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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 26, 2015

UNITED STATES OF AMERICA, Complainant, v. PM PACKAGING, INC., AND PM CORPORATE GROUP, INC., D/B/A PM PACKAGING, Respondent.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 11A00072

FINAL DECISION AND ORDER

Appearances:

Kristin Piepmeier
For the Complainant

Jonathan C. Capp
For the Respondent

I. PROCEDURAL HISTORY

The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint in two counts with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that respondents, PM Packaging, Inc. (PM Packaging) and PM Corporate Group, Inc. (PM Corporate) d.b.a. PM Packaging, Inc., failed to prepare Employment Eligibility Verification Forms I-9 for twenty-two named individuals, and failed to properly complete the section 2 certification in the I-9 forms for twenty-eight named individuals. The complaint seeks penalties totaling $53,762.50. The respondents filed an answer with affirmative defenses, and prehearing procedures were completed. The case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (2012) (INA or the Act).

Presently pending are ICE's motion for summary decision, to which PM Packaging and PM Corporate filed a joint response, and PM Corporate's cross motion for summary decision, to which the government filed a response. For the reasons more fully set forth herein, PM Corporate's cross motion will be granted and the complaint will be dismissed as to this entity. ICE's motion will be granted as well with respect to PM Packaging's liability, and will be granted as modified with respect to the penalties.

II. BACKGROUND INFORMATION

When the events in question began, PM Packaging was engaged in the production of folding cartons, blister cards, and litho-laminated corrugated boxes at its facility on Walnut Street in Compton, California, and was only one of several subsidiaries of PM Corporate. ICE served a Notice of Inspection (NOI) on PM Packaging on July 1, 2009, but the Compton facility ceased operations in August 2009. On September 18, 2009, a Notice of Suspect Documents containing the names of six employees was issued to PM Packaging, followed by a Notice of Intent to Fine (NIF) on February 3, 2010. PM Packaging filed a timely request for hearing dated March 2, 2010, and ICE filed the instant complaint on March 31, 2011. All conditions precedent to the institution of this proceeding have been satisfied as to PM Packaging, but the parties dispute whether those conditions have been satisfied with respect to PM Corporate. The government's complaint names both PM Packaging and PM Corporate as respondents, but PM Corporate contends that it was not properly served and is not a proper party.

The affidavit of Steven H. Reder, submitted with PM Corporate's cross motion, states that the affiant has been the Chief Financial Officer (CFO) for PM Corporate Group since its incorporation. The Articles of Incorporation for PM Corporate Group reflect that it was formerly a limited partnership known as PM Industries, L.P., but was converted into a California stock corporation in March 2007. Its stockholders were Ramona Schmidt and Steven Reder. Reder's affidavit says that he was also the vice president, CFO, and general manager for the now defunct PM Packaging, incorporated in California in October 2007. Reder's affidavit states further that he was also president of PM Packaging, Inc., a different corporation formed in Austin, Texas under Texas law, and that in 2008, there were also five manufacturing plants located in Mexico. Reder says that all but one of the manufacturing facilities were closed in August 2009; that as of the time of his affidavit, all the manufacturing was being conducted through a "maquila" corporation in Tijuana, Mexico; and that no more manufacturing operations exist in the United States.

Reder's affidavit states further that other than common shareholders and officers, PM Corporate does not have, and never has had, any operational or managerial connection to PM Packaging. A San Diego County Clerk report reflects that PM Corporate owns PM Packaging, but Reder says that the former is at most an affiliate of the latter. Reder says PM Corporate was formed to provide a U.S. face for the Mexican operations, and although its mailing address is in San Diego,

its physical location is at Otay Mesa, California, on the Mexican border. Reder asserts that PM Corporate and PM Packaging have never shared business addresses or premises, and that the companies were separate entities formed for separate purposes, had different tax ID numbers, and were not subject to shared or joint management or control. PM Corporate in fact had no employees at the time in question, and had no input into the operations of PM Packaging. Reder says that no assets of PM Packaging were transferred or siphoned off to PM Corporate, and that PM Packaging was just not a successful operation, and was effectively shut down in August 2009 because it was not profitable. The Texas company suffered the same fate.

