

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 April 2006

CASE NO.: 2005-DBA-00007

In the Matter of:

Disputes concerning the payment of
prevailing wage rates by

DUMARC CORPORATION,
Prime contractor,
and

AUTOMATIC FIRE PROTECTION SERVICE,
Subcontractor.

AND

Disputes concerning proposed debarment
for labor standards violations by

AUTOMATIC FIRE PROTECTION SERVICE,
Subcontractor,
and

TRISHA HANNAN,
Individually.

With respect to laborers and mechanics employed
by Automatic Fire Protection Service on Contract
Nos. 1242281 and 1242654.

DECISION AND ORDER

This proceeding is before me pursuant to the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*, the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 *et seq.*, and the U.S. Department of Labor regulations at 20 C.F.R. Part 5.

The Secretary of Labor (“the Secretary”) has brought claims against Dumarc Corporation (“Dumarc” or “Respondent”), the prime contractor; Automatic Fire Protection Service (“AFPS”), the subcontractor; and Trisha N. Hannan (“Hannan”), an individual, and former principal owner of AFPS. The Secretary alleges that AFPS violated the Davis-Bacon Act during its work on two projects in 2002 and 2003 at the NASA Jet Propulsion Laboratory (“JPL”) in Pasadena, California. In particular, the Secretary alleges that AFPS failed to pay the prevailing wage to five

employees who worked on the projects: Tim White, Johnny Olivares, Ramon Vasquez, Erick Casas, and Steven Tatsch. The Secretary also alleges that AFPS failed to keep accurate records of the hours worked by its employees and submitted falsified payrolls to Dumarco. The Secretary is seeking an award of back pay in the amount of \$45,634.66, and debarment of AFPS and Trisha Hannan. The contracting agency, JPL, is withholding \$45,634.66 at the Secretary's request.

Hannan, AFPS, and Dumarco have denied the allegations regarding underpayment, inaccurate record-keeping, and falsified payrolls. However, Hannan and AFPS did not contest any debarment.

PROCEDURAL HISTORY

The Secretary of Labor filed an Order of Reference (ALJX 1) on January 21, 2005. The order of reference included four exhibits: 1) a letter to Dumarco stating the basic claims and amount owed dated April 28, 2004; 2) a letter to AFPS/Hannan stating the basic claims dated April 28, 2004; 3) a letter from Dumarco disputing the claims and requesting a hearing dated May 10, 2005; and 4) letter from AFPS/Hannan disputing the claims and requesting a hearing dated May 4, 2005. Associate Chief Judge Thomas Burke issued a Prehearing Order on February 16, 2005. The Secretary filed a Statement of Claim on March 11, 2005. Dumarco filed a Denial of Claim (ALJX 4) on April 1, 2005. AFPS/Hannan filed a Response to Secretary's Statement of Claim on April 6, 2005. Judge Burke issued a Notice on April 12, 2005, stating that the parties had met the pre-hearing exchange requirements and the case would be assigned to an administrative law judge.

This case was assigned to me, and I issued a Prehearing Order (ALJX 2) on August 5, 2005. The Secretary filed an Updated Statement of Claim (ALJX 3) on September 1, 2005. Trisha Hannan filed a Response (ALJX 5) to the Secretary's Updated Statement of Claim on September 22, 2005. Dumarco submitted its Witness List (ALJX 7), Exhibit List (ALJX 8), and a Request for Judicial Notice (ALJX 9) on November 30, 2005. The Secretary submitted a Witness and Exhibit List (ALJX 6) on December 2, 2005.

On December 7, 2005, the Secretary filed a motion in limine to exclude the testimony of Dale Peterson and proposed exhibit 217 (ALJX 10). On December 8, 2005, Dumarco filed a motion in limine for order excluding testimony of Johnny Olivares, Tim White, and summaries therefrom, or alternatively, for continuance of trial (ALJX 11). On December 9, 2005, the Secretary filed a response (ALJX 12) to Dumarco's motion in limine.

A hearing was held on December 12 and December 13, 2005 in Long Beach, California. Hannan and AFPS failed to appear at the hearing, and were not represented by counsel.¹ TR at 5. Dumarco and the Secretary were represented by counsel at the hearing. Secretary's Exhibits ("SX") 1 through 22 were admitted into evidence. TR at 8-10, 100. However, SX 13, 14, 15, 20, and 21 were admitted on a limited basis, going to the weight of the evidence. Respondent's Exhibits ("RX") 201-268 were admitted into evidence, except that RX 217 was not admitted. TR at 12-13, 139-40, 187, 272. Administrative notice was taken of four of Respondent's

¹ On the second day of the hearing, Ms. Hannan briefly appeared, unrepresented by counsel, as a witness for Dumarco.

exhibits. TR at 15. Administrative Law Judge Exhibits (“ALJX”) 1 through 9 were admitted into evidence. TR at 14-15. At the close of the hearing, the record was left open for the submission of post-hearing briefs, which were filed by the Secretary and Respondent on February 24, 2006 and became part of the record as ALJX 13 and 14, respectively. TR at 272.

At the hearing, I heard arguments on Respondent’s motion in limine, which I denied based on 29 C.F.R. §§ 5.6(a)(5) and 6.5. TR at 21-27. With regard to the Secretary’s motion in limine, I examined Mr. Peterson about his qualifications to determine whether he was qualified as an expert. TR at 178-87. I rejected Mr. Peterson’s report (RX 217) as unreliable, due to his lack of qualifications as a forensic accountant or fire-sprinkler installer, the fact that his report was not specific to the 2002-03 time period or the circumstances of this case, and I found that information about the market rates for labor was irrelevant in contrast to published prevailing wage rates. TR at 187. I allowed Mr. Peterson’s testimony, going to the weight of the evidence, but limited it without further foundation to 1) his opinion with respect to the hours worked on the projects, and 2) his opinion with respect to the classification of the work that was done on the projects. TR at 189.

STIPULATIONS

The parties stipulated that Dumarco signed all of the contracts at issue. TR at 6.

ISSUES

According to the Secretary, the issues to be decided are: (TR 18-19)

- 1) whether the contracts at issue are subject to the requirements of the DBA;
- 2) whether the employees identified (Timothy White, Johnny Olivares, Ramon Vasquez, Erick Casas, and Steven Tatsch) all performed covered work on the contracts at issue;
- 3) whether the employees identified received the prevailing wage for their hours of work;
- 4) whether AFPS kept accurate records of the hours worked by all employees on the contracts at issue;
- 5) if not, whether AFPS, Hannan, or Dumarco can produce specific evidence to refute the estimate of hours compiled by the Secretary;
- 6) how much back pay is owed to the five employees;
- 7) whether AFPS and Hannan have disregarded their obligations to employees within the meaning of the DBA and its regulations.

FINDINGS OF FACT

This case involves federal contracts for renovation projects at NASA’s Jet Propulsion Laboratory (“JPL”) in Pasadena, CA. In June 2002, JPL entered into two separate contracts with Dumarco to install fire sprinkler systems: one contract for the Flight Hardware Logistics Program building (“the warehouse project”) and the other for Building 167 (“the cafeteria project”). SX 1; SX 2. Dumarco, the prime contractor, subcontracted with Automatic Fire Protection Service (“AFPS”) for both projects. SX 3; SX 4.

The following testimony was offered at the hearing held on December 12 and 13, 2005:

Michael Salsman, JPL construction contracting supervisor and witness for Secretary

Michael Salsman testified on behalf of the Secretary. TR at 39. He is employed by JPL as a supervisor in the construction contracting area. TR at 39. Mr. Salsman credibly testified that all of the contracts he enters into on behalf of JPL are government contracts subject to the Davis-Bacon Act because JPL is “a prime contractor to NASA, a federal agency, and JPL is administered by the California Institute of Technology for NASA.” TR at 45.

He testified that, on behalf of JPL, he signed the fixed-price construction contracts with Dumarc. TR at 40-41. He testified that, for all fixed-price construction contracts, JPL issues a letter to all subcontractors that defines the labor pass-down requirements, and each contractor and subcontractor must sign a form acknowledging these requirements. TR at 43. The evidence shows that Dumarc was notified of these requirements (SX 5, 6), and both Dumarc and AFPS signed forms acknowledging the requirements (SX 7, 8). David Hannan signed the forms on behalf of AFPS as its president. *Id.*

Mr. Salsman testified that JPL receives “certified payrolls that indicate workers are being paid in accordance with the prevailing wage for that particular subcontract.” TR at 46. He testified that JPL does not always conduct spot interviews of the employees of subcontractors like AFPS, and he has no knowledge of whether any spot interviews were conducted regarding AFPS’s contracts in this case. TR at 46. A spot interview would involve contacting the prime contractor to set something up, then going to the field and talking with a person on the payroll about what they are being paid. TR at 46-47.

He testified that JPL is withholding approximately \$45,000 in contract funds from Dumarc at the request of the U.S. Department of Labor. TR at 45-46.

Johnny Olivares, former AFPS employee and the Secretary’s witness

Mr. Olivares testified that he has been a pipefitter for seven to eight years. TR at 53. He worked for AFPS from 1998 through 2003. TR at 53. He testified that he was laid off about four or five times when Mr. Hannan, on behalf of AFPS, did not have enough work. TR at 77. He left AFPS after Mr. Hannan died because Trisha Hannan, Mr. Hannan’s wife, “shut the company down.” TR at 62, 71-72.

