In the Matter of:

HONG KONG ENTERTAINMENT (OVERSEAS) INVESTMENTS, LTD., d/b/a, TINIAN DYNASTY HOTEL AND CASINO,

ARB NO. 13-028

ALJ NO. 2010-FLS-008

DATE: November 25, 2014

and

RAYMOND CHAN, an individual,

RESPONDENTS,

and

KWAN MAN, an individual,

ALJ NO. 2011-FLS-004

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Plaintiff:

M. Patricia Smith, Esq.; Jennifer S. Brand, Esq.; William C. Lesser, Esq.; Paul L. Frieden, Esq.; and Paul L. Edenfield, Esq., *United States Department of Labor, Office of Solicitor*; Washington, District of Columbia

For the Respondents:

George Anthony Long, Esq., *Long Law Office*; Saipan, Commonwealth of the Northern Mariana Islands

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the Fair Labor Standards Act (FLSA), as amended, 29 U.S.C.A. § 201, et seq. (West 1998 & Supp. 2014), and its implementing regulations at 29 C.F.R. Part 578 (2013). Hong Kong Entertainment Investments, Ltd., doing business as Tinian Dynasty Hotel and Casino, and Kwan Man (collectively, HKE) appeal the Decision and Order Ordering Payment of Civil Money Penalties, Approving Settlement, and Dismissing Respondent Raymond Chan Without Prejudice, issued November 30, 2012, by a Department of Labor Administrative Law Judge (ALJ). In this Decision and Order, the ALJ affirmed the assessment of the Administrator of the Wage and Hour Division, United States Department of Labor (Administrator) of civil money penalties in the amount of $191,400 for HKE's willful and repeat violations of the FLSA's overtime provisions, 29 U.S.C.A. § 207 and 29 C.F.R. § 778.106 (2013). The Administrator has responded, urging the Board to affirm the ALJ's conclusions and imposition of civil money penalties. For the following reasons, the Administrative Review Board affirms the ALJ's holding that HKE violated the FLSA's overtime provisions and the ALJ's imposition of a civil money penalty of $191,400 for the violations.

BACKGROUND

HKE operates a hotel and casino on Tinian Island, in the Commonwealth of the Northern Mariana Islands. Documents of Record (DOR) at 270.[1] Kwan Man is the President, Treasurer, and Chairman of the Board of HKE. DOR at 276. The Wage and Hour Division of the United States Department of Labor (WHD) originally investigated HKE in 2001. A Consent Judgment resulted in which HKE agreed to pay $591,535.02 in "unpaid overtime pay hereby found to be due under the FLSA" or "backwage[s]" to 436 of its employees and agreed to comply with the FLSA's overtime requirements in the future. DOR at 240.

The WHD investigated HKE again in 2007, which resulted in a Back Wage Compliance and Payment Agreement (Back Wage Agreement or Agreement). HKE agreed to pay $309,816.21 in overtime pay due under the FLSA to 348 of its employees and agreed to comply with the FLSA's employee payment requirements. DOR at 249. The Agreement further stated in part that "the [WHD] does not waive its right to conduct future investigations . . . and . . . assess[] . . . civil money penalties with respect to any violations disclosed by such investigations." *Id.*

In a declaration HKE submitted from its Financial Comptroller, Raymond Chan, Chan states that the WHD investigator advised him on June 29, 2007, that HKE should sign the Agreement if it "desired to avoid the imposition of a civil money penalty." DOR at 273. HKE subsequently received the Agreement for signature, along with a letter from the WHD investigator stating that if HKE "has any hope of reducing the penalties" it should sign the Agreement or "the penalties could be greatly increased." DOR at 261, 273.

[1] The Documents of Record (DOR) refers to the paginated appendix of relevant record documents that HKE submitted on appeal and that the Administrator also stipulates is sufficient for purposes of reference to the relevant record documents.

Subsequently, the Administrator assessed civil money penalties in the amount of $191,400 against HKE for willful and repeat violations of the FLSA's overtime provisions. HKE requested a hearing before an ALJ and the matter was referred to the Office of the Administrative Law Judges. Before the ALJ, the Administrator filed a Motion for Summary Decision before the ALJ, and HKE filed a Motion for Partial Summary Decision.