The complaint alleges in Count I that PM Packaging failed to present I-9 forms upon request for Candelaria Campos, Norma Castaneda, Ricardo Carranza, Ofelia De Frutos, Jaime Dorantes, Maria Dorantes, Ermilia Frutos, Maritza Garcia, Juan Hernandez, Francisco Juarez, Sandy Luna, Abel Martinez, James McShane, Silvia Medrano, Richard Millard, Casey Nay, Abraham Ramirez, Maria Recinos, Octavio Salas, Erika Salazar, Moises Salmeron, and Ramona Schmidt, all of whom worked for PM Packaging between October 2007 and August 2009.[1]

Count II asserts that PM Packaging failed to properly complete section 2 of the I-9 forms for Alberto Alvarado, Claudia Anza, Guiseppe Anza, Salvatore Anza, Stephanie Ayala, Ignacio Bartolo-Lopez, Eloy Bartolo-Valencia, Marcos Bustamante, Gregory Castillo, Sergio Castillo, Leonides Dorantes, Roger Fabricante, Francisco Flores, Julio Mariscal, Maria Marquez, Yanet Marquez, Bruce McFarland, Richard Miller, Morena Portillo, Lilia Quintero, Geoffrey Reder, Steven Reder, Rosa Salmeran, Michael Soriano, Dihang Tang, Richard Vallejo, Alejandro Veloz, and Trisha Zalucha, all of whom worked for PM Packaging between October 2007 and August 2009.[2]

Reder acknowledged on behalf of PM Packaging that the company could not present I-9 forms for the twenty-two employees named in Count I, and says the company was unable to correct the violations on the other twenty-eight forms for the employees named in Count II because the employees had all been laid off by then and could not be located.

III. THE POSITIONS OF THE PARTIES

A. ICE's Motion

The government's motion asserts that PM Packaging and PM Corporate Group, Inc., doing business as PM Packaging, Inc. are affiliated companies involved in the production of folding

[1] The complaint lists these employees by the sequential alphabetic designations A-V.

[2] The complaint lists these employees by the sequential alphabetic designations A-BB.

cartons, blister cards, and other packaging materials. Other affiliates include PM Industries, LLC of Nevada; PM Packaging, of Texas; PMP Tijuana, S. de R.L. de C.V.; and PM Packaging de Mexico, S. de R.L. de C.V. The principals for all these companies are Steven Reder and Ramona Schmidt. ICE says that while PM Packaging's Compton plant closed after the NOI and moved its operations to Mexico, PM Corporate continues to operate in the United States under the fictitious business name of PM Packaging. The government contends that because PM Packaging and PM Corporate are alter egos, both are liable for the violations alleged.

The government notes that the respondents admitted they did not present I-9 forms for the twenty-two employees named in Count I, but denied the allegations in Count II. ICE says, however, that simple visual inspection of the I-9s for the twenty-eight employees named in Count II establishes the violations and shows that they are substantive. ICE points out that none of these forms contain the printed name of the employer representative who signed section 2, and that this is a substantive violation, so there is at least one substantive violation on every form. There are in addition no issuing authorities or expiration dates entered on the I-9 forms for documents that were allegedly verified for the employees identified as A, D, E, F, G, H, K, M, N, P, Q, T, V, and Y. Because no legible copies of the documents for these employees were provided at the time of inspection, these are substantive violations as well. The government notes further that the forms for employees D, G, and N show that the respondents also failed to ensure that these employees properly completed section 1 because the forms lack an attestation as to the individual's status in the United States, another substantive violation.

ICE's penalty memorandum reflects that the government set the baseline penalties for these violations at the rate of $935, but then aggravated the base penalties by fifteen percent, resulting in an assessment of $1075.25 for each of fifty violations. The government says that although PM Packaging had only a limited number of workers at the Compton facility, the respondents are nevertheless a large transnational business because they have three facilities in Mexico, one of which was expanded, and also have other businesses under the PM name in Texas and Nevada. The penalties were accordingly aggravated by five percent for the size of the business. The government treated the factors of good faith and the lack of previous history as neutral, but aggravated the penalties by another five percent based on the seriousness of the violations and an additional five percent because database searches revealed that six of the fifty-seven employees were unauthorized for work.