He testified that he installed fire sprinklers for AFPS on two projects at JPL: a metal warehouse project towards the end of 2002, and a cafeteria project that started at the end of 2002 and lasted until the beginning of 2003. TR at 54-55, 79-80.

Mr. Olivares testified that he worked with Mr. White and “three other guys,” one of whom was named Erick. TR at 55. (Mr. Olivares testified that he did not know the names of Tatsch, Casas, and Vasquez. TR at 77-78). He testified that all of the employees working for AFPS “all pretty much did the same thing,” which involved “just running a pipe machine and

installing [fire sprinkler] pipe.” TR at 59. He testified that he used a groover, a pipe machine, a pipe threader, and pipe wrenches in his work on these projects. TR at 55. He emphasized that all of the employees had the same job duties and were doing pretty much the same type of work. TR at 90-91. Comparing himself to Mr. White, Mr. Olivares stated, “We pretty much did the same thing. He just knew more about the job than I did.” TR at 90. He also noted that Mr. White had used a company credit card. TR at 88-89.

He testified that the JPL projects required at least two people. TR at 77. He testified that Mr. White “pretty much followed the same schedule.” TR at 56. However, he testified that there might have been a couple of occasions when Mr. White worked at JPL without him. TR at 74. He testified that “the other three guys weren’t there most of the time. They were just pretty much there occasionally.” TR at 55. The other three employees “would follow the same amount of hours whenever they would be there.” TR at 56. He testified that Mr. Hannan did not come to any of the projects, because he was working on the business for AFPS from his home/office. TR at 78.

He testified that he typically worked five days a week from around 6:30 a.m. to 2:30 p.m. TR at 56, 81. However, he conceded that he did not always work a full day. TR at 82. He testified that he did not work overtime for AFPS. TR at 81.

Mr. Olivares testified that he normally picked up the company truck from Mr. Hannan’s house at about 5:00 a.m. and drove it to the job site, occasionally giving a ride to Erick. TR at 56-57, 62. He testified that he would drop the truck back off at Mr. Hannan’s house after work at about 3:30 or 4:00 p.m. TR at 61-62. He testified that he and Mr. White had separate trucks during the time period of the JPL contracts. TR at 83. Mr. Olivares stated, “My time would start when I would pick up the company truck. That was the agreement for me going to Dave’s to pick up the company truck....I wasn’t always at the job site.” TR at 69.

Mr. Olivares testified that AFPS was involved in other projects in 2002. TR at 64. He testified that he worked for AFPS installing fire sprinklers on other projects, including Orange Bakery (TR 67), Commerce (TR at 68), Aerojet (TR at 70), and HBIC (TR at 72-73). TR at 87. Although he could not recall many details, Mr. Olivares testified that most of these projects required one or two people, usually himself and/or Mr. White. TR at 68, 77. He could not recall working on some of the other projects during that period. TR at 67-68, 70-71, 74-76, 87-88. Mr. Olivares testified that he was “pretty much at JPL most of the time” during the contract period, but he conceded that he was not there all day every day. TR at 73-74. He testified that he could not recall ever working on a side project on the same day as one of the JPL projects. TR at 82, 92. However, at a different point in his testimony, he more credibly recalled that one period “at JPL when that job started the cafeteria wasn’t moving that fast, so what we would do is go take care of these other jobs. And then we would go back to JPL.” TR at 73-74. Mr. Olivares testified that he did not work for anyone other than AFPS during the time period at issue. TR at 83.

Mr. Olivares testified as to the JPL gate log procedure. TR at 57. Upon arriving at JPL, he had to stop at the security gate, sign in on the gate log (SX 10), and show a driver’s license in order to get into the facility. TR at 57. He also testified that at the security gate, he would also

he issued a vehicle permit card that enabled him to drive around the premises. TR at 58. He explained that the JPL gate log has the signature of the person signing in, their driver's license number, the number of the vehicle permit that he is given, the name of the company that is the contact at the job site (Dumarc, in this case), the time they signed in, and the time they signed out. TR at 57-59. He testified that he would not believe the JPL gate logs were wrong because he stated, "one time I forgot my driver's license, and they wouldn't let me in the premises." TR at 74. He testified that each driver and passenger must sign in separately. TR at 33.

Mr. Olivares testified that he was paid \$14 per hour and received a raise to \$15 per hour around when the cafeteria project started in December 2002. TR at 60 and 118. He testified that he did not know what the other employees were paid. TR at 64. He stated that he had no idea what Mr. White was paid, but stated, "I'm sure he was probably making more than me. He's more experienced." TR at 90.

Since he was going to Mr. Hannan's home/office every day with the truck, he dropped off the employee's hourly time cards (RX 260). TR at 65. He testified that Mr. Hannan pretty much left the door to his home/office unlocked so he and Mr. White could drop off time cards and access other company documents. He testified that "Dave [Hannan] wasn't really pushy about time cards. There would be times where it would take me a month before I would fill one out, so I would just put pretty much anything on the time card and turn it in just to put in my hours. Dave would pretty much know." TR at 66. However, he denied that the hours listed on his time card were estimates. TR at 69. He also testified that some of the signatures on his time cards did not look like his. TR at 75, 84-85. Mr. Olivares testified that an entry for eight hours on his time card included lunch, but it is unclear that he understood the question. TR at 69. Later, he testified that he was seeking unpaid compensation for his lunch hour. TR at 79.

Mr. Olivares testified that envelopes would be left on the floor of the company truck for him to distribute to the other employees. TR at 61, 63. He assumed that Mr. Hannan put the payments in the envelopes. TR at 63. Although he did not open the envelopes, he believed that they contained cash because of their thickness and by seeing through the envelopes. TR at 80-81. Mr. Olivares testified that some of the envelopes contained cash. TR at 81. His envelope contained his check and a receipt (SX 11). TR at 61, 84. He did not receive any cash. TR at 80.

He testified that he assumed the checks were signed and receipts were filled out by Trisha Hannan. TR at 61, 65. He believed that she was responsible at AFPS for keeping the company payroll. TR at 61, 80. However, he later testified that he believed Trisha Hannan would fill out the paperwork and Mr. Hannan was the only one to sign the checks. TR at 89.

Le-Ha Tran, Secretary's wage and hour investigator

Ms. Tran has been a wage and hour investigator with the U.S. Department of Labor for nine years. TR at 93, 163. She has done approximately ten government contract investigations. TR at 163. In July 2003, she was assigned to investigate allegations that AFPS did not pay its employees the prevailing wage rate. TR at 93. She based her investigation on the contracts, the certified payrolls, the wage determinations, the JPL gate logs, the Dumarc superintendent logs, and the employees' statements. TR at 106, 108.

First, she interviewed Mr. Olivares and Mr. White each twice, in July 2003 in person and in August 2003 over the phone. TR at 94, 97. She testified that both Mr. Olivares and Mr. White told her that they had not seen any wage rate notice posted at their job site. TR at 95, 97.

Ms. Tran explained that she took a written statement (SX 12) from Mr. White during the course of the interview. TR at 98-99. The statement is written in her handwriting, but Mr. White reviewed, corrected, and signed it. TR at 99-100. She also took an additional, typewritten statement (SX 13) from Mr. White over the telephone, which he confirmed orally but never signed. TR at 100-01.

In the first statement he gave to Ms. Tran, Mr. White stated that he worked for AFPS for about eight years. SX 12 at 18. Between July 15, 2001 and April 26, 2003, he worked on four projects at JPL, including the metal JPL warehouse project and the cafeteria project, both of which began about August 15, 2002. SX 12 at 18. He stated that the warehouse project ended around the middle of April 2003, but they did not finish the cafeteria project because they had to leave the company after Mr. Hannan died. SX 12 at 18. He stated that he worked on these two projects with Johnny Olivares and three other employees who were paid in cash and not on the AFPS payroll. SX 12 at 19. He stated that, for these last two projects, they alternated working one week at a time on each project. SX 12 at 21. He stated, "I had a title of a foreman but most of the time I did the same type of work as Johnny Olivares did, the work of a pipe [fire] sprinkler fitter...." SX 12 at 18. He stated that his work involved laying out the locations of the new fire sprinklers, following the fire protection code, measuring pipes, installing pipe and sprinklers, and installing underground fire protection connections for water supply. SX 12 at 18-19. He stated that he used a pipe threader, pipe wrenches, power tools, and ladders in his work. SX 12 at 19. He stated, "The 3 other employees worked in the last 2 projects when we needed extra help. For any day they worked, they worked a complete day, same hours worked as Olivares and I did. Most of the time, these 3 employees worked as fabricators, cut the pipes, thread the end of the pipe for connection to the next pipe. SX 12 at 20.

