

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

February 24, 2015

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 14A00027
)	
LIBERTY PACKAGING, INC.,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012). The United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint alleging that Liberty Packaging, Inc. (Liberty Packaging, Liberty, or the company)¹ violated 8 U.S.C. § 1324a(a)(1)(B) by failing to timely prepare I-9 forms for eighteen named employees. Bonnie Hudson, President and CEO of Liberty Packaging, filed an answer on behalf of the company denying the material allegations and requesting mitigation of the penalties proposed. Prehearing procedures have been completed. Presently pending is the government’s motion for summary decision, to which Liberty Packaging filed a response.

II. BACKGROUND INFORMATION

Liberty Packaging, Inc., incorporated in 1986, is a manufacturing company that extrudes and converts polyethylene packaging products. Liberty is owned by Bonnie Hudson and Derek De Heras, and the company’s HR manager and shipping manager is Kendrea Johnson. A Business

¹ The company also refers to itself in various filings by the names Liberty Film & Packaging, and Liberty Packaging and Extruding, Inc.

Entity Questionnaire the company completed identifies Kendrea Johnson as the person who prepares the company's I-9s. The government's exhibits include a printout from the company website that says Liberty is a second generation family business housed in a 25,000 square foot office and manufacturing facility in Commerce, California, about ten miles east of downtown Los Angeles. According to the website, Liberty has 150 active distributors throughout the continental United States, Mexico, Europe, and Israel.

ICE served Liberty with a Notice of Inspection (NOI) on July 31, 2012, and subsequently conducted a Form I-9 inspection in response to which the company presented an employee list, recent payroll records, and twenty-one I-9 forms. ICE served Liberty with a Notice of Suspect Documents (NSD) on or about September 25, 2012, and with a Notice of Intent to Fine (NIF) on March 20, 2013. Hudson made a timely request for hearing on March 26, 2013. The request stated that a HR employee, Kendrea Johnson, had filled out new I-9 forms after the NOI because she "erroneously felt that the original I-9's were either incorrectly filled out or were on expired forms." Liberty's answer was accompanied by a different set of eighteen I-9s that Hudson said were the company's correct ones.² ICE filed a complaint with this office on January 2, 2014 and all conditions precedent to the institution of this proceeding have been satisfied.

III. THE GOVERNMENT'S MOTION ADJUDICATED

A. ICE's Motion for Summary Decision

1. Liability

The government says visual inspection of the I-9 forms Liberty presented shows that almost all were completed more than three days after the employees were hired and after Liberty received the NOI. ICE says in its motion and Summary of Investigation that when ICE served the NOI on July 31, 2012, the government agent gave Liberty Packaging a copy of the *Handbook for Employers*,³ as well as a sample copy of the August 7, 2009 version of a blank I-9 form that was surreptitiously marked with the typed word "ICE" in the far right-hand corner of the first box in section 3 of the form. ICE says the marking was put on the sample form to facilitate the detection of backdating. The government asserts that seventeen of the I-9s Liberty Packaging

² A letter Hudson sent to ICE dated July 30, 2013 said that she sent the I-9s to the government's attorney as soon as she returned from vacation, but the record does not reflect when that was.

³ United States Citizenship and Immigration Services (rev. Jan. 5, 2011). Although the *Handbook* has been subsequently revised, the 2011 edition was the version in effect at all times pertinent to this case.

presented contained the word “ICE,” indicating that they were backdated. ICE points in addition to other substantive violations it says are apparent on the I-9s.

2. Penalties

ICE set a baseline penalty of \$935 for each of the eighteen violations, for a total base fine of \$16,830. Enhancements totaling fifteen percent, or \$2524.50, were then added to the baseline, representing a five percent aggravation based on the company’s bad faith, another five percent for the seriousness of the violations, and an additional five percent for the presence of unauthorized workers in Liberty’s workforce. The total penalty sought by ICE is \$19,354.50.

The government acknowledges that Liberty is a small employer with no history of violations. ICE says that Liberty’s actions indicate bad faith because the I-9s were backdated and not completed within three days of the individuals’ hire dates. The government contends that backdating and altering the completion dates of the I-9s demonstrates that the company acted with culpable behavior, particularly where ICE provided the company with the *Handbook for Employers*, which explains clearly how employers are supposed to complete I-9s. ICE questions why Hudson, who was in the office when the NOI was served and signed the notice herself, did not simply instruct Johnson to present the company’s original I-9s. ICE also questions why Johnson attested to completing I-9s on dates that were patently incorrect, and it points out that gross negligence can constitute culpable behavior. ICE also highlights inconsistencies in the second set of I-9s that Liberty subsequently proffered. Three of these I-9s also contain the surreptitious marking “ICE,” indicating that they too were backdated and not actually prepared on time. ICE says some of these I-9s lack dates to show what version of the I-9 was used, and it is facially apparent that some were not timely completed. The I-9 for Margarita Garcia, for example, shows that Liberty signed section 2 of her I-9 on July 19, 2004, but Garcia did not sign section 1 until July 25, 2004.

ICE says that failure to timely prepare an I-9 is one of the most serious paperwork violations. The government says further that five employees named in the NSD were unauthorized for employment, and Liberty terminated them after the NSD. ICE asserts that aggravating the penalties is warranted based on this evidence that unauthorized workers were present in Liberty’s workforce.

Exhibits accompanying ICE’s motion include: C)⁴ Business Entity Detail for Liberty Packaging and Extruding, Inc. and website printout (2 pp.); D) Business Entity Questionnaire; E) Notice of

⁴ ICE does not explain why it began its list with exhibit C. The government’s prehearing statement identified exhibits G-1 through G-6, but that list does not conform to the exhibits accompanying the motion.

Inspection dated July 31, 2012 (2 pp.); F) chart of employees' hire dates; G) I-9s (18 pp.); H) 2012 corporate tax return for Liberty Packaging; I) 2011 corporate tax return for Liberty Packaging; J) Notice of Suspect Documents dated September 5, 2012 (4 pp.); K) Summary of Investigation (2 pp.); and L) chart comparing the two sets of I-9s.

B. Liberty's Response

1. Liability

Bonnie Hudson filed a response on behalf of Liberty, stating that the company has always tried to comply with all laws, including IRCA. Hudson acknowledged that the I-9s the company originally presented in response to the NOI were defective, but says that the company did timely prepare I-9s for all employees, and the allegation that it didn't is simply untrue. Hudson says she was on vacation at the time Kendrea Johnson presented the newly created forms to ICE. She said she later spoke to Johnson about the matter and Johnson told her she came into work one day while she had been out on disability from foot surgery and under heavy medication. Hudson says Johnson told her that,

Pat, the Temp Agency lady was delivering the Temp payroll and sat down to speak with Mrs. Johnson. Mrs. Johnson relayed her health problems to Pat and mentioned the upcoming deadline regarding the ICE paperwork. Pat advised Mrs. Johnson that all I-9s had to be updated with current Resident Card #s, Drivers License renewals, name changes, etc. Mrs. Johnson, under heavy medication and extreme stress, then attempted to "correct" the original I-9's in a short period of time.

Hudson says Johnson made a mess of things and presented the wrong I-9s to ICE. Liberty's answer to the complaint asserts that when Hudson returned from her vacation she sent "original copies"⁵ of all the company's I-9s to ICE's counsel. The company said in a prehearing statement that when it filed its request for hearing it re-submitted copies of the company's timely dated I-9s. Copies of those eighteen I-9 forms also accompanied Liberty Packaging's answer and response to ICE's motion for summary decision.

2. Penalties

Liberty's answer says the penalty doesn't "fit the crime" because Johnson simply made a mistake. The company's response to the government's motion acknowledges that the company should be fined but says the fine should be small and the company does not deserve a penalty

⁵ What Hudson means by "original copies" is unelaborated. Regulations require the presentation of original I-9s, not copies. 8 C.F.R. § 274a.2(b)(2)(ii).

exceeding \$19,000. The company also contends that it always called “Social Security BSO verification system” to verify applicants’ dates of birth and Social Security numbers and that it never knowingly hired unauthorized workers. Liberty says that as soon as it found out it had five “illegal immigrants” on the payroll, it terminated them immediately. The company asserts that all its actions demonstrate good faith.

The company’s answer states that it has been severely impacted by the economic recession and has lost money over the last three years. Liberty says the company’s 2013 tax return was anticipated to show a loss between \$250,000 and \$300,000 and a drop in sales of almost a million dollars. Liberty says ICE’s proposed penalty will severely impact its ability to recover and stay in business.

C. Discussion and Analysis

1. Liability for the Violations

It is well established in OCAHO case law that the I-9s to be examined for violations of § 1324a(a)(1)(B) are those the employer presents in response to the NOI, not different I-9s that are proffered at some point later in the process. In *United States v. Natural Environmental, Inc.*, 10 OCAHO no. 1197, 4 (2013),⁶ for example, the employer initially presented a set of newly created and backdated I-9s in response to the NOI. After the NIF was issued, the employer produced a different set of I-9s that the company said had been timely completed. *Id.* The ALJ found that the subsequent production of allegedly correct I-9s did not absolve the employer of liability for the violations on the I-9s the company initially presented. *Id.*; *cf. United States v. A&J Kyoto Japanese Rest., Inc.*, 10 OCAHO no. 1186, 7 (2013) (finding that a set of I-9s produced after the NOI did not absolve employer of liability for failure to present I-9s initially); *United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 5 (2013) (same). The same rule applies here. Like the employer in *Natural Environmental*, Liberty Packing initially produced newly created and backdated I-9s in response to the NOI. The company’s belated second set of I-9s is not considered for purposes of determining the company’s liability, but will be considered

⁶ 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>.

in assessing the penalties. Visual examination of the I-9s initially presented in response to the NOI reflects that Liberty Packaging failed to present timely prepared I-9s for all eighteen employees listed in the complaint.

Sections 1 and 2 of Leticia Barragan's I-9 are dated November 15, 2009, but Barragan's hire date is entered on the I-9, as well as the company's employee list, as November 15, 2006. The version of the I-9 form used is the August 7, 2009 revision, which was not in existence in 2006, and the typed word "ICE" appears in the corner of the box in section 3 of her I-9, indicating that the form was backdated. Sections 1 and 2 of Mary Anne Bove's I-9 are dated August 1, 2012, the day after the NOI, but Bove's hire date is entered on the I-9, as well as the company's employee list, as January 4, 1993.

Sections 1 and 2 of Derek De Heras's I-9 are dated May 17, 2006, and the employee list reflects that De Heras was hired on this date, but the version of the I-9 form used is the August 7, 2009 revision, which was not in existence in 2006. The typed word "ICE" appears in the far corner of the box in section 3, indicating that the form was backdated. Sections 1 and 2 of Carlos Duran's I-9 are dated May 28, 2009, and the employee list reflects that Duran was hired on this date,⁷ but the version of the I-9 form used is the August 7, 2009 revision, which was not available to the public in May 2009. The typed word "ICE" appears in the corner of the box in section 3, indicating that the form was backdated.

Sections 1 and 2 of Margarita Garcia's I-9 are dated July 19, 2009, but Garcia's hire date is entered on the I-9, as well as on the company's employee list, as July 19, 2004. The version of the form used is the August 7, 2009 revision, which was not available to the public in July 2009, and the typed word "ICE" appears in the corner of the box in section 3, indicating that the form was backdated. Sections 1 and 2 of Estela Gonzalez's I-9 are dated April 21, 2010, but Gonzalez's hire date is entered on the I-9 as April 21, 2003 and is listed on the company's employee list as April 22, 2003. The version of the I-9 form used is the August 7, 2009 revision given to Liberty in July 2012 when the NOI was served, and the typed word "ICE" appears in the box in section 3, indicating that the form was backdated.

Sections 1 and 2 of Kendrea Johnson's I-9 are dated September 10, 2009, but Johnson's hire date is entered on the I-9 as April 18, 1997 and on the company's employee list as April 18, 1987. Johnson signed both the employer and the employee sections of her own I-9 form. The version used is the August 7, 2009 revision given to Liberty in July 2012 with the NOI, and the typed word "ICE" appears in the corner of the box in section 3 of the form, indicating that it was backdated. Sections 1 and 2 of Lola Jones's I-9 are dated May 9, 1994, and the employee list reflects that Jones was hired on this date, but the version of the I-9 form used is the August 7,

⁷ Duran's date of birth and hire date appear to be transposed in Liberty Packaging's employee list.

2009 revision, and the word “ICE” appears in the box in section 3 of her I-9, indicating that it was backdated.

Sections 1 and 2 of Octavio Luna’s I-9 are dated March 5, 2012, and the employee list reflects that Luna was hired on this date. The August 7, 2009 revision of the I-9 form given to Liberty in July 2012 was used, and the typed word “ICE” appears in the box in section 3, indicating backdating. Sections 1 and 2 of Rosalina Luna’s I-9 are dated October 24, 2011, and the employee list reflects that Rosalina Luna was hired on this date. The August 7, 2009 version of the form given to Liberty with the NOI in July 2012 is used and the word “ICE” appears in section 3, indicating that the form was backdated. Sections 1 and 2 of Petra Macedo’s I-9 are dated November 10, 2010, but Macedo’s hire date is entered on her I-9 as November 10, 1987 and on the company’s employee list as March 23, 1987. The August 7, 2009 version of the form given to Liberty with the NOI in July 2012 is used and the typed word “ICE” appears in the box in section 3, indicating backdating.

