather than waiting until Saturday, March 4 to return with the other two men. He was re-booked on a flight that departed from Phoenix on March 3, 2006 (RX 24).

Mr. Vyas received a check from Integrated dated February 3, 2006 in the amount of $1,017.31 (Check 5187, CX 17, RX 29). On February 17, 2006 Integrated issued another check, numbered 5197, in the same amount (CX 22). On March 6, 2006 Digital Federal Credit Union (DFCU), Mr. Vyas' banking institution, issued a Notice of Returned Item (CX 23), noting that payment of check 5197 had been stopped. He did not receive any further paychecks from Integrated.

B. INVESTIGATION OF THE COMPLAINT

Mr. Vyas submitted his complaint to the Wage and Hour Division on April 28, 2006. On May 24, 2006 Mr. Christopher Mills, the Regional Immigration Coordinator for the Division, sent a memorandum to Ms. Janet Campbell, the District Director (ALJX 10). In this memo, he advised that there had been "a finding of 'reasonable cause' to believe" that a violation had been committed. The memorandum went on to note:

> This case should **immediately** be assigned to an investigator and an appointment letter sent out. Also, the complainant must be informed that the case will be investigated, utilizing the letter format previously provided.
>
> Please be mindful of the following contained in 29 CFR Part 655.806(a)(3): "If the Administrator determines that an investigation of a complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 days of filing." [emphasis in original]

The complaint was assigned to Mr. Jacques Lebon, a wage and hour investigator with the Division. Mr. Lebon sent Integrated a letter on December 26, 2006, stating that he would arrive to conduct an investigation on January 8, 2007 (RX 14). On that date he reviewed a large volume of payroll and other records of the corporation. On March 5, 2007 he sent Dr. Eswaran a letter requesting names and contact information of Integrated's H-1B employees. He stated that he would interview them confidentially, and proposed to conduct the interviews at Integrated's offices on March 12, 2007.

On June 27, 2007, the Division issued a determination letter finding that Integrated had violated the INA by failing to pay wages to Mr. Vyas in the amount of $4,381.64. The determination directed payment of back wages but did not assess any civil penalty. It is this determination that Integrated is appealing in the present proceeding. By the time of the hearing the government had computed a lower amount of back wages due. In its post-hearing brief the government calculated the back wages at $3,726.24. The basis for that calculation will be discussed below.

C. PAYROLL RECORDS

The last paycheck that Mr. Vyas succeeded in cashing was check #5187, dated February 3, 2006, and covering the pay period from January 7-20, 2006. For the next pay period, January 21-February 3, 2006, check #5197 was issued and Mr. Vyas endorsed it. However, Integrated stopped payment on it (CX 22, 23).

The payroll records for this period are contained in RX 28 and CX 8-13. CX 8 is a summary of the last six pay periods, and CX 9-13 are the pay slips for individual pay periods. In addition, Dr. Eswaran and Mr. Kulkarni summarized Integrated's contentions concerning Mr. Vyas' entitlement to pay for his last four pay periods in a letter to Mr. Lebon on June 7, 2007 (CX 14). Mr. Vyas' gross pay during this period before taxes and other deductions was $1330.80 for a full two-week pay period.

Integrated prepared two pay slips for the January 21-February 3 pay period. The first (CX 10) lists 10 days worked, with gross pay of $1,330.80. After deductions for taxes and insurance it lists net pay of $1,017.32 paid by check number 5197. This check was dated February 17, 2006, the day that Mr. Vyas gave notice of his resignation. After he gave notice payment on the check was stopped and a second pay slip for the same period was prepared.

The second pay slip for that pay period (CX 11) is headed "Modified Supercedes [sic] previous." It lists the same gross pay, but no taxes. The only adjustment is $25.37 for insurance, which leaves a balance of $1,305.43. That figure is listed as "adjustments (e.g. Loan Advance)." The line for net pay on this second version of the pay slip is blank. There is an additional category described as "Loan Advance Remaining, If Any" with a value of $239.57. The promissory note provided for six percent annual simple interest. The sum of $1,305.43 and $239.57 is $1545.00, representing the principal of the alleged loan and simple interest for one-half of one year.

The pay slip for the next pay period, February 4-17 (CX 12), lists 10 "days without pay." The entry for the categories of gross pay, deductions, and net pay are all zero. The figure $239.57 for Loan Advance Remaining carries over on this slip.

The pay slip for Mr. Vyas' last pay period with Integrated, February 18- March 3 (CX 13), lists eight "days without pay" and two "payable days." This results in gross pay of $266.16 (*i.e.* one-fifth of the gross pay for a normal pay period of 10 payable days). From this figure no deductions for taxes were taken. Deductions were taken for insurance ($50.74, double the amount deducted in CX 11, presumably to cover the previous pay period, when no pay was recorded as having been earned) and loan advance ($239.57, the figure carried over from the previous two pay periods). This resulted in total deductions of $290.31, leaving a negative value of $24.15 listed as net pay.

Integrated's account of the chronology reflected in these pay records is that:

1. Mr. Vyas worked the full January 21-February 3 pay period, but when he submitted his resignation Integrated accelerated the payment on his promissory note and applied his entire pay for that period to the debt.
2. Mr. Vyas was voluntarily absent without authority for the entire February 4-17 pay period so no pay was owed to him, and the unpaid portion of the debt carried over.
3. Mr. Vyas only worked two days during the February 18-March 3 pay period. He travelled to Arizona on February 28, worked there for the next two days and travelled back to Georgia on March 3. Integrated apparently did not count the travel days as work days, although the travel was undertaken solely for work on the project in Phoenix. The pay that he earned for the two days credited as work was applied to his remaining debt under the promissory note, resulting in no net pay owed to him.