Also in his first statement, Mr. White stated, "In these 4 projects [at JPL], most of the time Johnny Olivares and I worked exclusively for these projects. Very rarely did Olivares and I work on [a separate] regular job for 1 or 2 days during those project[s] performance." SX 12 at 19. He stated that usually worked 5 days a week, Monday through Friday, from 6:00 am to 2:30 pm with a half-hour lunch. SX 12 at 21. He stated that he never worked more than 40 hours a week. SX 12 at 21. He stated, "Most of the time Johnny Olivares and I worked together as a team in those 4 projects at JPL and we had almost the same hours worked each week." SX 12 at 21. He recorded his hours on time sheets to submit to AFPS at the end of each week. SX 12 at 19. He stated that Mr. Olivares used to drop off the time sheets and pick up the paychecks when he got the company truck from Mr. Hannan's house. SX 12 at 19. However, he stated that "For the last 6 months in our employment, we had our equipments [*sic*] at the job site and Olivares did not have to pick up and return equipments [*sic*] to the company. During that last 6 months, I called in on Friday to Trish Hannan the hours worked of the whole crew. On Monday, I came in to the company to pick up Olivares' and my pay checks and cash in envelopes for the other employees." SX 12 at 19-20. He stated that he was paid \$17 per hour by check. SX 12 at 20-21. He did not receive any health insurance or vacation pay, but that he received holiday pay for

Thanksgiving, Christmas, and New Year's Day. SX 12 at 21. He also described the procedures used for the JPL gate logs and the Dumarc superintendent logs. SX 12 at 20. He stated that the employees' time sheets and the Dumarc superintendent logs showed the hours worked on each project. SX 12 at 21. He also stated that he did not see any wage rates posted at the job site. SX 12 at 21.

In the second statement he gave to Ms. Tran, Mr. White clarified his hours and pay: "For each week, I received 24 hrs worked by check at a rate of \$17/hr in a gross amount and cash pay of \$240 to \$260." SX 13 at 23. He also added, "In 2002, there was a period of time that both Johnny Olivares and I were on unemployment since we had no work with Automatic Fire Protection Service." SX 13 at 23.

Ms. Tran testified that, when she first interviewed Mr. Olivares, he did not tell her about any other employees besides Mr. White and himself. TR at 147. After learning from Mr. White that other employees had worked on the projects, Ms. Tran asked Mr. Olivares in her second interview about the other employees. TR at 148. Mr. Olivares explained that he had not told her about those other employees before because he knew they had been paid in cash and were not on the payroll, "so he didn't think we can do anything for those employees." TR at 148.

She obtained some tax records (SX 9) and time cards (SX 11) from Mr. Olivares. TR at 96. He told her that he received wage receipts with his paychecks. TR at 96.

In addition to interviewing these AFPS employees, Ms. Tran gathered documentary evidence from various sources. Around August 2003, she contacted Dumarc and obtained copies of the contracts and subcontracts (SX 1,2,3,4); labor standards notices (SX 5,6,7,8); the certified payrolls (SX 14,15); the Dumarc superintendent logs (SX 16,17); and the wage determinations (SX 18, 19). TR at 104-06.

She contacted JPL and obtained copies of the JPL gate logs. TR at 108, 172-73. Mr. Olivares and Mr. White had previously explained to her the gate log procedure. TR at 95, 98. She testified that she asked someone at JPL why the gate logs were incomplete, but they stated that they did not know and did not have any further information to provide. TR at 173. She testified that it was her understanding that the employees themselves fill out all of the information on the gate logs, including the sign-in and sign-out times. TR at 174. She also testified that a JPL official told her there were two gate logs, one for customers and other visitors, like herself, and another for contractors and employees. TR at 175.

She also spoke with Dale Lankford, a representative for AFPS. TR at 102. He denied knowledge of any government contracts and refused to provide documents. TR at 102-03. There was some confusion that Mr. Lankford did not think these employees had worked on any government contract or contract with Dumarc because "Dumarc" was not referenced on any time cards; however, this was because the time cards listed "JPL" as the job. TR at 142-44.

At the end of her investigation she received some of Mr. Olivares' time cards (RX 260) from AFPS through Dale Lankford. TR at 140-42. She finished her investigation in November 2003. TR at 143. Because she received the time cards so late, she did not have an opportunity to

question Mr. Olivares about them. TR at 149-52. She believed that time cards were not accurate anyway because AFPS delayed in providing them and the employees' signatures did not seem to match. TR at 152-53. She also felt the time cards were less reliable than the JPL gate logs because some of the time cards were poorly copied, not signed at all, or had questionable signatures. TR at 171. Thus, she believed that the JPL gate logs and the Dumarc superintendent logs were more valid than the time cards. TR at 144. She felt the JPL gate logs were the most reliable because the employees have to show their ID and fill out information about the company they are working for and their vehicle in order to get a badge to enter. TR at 170-71. She testified that she experienced this procedure herself when she visited JPL during her investigation. TR at 171.

Ms. Tran explained that the certified payrolls must be submitted weekly. TR at 103. She testified that, to determine whether the certified payrolls in a Davis-Bacon Act case are correct, she always begins by looking at the contract, the wage determination, and the certified payrolls. TR at 103. In this case, she also compared the certified payrolls with the Dumarc superintendent logs (SX 16, 17), the JPL gate logs (SX 10), and the statements she had taken from the employees (SX 12, 13). TR at 103-04, 111-14. She credibly determined that the certified payrolls were false because they usually only listed one or two employees per day when two or more were actually working, and the certified payrolls only went until December 2002 when projects actually went until April 2003. TR at 111-14. Thus, she determined that AFPS had not paid its employees the prevailing wage rate. TR at 114.

To calculate the back wages owed, she first determined the hours worked by the AFPS employees. TR at 114-17. She based her calculations primarily on the JPL gate logs (SX 10). TR at 108, 114. She assigned hours to each project according to the Dumarc superintendent logs. TR at 116. She went through all of the JPL gate logs and found the names of Tim White, Johnny Olivares, Erick Casas, Ramon Vasquez, and Steven Tatsch, as signing in under AFPS and/or Dumarc. TR at 109. She noted that Erick Casas and Ramon Vasquez were often signed in as arriving with Tim White or Johnny Olivares. TR at 108-11. Thus, she used the JPL gate logs to determine if an employee worked at all on a given day. TR at 157.

Where the JPL gate logs were incomplete, Ms. Tran looked at Dumarc superintendent logs and employee testimony. TR at 114-15. Less than half of the JPL gate logs were incomplete in that they showed an employee signing in but not signing out. TR at 116, 146. The Dumarc superintendent logs were also incomplete at times. TR at 146. If the JPL gate logs showed an employee signing in but not out, and the Dumarc superintendent log was incomplete or did not show them there, she gave them the benefit of having worked 8 hours. TR at 157. She based this on the fact that Mr. Olivares and Mr. White had told her that the employees generally worked five days a week, eight hours a day on the JPL projects. TR at 149.

Next, Ms. Tran calculated back wages, which is the difference between the prevailing wage and the wage actually paid times the number of hours worked. TR at 117. With regard to the wages paid to the employees, Mr. Olivares told her that he was paid \$14 per hour up to December 15, 2002 sometime, then \$15 per hour. TR at 118. This was corroborated by the wage receipts that Mr. Olivares provided to her. TR at 118. Mr. White stated, "For each week I received 23 hours work by check at a rate of \$17 an hour and a gross amount of \$408 and cash

pay of \$240 to \$260.” SX 13; TR at 158. She was told that the three other employees were paid in cash. TR at 160. She did not have any statement or payroll records for the other three employees, and she was unable to obtain any estimate of their pay rate from Mr. White or AFPS, so she calculated their back wages based on zero wages paid. TR at 117, 160-63. Also, Ms. Tran testified that “the two worker[s] that I interview[ed] said that they did not receive any fringe benefit, and I didn’t receive any evidence about benefit payment from [AFPS].” TR at 107.

With regard to the prevailing wage rate, Ms. Tran testified that the “proper wage determination is referenced in the fifth sheet of the contract, and it is attached to the contract also.” TR at 106. She testified that she determined that the proper classification for the AFPS employees was Plumber and Pipe Fitter (SX 18 at 165, SX 19 at 189). She determined that this was the proper classification because Mr. Olivares said he was a pipe fitter and the described his work as installing fire sprinklers and cutting and installing pipe. TR at 164-65, 169. She also noted that Mr. White was classified as a pipe fitter on the certified payroll. TR at 165. In response to questions why she did not classify the employees as “fire sprinkler fitters,” she stated, “At the time when I make that determination I discuss that with my supervisor, and we agree on the classification that I used to compute the employee.” TR at 168. The prevailing wage for the Plumber and Pipe Fitter classification was \$38.21, including fringe benefits. TR at 107. She acknowledged at trial that using the Fire Sprinkler Fitter classification would result in a higher back wage amount owed for each employee. TR at 171-72.

Based on all of this evidence, Ms. Tran calculated that the following amounts of back pay were owed: Tim White - \$9,343.01; Johnny Olivares - \$15,553.17; Ramon Vasquez - \$3,935.63; Erick Casas - \$10,994.93, and Steven Tatsch - \$5,807.92. The total amount being sought is \$45,634.66. SX 20.

She concluded that Trisha Hannan and AFPS should be debarred because certified payrolls were false and they did not pay the prevailing wage rate. TR at 120-21. She concluded that Trisha Hannan was involved in the company’s payroll. TR at 120. She also determined that Trisha Hannan played a role in management of the company, based on a change order that she signed in June 2003, after Mr. Hannan had died. TR at 121-22, 169-70.

She asked JPL to withhold payment to Dumarc, and it was done with Dumarc’s knowledge and consent. TR at 122-23.