On April 16, 2012, the ALJ issued an Order Denying [HKE's] Motion for Partial Summary Decision (ALJ April Order). HKE had argued in its Motion for Partial Summary Decision that the five-year statute of limitations under 28 U.S.C.A. § 2462 precluded the Administrator from using evidence of its past overtime violations from the 2001 investigation to establish HKE's willful and repeat conduct in support of the assessment of civil money penalties in the current case. The ALJ held that the statute of limitations did not apply to the Administrator's use of evidence of its past violations, as it only applies to an "action, suit or proceeding" initiated in a court, as opposed to evidence of past instances of misconduct, and as the FLSA does not contain any limitation regarding the use of evidence to show willful or repeat violations.

On May 18, 2012, the ALJ issued an Order Granting in Part [the Administrator's] Motion for Summary Decision and Setting Hearing (ALJ May Order). The ALJ granted the Administrator's Motion for Summary Decision as to HKE, as the ALJ concluded that HKE and Kwan Man engaged in willful and repeated violations of the FLSA's overtime provisions, and affirmed the Administrator's assessment of $191,400 in civil money penalties against them. The ALJ denied the Administrator's motion as to Raymond Chan. Finding insufficient basis for holding Chan personally liable as an employer under the FLSA, the ALJ declined to order payment of the penalties based on the Administrator's motion, and set the matter of Chan's liability for further hearing.

Subsequently, a settlement agreement was reached between the Administrator and Chan that dismissed Chan without prejudice, subject to the ALJ's approval and issuance of a final order against HKE and Kwan Man to pay the $191,400 in civil money penalties against them. On November 30, 2012, the ALJ issued her Decision and Order Ordering Payment of Civil Money Penalties [of $191,400], Approving Settlement, and Dismissing [Chan] (D. & O.), from which HKE has appealed.

JURISDICTION AND STANDARD OF REVIEW

29 U.S.C.A. § 216(e)(4) affords any party against whom civil money penalties have been assessed under the FLSA the opportunity to challenge any such assessment through administrative procedures, including the opportunity for hearing, established by the Secretary of Labor in accordance with section 554 of Title 5 (the APA). Consistent with Section 216(e)(4), the Secretary has delegated to the Administrative Review Board (ARB) the authority and responsibility to act for the Secretary in civil money penalty cases arising under the FLSA's

overtime provisions. Secretary of Labor Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012). *See also* 29 C.F.R. § 580.13 (establishing the procedures for appeal and review by the ARB).

The APA provides, at 5 U.S.C.A. § 557(b), that "[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision . . . ." Thus, the Board reviews the ALJ's decision de novo, 5 U.S.C.A. §§ 554, 557, although on the record that was before the ALJ, 29 C.F.R. § 580.15. The ARB also reviews de novo an ALJ's grant of a motion for summary decision, i.e., under the same standard that an ALJ employs. The Board is guided in its consideration by 29 C.F.R. § 18.40, governing an ALJ's grant of summary decision. Pursuant to 29 C.F.R. § 18.40(d), the moving party is entitled to summary decision "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." The ALJ's evidentiary rulings are reviewed for abuse of discretion. *Butler v. Anadarko Petroleum Corp.*, ARB No. 12-041, ALJ No. 2009-SOX-001, slip op. at 2 (ARB June 15, 2012).

DISCUSSION

Relevant Statutory and Regulatory Law

The FLSA provides that "[a]ny person who repeatedly or willfully violates [the FLSA's overtime provisions] shall be subject to a civil penalty not to exceed $1,100 for each such violation. 29 U.S.C.A § 216(e)(2); *see* 29 C.F.R. § 578.3(a); *see also* 29 C.F.R. § 578.3(b), (c) (defining a "repeated" violation as where an employer previously violated the FLSA's overtime provisions and previously received notice of the violation from the Administrator and defining a "willful" violation as "where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act").