The motion was accompanied by exhibits consisting of: 1) memorandum of law (14 pp.); 2) business entity detail for PM Packaging; 3) business entity detail for PM Corporate Group; 4) fictitious business name, PM Corporate Group, Inc.; 5) entity details for PM Industries, LLC; 6) Texas state certification of account status for PM Packaging (3 pp.); 7) Cortera Company Profile, PM Corporate Group (2 pp.); 8) Perfeto printout for PM Packaging de Mexico, Inc.; 9) printout for www.pmpackaging.net/contact.html (3 pp.); 10) website printout for PM Packaging de Mexico dated August 14, 2008 (3 pp.); 11) Notice of Inspection (2 pp.); 12) Report of Investigation (3 pp.); 13) I-9 forms with attachments (49 pp.); 14) PM Packaging payroll journal

July 1, 2009 (4 pp.); and 15) quarterly wage and withholding reports (7 pp.). ICE's Index indicates there are more pages to exhibit 15, but only seven pages of the exhibit are included. Bates numbered pages 100-127 are also missing. These are listed on ICE's index as exhibits 16), 17), 18), and a portion of 19). Bates numbering resumes at page 128, with a portion of exhibit 19), consisting of part of the NIF and the request for hearing. Additional exhibits include: 20) the answer (5 pp.); 21) calculation of civil money penalty; 22) memorandum to case file of civil money penalty (5 pp.); 23) three letters from Steven Reder dated October 2, 2009 (3 pp.); 24) Fact Sheet: Form I-9 Inspection Overview (7 pp.); 25) Guide to Administrative Form I-9 Inspections and Civil Monetary Penalties, November 25, 2008 (46 pp.); 26) Handbook for Employers (rev. 4-3-09) (65 pp.); and 27) certificate of service.

B. PM Packaging and PM Corporate's Joint Response to ICE's Motion, and PM Corporate's Cross Motion

PM Corporate and PM Packaging first contend that there is no factual basis upon which PM Corporate can be found to be an alter ego of PM Packaging, and that their shared ownership cannot be determinative. This is the gravamen of PM Corporate's cross motion as well. The cross motion contends that even crediting the government's factual allegations, the allegations are inadequate as a matter of law to sustain alter ego liability where the entities were separate and distinct, no assets or employees were ever transferred between the companies, and the entities had different premises and purposes. The company cites *United States v. Furr's/Bishop's Cafeterias*, 2 OCAHO no. 330, 271, 274-76 (1991),[3] construing 8 U.S.C. § 1324a(e)(4) to preclude application of the term "person or entity" to a parent company where the subsidiary is a distinct, physically separate division that does its own hiring.

Both companies acknowledge that failure to present an I-9 is a substantive violation, but argue that the bulk of the violations in Count II are technical or procedural violations that could not be corrected because all the employees were laid off and could not be located. PM Packaging says that it has substantially complied with the regulations and acted in good faith. Both companies argue that failure to print the name of the employer representative should not be treated as a substantive violation because the employees' signatures are legible and can be matched to names on the payroll records. They also assert that the lack of "secondary details" such as issuing

[3] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage. htm# PubDecOrders.

authorities or expiration dates for documents should be treated as a technical violation as well. Respondents call upon the good faith compliance provision in 8 U.S.C. § 1324a(b)(6) and argue that ICE's own Worksite Enforcement Guide provides that when the employee or preparer is no longer employed or cannot be located, technical violations cannot reasonably be corrected.