Trisha Hannan, wife of deceased AFPS owner, David Hannan, and witness for Respondent

Ms. Hannan testified that David Hannan died on April 15, 2003, and that Mr. White said he wanted to carry on the business with Ms. Hannan as owner because he “wanted the business to become owned by a female so he could get more work.” TR at 135-36.

Ms. Hannan testified that she had a regular day job as a financial analyst, but that she handled the AFPS payroll for Mr. Hannan “off and on during his illness.” TR at 133. She testified that, to her knowledge, the employees filled out their own time cards, and they were left on the desk in the home office. TR at 130-131. She testified that she had never seen Mr. Olivares sign his time cards, but that she did not see or have any reason to believe anyone else

had signed them for him. TR at 131-32. However, she admitted that sometimes Mr. White called and left a voicemail message with the numbers to be listed on the time cards. TR at 132-33. She testified that, when she handled the payroll, she just left it on the desk in the home office. TR at 135. She testified that she did not pay any of the employees in cash, she did not see any envelopes with cash in them, and Mr. Hannan never told her that he paid the employees in cash. TR at 135, 137. Although she was not sure that the employees were explicitly granted access to the home office, she testified that there was no lock on the office door and that she did not know if they were coming and going during the day while she was at work. TR at 134.

Dale Peterson, Respondent's expert witness

I examined Mr. Peterson regarding his qualifications as an expert, and concluded that his report should not be admitted. However, I allowed Mr. Peterson to testify on limited basis with respect to 1) the proper classifications for the employees on these projects, and 2) the total number of hours he believes would have been required for the two projects. TR at 187, 189.

He explained his methodology for calculating the number of hours required for the two projects. TR at 183-84. He testified that he first reviewed the Dumarc superintendent logs and the JPL gate logs. TR at 190. However, he found that the JPL gate logs "close to half or more than half [of the days] didn't have a sign out time. TR at 190. Based on his own experience as a contractor, he opined that a superintendent's log is "more of a generalistic overview of the project" done first thing in the morning that does not account for when employees leave or come and go on a given day. TR at 190, 198. He stated that "without any time out [on the JPL gate logs] and knowing how a superintendent's log is created, I went back to the project itself and what the work consisted of. I felt that was a better means to the outcome of how many hours it would take and the classifications." TR at 190.

Next, he reviewed plans for the projects, and then visited the job site and took pictures to be "sure the plans were similar to the project itself." TR at 183. Then, he digitized the plans using Timberline Software to get "an accurate count of the amount of [sprinkler] heads for each project and what the scope of the work was." TR at 183. He also used RS Means Construction Software and book from 2006 (he testified that the hours estimates did not change over time TR at 220). TR at 187, 200, 214.

Then, he interviewed two union fire sprinkler companies and "asked them a number of questions concerning that many heads and that type of a project and the cost percentages for each for the labor, the materials, profit and overhead, and the design piece." TR at 183, 202. One of the companies, Qualco Fire Systems, estimated 237 hours for the cafeteria project and the other, G&M Fire Protection, estimated 235 hours, so Mr. Peterson picked one estimate since "they both gauged it the same." TR at 202-04. Mr. Peterson conceded that both of these companies are union companies, and that he did not interview any non-union companies. TR at 203-04.

Based on his interviews with the two other companies, he found that the number of hours being used for calculating back wages "seemed very excessive" for the size of the projects. TR at 184. He emphasized that the sprinkler systems are pre-engineered and fabricated off-site, such that they "the only thing they're doing direct on-site is just installing." TR at 184. He stated that

four employees were “too many people to work on that system.” TR at 201. Mr. Peterson emphasized that the system is “fabricated off-site. It’s very minimal as far as grooving and pipe threading on-site.” TR at 201. (He explained in detail what an off-site fabricated system is and what work is needed to install it. TR at 218-19). To explain the difference between the number of employees he recommended (2) and the number actually used on these projects (sometimes up to 5), he speculated, “I believe in my experience that they came over to help move and do the heavy lifting on their way to another project, and that’s possibly the reason why there’s no ending time on their days.” TR at 201. However, Mr. Peterson conceded that he had not cross-referenced whether the days on which there are no ending times are the days in which there were four employees or three employees on the site. TR at 201.

In summary, Mr. Peterson testified that his conclusions regarding how many hours the projects should have taken were based on his interviews with two union companies, his analysis of the plans for the projects, his experience, the RS Means Building Construction Cost Data, and the Timberline Construction Cost Data. TR at 207. Based on all of his research and calculations, Mr. Peterson concluded that the cafeteria project should have taken one journeyman and two laborers 237 hours each, and the warehouse project should have taken one journeyman and one laborer 84 hours each. TR at 196-97. However, Mr. Peterson conceded that employees work at different speeds, sometimes due to their experience. TR at 207. He also acknowledged that unforeseen delays can occur in construction projects, and he acknowledged that the Dumarc superintendent logs showed some gaps in where the AFPS employees were not working due to problems and delays. TR at 207, 216-17. He also conceded that a subcontractor would take more time if they were inefficient. TR at 214. Mr. Peterson testified that his hours estimates did not include time for off-site labor, such as driving to the job-site, because that is not paid at the prevailing wage rate. TR at 219.

Mr. Peterson also spoke with Mike Werta at Sprinkler Fitters Union Local 709 regarding “union rates and the Davis Bacon prevailing wage” and the classifications of employees that would be used on these projects. TR at 183-85. He learned that these projects would normally be done by one fire sprinkler fitter, which is a different classification and rate than a pipe fitter, and one apprentice/helper. TR at 184-85. The apprentice/helper would be paid a percentage of the fire sprinkler fitter prevailing wage, depending on how many years he had been an apprentice and his skill level. TR at 185, 211-213.

Thus, Mr. Peterson testified that a practical contractor would have done these projects with the following employees: one skilled journeyman and two helpers for the cafeteria project, and one journeyman and one helper for the warehouse project. TR at 192, 199-200, 208. However, he conceded that a contractor might distribute the work differently, and could even have all journeymen working on a project, especially if cost were not a factor. TR at 209.

Mr. Peterson opined that Mr. White was a journeyman level fire sprinkler fitter based on his experience and the fact that he was more instrumental in the company. TR at 214. Mr. Peterson thought that all of the other employees on this project – Johnny Olivares, Steven Tatsch, Erick Casas, and Ramon Vasquez – should all be classified as labor group 4. TR at 192-195. In particular, he emphasized that he did not think Mr. Olivares should be classified as a journeyman fire sprinkler fitter or pipe fitter, but his reasons were varied and not very credible

(e.g., Mr. Olivares was not paid at the journeyman rate; he did not know the names of some of his coworkers; he did not know how much others were paid; he did not state that he put valves together or was instrumental in the design or worked with engineers). TR at 193-96, 209-11.

Mr. Peterson testified that if an employee who was doing the work of an apprentice/helper was not certified as an apprentice, the appropriate classification for that employee would be Laborer Group 4. TR at 192-94, 212. He stated that a “group four laborer would work [as] a helper on a fire sprinkler job.” TR at 194. According to Mr. Peterson’s analysis, if “they’re working, they would fall under the pipe fitter classification and [they would fall under] a group four laborer if they’re just helping.” TR at 194. Mr. Peterson clarified by stating that a “journeyman pipe fitter would put the gauges and valves and the wet pipe stand together, and an apprentice or laborer...would spread the pipe, get everything ready, help lift items, but he wouldn’t put the system together.” TR at 196. He felt the Laborer Group 4 classification was appropriate because employees in that classification do work handling of “all forms of tubular material” including pipes, but “no joint pipe and stripping of the same.” TR at 193. However, Mr. Peterson testified that he did not know the meaning of “joint pipe” or “stripping of same,” and he assumed “joint pipe” was the “just the joint of a pipe.” TR at 193.

James Brown, Dumarc construction superintendent and witness for Respondent

Mr. Brown testified that he has been a construction superintendent for Dumarc for about 20 years. TR at 221. He testified that Dumarc has been doing projects at JPL for about 15 years, including these two projects from October 2002 to May 2003. TR at 221-22. He testified that AFPS had been working with Dumarc for five to six years. TR at 226. Mr. Brown testified that he was the superintendent responsible for the warehouse project, and Bucky Glase was responsible for supervising the cafeteria project. TR at 230, 234.

Mr. Brown testified that he completes daily superintendent logs for Dumarc with information for each subcontractor about the number of employees, number of hours, and the tasks accomplished each day (SX 16). TR at 224. He stated that “first thing in the morning when all the [sub]contractors arrive at the job site their foreman will come to my trailer, and we will discuss the tasks for the day.” TR at 225. He testified that he asks each foreman how many employees will be there that day and whether they will be working all day. TR at 225-26. He testified that although he observes employees on the job site, he relies on the foreman’s statement about his manpower on the project. TR at 225.

Consequently, I do not give Respondents’ superintendent logs very much weight as the information contained therein is not verified on a daily basis by Dumarc despite Mr. Brown’s later testimony that he is around the job site all day and can verify that the information provided by the foreman. TR at 229. In fact, he testified that he “didn’t make sure people weren’t leaving early,” and that he would not know that someone left early unless they told him. TR at 239. Moreover, Mr. Brown testified that he does not actually fill out the daily superintendent’s log until later in the day when he has time, usually about 1:30 in the afternoon. TR at 225-26. He testified that he believes the information provided by Mr. White on behalf of AFPS for the superintendent’s logs was accurate. TR at 229.