29 U.S.C.A. § 216(e)(3) requires that "[i]n determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered." *See also* 29 C.F.R. § 578.4(a). In addition to these mandatory statutory considerations, 29 C.F.R. § 578.4(b) provides other discretionary factors that the Administrator may also consider in determining the amount of penalty to be assessed, including but not limited to: "(1) good faith efforts to comply, (2) the employer's explanation for the violations, (3) previous history of violations, (4) the employer's commitment to future compliance, (5) the interval between violations, (6) the number of employees affected, and (7) whether there is any pattern to the violations."

Back Wage Agreement Does Not Prohibit Assessment of Civil Money Penalties

HKE contended before the ALJ that the Back Wage Agreement it signed bars the assessment of civil money penalties in this case; and that it only covers violations disclosed as the result of future WHD investigations. The ALJ noted that while the Back Wage Agreement does not expressly reserve the Administrator's right to impose a civil money penalty in this case, it did not expressly give up that right or address the issue. The ALJ further held that the Back Wage Agreement was not totally integrated, so that the WHD Investigator's letter that accompanied transmittal to HKE of the Agreement for signature constituted extrinsic evidence that is part of the same transaction. That letter, when interpreted together with the Agreement, supplied the understanding that civil money penalties might be assessed in this case. ALJ May Order at 24.

On appeal, HKE reiterates its contention that the Back Wage Agreement stands as a bar to the assessment of a civil money penalty. We disagree, for the reasons the ALJ articulated.

HKE argued before the ALJ, as it does before the ARB, that it relied on the WHD investigator's verbal statement that HKE should sign the Agreement to avoid the assessment of a civil money penalty. We reject this argument on appeal for the same reason the ALJ articulated, i.e., that upon HKE's subsequent receipt of the investigator's letter indicating that a civil money penalty might be imposed for the violations at issue, HKE could no longer reasonably rely on the investigator's verbal promise. ALJ May Order at 25. Accordingly, the Board holds that the Back Wage Agreement HKE entered into does not prohibit the assessment of civil money penalties in this case, for the reasons the ALJ stated.

No Statute of Limitations Applies for Establishing a Repeated Violation

HKE contended before the ALJ that the five-year statute of limitations under 28 U.S.C.A. § 2462 precludes the Administrator from using evidence of its past violations from its 2001 investigation to establish HKE's willful and repeat conduct in support of the assessment of civil money penalties in the current case. The ALJ held that the statute of limitations did not apply to the Administrator's use of evidence of its past violations, as it only applies to an "action, suit or proceeding" initiated in a court, as opposed to evidence of past instances of misconduct, and as the FLSA does not contain any limitation regarding the use of evidence to show willful or repeat violations. ALJ April Order at 5-8, n.5.

In response to HKE's reiteration of its contention on appeal, the Administrator cites the language of 29 C.F.R. § 578.4(a)(5), which provides for no limitations period, and addresses the Board's attention to the Department of Labor's explanatory comments accompanying the FLSA's implementing regulations:

> Other commenters suggested that the Department adopt a statute of limitations or maximum time period for establishing a repeated

> violation. It is the Department's view that such a maximum period is not appropriate in the regulations, because there is no such limitation in the statute. However, it is anticipated that the length of time since the previous violation will be taken into consideration in determining whether to assess a civil money penalty and, as a part of reviewing the previous history of violations, in determining the size of the penalty pursuant to § 578.4(b)(3).

57 Fed. Reg. 49,128-49,129 (Oct. 29, 1992).

Thus, we reject HKE's contention and affirm the ALJ, for the absence of any limitations period in 29 C.F.R. § 578.4(a)(5), accompanied by the Department's regulatory explanation, fully supports the ALJ's determination that the FLSA's five-year statute of limitations under 28 U.S.C.A. § 2462 does not apply to the use of evidence to show willful or repeat violations.