Finally, the respondents contend that the fines requested are in any event grossly excessive under the circumstances. First, PM Packaging says it only had about thirteen employees at any one time, and some of these were part-time. Contrary to the government's suggestion that it is a large transnational business, the company says it was small and in a perilous financial state. This is why the company had to close in August 2009 and why any penalty should be kept at a minimum. The company argues that good faith should also be treated as a mitigating factor, and that the presence of some illegal aliens should not lead to an aggravated fine because the presence of a small percentage of illegal aliens in a workforce in the Los Angeles area is just a reality of life.

C. The Government's Response to the Cross Motion

In response to PM Corporate's cross motion, ICE argues that its position is supported in OCAHO case law, both with respect to the alleged defective service of the NIF, *citing United States v. Goldenfield Corp.*, 2 OCAHO no. 321 (1991), and as to its alter ego theory, *citing United States v. Sargetis*, 3 OCAHO no. 407 (1992); *United States v. Ulysses, Inc*., 3 OCAHO no. 409 (1992). The government argues that both companies share the same owners, that PM Corporate registered for the fictitious business name PM Packaging, that both companies were engaged in the printing business, and that PM Corporate is still so engaged. ICE argues that although the manufacturing may have moved to Mexico, the owners are still marketing and selling products in the United States, and PM Corporate is the only entity that can be held accountable for the violations.

IV. STANDARDS APPLIED

A. Piercing the Corporate Veil

As explained in *United States v. Durable, Inc*., 11 OCAHO no. 1221, 6 (2014), piercing the corporate veil is a tool used only in extreme circumstances, *citing United States v. Kurzon*, 3 OCAHO no. 583, 1829, 1865 (1993). In determining whether to pierce the corporate veil, a court must consider not only whether there was a unity of interest and whether the shareholders lacked respect for the separate identity of the corporation, but also whether adherence to the corporate fiction would sanction a fraud, promote injustice, or lead to an evasion of legal obligations. *Kurzon*, 3 OCAHO no. 583 at 1865. Before a court will pierce the corporate veil, there must accordingly be some showing of "unfairness, injustice, fraud, evasion of existing obligations, use of the corporation to circumvent a statute, or some other inequitable conduct

arising from the misuse of the corporate form." *Id.* at 1866. In the absence of a demonstrated misuse of the corporate form, there is no justification for piercing the corporate veil. *Durable*, 11 OCAHO no. 1221 at 6.

These principles are consistent with federal case law, which holds that a parent corporation is not generally liable for the acts of its subsidiaries. *See United States v. Bestfoods*, 524 U.S. 51, 61 (1998). That a corporation and its shareholders are distinct entities is a basic tenet of American corporate law. *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003). A shareholder does not own the corporation's assets by virtue of owning its shares, *id.* at 475, and ownership alone is not a sufficient basis for piercing the corporate veil, *Katzir's Floor and Home Design, Inc. v. M-MLS.COM*, 394 F.3d 1143, 1149 (9th Cir. 2004). As explained in *Board of Trustees of the Mill Cabinet Pension Trust Fund for Northern California v. Valley Cabinet & Mfg. Co.*, 877 F.2d 769, 772-74 (9th Cir. 1989), three factors must be considered in determining whether to pierce the corporate veil: first, the respect afforded to the separate corporate identity by the shareholders; second, the degree of injustice to the litigants by recognizing the corporate entity; and third, the fraudulent intent of the incorporators.

B. Scope of the Good Faith Defense in Section 1324a(b)(6)

Section 1324a(b)(6) provides an affirmative defense where an employer made a good faith attempt to comply with the employment eligibility verification requirements, but nevertheless committed certain technical or procedural violations. The distinction between substantive violations and those that are technical and procedural is elaborated in a memorandum to INS from Paul W. Virtue, INS Acting Executive Commissioner for Programs, *Interim Guidelines: Section 274A(b)(6) of the Immigration & Nationality Act Added by Section 411 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (Mar. 6, 1997) (the Virtue Memorandum or Interim Guidelines), *available at* 74 Interpreter Releases 706, at app. I (Apr. 28, 1997). As explained in *United States v. WSC Plumbing, Inc*., 9 OCAHO no. 1071, 11 (2001), dissemination of the Interim Guidelines to the public may be viewed as an invitation for the public to rely upon them as representing agency policy. While this office is not bound by the Virtue Memorandum, the government is so bound, and failure to follow its own guidance is grounds for dismissal of those claims. *Id.* at 12. With respect to technical or procedural violations, the employer must be given a period of not less than ten business days to correct the failure voluntarily. 8 U.S.C. § 1324a(b)(6)(A)-(B).

The good faith affirmative defense in § 1324a(b)(6) does not apply, however, to substantive violations. Neither is it available to an employer that did not make a good faith attempt to comply with the employment eligibility verification requirements. 8 U.S.C. § 1324a(b)(6)(A). As explained in *United States v. LFW Dairy Corp.*, 10 OCAHO no. 1129, 5 (2009), "the rule relieves employers from liability for minor unintentional violations of the verification requirements; it does not provide a shield to avoid the basic requirements of the Act." This defense did not, in other words, repeal any provision of the statute or regulations, nor did it alter

an employer's obligation to ensure preparation of I-9 forms in the time and manner required by the statute and regulations. The reforms simply provided employers with the potential for a defense with respect to certain technical or procedural violations "if there was a good faith attempt to comply with the requirement." 8 U.S.C. § 1324a(b)(6)(A). Good faith is the sine qua non, and, without it, an employer does not cross the threshold of eligibility for the defense.

V. DISCUSSION AND ANALYSIS

A. Whether to Pierce the Corporate Veil

While the government's memorandum asserts that PM Corporate and PM Packaging shared the same location, no evidence is offered to support that proposition, and the affidavit of Steven H. Reder says otherwise. Factual allegations made only in a brief or memorandum are not evidence and do not suffice to create a genuine issue of material fact. *United States v. Ronning Landscaping, Inc.*, 10 OCAHO no. 1149, 14-15 (2012). A factual issue is genuine only if it has a real basis in the record. *United States v. Emp'r Solutions Staffing Grp. II, LLC*, 11 OCAHO no. 1242, 7 (2015). Absent countervailing evidence that creates a factual issue, I am obliged to and do credit the unrebutted factual statements in the Reder affidavit that the locations, as well as the tax numbers and the functions of PM Corporate and PM Packaging, were completely different. So it is as well with other unrebutted factual statements in the Reder affidavit, notwithstanding the government's claims to the contrary.

The cases cited by the government, *Ulysses, Inc*. and *Sargentis*, reflect wholly different factual scenarios than those presented in the instant case. In *Ulysses*, a company known as Ulysses, Inc., was operating an entity known as Wellington's Restaurant. 3 OCAHO no. 409 at 144. Ulysses, Inc., closed its bank account two days after receiving a Notice of Intent to Fine, then transferred its assets to Ulysses Restaurant Group, Inc., after which the same individuals continued to run the same restaurant in the same physical location, with the same operational name, and the same employees. *Id*. at 145. The administrative law judge found the allegedly different corporate entities to be merely paper arrangements, as in that context they clearly were. *Id*. at 145, 152. Similarly, in *Sargentis,* a new business called CVS Auto Sales was formed after the inception of the litigation out of the assets of Castle Valley Sales, Inc. 3 OCAHO no. 407 at 104. Subsequently, Castle Valley Sales ceased its operations in favor of CVS, which had the same owners, the same business activities, and the same financial structure as Castle Valley. *Id*. at 108. One of the owners acknowledged that despite an intention to keep the companies separate, he had not followed through on this intent. *Id*. at 110. The administrative law judge found both entities to be proper parties to the proceeding.

Here, in contrast, and unlike the companies at issue in *Ulysses* and *Sargentis,* PM Corporate is not a successor-in-interest that took over PM Packaging's operations after its demise; it was a corporate owner that already preexisted PM Packaging. PM Corporate was not actually

performing manufacturing activity itself before the formation of PM Packaging, and did not embark on actual manufacturing activity after the demise of PM Packaging either. All the manufacturing activity was moved to one site in Tijuana, Mexico. There is no evidence showing that PM Corporate ever borrowed or received money from PM Packaging, or otherwise siphoned off any of PM Packaging's assets. There is, in fact, no evidence showing that PM Packaging even had any assets when it ceased operations in August 2009. While ICE expresses concern that PM Packaging has no assets to pay a judgment, the inability to collect from an insolvent party is not by itself a sufficient injustice to warrant piercing the corporate veil. *Seymour v. Hull & Moreland Eng'g*, 605 F.2d 1105, 1113 (9th Cir. 1979); *accord*, *Kurzon*, 3 OCAHO no. 583 at 1866. The complaint will accordingly be dismissed as to PM Corporate inasmuch as it is not a proper party to this proceeding.

B. Liability

It is undisputed that PM Packaging is liable for the violations in Count I. As to Count II, notwithstanding the company's suggestion that the violations are "arguably" technical or procedural, that is simply not the case. An employer's failure to enter the printed name of the individual who signs the section 2 attestation is a substantive violation. *United States v. Nebeker, Inc*., 10 OCAHO no. 1165, 3-4 (2013). Visual review reflects that no printed name appears in section 2 for any of the employees in Count II. Contrary to PM Packaging's representation that the signatures are legible, moreover, visual examination of the I-9 forms themselves reflects that the "signature" in section 2 of the I-9s for Salvatore Anza, Maria Marquez, and Rosa Salmeran consists entirely of a wavy line. The signature on the form for Bruce McFarland is totally illegible as well. The purpose of having an I-9 form is to ensure that all the necessary information is recorded in one place precisely so that an examiner is not required to go rooting through payroll or other records trying to figure out who the signator is, or to find other information the employer failed to enter on the form. It is also well established in our case law that failure to provide the issuing authority for a List B document is a substantive violation. *See United States v. Ketchikan Drywall Servs., Inc.*, 10 OCAHO no. 1139, 19 (2011), *aff'd sub nom*. *Ketchikan Drywall Servs., Inc. v. ICE*, 725 F.3d 1103, 1114 (9th Cir. 2013); *United States v. M&D Masonry, Inc*., 10 OCAHO no. 1211, 9 (2014). Visual review reflects that no issuing authority was listed for List B documents that were entered on the I-9s of the employees listed in Count II.

Because each of the I-9s for the employees named in Count II has at least one substantive violation, it is unnecessary to reach the question of whether an employer that systematically fails to enter any start dates, any attestation dates, or any employer name and address on multiple I-9s can qualify for a good faith defense. Visual examination of the I-9 forms for the individuals named in Count II reflects that in addition to the substantive violations, each of the forms contains multiple technical or procedural violations as well. Most are missing the business name and address, the employee's start date, and the attestation dates in both section 1 and section 2 of the form. These I-9s appear to have been systematically prepared in a manner that makes it

impossible to ascertain upon examination of the form whether the employee completed section 1 on the first day of employment or whether the employer completed section 2 within three business days of the date of hire.

Nothing in the Virtue Memorandum suggests that 8 U.S.C. § 1324a(b)(6) was intended to provide employers with the opportunity to omit all the information that could potentially be characterized as technical or procedural on all of their I-9 forms. That the omission of a particular date, or a specific item of information, may be a technical or procedural violation where there was a good faith effort to comply with the requirements, does not mean that the wholesale omission of most of the required information on multiple I-9 forms will necessarily pass muster as constituting a good faith attempt to comply.

C. Penalties

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, is $110, and the maximum is $1100. The potential penalties in this case accordingly range from a low of $5500 to a high of $55,000. Because the government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), ICE must prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121, 159 (1997). In assessing an appropriate penalty, the following factors must be considered: 1) the size of the employer's business, 2) the employer's good faith, 3) the seriousness of the violations, 4) whether or not the individual was an unauthorized alien, and 5) the employer's history of previous violations. 8 U.S.C. § 1324a(e)(5). The statute neither requires that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

Whatever PM Packaging's size at the time of the NOI, it is undisputed that the company had already closed and had no employees well before ICE issued the NIF in this case. ICE asserts that PM Packaging is a large transnational company with multiple manufacturing facilities, but accepting, as I must, the unrebutted factual allegations in the Reder affidavit, there are currently no manufacturing operations in the United States, and only one left in Mexico. For purposes of this assessment, PM Packaging is not a large employer; it is not an employer at all.

While all the violations here are serious, their seriousness may be evaluated on a continuum because not all violations are equally serious. *See United States v. Snack Attack Deli, Inc.*, 10 OCAHO no. 1137, 8 (2010) (citing *Carter*, 7 OCAHO no. 931 at 169). Failure to prepare an I-9 at all is one of the most serious violations. *See United States v. Metro. Warehouse, Inc.*, 10 OCAHO no. 1207, 7 (citing *United States v. Reyes*, 4 OCAHO no. 592, 1, 10 (1994)). The errors and omissions in Count II are serious, but somewhat less so than the violations in Count I involving failure to present I-9s at all.

The government does not contend that PM Packaging failed to act in good faith or that the company had any history of previous violations. ICE does contend, however, that the penalties should be aggravated because six unauthorized workers were found in the workforce. But penalties may not be aggravated across the board due to the presence of only some unauthorized workers. *Hernandez*, 8 OCAHO no. 1043 at 668-69. Where there are only six allegedly unauthorized workers, the I-9 forms for the remaining employees should not be penalized for the presence of those six. The statute expressly commands that the relevant factor to be considered in setting a penalty is not the presence in the workforce of unauthorized aliens generally, but "whether or not *the individual* was an unauthorized alien . . . ." 8 U.S.C. § 1324a(e)(5) (emphasis added). Nothing in this language suggests that the penalty for a paperwork violation that does not involve an unauthorized worker may be enhanced because a different individual was unauthorized.

It is in any event not clearly demonstrated that the six employees listed in the NSD were actually unauthorized for employment. A Notice of Suspect Documents is not sufficient in itself to establish a worker's unauthorized status. *United States v. Romans Racing Stables, Inc.*, 11 OCAHO no. 1230, 8 (2014); *Natural Envtl.*, 10 OCAHO no. 1197 at 4-5. PM Packaging ceased operations in August 2009, and because the NSD was not issued until September 2009, there is no reason to believe that the company was able to give the individuals named in the NSD an opportunity to present alternative employment verification documents. Evidence as to the status of these individuals does not rise to the level of a preponderance absent some showing that the employees were afforded the opportunity to challenge their inclusion on the list and failed to do so or to present other documents. *United States v. Liberty Packaging, Inc.*, 11 OCAHO no. 1245, 10 (2015).

Finally, the proposed penalty of $53,762.50 is close to the maximum permissible of $55,000. Our case law consistently holds that penalties so close to the maximum should be reserved for more egregious violations than have been demonstrated here. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013); *United States v. New Outlook Home Care, LLC*, 10 OCAHO no. 1210, 4 (2014) (observing that eighty-five percent of the maximum possible penalty for a small employer with favorable factors was "unduly harsh"). Where, as here, a business has ceased to exist, enhancing the penalties has no deterrent effect. *See United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 6-7 (2010). Based on the record as a whole and the statutory factors in particular, the penalties will be reduced to an amount closer to the mid-range, and assessed at the rate of $600 for each of the twenty-two violations in Count I, and $500 for each of the twenty-eight violations in Count II. The total penalty is $27,200.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. PM Corporate Group, Inc. began as a limited partnership, but converted itself into a stock corporation in March 2007; its stockholders were Ramona Schmidt and Steven Reder.

2. PM Packaging, was incorporated in California in October 2007.

3. PM Packaging was one of several affiliates of PM Corporate Group, Inc. in 2009.

4. In early 2009, PM Packaging was engaged in the production of folding cartons, blister cards, and litho-laminated corrugated boxes at its facility on Walnut Street in Compton, California.

5. PM Corporate Group, Inc. was physically located in Otay Mesa, California but its mailing address is in San Diego, California.

6. The Department of Homeland Security, Immigration and Customs Enforcement, served a Notice of Inspection (NOI) on PM Packaging, at the Compton facility on July 1, 2009.

7. PM Packaging ceased operations at the Compton facility in August 2009.

8. On September 18, 2009, the Department of Homeland Security, Immigration and Customs Enforcement, served a Notice of Suspect Documents on PM Packaging that contained the names of six employees.

9. The Department of Homeland Security, Immigration and Customs Enforcement, served a Notice of Intent to Fine on PM Packaging on February 3, 2010.

10. PM Packaging made a request for hearing dated March 2, 2010, and ICE filed the instant complaint on March 31, 2011.

11. PM Packaging acknowledged that it failed to present I-9 forms upon request for Candelaria Campos, Norma Castaneda, Ricardo Carranza, Ofelia De Frutos, Jaime Dorantes, Maria Dorantes, Ermilia Frutos, Maritza Garcia, Juan Hernandez, Francisco Juarez, Sandy Luna, Abel Martinez, James McShane, Silvia Medrano, Richard Millard, Casey Nay, Abraham Ramires, Maria Recinos, Octavio Sala, Erika Salazar, Moises Salmeron, and Ramona Schmidt, all of whom worked for PM Packaging, Inc. between October 2007 and August 2009.

12. The I-9 forms PM Packaging, Inc. presented for Alberto Alvarado, Claudia Anza, Guiseppe Anza, Salvatore Anza, Stephanie Ayala, Ignacio Bartolo-Lopez, Eloy Bartolo-Valencia, Marcos Bustamante, Gregory Castillo, Sergio Castillo, Leonides Dorantes, Roger Fabricante, Francisco

Flores, Julio Mariscal, Maria Marquez, Yanet Marquez, Bruce McFarland, Richard Miller, Morena Portillo, Lilia Quintero, Geoffrey Reder, Steven Reder, Rosa Salmeran, Michael Soriano, Dihang Tang, Richard Vallejo, Alejandro Veloz, and Trisha Zalucha, all of whom worked for PM Packaging, Inc. between October 2007 and August 2009, contained no printed name of the employer representative who signed section 2 of the form.

B. Conclusions of Law

1. PM Packaging and PM Corporate Group, Inc. are entities within the meaning of 8 U.S.C. § 1324a(a)(1).

2. All conditions precedent to the institution of this proceeding with respect to PM Packaging have been satisfied.

3. Piercing the corporate veil is a tool used only in extreme circumstances. *United States v. Durable, Inc*., 11 OCAHO no. 1221, 6 (2014).

4. In determining whether to pierce the corporate veil, a court must consider not only whether there was a unity of interest and whether the shareholders lacked respect for the separate identity of the corporation, but also whether adherence to the corporate fiction would sanction a fraud, promote injustice, or lead to an evasion of legal obligations. *United States v. Kurzon*, 3 OCAHO no. 583, 1829, 1865 (1993).

5. PM Corporate Group, Inc. owned PM Packaging, Inc. and was not its alter ego, and as such PM Corporate Group, Inc. is not a proper party to this proceeding.

6. PM Packaging is liable for fifty substantive violations of 8 U.S.C. § 1324a(a)(1)(B) (2012).

7. In assessing the appropriate amounts of civil money penalties for violations of 8 U.S.C. § 1324a(b), the law requires consideration of the following factors: 1) the employer's size of business, 2) the good faith of the employer, 3) the seriousness of the violation(s), 4) whether or not the individuals involved were unauthorized aliens, and 5) any history of previous violations of the employer. 8 U.S.C. § 1324a(e)(5) (2012).

8. The governing statute, 8 U.S.C. § 1324a(b), does not require that equal weight be given to each factor, nor does it rule out consideration of additional factors. *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

The complaint is dismissed as to PM Corporate Group, Inc. PM Packaging, Inc., is liable for fifty violations of 8 U.S.C. § 1324a(a)(1)(B) and is ordered to pay civil money penalties totaling $27,200.

SO ORDERED.

Dated and entered this 26th day of June, 2015.

_____
Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.