Mr. Brown testified that he believed that AFPS completed their work on the project in an efficient manner, and the delays that occurred were due to unforeseen obstacles that are typical in construction. TR at 233. He explained some of the obstacles that had arisen in these projects, including difficulty locating the underground fire line and turning off the water in the line, which had resulted in AFPS not being able to work on certain days. TR at 231-32, 235-36.

He testified that during these projects, he observed only Mr. White and Mr. Olivares working “pretty much all the time”. TR at 232-33. He testified that they had other employees helping them “a very low percentage...maybe 10 percent of the time.” TR at 233. He testified that the other employees were needed when they had additional piping to go in, because “it’s very heavy, and they needed additional help to lift it and tie it in.” TR at 233. He testified that this might occur at any point in the project. TR at 233. These other employees were just “manhandling the pipe.” TR at 233.

Mr. Brown testified that in his experience working with AFPS, Mr. Hannan ran the business, but that Mr. White ran the field operations, such that Mr. Brown only saw Mr. Hannan on the job site once. TR at 228. He testified that Mr. White told him that Mr. Hannan had died, and that “the company was going to remain in business and [Mr. White] was going to go ahead and run the business.” TR at 227-28.

He testified that AFPS had one company truck, which was only used for transporting tools, since construction materials were delivered by service companies. TR at 236-37. He testified that the company truck was not used every day, and that the employees arrived in their personal vehicles (it is noteworthy that he was able to describe all of their vehicles in detail). TR at 238. He did observe Mr. Olivares driving the company truck at times. TR at 237.

Mr. Brown also clarified that JPL gate log procedure. TR at 223-24. He stated that there are two different logs and sets of procedures: one for construction workers and one for service contract workers. TR at 223-24. Construction workers are required to enter through the south gate and sign in when they arrive. TR at 223. He explained that the worker fills out each item on the gate log, not the security guard. TR at 223. When they exit the site, they must turn in their daily badges and vehicle permits, but they are not required to sign out. TR at 223-24. In contrast, service contract workers use other gates and are required to sign out when they leave. TR at 223-24. He explained that construction workers only log in once per day, but their badge lasts for the whole day. TR at 238-39. He testified that a worker “can drive out of JPL at lunchtime, show them your badge, tell them you’re going to lunch, leave, come back in at any time, show them your badge, [and] go back to the job site.” TR at 238-39.

Valente C. Morales, President of Dumarc and witness for Respondent

Mr. Morales is the president of Dumarc. He testified that he had known Mr. Hannan for approximately twelve years and Mr. White for about eight years. TR at 240. In his position of president of Dumarc, Mr. Morales testified that he would see certified payrolls from subcontractors coming into Dumarc’s office, but that he did not review them. TR at 260. He stated that Jackie Barnes would review the certified payrolls to ensure that the format was

correct, but that it was not her responsibility to verify the hours because they “relied on self-certification” of the subcontractors. TR at 26061.

Mr. Morales testified that he reviewed the JPL gate logs and highlighted the names of each AFPS employee. TR at 243-44. He compared the JPL gate logs to the Secretary’s hours. TR at 244. He found that the hours matched early on, but that he “noticed as [he] proceeded into the year 2003 the employees for Automatic Fire Protection, the gentlemen...were signing in, but they were not signing out.” For every day when an employee did not sign out, the Secretary had assumed that the employee worked until 2:30 pm.

Mr. Morales recalculated himself the hours for Tim White, Johnny Olivares, and Steven Tatsch by looking at the number of hours from the Dumarc superintendent logs for those days in which an AFPS employee did not sign out. TR at 244. He testified that for any workday over six hours, he subtracted a half hour for lunch, despite the fact that lunch breaks were not listed because it is not the normal practice for Dumarc supervisors to record lunch breaks in the superintendent logs. TR at 248. He testified that he deducted time for lunch because Dumarc superintendents are required to instruct workers to take lunch time. TR at 259. Mr. Morales stated that his calculations only included hours the employees were at the JPL site. TR at 256.

He found that Tim White worked 367.25 hours, Johnny Olivares worked 519 hours, and Steven Tatsch worked 67.5 hours. TR at 244-45, 249. Although he found similar discrepancies in the hours calculations for Ramon Vasquez and Erick Casas, he accepted the Secretary’s calculations for those employees because “it was a tremendous amount of work going through these things.” TR at 245. I find Mr. Morales’ calculation of hours worked for Mr. White, Mr. Olivares, and Mr. Tatsch more credible than the Secretary’s hours for these individuals because they more accurately reflect the JPL gate logs and incorporate deductions for lunch and specific days where the evidence shows that these individuals did not work complete eight-hour workdays at JPL.

Based on these recalculations of the hours worked, Mr. Morales also did his own calculations of the back wages owed to these employees. TR at 248-49. He used the prevailing wage for the Labor Group 4 classification. TR at 248. The prevailing wage rate he used was \$33.46. TR at 255. He stated that he applied an offset for wages paid in the amount of \$18 per hour for Johnny Olivares, Steven Tatsch, Ramon Vasquez, and Erick Casas, because his attorney directed him to do so. TR at 249, 252-54. He testified that this number was not based on actual knowledge of what they were paid, but rather, was based on information in RX 260 that listed total amounts paid over a time period. TR at 252-55. He calculated that Johnny Olivares was owed \$8,023.74, Steven Tatsch was owed \$1, 043.55, Ramon Vasquez was owed \$1592.38, and Erick Casas was owed \$4,448.62.

Mr. Morales did not calculate back wages for Mr. White, because he believed Mr. White was exempt due to the fact the “he was not a worker.” TR at 250. He testified that this belief was based on the fact that when he visited the job site, which was about twice a month for a half hour, he never observed Mr. White actually installing pipe. TR at 250-51. He also based his belief upon the feeling he had gained over the years of contracting with AFPS that Mr. White “was always the guy running the company pretty much as far as the field.” TR at 250.

Ray Calderon, business representative for Sprinkler Fitters Local 709 and witness for Respondent

Mr. Calderon testified that he mostly works with the state prevailing wage system, and only knows the “outlines” and “highlights” of the Davis-Bacon Act. TR at 269. He testified that on projects such that these that involved installing fire sprinklers, two classifications of employees would be used: a journeyman fitter and an apprentice. TR at 269-70. He stated that an apprentice is “[a]ny individual that is registered with the State of California to be in a state certified apprenticeship program.” TR at 270. He testified that if a job required both a journeyman and an apprentice but the person working as the apprentice was not certified as an apprentice, that person would be paid at the journeyman rate. TR at 270. He testified that for union work, there is only one prevailing wage per county that applies to every journeyman performing any kind of sprinkler fitter work. TR at 270-71.

CONCLUSIONS OF LAW

1. Contracts at Issue Are Subject to the Requirements of the DBA

Mr. Salsman testified that all of the contracts he enters into on behalf of JPL are subject to the Davis-Bacon Act because JPL is “a prime contractor to NASA, a federal agency, and JPL is administered by the California Institute of Technology for NASA.” TR at 45. The two contracts at issue in this case were signed by Mr. Salsman, on behalf of JPL, and by Mr. Morales, as president of Dumarc. SX 1; SX 2; TR at 6, 40-41.

Mr. Salsman also testified for all fixed-price construction contracts, JPL issues a letter to all subcontractors that defines the labor pass-down requirements, and each contractor and subcontractor must sign a form acknowledging these requirements. TR at 43. The evidence shows that Dumarc was notified of these requirements (SX 5, 6), and both Dumarc and AFPS signed forms acknowledging the requirements (SX 7, 8).

Thus, I find that these contracts were subject to the Davis-Bacon Act, and both Dumarc and AFPS were, or should have been, aware that Davis-Bacon Act requirements applied.

2. Employees Identified (Timothy White, Johnny Olivares, Ramon Vasquez, Erick Casas, and Steven Tatsch) All Performed Covered Work on the Contracts at Issue

The Davis-Bacon Act covers “laborers and mechanics employed on public building of the United States and the District of Columbia by contractors or subcontractors.” The regulations provide that “[t]he term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial.” 29 C.F.R. § 5.2(m).

The AFPS employees were employed on public building within the meaning of the Davis-Bacon Act and 29 C.F.R. § 5.2 because they worked on the renovation of two buildings at JPL, which is part of NASA, an entity of the federal government. The employees installed fire sprinkler systems, and they all performed the same type of work in doing so. TR at 59, 90-91. In their work, they used a groover, a pipe machine, a pipe threader, pipe wrenches, ladders and power tools. TR at 55, 59; SX 12 at 19. The AFPS employees were laborers or mechanics under the Davis-Bacon Act because they performed the manual work of the trade of fire sprinkler fitter and they used the tools of that trade. Thus, the AFPS employees all performed covered work on the contracts at issue, unless they fall within one of the limited exemptions.

In establishing the exemptions to Davis-Bacon Act coverage, the regulations state that the term laborer or mechanic “does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics.” 29 C.F.R. § 5.2(m). Pursuant to 29 C.F.R. § 541.1, an employee is considered to be “employed in a bona fide executive capacity” and exempt from coverage if his primary functions are executive in nature and he spends less than 20 percent of his work hours doing activities which are not directly and closely related to the performance of executive functions. However, as Respondent argued, the regulations establish an exception to this 20 percent rule by stating that “this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed.” 29 C.F.R. § 541.1(e).