HKE's agreement in the 2001 Consent Judgment that it owed its employees "unpaid overtime pay" constitutes acknowledgment of having committed prior FLSA overtime violations

While HKE agreed to pay back wages to its employees in the 2001 Consent Judgment, HKE contended before the ALJ that there is no admission in the Consent Judgment that HKE violated the FLSA, so the Administrator cannot rely on the Consent Judgment to establish that the violations found as a result of the current investigation constitute "repeat violations" within the meaning of 29 C.F.R. § 578.3(a) that permit the assessment of civil money penalties under the FLSA. However, as the ALJ noted, in the Consent Judgment, HKE agreed that it owed and would pay "unpaid overtime pay hereby found to be due under the FLSA." ALJ May Order at 10, 15-16. We thus agree with the ALJ that in signing the Consent Judgment HKE admitted to having committed FLSA overtime violations prior to those found as a result of the current investigation.

The ALJ's evidentiary rulings were not an abuse of the ALJ's discretion

Although HKE contended before the ALJ that the Federal Rules of Evidence require evidence to be admissible when considering evidence for making a decision on a motion for summary decision, the ALJ held that pursuant to 29 C.F.R. § 18.104(a), the Federal Rules of Evidence do not apply to proceedings before the ALJ. ALJ May Order at 3. On appeal, HKE reiterates its contention, arguing that the Administrator has not proven that the depositions of Kwan Man and Chan are admissible over the objections HKE made in their depositions. In addition, HKE argues that Chan's depositions were not properly authenticated as they did not have a signed certification from the reporter, and the Administrator relied on them in support of the motion for summary decision before the period provided to HKE to review them had expired.

Also HKE argues that the ALJ erred in relying on the deposition of Kwan Man, as it was not taken in accord with the procedural provisions provided in the Federal Rules of Civil Procedure for foreign depositions and the Hague Evidence Convention procedures. Finally,

HKE argues that the ALJ abused her discretion in permitting the Administrator to file a reply to HKE's response to the Administrator's motion for summary decision, but not allow HKE to subsequently file any reply of its own.

But the ALJ noted that the only objections in the depositions that HKE made related to events after the period covered by the WHD 2007 investigation, and the ALJ had already ruled that the Administrator could ask questions regarding HKE's compliance with FLSA requirements after 2007. ALJ May Order at 5-6. In addition, the ALJ noted that the depositions were subsequently certified and the reason that HKE did not timely receive them was due to HKE's own refusal to pay for copies of the deposition transcripts. Alternatively, the ALJ noted that Chan's deposition only contains admissions, even if the Federal Rules of Evidence were applied. ALJ May Order at 4. Finally, the ALJ held that the Administrator's reply did not introduce anything novel enough to require any further response from HKE.

Evidentiary rulings are within the ALJ's discretion and HKE has not shown how it was prejudiced as a result of the admission of Kwan Man's or Chan's depositions and the ALJ's refusal to allow HKE to file a reply or that the ALJ abused her discretion. *See Butler*, ARB No. 12-041. Consequently, because HKE has not shown that the ALJ abused her discretion, the ALJ's evidentiary rulings are affirmed for the reasons the ALJ stated.

The ALJ's determination that HKE violated the FLSA's overtime provisions and assessment of civil monetary penalties of $191,400 are in accordance with applicable law

As the ALJ noted, HKE admitted that it paid its employees overtime wages late in 2007. ALJ May Order at 10.[2] Moreover, HKE does not dispute on appeal the ALJ's determination that paying its employees overtime wages late constitutes an FLSA overtime violation under 29 C.F.R. § 778.106. *See* ALJ May Order at 14-15. Thus, the ALJ properly determined that the undisputed evidence establishes that HKE violated the FLSA overtime provisions during the period covered in the current investigation. *See* ALJ May Order at 15; D. & O. at 5.

As previously noted, a civil money penalty of up to $1,100 per violation may be assessed against any person who repeatedly or willfully violates the FLSA's overtime provisions. 29 U.S.C.A § 216(e)(2); 29 C.F.R. § 578.3(a). An employer will be deemed to have committed a repeat violation of FLSA's overtime provisions where, inter alia, the employer has committed a previous overtime violation, "provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act." 29 C.F.R. § 578.3(b)(1). An employer will be deemed to have committed a willful violation "where the employer knew that

[2] "Late," as the ALJ noted, is defined as not paid to employees before the end of the next pay period. *See* ALJ May Order at 10, n.8.

its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act." 29 C.F.R. § 578.3(c)(1).[3]

In this case, the evidence of record establishes not only that HKE committed previous FLSA overtime violations (*see* discussion, *supra*), but because of the prior 2001 investigation of HKE's FLSA overtime violations and the resulting Consent Judgment, the WHD provided HKE with the notice required under 29 C.F.R. § 578.3(b)(1). In addition, contrary to HKE's contention on appeal, the ALJ properly found, based on the undisputed evidence, that HKE knew prior to the current investigation that paying its employees overtime wages late constitutes an FLSA overtime violation.