Sections 1 and 2 of Ambroncio Miranda’s I-9 are dated March 5, 2012, and the employee list reflects that Ambroncio Miranda was hired on this date. The August 7, 2009 version of the form given to Liberty when the NOI was served in July 2012 is used, and the typed word “ICE” appears in the box in section 3 of this I-9, indicating backdating. Sections 1 and 2 of Juan Miranda’s I-9 are dated February 23, 2010, but Juan Miranda’s hire date is entered on the I-9 as February 23, 2004 and on the company’s employee list as February 24, 2004. The August 7, 2009 version of the form is used and the typed word “ICE” appears in the box in section 3 of his I-9. The form is backdated. Sections 1 and 2 of Raul Peyro’s I-9 are dated October 26, 2009, but Peyro’s hire date is entered on the I-9, as well as on the company’s employee list, as October 26, 2004. The version of the form used is the August 7, 2009 revision and the typed word “ICE” appears in the box in section 3, indicating backdating.

Sections 1 and 2 of Luis Ramirez’s I-9 are dated February 9, 2010, but Ramirez’s hire date is entered on the I-9, as well as the company’s employee list, as February 9, 2004. The August 7, 2009 revision is the form used and the typed word “ICE” appears in the corner of the box in section 3, indicating backdating. Sections 1 and 2 of Yolanda Rodriguez’s I-9 are dated November 7, 2009, but Rodriguez’s hire date is entered on the I-9, as well as on the company’s employee list, as November 7, 2005. The version of the form used in the August 7, 2009 revision, and the typed word “ICE” appears in the box in section 3 of her I-9. The form is backdated. Sections 1 and 2 of Cynthia Salazar’s I-9 are dated August 11, 2009, but Salazar’s hire date is entered on the I-9, as well as the company’s employee list, as August 11, 2003. Sections 1 and 2 of Guadalupe Salinas’s I-9 are dated January 2, 2009, but Salinas’s hire date is entered on the I-9, as well as the company’s employee list, as January 2, 2007. The version of the form used is the August 7, 2009 revision, and the typed word “ICE” appears in the corner of the box in section 3, indicating backdating.

It is facially apparent that the I-9s forms Liberty presented in response to the NOI were not timely completed and/or were backdated.

2. 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 permissible penalties in this case range from a low of \$1980 to a high of \$19,800. 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 employer's size 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).

The parties do not dispute that Liberty Packaging is a small business with no history of previous violations; they do, however, disagree about whether the company acted in good faith, whether the violations are serious, and whether the penalty should be aggravated based on the presence of unauthorized workers in Liberty's workforce.

The company says that it has "never had the need to deceive any one [sic] since [its] paperwork has been in complete compliance." Liberty says this compliance is demonstrated by its later-produced I-9s that are copies of its originals. But at least three of the late I-9s, those for Octavio Luna, Rosalina Luna, and Ambroncio Miranda, were demonstrably created after the NOI. The I-9 for Octavio Luna purports, in both sections 1 and 2, to have been completed on March 5, 2012, but the version of the form used is nevertheless the one given to Liberty four months later, in July 2012. The typed word "ICE" that the government surreptitiously marked in the corner of the first box in section 3 on the sample form appears in the box on this form. Rosalina Luna's I-9 purports to have been completed on October 24, 2011 and Ambroncio Miranda's purports to have been completed on March 5, 2012. Both are on the sample form ICE gave the company in July 2012, and the typed word "ICE" appears in the box in section 3. At least with respect to these three I-9s, Liberty does appear to be attempting to deceive the government as to when the I-9s were completed.

The same must be said about the documents Johnson initially presented in response to the NOI. All but one of these I-9 forms are dated neither at the time they were actually completed — after the NOI — nor at the time they should have been completed — at or near the hire date for the

individual employee involved. Rather, on most of the forms, Johnson appears to have entered dates that accurately state the day and/or month the employee was hired, but reflect the entry of a year that is anywhere from two to twenty-three years later. The I-9s for Leticia Barragan, Margarita Garcia, Raul Peyro, Yolanda Rodriguez, Cynthia Salazar, and Guadalupe Salinas are dated on the anniversary date of the employee's hire, but purport to have been completed in 2009 rather than in the actual year of hire. The forms for Estela Gonzalez, Juan Miranda, and Luis Ramirez accurately state the month of the individual's hire date, but the year entered on the form is 2010 instead of the real year of hire. The only form that appears to be correctly dated is the I-9 for Mary Anne Bove, which bears the date August 1, 2012, the day after the NOI.

Kendrea Johnson has worked for Liberty since April 18, 1997. The record does not reflect how long she has been the HR manager, but examination of both sets of I-9s reflects that at some point around June 2006, Johnson's name was Kendrea Garrett and she has been completing I-9 forms for Liberty under one or the other of those names since at least as far back as 2003-04. Except for one I-9 dated in April 2003 on which she identified her job title as an "admin. asst.," the subsequent I-9s indicate her job title as "HR." That a specialized HR employee with at least eight years of experience at the time of the NOI and presumably some expertise in handling an employer's I-9 responsibilities would choose to take advice from a passing temp agency representative to "correct" the forms is unfortunate. The completion dates entered on all but one of these forms, however, do not appear to "correct" prior errors; they reflect instead the systematic falsification of the completion dates signed under oath by a company representative.

The deliberate falsification of information in section 2 of an employer's I-9 forms cannot be said to indicate good faith. The section 2 attestation has long been described as "the very heart" of the employment eligibility verification process. *See United States v. Acevedo*, 1 OCAHO no. 95, 647, 651 (1989). And while the record does not suggest Bonnie Hudson did anything wrong, Kendrea Johnson was acting as Liberty's agent, and Liberty is responsible for her acts. For purposes of 8 U.S.C. § 1324a, the term "employer" means a person or entity, including an agent or anyone acting in the interest thereof, who engages the services of an employee. 8 C.F.R. § 274a.1(g). Employers are routinely held liable for the acts of their authorized agents. *See United States v. Assoc. Painters, Inc.*, 10 OCAHO no. 1151, 5 (2012). While a poor rate of I-9 compliance does not in itself necessarily indicate bad faith, *see United States v. Durable, Inc.*, 11 OCAHO no. 1229, 14 (2014); *United States v. Taste of China*, 10 OCAHO no. 1164, 4-5 (2013), culpable conduct can be shown by evidence that the employer tried to mislead the government. *United States v. Metro. Warehouse, Inc.*, 10 OCAHO no. 1207, 6-7 (2013).

OCAHO case law assessing good faith has principally focused on the employer's conduct prior to the NOI. *See United States v. Alyn Indus., Inc.*, 10 OCAHO no. 1141, 7-8 (2011). The traditional approach is to examine what steps the employer took prior to the NOI to ascertain what the law requires and to conform its conduct to the law. *Durable, Inc.*, 11 OCAHO no. 1229 at 14. But a failure to cooperate with ICE's investigation can also constitute culpable conduct

indicative of bad faith, *see United States v. Vickers*, 5 OCAHO no. 819, 749, 755-56 (1995) (citing *United States v. Karnival Fashions, Inc.*, 5 OCAHO no. 783, 477, 478-79 (1995) (modification by CAHO)), and presenting false information to the government is one way in which a respondent may fail to cooperate with an investigation.

Failure to present timely prepared I-9 forms is a serious violation, but the government failed to show that the penalties should be enhanced based on the presence of allegedly unauthorized workers in Liberty's workforce. To begin with, 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 five allegedly unauthorized workers, the remaining thirteen may not be penalized for the presence of those five. The statute expressly reflects that the 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 some other, different individual was unauthorized.

It is in any event not clear that the five 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 Env'tl.*, 10 OCAHO no. 1197 at 4-5. Liberty Packaging says it fired the five employees at issue immediately, and there is no evidence that the company first gave these individuals an opportunity to present alternative employment verification documents. Evidence as to the status of these individuals is suggestive, but does not rise to the level of a preponderance absent some evidence that the employees were afforded the opportunity to challenge their inclusion on the list and failed to do so or to present other documents.

Finally, although Liberty argues that it has been severely impacted by the recession, the record does not establish that Liberty has suffered financial hardship. Liberty Packaging's 2011 corporate tax return shows gross sales of \$5,724,814 and a total income of \$999,192. Liberty's 2012 corporate tax return shows gross sales of \$5,455,649 and a total income of \$1,055,359. While Hudson said Liberty's 2013 return was projected to show a million-dollar drop in sales, the 2013 tax return was never presented for examination.

D. Conclusion

ICE is entitled to summary decision as to liability for eighteen violations. As to the penalties, there are both mitigating and aggravating factors. While Liberty is a small employer with no history of previous violations and the unauthorized status of the five individuals listed in the NSD was not established, the company did not act in good faith and the violations were serious.

The violations, however, are not so egregious as to warrant penalties so close to the maximum permissible. *See Fowler Equip.*, 10 OCAHO no. 1169 at 6.

Instead, based on the record as a whole and the statutory factors in particular, the penalties will be adjusted to an amount closer to the midrange of permissible penalties. Each of the eighteen violations will be penalized at the rate of \$650, for a total of \$11,700, an amount that does not appear disproportionate to Liberty's resources. *See United States v. Minaco Fashions, Inc.*, 3 OCAHO no. 587, 1900, 1909 (1993) (a penalty should not be unduly punitive in light of the respondent's resources).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Liberty Packaging, Inc., incorporated in 1986, is a manufacturing company located in Commerce, California that extrudes and converts polyethylene packaging products.
2. Bonnie Hudson is the president and CEO of Liberty Packaging, Inc., and Kendrea Johnson is the company's HR manager and shipping manager.
3. The Department of Homeland Security, Immigration and Customs Enforcement served Liberty Packaging, Inc. with a Notice of Inspection (NOI) on July 31, 2012, and Liberty Packaging, Inc. presented documents in response, including twenty-one I-9 forms.
4. The Department of Homeland Security, Immigration and Customs Enforcement served Liberty Packaging, Inc. with a Notice of Suspect documents on or about September 25, 2012.
5. The Department of Homeland Security, Immigration and Customs Enforcement served Liberty Packaging, Inc. with a Notice of Intent to Fine on March 20, 2013.
6. Liberty Packaging, Inc. made a timely request for hearing on March 26, 2013, and submitted a different set of eighteen I-9 forms Bonnie Hudson said were the company's timely-prepared forms.
7. The Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer on January 2, 2014.
8. Liberty Packaging, Inc. hired Leticia Barragan, Mary Anne Bove, Derek De Heras, Carlos Duran, Margarita Garcia, Estela Gonzalez, Kendrea Johnson, Lola Jones, Octavio Luna, Rosalina

Luna, Petra Macedo, Ambrancio Miranda, Juan Miranda, Raul Peyro, Luis Ramirez, Yolanda Rodriguez, Cynthia Salazar, and Guadalupe Salinas and failed to present timely prepared I-9 forms for them upon request by an authorized government agency.

B. Conclusions of Law

1. Liberty Packaging, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).
2. All conditions precedent to the institution of this proceeding have been satisfied.
3. Liberty Packaging, Inc. is liable for eighteen violations of 8 U.S.C. § 1324a(a)(1)(B).
4. The Forms I-9 considered to determine liability for violations of § 1324a(a)(1)(B) are the forms the employer presents to Department of Homeland Security, Immigration and Customs Enforcement in response to the Notice of Inspection, not I-9s that may be submitted thereafter. *United States v. Natural Env'tl., Inc.*, 10 OCAHO no. 1197, 4 (2013).
5. 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).
6. A poor rate of I-9 compliance is not sufficient to prove bad faith; there must be some showing of culpable conduct beyond the employer's mere failure to comply. *See United States v. Durable, Inc.*, 11 OCAHO no. 1229, 14 (2014), *aff'd*, 11 OCAHO no. 1231, 5-6 (2014); *United States v. Taste of China*, 10 OCAHO no. 1164, 4-5 (2013).
7. A Notice of Suspect Documents standing alone does not establish a worker's unauthorized status. *United States v. Romans Racing Stables, Inc.*, 11 OCAHO no. 1230, 8 (2014); *United States v. Natural Env'tl.*, 10 OCAHO no. 1197, 4-5 (2013).
8. The section 2 attestation has been described as "the very heart" of the employment eligibility verification process. *See United States v. Acevedo*, 1 OCAHO no. 95, 647, 651 (1989).

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

Liberty Packaging, Inc. is liable for eighteen violations of 8 U.S.C. § 1324a(a)(1)(B) and is ordered to pay a civil money penalty of \$11,700.

SO ORDERED.

Dated and entered this 24th day of February, 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) (2012).

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.