Respondent argued that Mr. White is exempt from coverage as the employee-owner of AFPS under 29 C.F.R. § 541.1. ALJX 14 at 9. Specifically, Respondent argued that regardless of the amount of time Mr. White spent in a management role, he is exempt from coverage because he controlled the business and acted as the owner. *Id.* Respondent asserted that after Mr. Hannan became ill, “Mr. White ran the company, made the payroll, and controlled company cash, without the knowledge of Mr. Hannan’s widow, Tricia [sic] Hannan. There can be no circumstance more appropriate for applying the ownership exception to a controlling employee, than where the owner turns over his business while succumbing to a fatal disease.” *Id.*

I find that Mr. White did act as a foreman or manager for AFPS, but he spent the vast majority of his time working as a fire sprinkler fitter along with the other employees. In the first statement he gave to Ms. Tran, Mr. White stated, “I had the title of foreman but most of time I did the same type of work as Johnny Olivares did, the work of pipe sprinkler fitter in all 4 projects with JPL...” SX 12 at 18. Mr. Olivares also testified that he, Mr. White, and all of the other employees did pretty much the same work. TR at 59, 90-91, 98.

Although Mr. Morales testified that he did not observe Mr. White actually performing work on the job site, TR at 250-51, I do not find this credible for at least three reasons. First, Mr. Brown testified that he saw Mr. White and Mr. Olivares working together whenever he observed the projects. TR at 232-33. Second, Mr. Morales conceded that his visits to the work site were short and infrequent, occurring only about twice a month for a half hour. TR at 250-51. Third, considering that Mr. White and Mr. Olivares were the only two employees on these projects on

most days, TR at 56, the projects could not have been completed without Mr. White performing a large amount of the manual labor. *See Corley Mechanical Contractor*, WAB Case No. 78-26 (Apr. 6, 1979) (finding that the foreman must have been working because the project called for a large volume of pipe fitter skills and there were not many other employees). In addition, even Mr. Peterson opined that Mr. White worked a journeyman pipe fitter on the projects. TR at 214. Thus, I find that Mr. White spent less than 20 percent of his time on executive or managerial functions, such that he does not fall within the executive or administrative exemptions of 29 C.F.R. § 541.

Therefore, the analysis turns on whether Mr. White should be exempt as “an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed.” 29 C.F.R. § 541.1(e). Until his death, Mr. Hannan remained the legal owner and head of AFPS and he was as involved as his illness would permit. On at least two occasions, Mr. Hannan visited the JPL worksite on behalf of his company. SX 10 at 238 and 245.

During his illness, Trisha Hannan helped her husband with the management of the business. Although Trisha Hannan did not appear to have had knowledge of the detailed workings of AFPS, Respondent is incorrect in stating that Mr. White “ran the company, made the payroll, and controlled company cash, without [her] knowledge.” Rather, Trisha Hannan testified that she helped collect the time cards and make the payroll. TR at 131-35. In addition, Mr. White and Mr. Olivares both helped Mr. Hannan and Trisha Hannan to keep the business going after Mr. Hannan became ill. In particular, Mr. Olivares testified that he dropped off the time cards and picked up the employees’ paychecks and cash from Mr. Hannan’s home/office. TR at 60-65. Mr. White stated that toward the end of the projects, he would call in the employees’ hours for the time cards and would pick up their paychecks and cash. SX 12 at 19-20. Ultimately, Trisha Hannan shut the business down after Mr. Hannan’s death. TR at 62, 71-72; SX 12 at 18. Thus, the evidence shows that Mr. Hannan, Trisha Hannan, Mr. White, and Mr. Olivares each played a role in managing the operations of AFPS. Consequently, it cannot be said that Mr. White was “in sole charge” of the business, and Mr. White is *not* exempt from coverage under the Davis-Bacon Act.

I find that Mr. White and all of the other employees performed covered work on the contracts at issue in the case and do not fall within any exemptions from coverage of the Davis-Bacon Act.

3. Employees Identified Did Not Receive the Prevailing Wage

a. Wages Actually Paid to the Employees

i. Timothy White

Mr. White also told Ms. Tran he was paid \$17 per hour, and he also gave her statements that he generally worked 40 hours per week. TR at 119; SX 12 at 21 and SX 13 at 23. However, Mr. White’s payroll stubs showed that he was only paid \$408 per week. TR at 159. In his second statement given to Ms. Tran, Mr. White explained, “For each week I received 23 hours

work by check at a rate of \$17 an hour and a gross amount of \$408 and cash pay of \$240 to \$260.” SX 13; TR at 158. I note that adding \$408 and \$260, then dividing by 40 hours per week yield about \$16.7 per hour. Therefore, Mr. White averaged about \$17 per hour for about 40 hours of work each week, including the payments he received by check and cash. This pay rate is also consistent with Mr. Olivares’ statement that, although he had no idea what Mr. White was paid, he stated, “I’m sure he was probably making more than me. He’s more experienced.” TR at 90.

Thus, I find that Mr. White was paid \$17 per hour by AFPS for his work on the projects.

ii. Johnny Olivares

Mr. Olivares testified that he was paid \$14 per hour and then received a raise to \$15 per hour around when the cafeteria project started. TR at 60. Similarly, he told Ms. Tran that he was paid \$14 per hour up to sometime in December 2002, then \$15 per hour. TR at 118. Ms. Tran testified that these pay rates were corroborated by the wage receipts that Mr. Olivares provided to her. TR at 118. Mr. Olivares testified that his pay envelope contained his check and a wage receipt (SX 11), but not any cash. TR at 61, 84, 80.

Thus, I find that AFPS paid Mr. Olivares \$14 per hour through mid-December 2002 and \$15 per hour after mid-December 2002 for his work on the projects.

iii. Erick Casas, Ramon Vasquez, and Steven Tatsch

Dumarc’s president, Mr. Morales, conceded that the JPL gate logs showed that Erick Casas, Ramon Vasquez, and Steven Tatsch worked at the site. TR at 243-45, 248-89, 256-59. Mr. Olivares testified, however, that he did not know what the other employees were paid. TR at 64. However, he testified that pay envelopes would be left on the floor of the company truck for him to distribute to the other employees. TR at 61, 63. Although he did not open the envelopes, he believed that they contained cash because of their thickness and by seeing through the envelopes. TR at 80-81. Mr. Olivares testified that some of the envelopes contained cash. TR at 81. Similarly, Mr. White stated in his first statement that he and Mr. Olivares would pick up from Mr. Hannan’s home/office their paychecks and cash in envelopes for the other employees. SX 12 at 20. However, Trisha Hannan testified that she did not pay any employees in cash or know about any cash payments. TR at 135, 137. I find that based on my observation of Ms. Hannan’s demeanor at trial and the testimony of Johnny Olivares and Timothy White, Ms. Hannan was not credible in her statement that she did not pay any employee in cash.

Ms. Tran was told by Mr. Olivares and Mr. White that the three other employees were paid in cash. TR at 160. However, she did not have any statement or payroll records for the other three employees, and she was unable to obtain any estimate of their pay rate from Mr. White or AFPS. TR at 160-62. Consequently, she calculated their back wages based on zero wages paid. TR at 117, 162-63.

Based on the testimony of Mr. Olivares and the statement of Mr. White, it is likely that the other three employees were paid some amount in cash. However, given the absence of any records or statements regarding the amounts paid to these employees, the Secretary was

reasonable in computing their back wages owed based on zero wages paid. To have used any other amount for wages paid would have been arbitrary or speculative and would have rewarded AFPS for its failure to keep payroll records for these employees. Rather, when confronted with a payroll reconstructed by the U.S. Department of Labor, the employer bears the burden of contradicting that reconstructed payroll, if able to do so. *In Re Joseph Morton Co. Inc.*, WAB Case No. 80-15 (July 23, 1984). The employer may not object to calculations necessitated by its own failure to keep complete and accurate records. *Id.* Thus, I find that AFPS, Hannan, and Dumarc did not produce any persuasive evidence proving that these employees were paid at all or the amounts they were paid, and therefore, I will assume their wages were zero in calculating the back wages owed to them.

b. The Appropriate Prevailing Wage

An administrative law judge is authorized to determine an employee's classification for purposes of determining the appropriate prevailing wage rate. *See Thomas & Sons Bldg. Contractors, Inc.*, ARB Case No. 98-164 (Oct. 19, 1999) at 8. As an initial matter, I find that the employees should all be classified in the same way because the evidence indicates that all of the employees did essentially the same work. TR at 59, 90-91, 98; SX 12 at 18. The employees in this case all installed fire sprinkler systems, which involved cutting and installing pipe. TR at 98, 164-65. More specifically, this work involved laying out the locations of the new fire sprinklers, following the fire protection code, measuring pipes, installing pipe and sprinklers, installing underground fire protection connections for water supply, fabricating, cutting pipes, and threading the end of pipes for connection to the next pipe. SX 12 at 18-20. In their work, they used a groover, a pipe machine, a pipe threader, pipe wrenches, ladders and power tools. TR at 55, 59; SX 12 at 19. Based on all of these tasks and tools used, I find that all of the employees should be classified as Fire Sprinkler Fitters. I note that the wage determination for Fire Sprinkler Fitter (SX 18 at 166; SX 19 at 190) has no description, perhaps because it seems intuitive that workers who install fire sprinklers should be classified as fire sprinkler fitters. This lack of a description also means that there are no explicit limitations imposed on the classification, such as excluding from the classification workers who install systems that are prefabricated, as suggested by Mr. Peterson. To confirm that Fire Sprinkler Fitter is the appropriate classification for these employees, I will also address why the classifications suggested by the Secretary and Respondent are incorrect or less appropriate.

First, on behalf of the Secretary, Ms. Tran testified that she determined that the proper classification was Plumber and Pipe Fitter (SX 18 at 165, SX 19 at 189). She determined that this was the proper classification because Mr. Olivares said he was a pipe fitter and he described his work as installing fire sprinklers and cutting and installing pipe. TR at 164-65, 169. She also noted that Mr. White was classified as a pipe fitter on the certified payroll. TR at 165. In response to questions why she did not classify the employees as Fire Sprinkler Fitters, she stated, "At the time when I make that determination I discuss that with my supervisor, and we agree on the classification that I used to compute the employee." TR at 168. The prevailing wage for the Plumber and Pipe Fitter classification was \$38.21, including fringe benefits. TR at 107. She acknowledged at trial that using the Fire Sprinkler Fitter classification would result in a higher back wage amount owed for each employee. TR at 171-72.

The Plumber and Pipe Fitter chosen by Ms. Tran might have been an acceptable classification if the Fire Sprinkler Fitter classification did not exist. While it is correct that these workers are pipe fitters, they are also fire sprinkler fitters because fire sprinkler fitters are a subset of pipe fitters. However, because these employees worked exclusively on installing fire sprinklers, the Fire Sprinkler Fitter classification is more specific to their work and therefore, is more appropriate. Moreover, Ms. Tran did not have any persuasive reasons for choosing the Plumber and Pipe Fitter classification except that Mr. Olivares had stated that he was a pipe fitter and the certified payrolls listed the workers as pipe fitters. There is no indication in the record that Ms. Tran ever considered the Fire Sprinkler Fitter classification.

Second, on behalf of Respondent, Mr. Peterson opined all of the employees, except for Mr. White, should be classified as Laborer Group 4. TR at 192-95. He thought that Mr. White was a journeyman level fire sprinkler fitter based on his experience and the fact that he was more instrumental in the company. TR at 214. However, he thought that all of the other workers on this project – Johnny Olivares, Steven Tatsch, Erick Casas, and Ramon Vasquez – should all be classified as Laborer Group 4. TR at 192-195. In particular, he emphasized that he did not think Mr. Olivares should be classified as a journeyman fire sprinkler fitter or pipe fitter, because he was not paid at the journeyman rate, he did not know the names of some of his coworkers or their pay rates, and he did not state that he put valves together or was instrumental in the design or worked with engineers. TR at 193-96, 209-11.

Mr. Peterson testified that if an employee who was doing the work of an apprentice/helper was not certified as an apprentice, the appropriate Davis-Bacon Act classification for that employee would be Laborer Group 4. TR at 192-94, 212. He stated that a “group four laborer would work [as] a helper on a fire sprinkler job.” TR at 194. Mr. Peterson testified ambiguously that if “they’re working, they would fall under the pipe fitter classification and [they would fall under] a group four laborer if they’re just helping.” TR at 194. Mr. Peterson attempted to clarify his analysis by stating that a “journeyman pipe fitter would put the gauges and valves and the wet pipe stand together, and an apprentice or laborer...would spread the pipe, get everything ready, help lift items, but he wouldn’t put the system together.” TR at 196. He felt the Laborer Group 4 classification was appropriate because workers in the labor group 4 classification do work handling of “all forms of tubular material” including pipes, but “no joint pipe and stripping of the same.” TR at 193. However, Mr. Peterson testified that he did not know the meaning of “joint pipe” or “stripping of same,” except that he assumed “joint pipe” was the “just the joint of a pipe.” TR at 193.

I find that the Laborer Group 4 classification is inappropriate. Respondent emphasized that the Laborer Group 4 classification refers to “Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material...” (SX 18 at 161; SX 19 at 185). However, a pipelayer is generally understood to be a worker who lays pipes *in the ground*, and this description specifically mentions “receiving pipe *in the ditch*.” The AFPS employees generally worked at installing pipes for fire sprinkler systems *in buildings*. Thus, Mr. Peterson’s analysis of this classification should not be credited, because he either did not read the description properly or did not actually understand the difference between a pipe fitter (or fire sprinkler fitter) and a pipelayer. Also, Mr. Peterson’s reasons for asserting that Mr. Olivares was

a Group 4 Laborer were not credible. A worker's classification depends upon the tasks he performs and the tools he uses, not, as Mr. Peterson asserted, on whether he knows the names and pay rates of his co-workers. In addition, to assert that Mr. Olivares is a Group 4 Laborer because he was not paid at the rate of a Pipe Fitter or Fire Sprinkler Fitter is a circular, unpersuasive argument.

4. Hours Worked by the Employees

Under the Davis-Bacon Act, contractors must pay the laborers and mechanics employed on a project the full amounts earned at the prevailing wage rates. Proof of underpayment is governed by the principles of *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), which was applied to DBA cases by *Trataros Construction Corp.*, WAB Case No. 92-03 (April 28, 1993). Under these principles, an employee (or the Secretary of Labor on his or her behalf) who seeks to recover unpaid wages "has the burden of proving that he performed work for which he was not properly compensated." 328 U.S. at 687. This burden is not intended to be "an impossible hurdle." *Id.* Rather, "where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes," the employee meets his burden "if he proves that he has 'in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.'" *Id.*

When confronted with a payroll reconstructed by the U.S. Department of Labor, the employer then has the burden to demonstrate the precise number of hours worked or to present evidence sufficient to negate "the reasonableness of the inference to be drawn from the employee's evidence." 328 U.S. at 688; *In Re Joseph Morton Co. Inc.*, WAB Case No. 80-15 (July 23, 1984). Furthermore, a contractor "may not be heard to object to calculations or underpayments based on reconstructed records or facts as lacking preciseness when reconstruction was necessitated by the contractor's failure to produce or maintain accurate records of the hours worked ... Courts have held that employees are not to be penalized as a result of an employer's failure to maintain records." *Morton*, WAB Case No. 80-15. Thus, "an award of back wages will not be barred for imprecision where it arises from the employer's failure to keep records[.]" *Brock v. Seto*, 790 F.2d 1446, 1448 (1986). Furthermore, "[u]nless the employer can provide accurate estimates [of hours worked], it is the duty of the trier of facts to draw whatever reasonable inferences can be drawn from the employees' evidence[.]" 328 U.S. at 693. The court "may then award damages to the employee, even though the result be only approximate." 328 U.S. at 688.

a. Because AFPS Did Not Keep Complete and Accurate Records, the Secretary Compiled an Estimate of the Hours Worked by the Employees

Ms. Tran testified that AFPS failed to keep complete and accurate records, and that the time cards were unreliable (TR at 144, 152-53) and the certified payrolls were false (TR at 111-14). In particular, she found that the AFPS time cards were unreliable because some of the time cards were poorly copied, not signed at all, or had questionable signatures, and because AFPS had delayed in providing them to her. TR at 152-53, 171. She determined that the certified payrolls were false because they usually only listed one or two employees per day when two or

more were actually working, and certified payrolls only went until December 2002 when one or more of the projects actually went until April 2003. TR at 111-14.

Thus, she compiled an estimate of the hours worked and wages paid to the employees based primarily on the JPL gate logs, as well as the Dumarc superintendent logs and her own interviews with Mr. White and Mr. Olivares. TR at 108, 114. To calculate the back wages owed, she first determined the hours worked by the AFPS employees. TR at 114-17. She based her calculations primarily on the JPL gate logs (SX 10). TR at 108, 114. She used the JPL gate logs to determine if an employee worked on a given day. TR at 157. Then, she assigned hours to each project according to the Dumarc superintendent logs. TR at 116.

Where the JPL gate logs were incomplete, she looked at Dumarc superintendent logs and employee testimony. TR at 114-15. If the JPL gate logs showed an employee signing in but not out, she gave them the benefit of having worked 8 hours. TR at 157. She based this assumption on the fact that Mr. Olivares and Mr. White had told her that the employees generally worked five days a week, eight hours a day on the JPL projects. TR at 149.

Based on these calculations, Ms. Tran determined that the employees worked the following hours:

Tim White:	440.5 hours
Johnny Olivares:	656.75 hours (310 at \$14/hour and 346.75 at \$15/hour)
Erick Casas:	287.75 hours
Ramon Vasquez:	103 hours
Steven Tatsch:	152 hours
 Total hours:	 1,640 hours

I find that Respondent's records are inaccurate and inadequate to establish the hours worked and the amounts paid to these employees. Accordingly, under *Anderson*, the Secretary meets its burden by proving that the employees in fact performed work for which they were improperly compensated and producing sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. I find that the Secretary has satisfied that burden with the hours estimates that it compiled.

b. Respondent Produced Some Evidence to Refute the Secretary's Hours Estimate

When confronted with a payroll reconstructed by the Secretary, Respondent has the burden to come forward with "evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the [Secretary's] evidence." 328 U.S. at 688. Respondent is unable to come forward with evidence of the precise amount of work performed because AFPS did not keep complete and accurate records. However, Respondent does present some evidence that the Secretary's estimate is not entirely reasonable in assuming that the employees worked a full eight hours on each day when the JPL gate logs are incomplete.

First, Respondent presents evidence that it is unreasonable to assume the employees were working the entire time between when they signed in and signed out on the JPL gate logs. Although they are the most reliable record of hours worked, since they were systematically kept by an unbiased party, the JPL gate logs are not an exact record of the hours worked by an employee on a given day. For example, Mr. Brown testified that a worker can tell the JPL security gate personnel they were leaving for lunch, leave JPL without signing out, and then come back in at any time without signing in again by showing his daily badge.” TR at 238-39. Mr. Olivares conceded on cross-examination that there were other projects proceeding at the same time as the JPL projects and there was at least one period when they left JPL to work on another project and then returned to JPL later. TR at 64, 73-74. Mr. White also gave a statement that he and Mr. Olivares “very rarely” would work on another project for one or two days during the JPL projects. SX 12 at 19.

Second, Respondent presents evidence that it is unreasonable to assume the employees worked 8 hours on any day when the JPL gate logs are incomplete. Mr. Olivares conceded that they did not always work eight hours a day. TR at 73-74. Upon examination of the JPL gate logs, I also find that employees did not work as regular a schedule of eight-hour days from 6 am to 2:30 pm as Mr. Olivares and Mr. White asserted.

As an alternative to the Secretary’s estimate, Respondent presented its own estimate of the hours worked, which was compiled by Dumarc’s president, Mr. Morales. In estimating the hours worked by the employees, Mr. Morales took the same general approach as Ms. Tran of relying primarily on the JPL gate logs to determine whether an employee worked on a given day and using the hours from those logs on where there was both a sign-in and sign-out time. However, where Ms. Tran assumed an eight-hour work day on those days where the JPL gate logs were incomplete, Mr. Morales used the number of hours from the Dumarc superintendent logs for those days. TR at 244. He testified that for any workday over six hours, he subtracted a half hour for lunch, despite the fact that lunch breaks were not listed because it is not the normal practice for Dumarc supervisors to record lunch breaks in the superintendent logs. TR at 248. Based on these calculations, he found that Tim White worked 367.25 hours, Johnny Olivares worked 519 hours, and Steven Tatsch worked 67.5 hours. TR at 244-45, 249. Although he found similar discrepancies in the hours calculations for Ramon Vasquez and Erick Casas, he accepted the Secretary’s calculations for those employees because “it was a tremendous amount of work going through these things.” TR at 245.

Thus, I find that Respondent has met its burden of coming forward with evidence to negative the reasonableness of the inference to be drawn from the [Secretary’s] evidence. I find that the estimate compiled by Mr. Morales, on behalf of Respondent, is reasonably accurate. Although I understand the testimony of Ms. Tran and Mr. Peterson that the Dumarc logs are more of an estimate of workforce needs than a record of actual employees working, I find that they are more accurate than assuming the employees worked a full eight-hour day. Moreover, while it may not be completely accurate to assume the employees took a half-hour lunch each day, I find that this reduction is a fair proxy for the time when the employees did leave for lunch or to work on other projects during the work day.

Thus, based on the estimates of Mr. Morales (TR at 244-45, 249; ALJX 13 at Ex.2), I find that the hours worked by each employee were as follows:

Tim White:	367.25 hours
Johnny Olivares:	519 hours (172.25 at \$14/hour and 346.65 at \$15/hour)
Erick Casas:	287.75 hours
Ramon Vasquez:	103 hours
Steven Tatsch:	67.5 hours
 Total hours:	 1,344.5 hours

5. Amounts of Back Pay Owed to the Five Identified Employees

The formula for calculating the back pay owed to each employee is:

(prevailing wage rate X hours worked) – (wage rate paid X hours worked)

Using the prevailing wage rate for the Fire Sprinkler Fitter classification, the wages that were shown to have been paid based on the testimony of Ms. Tran and Mr. Olivares, and the hours estimated by Mr. Morales, the back pay owed to the AFPS employees is as follows:

Tim White: $(\$42.53 \times 367.25 \text{ hours}) - (\$17.00 \times 367.25 \text{ hours}) = \mathbf{\$9,375.89}$

Johnny Olivares: $(\$42.53 \times 519 \text{ hours}) - ((\$14.00 \times 172.25 \text{ hours}) + (\$15.00 \times 346.75)) = \mathbf{\$14,460.32}$

Erick Casas: $(\$42.53 \times 287.75 \text{ hours}) - (\$0 \times 287.75 \text{ hours}) = \mathbf{\$12,238.01}$

Ramon Vasquez: $(\$42.53 \times 103 \text{ hours}) - (\$0 \times 102 \text{ hours}) = \mathbf{\$4,380.59}$

Steven Tatsch: $(\$42.53 \times 67.5 \text{ hours}) - (\$0 \times 67.5 \text{ hours}) = \mathbf{\$2,870.78}$

TOTAL BACK WAGES OWED = \$43,325.59

Under the Davis-Bacon Act, the prime contractor is responsible for insuring that all persons performing the duties of a laborer or mechanic on the construction site and paying for the back wages owed to employees of its subcontractor. 29 C.F.R. § 5.5(a)(6). *See, e.g., Arliss D. Merrell, Inc.*, 1994-DBA-41 (Oct. 26, 1995). The prime contractor is ultimately responsible for the payment of back wages owed to employees of its subcontractor, and contract funds may properly be withheld from the prime contractor to satisfy the violations of the subcontractor. 40 U.S.C. § 3142(c)(3); 29 C.F.R. § 5.5(a)(2); *In re Tap Electric, Inc.*, WAB Case NO. 84-1 (Mar. 4, 1985). Thus, in this case, the back wages owed to the AFPS employees will be paid out of the contract funds that were properly withheld from Dumarc, since Dumarc is ultimately liable for compliance with the Davis-Bacon Act.

6. Debarment - AFPS and Hannan Have Disregarded Their Obligations to Employees Within the Meaning of the DBA and its Regulations.

In addition to the provisions requiring payment of prevailing wages, the DBA provides for debarment of contractors and their responsible officers who are found to have “disregarded their obligations to employees.” 40 U.S.C. § 3144; 29 C.F.R. § 5.12. One of a contractor’s obligations is to maintain and submit accurate weekly records stating each employee’s job classification, pay rates, and daily and weekly hours worked, and certifying that the employees were paid the applicable prevailing wage rates. 29 C.F.R. § 5.5(a)(3). Falsification of these certified payroll records and underpayment of employees constitutes a disregard of obligation under the Act. *Trataros Const. Corp.*, WAB Case No. 92-03 (April 28, 1993). Where a contractor disregards its obligations under the DBA, debarment for three years is mandatory; evidence of “mitigating” or “extraordinary circumstances” is irrelevant.” *G & O General Contractors, Inc.*, WAB Case No. 90-35 (February 19, 1991).

As discussed above, AFPS failed to pay its employees the prevailing wage rate. In addition, the certified payroll was also false in that it usually only listed one or two employees working on days when the Dumarc superintendent logs and the JPL gates logs showed more employees actually working. TR at 111-14. The certified payrolls also only went until December 2002, while the logs showed that the projects actually continued through April 2003. TR at 111-14.

Thus, I find that AFPS and Trisha Hannan have disregarded their obligations to the employees under the Davis-Bacon Act and shall be debarred for three years. AFPS and Trisha Hannan have stated that they accept that they will be debarred. TR at 264, 274.

ORDER

Based on the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that:

1. The contracting agency, JPL, shall turn over to the Administrator the sums withheld under the two contracts at issue.
2. The Administrator shall distribute the back wages owed to the identified employees, Tim White, Johnny Olivares, Erick Casas, Ramon Vasquez, and Steven Tatsch, in the amounts listed below in Appendix A. Any excess remaining after the back wages are paid out of the withheld sums shall be returned to Dumarc.
3. Any sums for payment to an identified employee, which are not paid to said employee or his legal representative within a reasonable time not to exceed one year from this Decision and Order because of inability, after reasonable diligence, to locate the employee or his legal representative, shall be deposited in the Treasury of the United States.

4. The Secretary shall transmit to the Comptroller General of the United States the names of Automatic Fire Protection Service and Trisha Hannan, along with any firm in which they have a substantial interest, to be placed on the ineligible list for a period not to exceed three years from the date of the publication pursuant to the Davis-Bacon Act, 40 U.S.C. § 3144, and 29 C.F.R. § 5.12.

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GERALD M. ETCHINGHAM
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 forty (40) days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. § 6.34. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. The Petition must refer to the specific findings of fact, conclusions of law, or order at issue. *See* 29 C.F.R. § 6.34. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

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

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

APPENDIX A: Amounts of Back Wages Owed to Identified Employees

Timothy White: \$9,375.89

Johnny Olivares: \$14,460.32

Erick Casas: \$12,238.01

Ramon Vasquez: \$4,380.59

Steven Tatsch: \$2,870.78

TOTAL BACK WAGES OWED = \$43,325.59