Thus, the ALJ both properly concluded that the undisputed evidence establishes that HKE's overtime violations, which occurred during the period covered in the current investigation, were repeat violations, *see* ALJ May Order at 17; D. & O. at 6, and that the overtime violations were willful. *See* ALJ May Order at 17-18; D. & O. at 6. Thus, having established that HKE repeatedly and willfully violated the FLSA's overtime provisions, we affirm the ALJ's holding that HKE is subject to civil money penalties under 29 U.S.C.A § 216(e)(2) and 29 C.F.R. § 578.3(a).

In evaluating the appropriateness of the Administrator's civil money penalty assessment, the ALJ initially reviewed the appropriateness of the assessment to both the gravity of the violation and the size of HKE's business, mandatory considerations under 29 U.S.C.A. § 216(e)(3). *See also* 29 C.F.R. § 578.4(a). Specifically, the ALJ determined that the Administrator was correct in concluding that HKE's overtime violations, which occurred during the period covered in the current investigation, were most serious as they were both repeat and willful. ALJ May Order at 18. Additionally, the ALJ determined that the penalties assessed were appropriate given "the large number of employees involved, and the amount of wages that were owed to the employees," noting that "HKE was the largest private employer on the island of Tinian Island . . . and one of the larger employers in the Commonwealth of the Northern Mariana Islands. D. & O. at 6. The ALJ thus agreed with the Administrator that both mandatory factors weighed in favor of the civil money penalties assessment. *Id*.

In addition to the appropriateness of the statutorily imposed mandatory considerations in the assessment of civil money penalties, the ALJ also concluded that the Administrator properly considered the discretionary factors under 29 C.F.R. § 578.4(b) in assessing the amount of the civil money penalties against HKE.

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[3] An employer's conduct will be deemed "knowing" if, among other situations, "the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful." 29 C.F.R. § 578.3(c)(2). An employer's conduct will be deemed to be in "reckless disregard" of the requirements of the Act if, among other situations, "the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry." 29 C.F.R. § 578.3(c)(3).

In challenging the Administrator's (and thus the ALJ's) consideration of the discretionary factors, HKE contends that its overtime violations in this case are not "the most serious type" because of the interval between the current violation and HKE's prior violation, which occurred more than five years earlier, and because the current violation was only the company's second overtime violation. In addition, HKE contends that the Administrator failed to consider discretionary factors under 29 C.F.R. § 578.4(b) that would mitigate, rather than increase, the amount of the civil money penalties assessment. Specifically, HKE argues that the ALJ did not consider HKE's financial condition as a mitigating factor, which HKE contends affected its ability to timely pay its employees overtime.

HKE also argues that the Commonwealth of the Northern Mariana Islands was exempt from the FLSA's minimum wage requirements when the Wage and Hour Division conducted the current investigation, yet the Administrator calculated the amount of back wages HKE owed pursuant to 29 C.F.R. § 778.315 to include wages other than merely the amount of the overtime wages it owed, which HKE asserts amounted to only $87,486.56. Thus, HKE argues that the ALJ failed to consider the ratio between the amount of the civil money penalties the Administrator assessed and the amount of the overtime wages that were actually owed, which it asserts is more than double the amount of the overtime wages owed, as a mitigating factor in assessing the amount of the civil money penalties.