Mr. Vyas gives a different chronology. He acknowledged that he took personal days off on February 14-15 in connection with his wife's arrival. He stated that after he gave his notice on February 17, Mr. Kulkarni told him not to come in on the next workday, Monday, February 20, while they tried to work things out, and Dr. Eswaran later told him not to come in on Tuesday, February 21. Out of an apparent concern to avoid word of dissension spreading among the employees, they asked him to say that he had taken those two days as personal days. He testified that other than those two days he worked the entire pay period. If his account is correct he would be entitled to pay for those two days, as well as for the rest of the pay period, because he was available for work and his absence on those two days was at the request of his employer.

Mr. Vyas' gross pay at the time was $1,330.80 per pay period, or $133.08 per work day. According to his account, he either worked or was available to work for 28 of the 30 days in his last three pay periods. Multiplying $133.08 by 28 yields $3,726.24, the figure that the government asserts as gross pay owed to Mr. Vyas.

III. FACTUAL MATTERS IN DISPUTE

A. MR. VYAS' ATTENDANCE RECORD

The following table summarizes the allegations of the two sides concerning Mr. Vyas' attendance history and entitlement to pay during his final three pay periods.

Pay period	Government's contention	Integrated's contention
1/21-2/03	Worked entire pay period-entitled to 10 days pay	Worked entire pay period. Paycheck #5197 was issued for 10 days pay. When he gave notice on Feb 17, Integrated stopped payment on check #5197 for partial loan repayment
2/04-2/17	Worked 8 days, took Feb 14-15 off as voluntary absence-entitled to 8 days pay	Voluntarily absent entire pay period-entitled to no pay
2/18-3/03	Worked entire pay period, except Feb 20-21 when Integrated told him not to come in-entitled to 10 days pay	Voluntarily absent entire pay period except trip to Arizona-entitled to 2 days pay, which was withheld for loan repayment
Total	Entitled to 28 days pay, which was improperly withheld	Entitled to 12 days pay, which was properly withheld for loan repayment

At the hearing, Mr. Pathak testified to his recollection of the disputed period in February, 2006:

> Q. So had you -- do you recall or don't recall whether Kunal showed up for work from 2/3/06 to the day he left for Phoenix, 2/28/06?
>
> A. He went us to being -- went with us to --
>
> Q. No, no, before you went to Phoenix, from 2/3 to 2/28 when he supposed to be --
>
> A. In February?
>
> Q. Yes, in February.

A. At the end of February, I don't have -- I don't think he was working for those whole days. He might have showed up a couple days, two, three days, but I don't remember the exact dates.

Tr. 339

Mr. Pathak went on to testify that he took over work on the project that Mr. Vyas had been working on, which was part of the product intended to be installed in Phoenix.

Mr. Kulkarni testified that the rough work of engineers is done on scratch pads known as "yellow books" and that Integrated's normal document maintenance policy provides for destruction of the yellow books six months after either the completion of a project or an employee's termination (Tr. 545-547). The yellow books for Mr. Vyas' work on the Phoenix project might be of assistance in establishing what, if any, days he was at work during February, but they were destroyed in accordance with that policy before Mr. Lebon began his investigation.

On November 9, 2007 Integrated filed a motion (ALJX 8) to dismiss the determination based on the delay between the filing of the complaint and the beginning of the investigation. The complaint was filed on April 28, 2006. On May 24, 2006 Mr. Mills forwarded it to Ms. Campbell with the request that it be "immediately" assigned to an investigator and a reminder of the regulatory provision for making a determination within 30 days of filing.

Integrated was aware of the complaint, and of the regulatory requirement for swift action. When it did not hear anything about the complaint during the summer and fall of 2006, it destroyed the yellow books for the period in question.

I denied Integrated's motion to dismiss, based on the authority of *Administrator v. Synergy Systems, Inc*., ARB No. 04-076 (June 30, 2006). In that case the Board held that the statutory and regulatory time limits for processing a complaint under the H-1B program are not jurisdictional and that failing to meet them does not preclude the government from proceeding with a case.

Based on the authority of *Synergy Systems*, the delay in conducting the investigation was not grounds for dismissal of the determination. However, that delay is relevant in evaluating the evidence that was available to Integrated as it attempted to prove a negative, *i.e.* that Mr. Vyas was not present on certain days. Ordinarily if the party having control over potential evidence destroys it before the hearing it may properly be inferred that the evidence was unfavorable to the party. In this case, however, I decline to draw that inference.

Integrated was aware of the complaint and of the time limit that 29 C.F.R. §655.806(a)(3) prescribes for the investigation. When months had passed after the expiration of that time limit without any contact from the Division, Integrated assumed that there would be no DOL investigation. This assumption was incautious, especially with the state lawsuit pending. However, with regard to the DOL complaint, it was not unreasonable based on the information that was then available to Integrated.

In the absence of that documentation, the only available evidence is the testimony of the witnesses, and none of them are wholly disinterested. Mr. Vyas has a strong personal stake in the outcome of this case, as do Dr. Eswaran and Mr. Kulkarni. Mr. Pathak is an employee and not a manager of Integrated so his interest in the company's prospects in the litigation, while real, is more attenuated than that of the two management officials.

Mr. Pathak is not clear on the precise comings and goings of Mr. Vyas during February, 2006. This is understandable, as he had no management responsibilities over Mr. Vyas. He is merely one rank and file employee testifying to his recollection of the whereabouts of another more than two years earlier. His recollection of the trip to Arizona is, also understandably, clearer than his recollection of the normal workday routine at the company's offices in Atlanta.

Mr. Pathak is clearer and more specific on the impact of Mr. Vyas' absence than he is on the specific dates of absence. Mr. Vyas had been working on a portion of the Phoenix project called the virtual printer. Mr. Pathak testified that the program did not work and that because of Mr. Vyas' absence in February as the company was working to prepare for the trip to Phoenix he had to take over the work on it. Eventually, Integrated had to purchase third party software because of the need to get it working (Tr. 338-339). I find Mr. Pathak's testimony to be the most reliable account of Mr. Vyas' attendance history during this period.

By February of 2006, Mr. Vyas had become disillusioned with his employment with Integrated and was actively seeking employment elsewhere. He was also preoccupied with the preparations for his wife's arrival. It would be understandable if, after deciding to quit, he regarded continuing to work for Integrated as a waste of time that could be spent more productively on his pressing professional and domestic concerns.

Integrated issues paychecks two weeks after the end of the pay period in which the pay is earned. Mr. Vyas complained that there had earlier been delays in promised raises and other irregularities in his pay. If he feared that Integrated would attempt to withhold or otherwise interfere with his pay (as it in fact did) the best strategy to minimize the risk would be to do what Integrated says that he did: work through the end of one pay period (February 3), voluntarily absent himself for the next two weeks to attend to job hunting and housekeeping, then go in on the next payday (February 17) to pick up his check for the last pay period that he worked. At that point he could negotiate the check and then immediately give notice, as he did. However, he did not obtain the funds for that last paycheck because Integrated stopped payment on the check. It claimed the authority to do this to repay the alleged loan.

B. THE ALLEGED LOAN

On two pay slips (CX 11 and CX13) Integrated listed a total of $1,545.00 as being withheld for a loan advance, including interest. The nature of the $1,500.00 principal of that alleged loan is hotly disputed between the parties.

On March 4, 2006, Mr. Vyas sent Dr. Eswaran an email (CX 24), in which he complained that the company was holding back his payroll checks. He also stated that he had

learned that it was illegal for the company to charge him for the H-1B processing fee and demanded reimbursement of $1,500.00. In CX 24 he listed three checks that he said had gone toward the payment of that fee, with dates and amounts:

401	8/17/2005	$500.00
403	9/26/2005	$500.00
405	10/19/2005	$500.00

As noted, Mr. Vyas' original complaint to the Wage and Hour Division (ALJX 1) also included this allegation that he had paid the processing fee by three $500.00 checks. His original complaint attached to ALJX 1 lists the same dates given in CX 24, but does not list the check numbers. In that original complaint he wrote that he had photocopies of the three checks.

Integrated contends that, at the beginning of the employment relationship, Mr. Vyas requested and was granted a loan to buy a car. Mr. Vyas contends that he never took out such a loan, and that his alleged signature on the promissory note (CX 3) is a forgery.

There was abundant evidence that loans for personal expenses, often on very informal terms, are available both within Integrated and within the community of Indian information technology professionals in the Atlanta area. Integrated gave such loans to Mr. Kulkarni on August 17, 2000 (RX 50) and to a recently hired employee, Mr. Venkatesan Latchimi-Narasimhan on February 15, 2008 (RX 52, Tr. 354-360). After he arrived in Atlanta, Mr. Vyas obtained personal loans in cash from Mr. Kulkarni (Tr. 161) and from Mr. Asim Rao (Tr. 393-394). Mr. Lebon testified (Tr. 23-24) that Integrated had mentioned the loan at his initial interview.

In July or August of 2005, Mr. Rao loaned Mr. Vyas $800.00 in cash to make the down payment on a car (Tr. 92-96, 393). Mr. Rao testified that he was paid back with two checks for $400.00 each. The first of these (CX 1) was check number 0052 drawn on DFCU, made out to Mr. Rao for $400.00 and dated August 10, 2005. It cleared DFCU on August 12, 2005 (CX 30). The second check (CX 31) was number 402, dated August 22, 2005. It cleared DFCU on August 29, 2005. Mr. Vyas himself is listed as the payee, but Mr. Rao acknowledged that he was paid from the proceeds of "another check" (Tr. 96) and that the debt was satisfied in full.

The personal loan from Mr. Kulkarni was for $500.00. It was paid by check number 404 (CX 32), which was dated September 19, 2005 and cleared DFCU on October 5, 2005 (CX 30).

Mr. Vyas bought a car on August 2, 2005. He and the seller signed an Intent to Sell Form (CX 25) indicating a purchase price of $4,375.00. On August 2, 2005 DFCU financed $3,500.00 (CX 27) and issued a treasurer's check for the $875.00 down payment (CX 29). Previously, on July 30, 2005 the DFCU account had a zero balance and Mr. Vyas deposited $996.00, so that after receiving the check for the down payment he had a balance of $121.00 (CX 30).

The alleged promissory note (CX 3) is dated July 15, 2005. It does not give a specific purpose for the loan. It says that "the intention for making the loan is to help employer/employee relationship." The same language appears in the August 17, 2000 loan to

Mr. Kulkarni. According to Integrated, Mr. Vyas represented that he wanted the money to buy a car.

As a result of the loan from Mr. Rao, Mr. Vyas did not need a loan from Integrated to make the down payment on his car, but this does not disprove Integrated's account. There was no documentation of the loan from Mr. Rao and neither witness was precise as to the date. Therefore, we cannot know whether Mr. Vyas either had the loan from Mr. Rao or was confident of getting it on July 15, the date of the promissory note.

Even if he ended up not needing a loan from his employer for the specific purpose of making the down payment on a car, he was a young man who had recently finished graduate school, relocated to a new city with a high cost of living, was starting a new job, and planned to get married soon. The promissory note specifies six percent simple interest annually, with interest waived if he remained with Integrated for two years, and no payments due for the first year after the note was signed. Whether or not it was applied to the purchase of a car, a loan on such favorable terms would be attractive to someone dealing with all of the new housekeeping expenses that he faced.

The alleged promissory note contains the following provision for accelerating the loan:

> Acceleration: If Mr. Vyas defaults on any installment payments or if Mr. Vyas terminates his employment with Integrated, the entire principal amount plus interest shall become due and payable on the date which is earlier of the default date or the date on which Mr. Vyas expresses his intent to terminate his employment with Integrated.

In its post-hearing brief the government argues that the acceleration clause is a penalty for leaving employment and as such a violation of 20 C.F.R. 655.73(c)(10)(i). The repayment plan contemplated in the loan is for repayment by wage deduction to begin one year after employment and to continue for almost another year (24 pay periods). The acceleration clause merely recognizes the reality that if Mr. Vyas quit before repayment by wage deduction was complete, the agreed upon repayment plan would become a nullity and Integrated would be forced to collect the debt by other means. The clause only addresses repayment of the loan, and does not purport to give Integrated a remedy with regard to any aspect of its other potential losses from Mr. Vyas' resignation. Any such other losses that Integrated alleges that it suffered are the subject of the pending state lawsuit. I find that the acceleration of the loan specified in CX 3 is not an illegal penalty under 20 C.F.R. 655.73(c)(10)(i).

In addition, the government argues that the provision for acceleration on notice of intent to resign, rather than when the resignation takes effect, is evidence that the note was drafted after Mr. Vyas left, and his signature then forged, to retroactively justify withholding his pay. However, the same provision for acceleration on giving notice appears in the promissory notes for the loan to Mr. Kulkarni in 2000 (RX 50) and to Mr. Latchimi-Narasimhan in 2008 (RX 52). If an employee owes money to the employer and the employer's most efficient way of collecting the loan is to withhold the money owed from the wages, it is not surprising that in the event of a

sudden resignation the employer would want as many pay periods as possible to attempt to collect the loan.

Collecting a debt by withholding pay is cheaper and faster than pursuing a lawsuit. The law imposes limitations on an employer's ability to collect a debt by pay withholding, which will be discussed later, but it is not surprising that an employer would draft a loan document to give itself as much leeway as possible if it finds itself in a position to withhold pay to satisfy a debt. The acceleration clause that Integrated uses may be unconventional (as, indeed, may be the type of employer-employee loan that Integrated makes), and it is certainly drafted with an eye to advance Integrated's interests if the employee-debtor gives notice of resignation. It does not, however, support an inference that the document was drafted after the fact for purposes of this hearing.

The clearest indication that the alleged promissory note is not a recent production is that Integrated cited it in the state court complaint (RX 22) that it filed on March 1, 2006, while Mr. Vyas was still employed and still in Phoenix. Mr. Vyas in his turn denied the existence of the loan and alleged that he had been required to pay the H-1B filing fee in both his answer and counter-claim in the state lawsuit (RX 22), filed on April 17, 2006 and his original complaint to DOL (ALJX 1). Whatever the merits of each side's claims on the nature of the $1,500.00 at issue, neither side can be accused of having made its allegation recently for the sake of this adjudication.

Mr. Vyas testified that he did not sign the alleged promissory note (Tr. 165-167). The government had a copy of the note for several months before the hearing, and was aware from the time of Mr. Lebon's initial investigation that Integrated claimed that Mr. Vyas had taken out a loan from the company. However, there was no indication that any professional questioned document analysis was performed on CX 3.

Under 20 C.F.R. §18.901(b)(3), the counterpart to Federal Rule of Evidence 901(b)(3), an administrative law judge may determine the authenticity of evidence by "[c]omparison . . . with specimens which have been authenticated." There are several specimens of Mr. Vyas' signature in the record, on employment documents, checks, and automobile purchase documents. He explicitly acknowledged several of them in testimony, and did not deny any of them other than the alleged promissory note. Among the exhibits containing his signature are CX 1, 17, 21, 22, 25, 27, 28, 31, 32, 33, and RX 42. None of these are originals and most are faxes or multiple-generation photocopies. Some have the signature partially obscured by mechanical printing from the check clearing process. Even a professional questioned document examiner might have substantial difficulty with specimens of such quality.

Whatever a professional questioned document examiner could do, I can do even less. I have no training or expertise in the field and can make only the most general and unsystematic observations of the appearance of the signatures. The questioned signature, like all of the acknowledged authentic ones, consists of the single word "Kunal" with a horizontal line from the end of the cursive "l" underlining the right half of the word. Some of the signatures are horizontal, others, including CX3, have a slight upward diagonal tilt. The vertical line of the "K" in both the questioned and authentic signatures has small embellishing strokes at both ends. The

one at the top is more or less straight and at a sharp downward angle. The one at the bottom is more horizontal. In some of the authentic signatures that stroke is bowed slightly in the middle while in others it is horizontal, as it is in the questioned signature.

The process of attempting to identify handwriting is necessarily imprecise because of the variations in a person's writing from one sample to another. This inherent uncertainty is exacerbated when the examination is made by a layman using poor quality samples. In the absence of a professional examination, the appearance of the signatures is less significant than other factors that relate to credibility.

Mr. Vyas contends that he never received a loan from Integrated and that the $1,500.00 under discussion was money that Integrated required him to pay for the H-1B petition processing fee. When he began his employment he did not know that it was illegal for an employer to require the non-immigrant worker to pay that fee, but Dr. Eswaran and Mr. Kulkarni, as officers of a company that routinely hires H-1B workers, did. For them to have extorted this illegal payment from Mr. Vyas assumes one of two things: either they commonly did this with their new H-1B employees, or they singled Mr. Vyas out in this respect.

If they routinely required this illegal prepayment it would be a considerable risk for a very small reward. Mr. Vyas stated that they offered to refund the fee after he worked there for six months. One of his complaints was that they kept moving the end of the six month period back, first by starting it at the time the petition was granted rather than when he began working, and then by not counting his unpaid vacation in India towards the six months.

If Integrated charged each H-1B employee for the petition fee and refunded it six or more months later, all it would be getting is a short term interest-free loan of $1,500.00 from each employee. Balanced against this would be the substantial risk of discovery. The H-1B workers that Integrated employs are highly educated specialists who live within a culturally and professionally cohesive group. The members of that group talk among themselves and sometimes move in the course of their careers from one employer to another. For a company like Integrated to carry on for years routinely violating the rules in the way alleged would be to run a very high risk of eventual discovery.

Furthermore, while Mr. Vyas did not know about the rule against making the applicant pay the fee, Integrated would have no way of knowing whether he or any other job applicant knew of that rule. All of the applicants are attempting to further their careers by employment in this country through the H-1B program. A potential employer like Integrated could not know how familiar any particular applicant was with the program's rules, and would risk discovery by indiscriminately attempting to extort an illegal payment from new employees.

Turning to the more immediate facts of the present case, after his initial visit Mr. Lebon made a point of arranging confidential interviews with all of Integrated's then-current H-1B employees. He did not discover evidence of any of them having been charged a processing fee as Mr. Vyas alleged that he had.

The alternative hypothesis, that Integrated did not ordinarily charge H-1B applicants for their petition fees but that it singled Mr. Vyas out, is if anything even more problematic. By the time that Mr. Vyas submitted his resignation there was a great deal of bitterness and animosity on both sides. It would be easy to believe that Integrated would single him out for adverse action at that time. Indeed, that is essentially what the determination alleges that Integrated did by refusing to pay him.

However, it is less plausible that he would be singled out for special unfavorable treatment at the beginning of his employment. Not only was he a new and promising recruit, but he was so highly regarded that Mr. Kulkarni was willing to make a personal loan to him in cash, without putting the loan into writing. Also, as noted above, Integrated's management would have had no way of knowing that he did not know of the rule against charging him for the petition fee.

The allegations of each side that the $1,500.00 in question was either an illegal fee payment or a legal loan are parts of their respective answers to a more fundamental question raised by the Division's determination and Integrated's defense. That more fundamental question is whether Integrated had the legal right to withhold $1,500.00 from Mr. Vyas' pay during his last several pay periods. In regard to that question there is a troubling omission in the evidence.

Mr. Vyas has repeatedly alleged that when Integrated required him to pay $1,500.00 for the processing fee he could not afford it all at once. He further alleges that he gave the company three checks, numbered 401, 403, and 405, dated roughly one month apart, for $500.00 each. The government, which offered checks 402 and 404 from the same account into evidence, and which diligently gathered evidence on such collateral matters as samples of Mr. Vyas' handwriting and the documentation for his car purchase, never offered into evidence the three checks that he said would prove what he had paid to Integrated.

Mr. Vyas' account statement from DFCU (CX 30) covers the period from August through October, 2005 and lists all three checks. Check 401 cleared on August 17, check 403 on September 26, and check 405 on October 19. All were for $500.00, but the DFCU statement does not give any indication of who the payee was.

Proof that those three checks were made out to and negotiated by Integrated would have decided the issue. If Mr. Vyas had already paid Integrated the $1,500.00 in 2005, the company would have had no right to collect it from him a second time in 2006. This would of course be true if it was an illegal fee payment, but even if it was a legal loan, the checks would be proof that he had already repaid the loan months before.

Those three checks may have been made out to Integrated or, falling roughly a month apart, they may have been for rent, or some other regularly recurring expense, or they may have been made out to Mr. Vyas himself to obtain cash, as check 402 was. There is no point in speculating in the absence of evidence. What is important about those checks is that if they were as Mr. Vyas claimed they would have the obvious effect of proving the government's case, that they were readily available to Mr. Vyas, and that the government did not offer them.

A final aspect of the complex task of assessing credibility in this case is Mr. Vyas' failure to submit to a deposition. On January 24, 2008 Integrated filed a motion for a subpoena to compel a deposition of Mr. Vyas (ALJX 15). After receiving briefs from both parties I denied this motion on February 15, 2008 (ALJX 25). This denial was based on the lack of express statutory authority in the INA for administrative law judges to issue subpoenas in cases arising under the Act. In the last paragraph of my discussion of the motion I wrote:

> The issue involved in this motion was discussed in a conference call before the written motion was filed. During the discussion I raised with the parties the fact that, regardless of how such a motion might be resolved, Mr. Vyas would have the option of voluntarily providing pre-hearing deposition testimony. If he testifies at the hearing, his willingness or unwillingness to cooperate in the prehearing discovery of the action brought on his complaint will be an obviously relevant factor in considering the weight and credibility to be accorded his testimony.

The officers and employees of Integrated and the personnel of the Wage and Hour Division were subjected to exhaustive discovery in preparation for this hearing. However, the most important witness, for whose financial benefit the government brought the complaint, did not submit to a deposition. I ruled that he could not legally be required to do so, but in doing so I put government counsel on notice of the potential result if he did not.

Based on the foregoing, I find that on July 15, 2006 Integrated loaned Mr. Vyas $1,500.00 according to the terms of CX 3, and that when he gave notice on February 17, 2006, none of the loan had been repaid. I further find that he voluntarily absented himself from work from February 6 to February 27, 2006, inclusive and that, at Integrated's request, he returned to work for the four-day period February 28 to March 3, 2006 inclusive. I find that February 28 and March 3, the days on which he travelled to and from Phoenix for the purpose of performing work for Integrated, were work days for purposes of his entitlement to wages.

IV. WAGE REGULATIONS FOR H-1B WORKERS

The basic wage requirement for H-1B workers is found in 20 C.F.R. §655.731. Integrated, as an employer of H-1B workers, is familiar with this regulation, and cited it in its appeal of the determination letter on July 2, 2007 (ALJX 2). Sub-section (c) of that section begins: "(c) Satisfaction of required wage obligation. (1) The required wage must be paid to the employee, cash in hand, free and clear, when due, except that deductions made in accordance with paragraph (c)(9) of this section may reduce the cash wage below the level of the required wage."

A. ABSENCE AND OTHER NON-PRODUCTIVE TIME

20 C.F.R. §655.731(c)(7) addresses the issue of non-productive time, including periods of absence from work:

(7) *Wage obligation(s) for H-1B nonimmigrant in nonproductive status—*

(i) *Circumstances where wages must be paid*. If the H-1B nonimmigrant is not performing work and is in a nonproductive status due to a decision by the employer (e.g., because of lack of assigned work), lack of a permit or license, or any other reason except as specified in paragraph (c)(7)(ii) of this section, the employer is required to pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for hourly employees, or the full amount of the weekly salary for salaried employees) at the required wage for the occupation listed on the LCA.

. . . . . .

In all cases the H-1B nonimmigrant must be paid the required wage for all hours performing work within the meaning of the Fair Labor Standards Act, 29 U.S.C. §201 et seq.

(ii) *Circumstances where wages need not be paid*. If an H-1B nonimmigrant experiences a period of nonproductive status due to conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience (*e.g*., touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (*e.g*., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), then the employer shall not be obligated to pay the required wage rate during that period, provided that such period is not subject to payment under the employer's benefit plan or other statutes such as the Family and Medical Leave Act (29 U.S.C. 2601 et seq.) or the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*.). . . .

20 C.F.R. §655.731(c)(7)

Mr. Vyas' voluntary absences for personal purposes discussed above are examples of periods for which wages are not required to be paid under Section 655.731(c)(7)(ii).

B. AUTHORIZED DEDUCTIONS FROM WAGES

20 C.F.R. §655.731(c)(9) regulates the withholding of authorized deductions from an H-1B worker's pay. In order to be authorized, a deduction must satisfy either subsection (i), subsection (ii), or all five parts of subsection (iii):

(9) "Authorized deductions," for purposes of the employer's satisfaction of the H-1B required wage obligation, means a deduction from wages in complete compliance with one of the following three sets of criteria (*i.e.*, paragraph (c)(9)(i), (ii), or (iii))—

(i) Deduction which is required by law (*e.g*., income tax; FICA); or

(ii) **Deduction which is authorized by a collective bargaining agreement, or is reasonable and customary in the occupation and/or area of employment (e.g., union dues; contribution to premium for health insurance policy covering all employees; savings or retirement fund contribution for plan(s) in compliance with the Employee Retirement Income Security Act, 29 U.S.C. §1001, *et seq*.),** except that the deduction may not recoup a business expense(s) of the employer (including attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer, e.g., preparation and filing of LCA and H-1B petition); **the deduction must have been revealed to the worker prior to the commencement of employment** and, if the deduction was a condition of employment, had been clearly identified as such; and the deduction must be made against wages of U.S. workers as well as H-1B nonimmigrants (where there are U.S. workers); or

(iii) Deduction which meets the following requirements:

(A) Is made in accordance with a voluntary, written authorization by the employee (Note to paragraph (c)(9)(iii)(A): an employee's mere acceptance of a job which carries a deduction as a condition of employment does not constitute voluntary authorization, even if such condition were stated in writing);

(B) Is for a matter principally for the benefit of the employee (Note to paragraph (c)(9)(iii)(B): housing and food allowances would be considered to meet this ``benefit of employee'' standard, unless the employee is in travel status, or unless the circumstances indicate that the arrangements for the employee's housing or food are principally for the convenience or benefit of the employer (*e.g*., employee living at worksite in ``on call'' status));

(C) Is not a recoupment of the employer's business expense (*e.g*., tools and equipment; transportation costs where such transportation is an incident of, and necessary to, the employment; living expenses when the employee is traveling on the employer's business; attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer (*e.g*., preparation and filing of LCA and H-1B petition)). (For purposes of this section, initial transportation from, and end-of-employment travel, to the worker's home country shall not be considered a business expense.);

(D) Is an amount that does not exceed the fair market value or the actual cost (whichever is lower) of the matter covered (Note to paragraph (c)(9)(iii)(D): The employer must document the cost and value); and

(E) Is an amount that does not exceed the limits set for garnishment of wages in the Consumer Credit Protection Act, 15 U.S.C. §1673, and the regulations of the Secretary pursuant to that Act, 29 CFR part 870, under which garnishment(s) may not exceed 25 percent of an employee's disposable earnings for a workweek.

20 C.F.R. §655.731(c)(9) [emphasis added]

The government argues that even if there was a loan (which it denies) subsection (c)(9)(iii)(E) limited Integrated to deducting no more than 25 percent of disposable earnings in collecting it. At page 87 of its initial post-hearing brief Integrated describes this 25 percent limit in the following terms:

> DOL made up an artificial cockamamie rule of how a loan should be deducted. DOL has the burden to prove how and why it invented the rule.

The "how" may be addressed fairly simply. The Department of Labor, having been tasked by Congress in 15 U.S.C. §1676 with enforcing the Consumer Credit Protection Act (CCPA), issued 29 C.F.R. part 870, and 20 C.F.R. §655.731(c)(9)(iii)(E). The latter regulation incorporates the 25 percent limitation on wage deduction that Congress enacted in the CCPA into situations like the present one, where the employer of an H-1B worker is collecting a debt through wage deduction.

20 C.F.R. §655.731(c)(9)(iii)(E) is certainly "artificial" in the technical sense of being the product of human activity rather than natural phenomena. In enacting the CCPA Congress found that the then-prevailing conditions in debt collection caused a "disruption of employment, production, and consumption [that] constitutes a substantial burden on interstate commerce." 15 U.S.C. §1671(a)(2). To deal with that burden Congress determined on a policy of leaving workers whose wages are being withheld for debt payment a certain fraction of their income during the period of garnishment. The figure that Congress settled on as a limit on garnishment was 25 percent of disposable earnings.

In drafting 20 C.F.R. §655.731(c)(9)(iii)(E) the Department of Labor applied that policy to the situation here, where an employer-creditor is collecting a debt on its own from an H-1B worker, without resorting to garnishment. The CCPA applies where the creditor has obtained a garnishment order through the legal system. When, as here, the creditor can simply withhold pay without the debtor being able to challenge the debt in court, the Department has incorporated the same statutory policy into regulations. That is the "why."

Integrated implies in its comments quoted above, and illustrated with unmistakable clarity by the action that it took on Mr. Vyas' pay, that it believes that creditors are entitled to temporarily pauperize their debtors by seizing 100 percent of their wages in order to collect a debt. It is entitled to that opinion and, if Congress had agreed, it and other creditors would be free to implement it. However, Congress did not agree. The policy of leaving debtors some income to live on may be "cockamamie" in Integrated's view, but was within Congress' discretion to enact into law, and within the Department's authority to incorporate into Section 655.731(c)(9).

C. REASONABLE AND CUSTOMARY DEDUCTIONS

At page 107 of its initial post-hearing brief, Integrated argues that the promissory note in this case is not governed by subsection (c)(9)(iii) with its limit of 25 percent, but by subsection (c)(9)(ii). The latter subsection provides for deductions that are "reasonable and customary in

the occupation and/or area of employment" and does not limit deductions to any percentage of disposable earnings.

It is true, as noted above, that Integrated has a history of granting loans to employees. At the hearing it presented documentation of such loans being made to Mr. Kulkarni in 2000, to Mr. Vyas in 2006, and to Mr. Latchimi-Narasimhan in 2008. At page 30 of its post-hearing reply brief, Integrated asserted that those loans were proffered at the hearing as representative examples of loans made to other employees over a course of years.

Granting that the type of loan at issue was "customary" within the company and the industry, it must also be "reasonable." Comparing the loan in this case to the examples of "reasonable and customary" deductions listed in the regulations shows clear distinctions. The loans to Mr. Vyas and the others were sporadic and individualized loans to particular employees and as such not closely similar to the more or less universal and permanent deductions for union dues, health insurance premiums, or retirement plan contributions. Furthermore, the method adopted of recouping the loan by taking 100 percent of the employee-debtor's pay until it was paid in full is scarcely a "reasonable" analogy to the deduction of comparatively small fractions of pay for union dues and other regularly recurring deductions.

Finally, for a deduction to be permissible under subsection (c)(9)(ii) it must not only be reasonable and customary, but "must have been revealed to the worker prior to the commencement of employment." The employment contract (CX 21) was signed on July 12, 2005 and does not discuss loans or their repayment terms. The promissory note (CX 3) was signed on July 15, 2005. In Integrated's answer to Mr. Vyas' counterclaim in the state lawsuit (RX 22) it stated that "Plaintiff denies existence of any verbal agreements with the Defendant on any matter." Therefore, based on Integrated's own representations, the loan and its repayment terms were not agreed to, either orally or in writing, when Mr. Vyas began his employment.

To summarize the application to this case of the requirements of subsection (c)(9)(ii), the issue of customariness, based on the evidence of other loans, is legitimately arguable. However, the claim for reasonableness depends on a strained analogy between temporarily withholding all pay from an employee and the periodic withholding of union dues, insurance premiums, and retirement plan contributions. Finally, the requirement that the deduction be revealed before the commencement of employment is directly contradicted by Integrated's own records. Even assuming for the sake of argument that Integrated could have structured its informal employee loan procedures so as to supersede the CCPA protections incorporated into 20 C.F.R. §655.731(c)(9)(iii)(E), it did not do so in this case.

D. WAGE ASSIGNMENT

At page 112 of its initial post-hearing brief Integrated argues that the withholding of pay in February and March 2006 was a wage assignment voluntarily agreed to by Mr. Vyas. It does not offer any language from the promissory note (CX 3) in support of that argument, and nothing in the note can be interpreted in that way.

The promissory note lists three different ways in which the debt can be settled:

1. (third paragraph) "This principal amount of the loan shall be payable by payroll deduction in twenty four (24) equal installments starting from one year from this Promissory Note."
2. (fifth paragraph) "Acceleration: If Mr. Vyas defaults on any installment payments or if Mr. Vyas terminates his employment with Integrated, the entire principal amount plus interest shall become due and payable on the date which is earlier of the default date or the date on which Mr. Vyas expresses his intent to terminate his employment with Integrated." This is the acceleration clause discussed earlier in this decision.
3. (sixth paragraph) "If Integrated terminates the employment of Mr. Vyas, Mr. Vyas would repay any unpaid balance of the loan and the interest within two years of the Promissory Note."

When the note was signed there were only three possibilities: either Mr. Vyas would remain employed, or he would quit, or Integrated would fire him. The note describes precisely the consequences of each of those three contingencies.

The only one of the three provisions that can possibly be described as a voluntary wage assignment is the first. If Mr. Vyas had remained employed by Integrated a deduction of $62.50 per pay period would have started in July, 2006 and would have continued for 24 pay periods to pay the $1,500.00 principal. That is what the parties agreed to in writing and is a clear example of what the legal authorities that Integrated cites (RX 1-4) mean by a wage assignment. It might be added that the dollar amount withheld would have been far less than 25 percent of his disposable earnings, so there would have been no issue regarding the interplay between the wage assignment and the 25 percent limit.

The other two contingencies involve the employment relationship ending before repayment of the loan was completed. The relationship actually ended in March, 2006, before repayment had even begun. In the case of Mr. Vyas either quitting (as actually happened) or being fired, the note provides that the debt would become due and payable. However, those paragraphs do not specify any particular means to enforce the debt, much less the extreme measure of 100 percent wage withholding to which Integrated actually resorted.

The fact that a debt is due and payable at a certain time does not give the creditor unlimited power to collect it by any form of self help that it might desire. An ordinary unsecured creditor may not garnish the debtor's wages nor seize his property merely because the loan has become due. The creditor must first obtain a judgment. With a court judgment, the creditor can obtain a garnishment order, but even then there are restrictions on the creditor's options. The garnishment cannot exceed the statutory 25 percent limit that Integrated considers "cockamamie."

When, as in this case, the creditor is also the debtor's employer, it has the wages that it is paying the employee as a revenue stream from which it can potentially collect the debt. This remedy is not the same as a garnishment resulting from the judgment of a court, but Department

of Labor regulations have subjected the employer's self help remedy in this situation to the same 25 percent limit.

The promissory note in this case, which Integrated drafted and has used since at least 2000, is very clear on this point. It provided for a voluntary wage assignment in one and only one situation—if Mr. Vyas remained employed for at least a year. That is the only wage assignment that he agreed to by signing the note, and it was never implemented.

The note did not provide for any wage assignment whatsoever in any other contingency, including the contingency that actually happened. Once again, even assuming for the sake of argument that Integrated could legally have drafted an enforcement provision that exceeded the 25 percent limit, it simply did not do so in this case.

E. CALCULATION OF ALLOWABLE DEDUCTION FOR LOAN REPAYMENT

This application of the CCPA rules to H-1B wages in accordance with 20 C.F.R. §655.731(c)(9)(iii)(E) does not affect the underlying validity of the debt. It merely limits the amount that Integrated was entitled to deduct per pay period when it resorted to wage deduction in order to collect that debt.

The CCPA defines the term "disposable earnings" at 15 U.S.C. §1672(b) as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Section 1673(b) of the CCPA lists several exceptions (spouse or dependent support, bankruptcy proceedings, and debts for taxes) that do not apply in this case.

The first pay period in controversy is January 21- February 3. Integrated acknowledged that Mr. Vyas worked the entire period. The first pay slip that was prepared (CX 10) indicated that his gross pay was $1,330.80 and that after deductions he was entitled to receive $1,017.32. Integrated issued a paycheck for this amount, and then stopped payment on that check and issued CX 11, the modified pay slip for that period.[1]

[1] I note parenthetically another issue that is raised by the payroll records that Integrated provided. The first of the two pay slips for the January 21-February 3 pay period (CX 10) lists the usual deductions for federal and state income tax, as well as Social Security and Medicare payroll taxes. The revised pay slip (CX 11) still lists Mr. Vyas as having worked 10 days and therefore to have earned his gross pay. If he earned his pay, then taxes were due on it, whether or not he received a paycheck. However, CX 11 shows no taxes withheld, and the entire gross pay, except for the $25.37 insurance deduction, applied to loan payment. It appears from CX 11, therefore, that Integrated applied not only the net pay due to Mr. Vyas, but the state and federal taxes that were due, towards payment of the debt. This anomaly may have been reconciled at some later date, but the pay records that were offered into evidence do not specify how, if at all, it was resolved.

The next pay period during which he worked was his last, February 18-March 3. During this period he worked for four days, two days of travel and two days working onsite for the Phoenix project. This entitled him to pay for four days during this pay period.

Based on the findings above, Mr. Vyas is entitled to pay for 14 days during the three pay periods at issue. His gross pay per pay period was $1,330.80. Therefore his gross pay for 14 days was $1,863.12.

Computing his disposable earnings within the meaning of the regulations requires accounting for required deductions. Under the CCPA, amounts required to be deducted by law are deducted from earnings to compute disposable earnings. On the pay slips in the record, the four amounts within that category are federal income tax, state income tax, Social Security tax, and Medicare tax. Insurance premiums, the fifth category of deduction listed in the pay records, are not among the sums that are deducted in order to compute disposable earnings.

The last pay slip on which Integrated credited Mr. Vyas with 10 days worked and issued him any pay was CX 10, covering January 21-February 3, 2006. Integrated later modified the figures, stopped payment on the check and issued CX 11 in its place. Although it was later superseded, CX 10 provides the best contemporary evidence in the record of the pay and deductions in a normal pay period.

CX 10 lists taxes withheld in each category. This table shows the amount for that pay period, pro rated for the 14 days for which Mr. Vyas is entitled to pay.

Category	**10 days (per CX 10)**	**14 days**
Federal Income Tax	$146.39	$204.95
Social Security Tax	$82.51	$115.51
Medicare Tax	$19.30	$27.02
Georgia Income Tax	$39.92	$55.89
TOTAL	$288.12	$403.37

Subtracting $403.37 for legally required deductions from total earnings of $1,863.12 leaves disposable earnings of $1,459.75. Twenty-five percent of this is $364.94, the maximum that Integrated could withhold for debt repayment during the three pay periods at issue. Subtracting these two figures ($1,459.75-$364.94) leaves $1,094.81.

Finally, insurance payments, unlike taxes, are not deducted as part of the calculation of statutory disposable earnings. According to CX 10-13, Integrated paid $76.11 in insurance premiums for those three pay periods, even when it was not issuing any pay to Mr. Vyas. Deducting this final amount from the earnings left after the maximum permissible loan repayment leaves $1,018.70.

This is a net figure, after deductions for taxes, which do not appear from the record to have been paid, and insurance premiums, which have. The documents provided indicate that

additional amounts are owed to federal and state taxing authorities but, as noted above, those may have been paid already in transactions with which I have not been provided. Whether they have been paid or are still due to be paid, I have no authority to enforce any such tax liabilities in this decision and order.

V. ORDER

It is hereby **ORDERED** that Respondent, Integrated Informatics, Inc., pay to Kunal Vyas $1,018.70 to reimburse him for wages improperly withheld.

A

KENNETH A. KRANTZ
Administrative Law Judge

KAK/jcb
Newport News, Virginia

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, Suite 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).