Contrary to HKE's contentions, the ALJ properly noted that the Administrator did consider HKE's prior history and the interval between HKE's overtime violations as mitigating factors in determining the amount of the civil money penalties to be assessed. While a civil money penalty of up to $1,100 for each repeat or willful violation of the FLSA's overtime provisions may be imposed under 29 U.S.C.A. § 216(e)(2) and 29 C.F.R. § 578.3(a), the ALJ noted that the Administrator assessed only half of the allowed $1,100 civil money penalty, or $550, for each of the overtime violations involving the 348 HKE employees who were not properly paid their overtime wages during the period covered by the current investigation. ALJ May Order at 19.

Similarly, contrary to HKE's contention, both the Administrator and the ALJ did consider HKE's financial condition in assessing the amount of the civil money penalties. The ALJ affirmed the Administrator's determination that HKE's financial condition weighed *in favor* of imposing civil money penalties. As the ALJ explained, not having the financial condition or ability to pay employees "does not excuse violating the law," as HKE could have "decreased the size of its workforce to a size that it could afford," or otherwise changed or closed its business. ALJ May Order at 19-20; D. & O. at 8.

Finally, contrary to HKE's contention, the ALJ determined that the Administrator properly calculated the amount of back wages HKE owed pursuant to 29 C.F.R. § 778.315 as including more than just the overtime wages alone. 29 C.F.R. § 778.315 states that in determining the number of hours for which overtime compensation is due, "all hours worked" by an employee for an employer "must be counted" and that overtime wages "cannot be said to have been paid to an employee unless all the straight time compensation due him for the non-overtime

hours" has been paid. Thus, the ALJ properly concluded that HKE did not merely owe $87,486.56 in back overtime wages, as its overtime requirements can only be satisfied once [its] regular wage obligations" were met. Pursuant to 29 C.F.R. § 778.315, compliance with the FLSA's overtime provisions required payment of the full $309,816.21 in back wages owed, which HKE agreed to pay in the Back Wage Agreement. ALJ May Order at 22. Therefore, the ratio between the amount of the civil money penalties the Administrator assessed and the amount of back wages HKE owed was not more than double as HKE asserts.

Ultimately, in determining the propriety of the Administrator's consideration of the discretionary factors identified under 29 C.F.R. § 578.4(b), the ALJ noted and examined the following:

> (1) The Administrator found that it was "not apparent" that HKE made good faith efforts to comply with the FLSA's overtime provisions, since HKE's responsibilities were spelled out in the first investigation and the resulting Consent Judgment, but were not carried out;
>
> (2) HKE's explanation that its employees were paid late due to its financial condition because "business was slow" weighed in favor of assessing civil money penalties because "it did not indicate confusion about the law" on HKE's part or that the violations were "an honest mistake," but rather demonstrated "a conscious decision" to let employees work when HKE knew they would "not be paid in compliance with the law;"
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> (3) HKE's previous violations, which included by virtue of the prior Consent Judgment, that "the employer is subject to injunction against violations of the Act;"
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> (4) The Administrator credited HKE's "commitment to future compliance" because they signed the current Compliance Agreement, although the Administrator viewed this as somewhat discredited since HKE had broken the commitments it made in the prior Consent Judgment;
>
> (5) The Administrator found the six-year interval between HKE's violations mitigated the civil money penalties assessment;
>
> (6) A "very large number of employees" (348 employees) were affected which "weighed in favor" of a civil money penalties assessment;

> (7) There was a "pattern" on the part of HKE "of failing to pay wages when they were due," citing the similarity between the violations in the prior and current investigations.

ALJ May Order at 19; D. & O. at 7.

Based on this broad and detailed examination by both the Administrator and the ALJ, the Board concludes that they both properly considered the relevant factors for determining the amount of the civil money penalties for HKE's willful and repeat violations of the FLSA's overtime provisions. Furthermore, HKE has failed to demonstrate that the Administrator's civil money penalties assessment lacks undisputed evidentiary support, or that the ALJ's decision affirming the Administrator's assessment was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law. Accordingly, the ALJ's order that HKE pay civil money penalties in the amount of $191,400 for violations of the FLSA's overtime provisions is affirmed.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the ALJ's holding that HKE violated the overtime provisions of the FLSA and the ALJ's imposition of civil money penalties of $191,400 for the violations. Accordingly, HKE is **ORDERED** to pay civil money penalties in the amount of $191,400.

SO ORDERED.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge