



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

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Notice of Decision

In Reference To:

Secretary of Labor v. JUAN G. QUEVEDO-GARCIA.

OSHRC Docket No. 20-1029 et al.

1. Enclosed is a copy of my decision. The entire record, including this decision, shall constitute the report of this Administrative Law Judge pursuant to section 12(j) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. § 661(j). The Judge's report, which includes this decision, will be filed with the Commission's Executive Secretary on **Tuesday, March 8, 2022**. See Commission Rule 90(b), 29 C.F.R. § 2200.90(b).¹ The Executive Secretary will then issue a "Notice of Docketing of Administrative Law Judge's Decision" that notifies all parties of the date that the Executive Secretary docketed the Judge's report, and that will state the date by which a party must file a petition for discretionary review.
2. *Commission final order.* The decision shall become a final order of the Commission thirty (30) days from the date the Executive Secretary docketed the decision, unless a Commission member directs review of the Decision within that time. See Section 12(j) of the Act; Commission Rule 90(f), 29 C.F.R. § 2200.90(f).
3. *Party adversely affected or aggrieved by the decision.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review with the Executive Secretary at any time following the service of the Judge's decision on the parties but no later than 20 days after the date of docketing of the Judge's report. See Commission Rule 91(b), 29 C.F.R. § 2200.91(b). The Executive Secretary's address is as follows:

**Executive Secretary
Occupational Safety and Health Review Commission
One Lafayette Centre
1120 20th Street NW, Suite 980
Washington, D.C. 20036-3457**

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).

The full text of the rule governing the filing of a petition for discretionary review is Commission Rule 91, 29 C.F.R. § 2200.91.

4. *Correction of errors in the Judge's report.* Up to the time that either the Commission directs review of the decision or the decision becomes a final order of the Commission, a request to correct clerical errors arising through oversight or inadvertence in the decision or in other parts of the Judge's report shall be filed with the undersigned Judge, by motion, pursuant to Commission Rule 90(b)(4)(i), 29 C.F.R. § 2200.90(b)(4)(i). Motions shall conform to Commission Rule 40, 29 C.F.R. § 2200.40.
5. *Relief from default.* Requests for relief from default or for reinstatement of the proceeding may be filed with the undersigned Judge, by motion, until the date the Executive Secretary docketed the Judge's report. *See* Commission Rule 90(c), 29 C.F.R. § 2200.90(c). Motions shall conform to Commission Rule 40, 29 C.F.R. § 2200.40.
6. *Filing with Executive Secretary.* Except for motions filed to correct errors in the Judge's report discussed in paragraph 4 above, on or after the date the Executive Secretary docketed the Judge's report, all documents shall be filed with the Executive Secretary. *See* Commission Rule 90(d), 29 C.F.R. § 2200.90(d).

/s/ William S. Coleman
Administrative Law Judge

Dated: February 25, 2022



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,
Complainant,

v.

JUAN G. QUEVEDO-GARCIA,
Respondent.

OSHRC DOCKET Nos.
20-1029, 20-1030, 20-1031, 20-1032, & 20-1042

APPEARANCES:

For the Complainant:

Alexander M. Kondo, Senior Trial Attorney
B. Carina De La Paz, Trial Attorney
U.S. Department of Labor
New York City, New York

For the Respondent:

Richard P. Galler, Esquire
Hackensack, New Jersey

BEFORE: William S. Coleman
U. S. Administrative Law Judge

DECISION AND ORDER

The parties have filed cross-motions for summary judgment on the sole issue remaining to be decided, which may be stated as follows:

Issue: Does a genuine dispute of material fact exist on whether the evidence does, or does not, constitute “clear and convincing evidence” to hold the Respondent, Mr. Quevedo-Garcia, personally liable for OSHA violations and penalties that have been assessed against his closely-held company (BB Frame LLC) by piercing the corporate veil of that company?

Decision: The whole of the evidence on the cross-motions permits only one reasonable conclusion—that the evidence is clear and convincing that BB Frame LLC has not operated as an entity separate from Quevedo-Garcia and that he has abused the company’s corporate form to circumvent the Occupational Safety and Health Act of 1970 (Act or OSH Act) and avoid the Act’s expressed purpose and policy. The Secretary is therefore entitled to judgment as a matter of law that the company’s corporate form should be disregarded to hold Quevedo-Garcia personally liable for the company’s OSHA violations and penalties.

Accordingly, as set forth below, the Respondent’s motion for summary judgment is denied, and the Secretary’s cross-motion for summary judgment is granted.

**FACTS
(Of Which No Genuine Dispute Has Been Shown)**

The evidentiary material considered on the cross-motions for summary judgment reflects no genuine dispute as to the following facts:

Quevedo-Garcia and Related Closely-Held Companies

1. The Respondent, Mr. Juan G. Quevedo Garcia (Quevedo-Garcia or Respondent), is an individual whose primary residence is 200-B Commercial Avenue, Palisades Park, New Jersey (Quevedo-Garcia Residence). (Exs. 1 & 4 to Declaration of Alexander Kondo, Oct. 15, 2021 [Kondo Decl.]

2. Quevedo-Garcia was originally cited along with BB Frame LLC (BB Frame) for the violations and proposed penalties that remain here alleged against Quevedo-Garcia alone. As to BB Frame, the alleged violations and penalties subsequently became final orders against it, as detailed infra.

BB Frame LLC (BB Frame)

3. BB Frame was organized as a New Jersey limited liability company on April 13, 2017 and was voluntarily dissolved about 42 months later, on November 19, 2020. (Exs. 9 & 10 to

Kondo Decl.). Quevedo-Garcia owned 70% of BB Frame and was its only officer, serving as its president. Quevedo-Garcia's sister, Magda Quevedo-Garcia, was the only other member of BB Frame, owning 30%. (Exs. 7 & 8 to Kondo Decl.; Quevedo-Garcia Motion for Summary Judgment, Sept. 23, 2021 [Quevedo-Garcia Mot.] ¶ 10). BB Frame maintained its principal office and place of business at the Quevedo-Garcia Residence. (Ex. 4 to Kondo Decl.).

4. BB Frame was a construction contractor engaged mainly in framing small to medium sized residential structures. (Exs. 4 & 31 to Kondo Decl.; Quevedo-Garcia Mot. ¶¶ 1 & 10).

5. Quevedo-Garcia was the only person authorized to hire, terminate, direct, train or discipline employees of BB Frame. (Ex. 31 to Kondo Decl.). Quevedo-Garcia was the only person to sign contracts, work orders, and service agreements with customers on behalf of BB Frame. (Ex. 4 to Kondo Decl.). Quevedo-Garcia was the only person authorized to withdraw money from the bank accounts of BB Frame. (Ex. 31 to Kondo Decl.).

6. The Secretary's ability to discover and present evidence relating to BB Frame's formation, operations, and dissolution in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia's invocation of his Fifth Amendment privilege against compulsory self-incrimination, which Quevedo-Garcia first formally asserted through counsel on July 16, 2021, and which he has thereafter maintained. (As described *infra* in the Discussion, the undersigned sustained Quevedo-Garcia's invocation of the Fifth Amendment privilege in orders that denied discovery motions filed by the Secretary.)

Frame Q LLC (Frame Q)

7. Frame Q LLC ("Frame Q") was organized as a New Jersey limited liability company on January 21, 2013 with Quevedo-Garcia as the sole owner and its president. (Exs. 2, 3, 31 to Kondo Decl.; Quevedo-Garcia Mot. ¶ 1). Frame Q maintained its principal office and place of business at the Quevedo-Garcia Residence. (Exs. 2, 3, & 4 to Kondo Decl.). Frame Q was

voluntarily dissolved on April 7, 2019. (Exs. 5 & 6, Kondo).

8. Frame Q was a construction contractor engaged mainly in framing small to medium sized residential structures. (Exs. 4 & 31 to Kondo Decl.; Quevedo-Garcia Mot. ¶ 1). Quevedo-Garcia was the only person authorized to hire, terminate, direct, train or discipline employees of Frame Q. (Ex. 31 to Kondo Decl.). Quevedo-Garcia was the only person to sign contracts, work orders, and service agreements with customers on behalf of Frame Q. (Ex. 4 to Kondo Decl.). Quevedo-Garcia was the only person authorized to withdraw money from the bank accounts of Frame Q. (Ex. 31 to Kondo Decl.).

BM Frame LLC (BM Frame)

9. BM Frame LLC (BM Frame) was organized as a New Jersey limited liability company on December 24, 2019 with two members—Quevedo-Garcia (75% owner) and Hector F. Roca (25% owner). (Exs. 1, 11 & 12 to Kondo Decl.). At the time of its formation, BM Frame sought and obtained authorization from the State of New Jersey to operate under the alternate name of “BB Frame.” (Exs. 12 & 13 to Kondo Decl.).

10. BM Frame sought and obtained a license from the State of New Jersey as a home improvement contractor and is engaged in framing small to medium sized residential structures. (Exs. 12 & 29 to Kondo Decl.). BM Frame maintains its principal office and place of business at the Quevedo-Garcia Residence. (Ex. 12 to Kondo Decl.).

11. The Secretary’s ability to discover and present evidence relating to BM Frame’s formation and operations in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege against compulsory self-incrimination.

Q Properties LLC, Q Properties II LLC, and Q Nails Boutique LLC

12. Q Properties LLC (Q Properties) is a limited liability company formed on February

5, 2018, with an address at the Quevedo-Garcia Residence. Quevedo-Garcia owns 60% and his sister Magda owns 40%. Q Properties is in the business of renting and selling real estate. (Exs. 1, 3 & 14 to Kondo Decl.).

13. A company named Q Properties II LLC (Q Properties II) has an address at the Quevedo-Garcia Residence. (Kondo Decl. ¶ 16). There is no information in the record regarding the identity of the owners of Q Properties II, but in 2020, BM Frame issued checks totaling \$18,000 payable to Q Properties II, as described infra.

14. A company named Q Nails Boutique LLC (Q Nails) is a limited liability company solely owned by Quevedo-Garcia's sister, Magda. In the spring of 2020, Quevedo-Garcia wrote four checks from BM Frame's checking account totaling \$11,600 for the apparent benefit of Q Nails, as described infra. (Ex. 36 to Kondo Decl.).

15. The Secretary's ability to discover and present evidence relating to Q Properties, Q Properties II, and Q Nails in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia's invocation of his Fifth Amendment privilege against compulsory self-incrimination.

**Citations and Proposed Penalties Precipitating These
Consolidated Cases (Nos. 20-1029, et al).**

16. These five consolidated cases involve five separate citations that were originally issued to both BB Frame and to Quevedo-Garcia. The five citations alleged a total of 33 separate violations of construction industry workplace safety and health standards codified in 29 C.F.R. pt. 1926, that are alleged to have occurred over a period of about three months from December 5, 2019 to March 2, 2020. Of the 33 alleged violations, thirteen were classified as serious, twelve were classified as repeat, and eight were classified as willful. Among the alleged repeat and willful violations were the following:

a. All five citations alleged either a willful or a repeat violation of fall protection in residential construction standard, codified at 29 C.F.R. § 1926.501(b)(13).

b. All five citations alleged either a willful or a repeat violation of the eye and face protection standard codified at 29 C.F.R. § 1926.102(a)(1).

c. Three of the five citations alleged repeat violations of the head protection standard codified at 29 C.F.R. § 1926.100(a).

d. The citations collectively set forth nine alleged violations of the Stairways and Ladders standard codified at 29 C.F.R. pt. 1926, subpt. X. Three of those alleged violations were classified as repeat violations, and two others were classified as willful violations.

17. The five citations proposed penalties totaling \$2,004,225. The details of each of these five citations are described in following ¶¶ 18–53.

Case 20-1029
(Inspection 1450621 Opened on Dec. 5, 2019)

18. On December 5, 2019, a compliance safety and health officer (CO) from the area office of the Occupational Safety and Health Administration (OSHA) in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1450621 at a residential construction site in Cliffside Park, New Jersey at 700 Palisades Avenue. BB Frame was engaged in construction activities at this worksite at this time. BB Frame’s president, Quevedo-Garcia, was present at the worksite and spoke with the CO.

19. Quevedo-Garcia told the CO that the name of his business doing the construction work was Frame Q and that the employees at the site were Frame Q employees. He said this even though Frame Q had been formally dissolved eight months earlier in April 2019. Two trucks present at the worksite displayed logos for Frame Q on the sides and rear of the trucks, and at the time of the inspection the registered owner of at least one of the trucks remained Frame Q.

(Sydenstricker Decl. ¶¶ 13–15).

20. About four months after the inspection, in April 2000, an attorney for Quevedo-Garcia informed OSHA that Frame Q was out of business. (Sydenstricker Decl.). OSHA determined thereafter that BB Frame was the company performing the construction work at the site on December 5, 2019 (although the evidence of record does not reveal how OSHA arrived at this determination).

21. On June 2, 2020, OSHA issued a Citation and Notification of Penalty to both the company, BB Frame, and to the individual, Quevedo-Garcia. The citation identified BB Frame to be doing business as “Frame Q LLC.” The citation alleged also that BB Frame was the successor company of Frame Q. The citation against BB Frame and Quevedo-Garcia alleged nine violations (four classified as serious, three as willful, and two as repeated). The citation proposed penalties totaling \$520,860.

22. The citation alleged that the two “repeated” classifications were predicated on prior violations by Frame Q that had become final orders in 2017.

23. One of the alleged willful violations cited the standard for fall protection in residential construction, which is codified at 29 C.F.R. § 1926.501(b)(13), alleging two separate instances that had occurred on December 5 and on December 6.

24. BB Frame and Quevedo-Garcia timely contested the citation and proposed penalties, and the independent Occupational Safety and Health Review Commission (Commission) subsequently docketed the matter and assigned it docket number 20-1029. The Secretary then filed a complaint alleging that both BB Frame and Quevedo-Garcia “are employers within the meaning of section 3(5) of the Act” and realleging against both BB Frame and Quevedo-Garcia all the violations and proposed penalties described in the citation. The complaint alleged further

that Quevedo-Garcia “as owner and principal of both BB Frame LLC and Frame Q LLC, abused the corporate form in an attempt to evade liability for prior violations” of the OSH Act. (Compl. ¶ II & III, Aug. 27, 2020).

25. BB Frame and Quevedo-Garcia duly filed a joint answer that generally denied the allegations of the complaint. In the joint answer, BB Frame expressly denied that BB Frame was the successor company to Frame Q, and Quevedo-Garcia expressly denied any personal liability for the violations alleged. (Answer, Sept. 11, 2020). The joint answer interposed “separate defenses” as follows (among others not described): (a) “BB Frame is not a successor to Frame Q, but is separate and a distinct corporation,” (b) “[Quevedo-Garcia] individually has no liability and no relationship of any kind, nor responsibility to” the Complainant, and (c) “Any relationship by and between [Respondents] and [Complainant] were corporate in nature and not personal.”

26. BB Frame later withdrew its notice of contest respecting case number 20-1029 (as well as its notices of contest in the four other cases with which it has been consolidated, as reflected in the caption). (Withdrawal, Apr. 5, 2021). After that withdrawal, the undersigned issued an order severing BB Frame from case 20-1029 and further severing BB Frame from the four other cases with which case 20-1029 was consolidated. Upon BB Frame’s severance from case 20-1029, the claims against BB Frame were assigned to a newly opened Commission case with docket number 21-0635.

27. As a result of BB Frame’s withdrawal of its notice of contest in case 20-1029, the violations and proposed penalties set forth in the citation issued to BB Frame on June 2, 2020 that arose out of inspection 1450621 became a final order against BB Frame in case 21-0635 on August 23, 2021.

28. After the severance of BB Frame from case 20-1029 (and the consolidated cases

reflected in the caption) Quevedo-Garcia remained the sole respondent. The parties executed a formal stipulation in which Quevedo-Garcia expressly agreed to “waive[] any defense to the Citations and Notifications of Penalty other than the defense that [he] should not be held liable for the Citations and Notifications of Penalty in his individual capacity.” (Stipulation, May 22, 2021).

Case 20-1030
(Inspection 1470364 Opened on Dec. 31, 2019)

29. On December 31, 2019, a CO from OSHA’s area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1470364 at a residential construction site in Fort Lee, New Jersey at 2400 6th Street. BB Frame was engaged in construction activities at this worksite at this time. BB Frame’s president, Quevedo-Garcia, was present at the worksite and spoke with the CO. The same trucks that displayed logos of Frame Q that were present at the Cliffside Park worksite on December 5, 2019, were present at the Fort Lee worksite. (Sydenstricker Decl.).

30. On June 2, 2020, after having been informed by an attorney for Quevedo-Garcia that Frame Q was no longer in business, OSHA issued a Citation and Notification of Penalty to both the company, BB Frame, and to the individual, Mr. Quevedo-Garcia. The citation identified BB Frame to be doing business as “Frame Q LLC.” The citation alleged also that BB Frame was the successor company of Frame Q LLC. The citation alleged two serious, three willful, and one repeat violations and proposed penalties totaling \$433,146. The citation alleged that the classification for the “repeat” violation was predicated on a prior violation by Frame Q that had become a final order in 2017. One of the alleged willful violations cited the standard for fall protection in residential construction, codified at 29 C.F.R. § 1926.501(b)(13).

31. BB Frame and Quevedo-Garcia timely contested the citation and proposed penalties, and the Commission subsequently docketed the matter and assigned it docket number 20-1030. The Secretary then filed a complaint setting forth allegations substantially identical to those

described supra in ¶ 24 in connection with case 20-1029. BB Frame and Quevedo-Garcia duly filed a joint answer that was identical to the joint answer filed in case 20-1029 described supra in ¶ 25.

32. BB Frame later withdrew its notice of contest respecting case number 20-1030 and the other four consolidated cases reflected in the caption above. (Withdrawal, Apr. 5, 2021). After that withdrawal, the undersigned issued an order severing BB Frame from case 20-1030 and from the other consolidated cases. Upon BB Frame's severance from case 20-1030, the claims against BB Frame were assigned to a newly opened Commission case with docket number 21-0636. The violations and proposed penalties set forth in the citation issued to BB Frame on June 2, 2020 that arose out of inspection 1470364 became a final order against BB Frame in case 21-0636 on August 23, 2021.

33. After the severance of BB Frame from case 20-1030 (and the consolidated cases reflected in the caption) Quevedo-Garcia remained the sole respondent. The parties executed a formal stipulation in which Quevedo-Garcia waived all defenses other than the defense that he should not be held personally liable as described supra in ¶ 28.

Case 20-1042
(Inspection 1470345 Opened on Jan. 7, 2020)

34. On January 7, 2020, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1470345 of a residential construction site in Cliffside Park, New Jersey at 671 Grove Avenue. BB Frame was engaged in construction activities at this worksite. BB Frame's president, Quevedo-Garcia, was present at the worksite and spoke with the CO. The same trucks displaying logos of Frame Q that were present at the two BB Frame worksites in December 2019 as described above were present at the Grove Avenue worksite. (Sydenstricker Decl.).

35. On June 2, 2020, after having been informed by an attorney for Quevedo-Garcia that Frame Q was no longer in business, OSHA issued a Citation and Notification of Penalty to both the company, BB Frame, and to the individual, Mr. Quevedo-Garcia. The citation identified BB Frame to be doing business as “Frame Q LLC.” The citation alleged one serious and four repeat violations and proposed penalties totaling \$405,588.

36. The citation alleged that the classifications for the three “repeat” violations were predicated on prior violations by Frame Q that had become final orders in 2013, 2014, 2017, 2018, and 2019. One of the alleged repeat violations cited the fall protection in residential construction standard, 29 C.F.R. § 1926.501(b)(13), and averred that Frame Q had violated that standard eight times before in separate violations that had become final orders between October 3, 2013 and February 6, 2019, and further that five of those prior violations of Frame Q had been classified as repeated and two had been classified as willful.

37. BB Frame and Quevedo-Garcia timely contested the citation and proposed penalties, and the Commission subsequently docketed the matter and assigned it docket number 20-1042. The Secretary then filed a complaint setting forth allegations substantially identical to those described supra in ¶ 24 in connection with case 20-1029. BB Frame and Quevedo-Garcia duly filed a joint answer that was identical to the joint answer filed in case 20-1029 described supra in ¶ 25.

38. BB Frame later withdrew its notice of contest respecting case number 20-1042 and the other four consolidated cases reflected in the caption above. (Withdrawal, Apr. 5, 2021). After that withdrawal, the undersigned issued an order severing BB Frame from case 20-1042 and from the other consolidated cases. Upon BB Frame’s severance from case 20-1042, the claims against BB Frame were assigned to a newly opened Commission case with docket number 21-0639. The

violations and proposed penalties set forth in the citation issued to BB Frame on June 2, 2020 that arose out of inspection 1470356 became a final order against BB Frame in case 21-0639 on August 23, 2021.

39. After the severance of BB Frame from case 20-1042 (and the consolidated cases reflected in the caption) Quevedo-Garcia remained the sole respondent. The parties executed a formal stipulation in which Quevedo-Garcia waived all defenses other than the defense that he should not be held personally liable as described supra in ¶ 28.

***Case 20-1031
(Inspection 1464272 Opened on Feb. 20, 2020)***

40. On February 20, 2020, a CO from OSHA’s area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1464272 of a residential construction site in Palisades Park, New Jersey at 20 West Central Boulevard. BB Frame was engaged in construction activities at this worksite. BB Frame’s president, Quevedo-Garcia, was present at the worksite and spoke with the CO. The same trucks that displayed logos of Frame Q that were present at the BB Frame’s worksites on December 5 & 31, 2019, and on January 7, 2020, as described above were present at this worksite on February 20, 2020. (Sydenstricker Decl.).

41. On June 2, 2020, after having been informed by an attorney for Quevedo-Garcia that Frame Q was no longer in business, OSHA issued a Citation and Notification of Penalty to both the company, BB Frame, and to the individual, Mr. Quevedo-Garcia. The citation identified BB Frame to be doing business as “Frame Q LLC.” The citation alleged one serious, one willful, and two repeat violations and proposed penalties totaling \$274,892.

42. The violation alleged to have been “willful” cited the fall protection standard for residential construction, which is codified at 29 C.F.R. § 1926.501(b)(13). That willful citation item alleged that the company Frame Q LLC had violated that standard seven times previously,

with those violations having become final orders in 2017, 2018, and 2019, and with all seven of those prior violations having been classified as either willful or repeat violations.

43. The citation alleged that the classifications of the two “repeat” violations were predicated on prior violations by Frame Q that had become final orders in 2017, 2018, and 2019.

44. BB Frame and Quevedo-Garcia timely contested the citation and proposed penalties, and the Commission subsequently docketed the matter and assigned it docket number 20-1031. The Secretary then filed a complaint setting forth allegations substantially identical to those described supra in ¶ 24 in connection with case 20-1029. BB Frame and Quevedo-Garcia duly filed a joint answer that was identical to the joint answer filed in case 20-1029 described supra in ¶ 25.

45. BB Frame later withdrew its notice of contest respecting case number 20-1031 and the other four consolidated cases reflected in the caption above. (Withdrawal, Apr. 5, 2021). After that withdrawal, the undersigned issued an order severing BB Frame from case 20-1031 and from the other consolidated cases. Upon BB Frame’s severance from case 20-1031, the claims against BB Frame were assigned to a newly opened Commission case with docket number 21-0637. The violations and proposed penalties set forth in the citation issued to BB Frame on June 2, 2020 that arose out of inspection 1464272 became a final order against BB Frame in case 21-0637 on August 23, 2021.

46. After the severance of BB Frame from case 20-1031 (and the consolidated cases reflected in the caption) Quevedo-Garcia remained the sole respondent. The parties executed a formal stipulation in which Quevedo-Garcia waived all defenses other than the defense that he should not be held personally liable as described supra in ¶ 28.

Case 20-1032
(Inspection 1466351 Opened on Feb. 28, 2020)

47. On February 28, 2020, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1466351 of the same residential construction site that was the subject of inspection 146427 (case 20-1031) in Palisades Park, New Jersey at 20 West Central Boulevard. BB Frame was again engaged in construction activities at this worksite. Quevedo-Garcia was again present at this worksite. The same trucks displaying logos of Frame Q that were present at the same worksite on February 20, 2020, as described above were present at the worksite on February 28, 2020. (Sydenstricker Decl.).

48. On June 2, 2020, after having been informed by an attorney for Quevedo-Garcia that Frame Q was no longer in business, OSHA issued a Citation and Notification of Penalty to both the company, BB Frame, and to the individual, Mr. Quevedo-Garcia. The citation identified BB Frame to be doing business as "Frame Q LLC." The citation alleged five serious, one willful, and three repeat violations and proposed penalties totaling \$369,739.

49. The citation alleged that the classifications for the three "repeat" violations were predicated on prior violations of OSHA standards by Frame Q that had become final orders in 2017, 2018, and 2019.

50. One of the alleged willful violations cited the standard for fall protection in residential construction, which is codified at 29 C.F.R. § 1926.501(b)(13), alleging two separate instances that had occurred on February 28 and March 2, 2020.

51. BB Frame and Quevedo-Garcia timely contested the citation and proposed penalties, and the Commission subsequently docketed the matter and assigned it docket number 20-1032. The Secretary then filed a complaint setting forth allegations substantially identical to those described supra in ¶ 24 in connection with case 20-1029. BB Frame and Quevedo-Garcia duly

filed a joint answer that was identical to the joint answer filed in case 20-1029 described supra in ¶ 25.

52. BB Frame later withdrew its notice of contest respecting case number 20-1032 and the other four consolidated cases reflected in the caption above. (Withdrawal, Apr. 5, 2021). After that withdrawal, the undersigned issued an order severing BB Frame from case 20-1032 and from the other consolidated cases. Upon BB Frame's severance from case 20-1032, the claims against BB Frame were assigned to a newly opened Commission case with docket number 21-0638. The violations and proposed penalties set forth in the citation issued to BB Frame on June 2, 2020 that arose out of inspection 1466351 became a final order against BB Frame in case 21-0638 on August 23, 2021.

53. After the severance of BB Frame from case 20-1042 (and the consolidated cases reflected in the caption) Quevedo-Garcia remained the sole respondent. The parties executed a formal stipulation in which Quevedo-Garcia waived all defenses other than the defense that he should not be held personally liable as described supra in ¶ 28.

**Thirteen Final Orders Against Frame Q LLC
Alleged to Support "Repeat" and "Willful" Classifications Alleged Here**

54. From February 2013 to July 2018, officials from OSHA's area office in Hasbrouck Heights, New Jersey, conducted thirteen inspections of Frame Q worksites. CO Stuart Sydenstricker was the lead OSHA official on seven of those inspections, during which he directly explained OSHA safety requirements to Quevedo-Garcia. CO Sydenstricker specifically explained the requirement that workers utilize certain fall protection measures, and each time Quevedo-Garcia indicated that he understood this requirement. Nevertheless, on multiple occasions during those inspections, Quevedo-Garcia said that he intentionally does not require the employees to utilize compliant fall protection measures because he did not consider those measures

to be worth the expense. (Sydenstricker Decl. ¶ 7).

55. Each of the thirteen inspections of Frame Q worksites resulted in the OSHA area office issuing to Frame Q a separate Citation and Notification of Penalty relating to each inspection. Twelve of those thirteen citations ultimately became final orders in which all the citations and proposed penalties became final orders as they had been originally issued. (One of the thirteen citations did *not* result in the complete affirmance of the citation items and proposed penalties as originally issued, but rather resulted reduced penalties and the reclassification of one violation pursuant to the terms of a formal settlement agreement, as described infra in ¶ 57.) Altogether, the thirteen citations established 40 violations of certain construction industry workplace safety and health standards codified in 29 C.F.R. pt. 1926. Of those 40 violations, twenty-one were classified as serious, seventeen were classified as repeated, and two were classified as willful. Those 40 violations included the following:

a. Eight violations of the fall protection in residential construction standard codified at 29 C.F.R. § 1926.501(b)(13), five of which were repeat violations and two of which were willful violations.

b. Twelve violations of personal protective equipment standards pertaining to eye, face, and head protection. Nine of those twelve violations were repeat violations.

c. Ten violations of the “Stairways and Ladders” standard codified at 29 C.F.R. pt. 1926, subpt. X.

d. Nine violations of the “Scaffolds” standard codified at 29 C.F.R. pt. 1926, subpt. L. Two of those nine violations were repeat violations.

56. The penalties arising out of the thirteen citations totaled \$777,609. Of that amount, Frame Q has paid \$4,800 that had been assessed in connection with an inspection conducted in

August 2013 as described *infra* at ¶ 58. Frame Q did not pay any of the remaining sum of \$772,809 either before or after its voluntary dissolution on April 7, 2019. (Sydenstricker Decl.). A summary of those thirteen prior inspections and resulting citations issued to Frame Q between February 2013 and January 2019 are set forth *infra* in ¶¶ 57–69.

57. Inspection 897001 of Frame Q Worksite. On February 26, 2013, a CO from OSHA’s area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 897001 of a residential construction site in Englewood Cliffs, New Jersey at 31 New Street, where Frame Q was building a porch on an existing residential structure. On June 19, 2013, OSHA issued a citation and notification of penalty that alleged three violations. Frame Q contested the citation and proposed penalties, and the Commission’s Executive Secretary docketed the matter and assigned it docket number 13-1603.¹ Frame Q entered into a formal settlement agreement on February 21, 2014, that became a final order of the Commission on April 28, 2014, wherein

¹ The description of certain details respecting the citation involved in Commission case 13-1603 is based on taking judicial notice of the docket filings in that Commission case. *See Copomon Enters., LLC*, 24 BNA OSHC 2177, 2179 n. 1 (No. 13-0709, 2018) (ALJ) (taking judicial notice of documents filed in a different Commission proceeding). Those documents, and other documents pertaining to the underlying inspection, are known to both the Secretary and Quevedo-Garcia.

This judicial notice is taken subject to either party’s opportunity to show the contrary. *See* 5 U.S.C. § 556(e) (providing that “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary”); Fed. R. Evid. 201(e) (providing that if judicial notice is taken “before notifying a party, the party, on request, is still entitled to be heard”); *L & L Painting Co., Inc.*, 22 BNA OSHC 1346, 1352 (No. 05-0050, 2008).

Either party may exercise the opportunity to show the contrary by requesting to do so *prior to* the date the undersigned’s decision and report is to be filed with the Commission’s Executive Secretary for docketing pursuant to Commission Rule 90(b)(2). [That date is identified in the cover letter under which this decision is being served on the parties pursuant to Commission Rule 90(a)(2). 29 C.F.R. § 2200.90.] If either or both parties file such a request, the undersigned will not transmit the report to the Executive Secretary for docketing on the date identified, but rather may schedule further proceedings as appropriate.

Frame Q accepted three serious violations and associated penalties that totaled \$4,180 that were payable in ten equal monthly installments. Frame Q did not pay the agreed penalties. (Sydenstricker Decl.).

58. Inspection 927166 of Frame Q Worksite. On August 5, 2013, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 927166 of a residential construction site in Paramus, New Jersey at 224 Diane Place. Frame Q was engaged in construction activities at this worksite. On August 28, 2013, OSHA issued a citation and notification of penalty to Frame Q that alleged two serious violations and proposed penalties totaling \$4,800.² Frame Q did not contest the citation and paid the proposed penalty of \$4,800,

² The findings regarding inspection number 897001 are based in part on taking judicial notice of information retrieved from OSHA's public website where OSHA publishes certain information about its numbered inspections (most recently accessed on February 22, 2022, at [osha.gov/pls/imis/InspectionNr.html](https://www.osha.gov/pls/imis/InspectionNr.html)). See *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (observing that courts "routinely take judicial notice of information contained on state and federal government websites"). The foundational documents on which this publicly posted information is based are known to both the Secretary and Quevedo-Garcia but were not presented on the cross motions for summary judgment. Cf. *Dukane Precast, Inc. v. Perez*, 785 F.3d 252, 254 (7th Cir. 2015) (in judicial review a Commission decision, the court of appeals "discovers on [its] own" certain facts that were published on a municipality's public website that the court said it "would have liked the parties to tell us").

Judicial notice of these facts is taken subject to either party's opportunity to show the contrary. See 5 U.S.C. § 556(e) (providing that "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary"); Fed. R. Evid. 201(e) (providing that if judicial notice is taken "before notifying a party, the party, on request, is still entitled to be heard"); *L & L Painting Co., Inc.*, 22 BNA OSHC 1346, 1352 (No. 05-0050, 2008).

Either party may exercise the opportunity to show the contrary by requesting to do so *prior to* the date the undersigned's decision and report is to be filed with the Commission's Executive Secretary for docketing pursuant to Commission Rule 90(b)(2). [That date is identified in the cover letter under which this decision is being served on the parties pursuant to Commission Rule 90(a)(2). 29 C.F.R. § 2200.90.] If either or both parties file such a request, the undersigned will not transmit the report to the Executive Secretary on the date identified, but rather may schedule further proceedings as appropriate.

which is the only penalty for any established violations of OSHA standards that Frame Q has paid. (Sydenstricker Decl.).

59. Inspection 955187 of Frame Q Worksite. On January 16, 2014, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 955187 of a residential construction site in Teaneck, New Jersey at 368 Edgewood Avenue. Frame Q was engaged in construction activities at this worksite. On July 11, 2014, OSHA issued a citation and notification of penalty to Frame Q that alleged one repeat and three serious violations and proposed penalties totaling \$23,320. Frame Q did not contest the citation or proposed penalties and consequently they became a final order pursuant to section 10(b) of the Act. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 2, supra, [as to judicial notice of OSHA website information]).

60. Inspection 983958 of Frame Q Worksite. On January 24, 2014, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 983958 at the same residential construction site in Teaneck, New Jersey at 368 Edgewood Avenue that had been the subject of inspection 955187, which is described in the preceding paragraph. Frame Q was engaged in construction activities at this worksite. On July 16, 2014, OSHA issued a citation and notification of penalty to Frame Q that alleged one repeat and two serious violations and proposed penalties totaling \$20,680. Frame Q did not contest the citation and consequently it became a final order pursuant to section 10(b) of the Act. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 2, supra, [as to judicial notice of OSHA website information]).

61. Inspection 979064 of Frame Q Worksite. On March 3, 2014, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 979064 of a residential construction site in Englewood Cliffs, New Jersey at 18 Skyline Drive. Frame Q was

engaged in construction activities at this worksite. On June 17, 2014, OSHA issued a citation and notification of penalty to Frame Q that alleged one repeat and four serious violations and proposed penalties totaling \$14,520. Frame Q did not contest the citation and consequently it became a final order by operation of law on July 23, 2014, pursuant to section 10(a) of the Act. By letter dated November 23, 2016, Frame Q sought to challenge this final order by filing with the Commission a notice of contest. The Commission's Executive Secretary treated this to be a "late notice of contest" and docketed the matter, assigning it case number 16-2015. By decision dated September 22, 2017, a Commission Judge issued an order dismissing Frame Q's late notice of contest. The order of dismissal became a final order of the Commission on October 25, 2017. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 1, supra [as to judicial notice of Commission case files]).

62. Inspection 1052385 of Frame Q Worksite. On January 23, 2015, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1052385 of a residential construction site in Paramus, New Jersey on Sherwood Drive. Frame Q was engaged in construction activities at this worksite. On April 28, 2015, OSHA issued a citation and notification of penalty to Frame Q that alleged two serious violations and proposed penalties totaling \$4,400. By letter dated November 23, 2016, Frame Q sought to challenge the citation and proposed penalties by filing a notice of contest. The Commission's Executive Secretary treated this to be a "late notice of contest" and docketed the matter, assigning it case number 16-2011. Frame Q contended in part that it had never been served with the citation. After conducting an evidentiary hearing on September 18, 2017, a Commission Judge issued a decision and order on February 5, 2018, determining in part that (a) the citation had become a final order by operation of law under section 10(a) of the Act, (b) Frame Q had failed to demonstrate that it was entitled to

relief from this final order, and (c) dismissing Frame Q's notice of contest. The order of dismissal became a final order of the Commission on March 8, 2018. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 1, supra [as to judicial notice of Commission files]).

63. Inspection 1042114 of Frame Q Worksite. On February 24, 2015, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1042114 of a residential construction site in Mahwah, New Jersey at 27 Maple Avenue. Frame Q was engaged in construction activities at this worksite. On June 22, 2015, OSHA issued a citation and notification of penalty to Frame Q that alleged one serious, one willful, and one repeat violation, and proposed penalties totaling \$20,680. By letter dated November 23, 2016, Frame Q sought to challenge the citation and proposed penalties by filing a notice of contest. The Commission's Executive Secretary treated this to be a "late notice of contest" and docketed the matter, assigning it case number 16-2010. Frame Q contended in part that it had never been served with the citation. After conducting an evidentiary hearing on September 18, 2017, a Commission Judge issued a decision and order on February 5, 2018, determining in part that (a) the citation had become a final order by operation of law under section 10(a) of the Act, (b) Frame Q had failed to demonstrate that it was entitled to relief from this final order, and (c) dismissing Frame Q's notice of contest. The order of dismissal became a final order of the Commission on March 8, 2018. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 1, supra [as to judicial notice of Commission files]).

64. Inspection 1071019 of Frame Q Worksite. On April 22, 2015, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1071019 of a residential construction site in Fort Lee, New Jersey on Abbott Boulevard. Frame Q was engaged in construction activities at this worksite. On October 5, 2015, OSHA issued a citation and

notification of penalty to Frame Q that alleged one serious and two repeat violations, and that proposed penalties totaling \$13,640. By letter dated November 23, 2016, Frame Q sought to challenge the citation and proposed penalties by filing a notice of contest. The Commission's Executive Secretary treated this to be a "late notice of contest" and docketed the matter, assigning it case number 16-2012. Frame Q contended in part that it had never been served with the citation. After conducting an evidentiary hearing on September 18, 2017, a Commission Judge issued a decision and order on February 5, 2018, determining in part that (a) the citation had become a final order by operation of law under section 10(a) of the Act, (b) Frame Q had failed to demonstrate that it was entitled to relief from this final order, and (c) dismissing Frame Q's notice of contest. The order of dismissal became a final order of the Commission on March 8, 2018. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 1, supra [as to judicial notice of Commission files]).

65. Inspection 1076348 of Frame Q Worksite. On June 8, 2015, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1076348 of a residential construction site in Palisades Park, New Jersey at 462 Second Street. Frame Q was engaged in construction activities at this worksite. On August 10, 2015, OSHA issued a citation and notification of penalty to Frame Q that alleged one willful and two repeat violations, and that proposed penalties totaling \$25,080. By letter dated November 23, 2016, Frame Q sought to challenge the citation and proposed penalties by filing a notice of contest. The Commission's Executive Secretary treated this to be a "late notice of contest" and docketed the matter, assigning it case number 16-2013. Frame Q contended in part that it had never been served with the citation. After conducting an evidentiary hearing on September 18, 2017, a Commission Judge issued a decision and order on February 5, 2018, determining in part that (a) the citation had become a final

order by operation of law under section 10(a) of the Act, (b) Frame Q had failed to demonstrate that it was entitled to relief from this final order, and (c) dismissing Frame Q's notice of contest. The order of dismissal became a final order of the Commission on March 8, 2018. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 1, supra [as to judicial notice of Commission files]).

66. Inspection 1113701 of Frame Q Worksite. On December 22, 2015, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1113701 of a residential construction site in Fort Lee, New Jersey at 1010/1006 Morningside Lane. Frame Q was engaged in construction activities at this worksite. On February 16, 2016, OSHA issued a citation and notification of penalty to Frame Q that alleged two repeat violations and proposed penalties totaling \$18,920. By letter dated November 23, 2016, Frame Q sought to challenge the citation and proposed penalties by filing a notice of contest. The Commission's Executive Secretary treated this to be a "late notice of contest" and docketed the matter, assigning it case number 16-2014. Frame Q contended in part that it had never been served with the citation. After conducting an evidentiary hearing on September 18, 2017, a Commission Judge issued a decision and order on February 5, 2018, determining in part that (a) the citation had become a final order by operation of law under section 10(a) of the Act, (b) Frame Q had failed to demonstrate that it was entitled to relief from this final order, and (c) dismissing Frame Q's notice of contest. The order of dismissal became a final order of the Commission on March 8, 2018. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 1, supra [as to judicial notice of Commission files]).

67. Inspection 1149505 of Frame Q Worksite. On April 23, 2016, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1149505 of a

residential construction site in Palisades Park, New Jersey at 119 Abbot Avenue. Frame Q was engaged in construction activities at this worksite. On September 28, 2016, OSHA issued a citation and notification of penalty that alleged two repeat violations and proposed penalties totaling \$222,697. Frame Q timely contested the citation and proposed penalties, and the Commission's Executive Secretary docketed the matter and assigned it docket number 16-1737. Frame Q formally withdrew its notice of contest by notice dated February 5, 2018, and a Commission Judge approved the withdrawal by order dated February 20, 2018. Consequently, the citation and proposed penalties became a final order on March 22, 2018. Frame Q has not paid the imposed penalties. (Ex. 16 to Kondo Decl.; Sydenstricker Decl.; footnote 1 supra [as to judicial notice of Commission files]).

68. Inspection 1264265 of Frame Q Worksite. On April 3, 2017, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1264265 of a residential construction site in Fort Lee, New Jersey at 2475 Sixth Street. Frame Q was engaged in construction activities at this worksite. On September 25, 2017, OSHA issued a citation and notification of penalty that alleged two serious and two repeat violations and proposing penalties totaling \$153,241. Frame Q timely contested the citation and proposed penalties, and the Commission's Executive Secretary docketed the matter and assigned it docket number 17-2030. After Frame Q failed to timely file an answer to the Secretary's complaint, a Commission Judge issued an order to show cause to Frame Q directing Frame Q to show cause why it should not be held in default. Frame Q did not formally respond to the order to show cause. However, Frame Q's attorney informally advised the Commission on June 20, 2018 that Frame Q had "closed its business" and that Frame Q would not file any formal response to the order to show cause. The Commission Judge thereafter filed an order of default affirming the citation and proposed

penalties. The order of default became a final order on August 8, 2018. Frame Q has not paid the imposed penalties. (Ex. 18 to Kondo Decl.; Sydenstricker Decl.; footnote 1 supra [as to judicial notice of Commission files]).

69. Inspection 1329463 of Frame Q Worksite. On July 11, 2018, a CO from OSHA's area office in Hasbrouck Heights, New Jersey, opened OSHA inspection number 1329463 of a residential construction site in Palisades Park, New Jersey at 417 Third Street. Frame Q was engaged in construction activities at this worksite. On January 4, 2019, OSHA issued a citation and notification of penalty to Frame Q that alleged one serious and three repeat violations and proposed penalties totaling \$261,451. Frame Q did not contest the citation and consequently it became a final order pursuant to section 10(b) of the Act. Frame Q has not paid the imposed penalties. (Sydenstricker Decl.; footnote 2, supra [as to judicial notice of OSHA website information]).

70. The penalties imposed on Frame Q in the thirteen inspections from 2013 to 2018 totaled \$777,609. Of that sum, Frame Q paid only \$4,800. (Sydenstricker Decl.; footnotes 1 and 2, supra).

71. The last day that Frame Q made payroll disbursements to employees was on June 1, 2018, when it issued payroll checks to seven individuals. (Ex. 24 to Kondo Decl.). Frame Q made no payroll disbursements after June 1, 2018. (Ex. 24 to Kondo Decl.). OSHA's last inspection of a Frame Q worksite was opened about six weeks later, on July 11, 2018, which resulted in the issuance of a citation to Frame Q on January 4, 2019 that Frame Q did not contest.

72. Quevedo-Garcia caused Frame Q to be dissolved on April 7, 2019, which was about ten weeks after the last of the described thirteen citations issued to Frame Q became a final order.

73. In its federal tax return for tax year 2018, which was dated four days after Frame Q

was formally dissolved in April 2019, Frame Q reported gross receipts of \$528,895 and total income of \$366,528. After deductions from the total income figure for expenses such as compensation of officers and salaries and wages, Frame Q reported a positive business income of \$14,464 for tax year 2018. The 2018 tax return reflects a balance sheet liability for “accounts payable” at the beginning of the tax year of \$303,318 but by the end of the year that balance sheet liability had been reduced by 44% to \$170,807. (Ex. 2 to Kondo Decl.). There is no evidence regarding the components of this balance sheet liability for accounts payable, or the identity of the creditors. The Secretary’s ability to discover and present evidence relating to the 2018 balance sheet liabilities for accounts payable in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege against compulsory self-incrimination.

74. On February 6, 2019, the Office of the United States Attorney for the District of New Jersey (USAO-NJ) brought a civil action in federal district court against Frame Q to collect \$473,178 in unpaid OSHA penalties relating to eight of the citations issued to Frame Q (the six late contests plus the citations that resulted from inspections 1149505 and 1264265). The civil action also sought \$205,325.01 in interest and fees.

75. On April 7, 2019, two months after the collection action was filed, Quevedo-Garcia caused Frame Q to be voluntary dissolved. About four weeks later, on May 3, 2019, the USAO-NJ filed a voluntary dismissal of its collection action after concluding that Frame Q could not be successfully served with the summons and complaint because it had been dissolved. (Jordan Anger Decl.).

76. According to interrogatory responses that Quevedo-Garcia verified, Frame Q’s only assets upon its dissolution in April 2019 were three trucks that were to be “transferred with loans”

to BB Frame. (Ex. 4 to Kondo Decl.). At least one of those vehicles remained officially registered to Frame Q during the underlying inspections of BB Frame’s worksites involved here. (Ex. B to Sydenstricker Decl.).

77. In Frame Q’s certificate of dissolution filed on April 7, 2019, Quevedo-Garcia represented that “[a]ll assets have been discarded and have been applied to creditors or distributed to members.” (Ex. 6 to Kondo Decl.). There is no evidence respecting the extent to which the liquidation of Frame Q’s assets reduced the balance sheet liability for accounts payable that was reported at the end of tax year 2018. The Secretary’s ability to discover and present evidence on this matter of fact in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege.

78. Quevedo-Garcia caused Frame Q to be dissolved at least in part to avoid collection of unpaid penalties of \$772,809 that resulted from OSHA inspections of Frame Q worksites. (Quevedo-Garcia Mot. ¶¶ 6–9).

79. Prior to Frame Q’s formal dissolution April 2019, Quevedo-Garcia discontinued framing operations through Frame Q and transitioned all of Frame Q’s framing operations to BB Frame. Frame Q’s employees began working for BB Frame doing the same type of construction work and in the same locale as Frame Q. (Exs. 4, 24, 25, 31 to Kondo Decl.).

BB Frame LLC (BB Frame)

80. On April 13, 2017, Quevedo-Garcia caused BB Frame to be formed; its certificate of formation did not identify any member(s) of the company. (Ex. 9 to Kondo Decl.; Sydenstricker Decl. ¶ 10). BB Frame was formed ten days after OSHA had opened inspection number 1264265, which was the twelfth of the thirteen inspections of Frame Q worksites described supra in ¶ 68.) On September 4, 2018, about 17 months after BB Frame had been formed, Quevedo-Garcia filed an amendment to BB Frame’s certificate of formation that identified himself and his sister, Magda

Quevedo-Garcia, as BB Frame's only members. (Ex. 22, Kondo Decl.).

81. In mid-2018, Quevedo-Garcia transferred \$20,000 from Frame Q to BB Frame by issuing three checks from Frame Q's bank account (dated respectively on June 20, July 21, and August 2, 2018). He signed these checks as the agent of Frame Q and he then endorsed on behalf of BB Frame for deposit into BB Frame's bank account. (Exs. 21 & 31 to Kondo Decl.).

82. All seven individuals who had received a payroll disbursement from Frame Q on June 1, 2018 (which was Frame Q's final payroll disbursement before it was formally dissolved about ten months later) began to receive payroll disbursements from BB Frame starting on June 8, 2018. (Exs. 24 & 25 to Kondo Decl.). Four of those seven individuals continued to receive payroll disbursements from BB Frame through December 20, 2019, which was the date of BB Frame's final payroll disbursements. (Payroll disbursements from BB Frame to the other three individuals ended respectively on 6/22/18, 3/29/2019 and 6/28/2019, apparently because each had left BB Frame's employment on or before those respective dates.) (Ex. 25 to Kondo Decl.). The day of BB Frame's final payroll disbursements (December 20, 2019) was fifteen days after OSHA had opened the first of the five inspections of BB Frame worksites that precipitated these consolidated matters. (Ex. 25 to Kondo Decl.).

83. On March 12, 2019, less than four weeks before Quevedo-Garcia would cause Frame Q to be voluntarily dissolved, Quevedo-Garcia caused BB Frame to apply for a home improvement contractor license with the New Jersey Office of the Attorney General, Division of Consumer Affairs (DCA). (Ex. 8 to Kondo Decl.). About eleven weeks later, on May 29, 2019, DCA issued to BB Frame a New Jersey home improvement contractor license. (Ex. 23 to Kondo Decl.).

84. Prior to the OSHA inspections that precipitated these consolidated matters, BB Frame

used its business checking account for BB Frame operations, including issuing payroll checks. Beginning November 25, 2019, that checking account had a consistently negative balance, causing the bank to force the account closed on March 25, 2020. (Ex. 28 to Kondo Decl.).

85. BB Frame did not make any payroll disbursements in 2020. (Exs. 1 & 25 to Kondo Decl.) In 2020, Quevedo-Garcia caused payroll disbursements for framing projects, including the projects involved in the last four of the five underlying inspections here, to be made by BM Frame. (Exs. 1, 11, 25 & 29 to Kondo Decl.).

86. BB Frame used the three trucks that Frame Q had used in the operation of its framing business, even though at least one of those vehicles remained registered in the name of Frame Q over the course of the underlying inspections. (Ex. B to Sydenstricker Decl.; Ex. 4 to Kondo Decl.).

87. Quevedo-Garcia expressly and falsely held out to OSHA officials during the first of the underlying inspections that precipitated these consolidated cases that Frame Q was the company performing work at the inspected construction sites and that the workers were employees of Frame Q. (Sydenstricker Decl. ¶ 14). Quevedo-Garcia did not disclose to OSHA officials that Frame Q had been dissolved and that the employees present at the first of the five inspections were employees of BB Frame. Until April 2020, when an attorney for Quevedo-Garcia informed OSHA that Frame Q was out of business, OSHA held the false understanding that the employees present for the five underlying inspections were Frame Q employees. (Sydenstricker Decl. ¶ 12).

88. Prior to the issuance of the citations at issue here on June 2, 2020, OSHA concluded that BB Frame, not the dissolved Frame Q, was the corporate entity performing the construction work at all five of the worksite inspections. Consequently, the citations identified “BB Frame LLC d/b/a Frame Q LLC, as successor to Frame Q LLC” as the cited employer (as well as Quevedo-

Garcia individually). The separate complaints filed by the Secretary in each of these five matters continued with this description of BB Frame as both (a) “doing business as” Frame Q, and (b) being a successor company to Frame Q.

89. On November 19, 2020, Quevedo caused BB Frame to be voluntarily dissolved. This was twelve weeks after the Secretary had filed separate complaints in each of the above captioned matters seeking to affirm all citation items and proposed penalties against both BB Frame and Quevedo-Garcia. (Ex. 10 to Kondo Decl.).

90. There is no evidence that BB Frame had crippling debt when Quevedo-Garcia caused it to be dissolved, which occurred before the penalties proposed against BB Frame became final orders. The only evidence of BB Frame’s indebtedness at the time of its dissolution is its 2019 tax return which states that at the end of the tax year it had balance sheet liabilities totaling \$21,754 (exclusive of a balance sheet liability of \$27,500 for “capital stock,” which would have been owing to Quevedo-Garcia and his sister as the only owners of the company). The two balance sheet liabilities identified that totaled \$21,754 were “accounts payable” of \$1,557 and “other current liabilities” totaling \$20,197 that were not itemized in the return. (Ex. 7 to Kondo Decl.).

91. Quevedo dissolved BB Frame not because of overwhelming debt but rather to avoid collection of any of the OSHA penalties that had been proposed against BB Frame in the underlying citations (but that had not become final orders against BB Frame at the time of its dissolution). The Secretary’s ability to discover and present evidence relating to Quevedo-Garcia’s reasons for dissolving BB Frame in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege against compulsory self-incrimination.

BM Frame LLC (BM Frame)

92. On December 24, 2019, about three weeks after OSHA had opened the first of the

five inspections involved in these consolidated cases, Quevedo-Garcia caused BM Frame to be formed, with Quevedo-Garcia owning 75% and one Hector F. Roca owning 25%.³ (Exs. 11 & 13 to Kondo Decl.) The declared planned activity of the new company was “miscellaneous construction & repair.” (Exs. 13 & 26 to Kondo Decl.).

93. Two days later, on December 26, 2019, Quevedo-Garcia caused to be filed with the State of New Jersey a certificate of alternate name that authorized BM Frame to do business as “BB Frame” even though BB Frame continued to exist as a New Jersey limited liability company. (Exs. 13 & 26 to Kondo Decl.).

94. About four weeks later, on January 23, 2020, BM Frame applied for a home improvement contractor license with the State of New Jersey. The application lists the name “BB Frame” as another “name[] under which [BM Frame] does business.” (Ex. 12 to Kondo Decl.).

95. On or about December 31, 2019, BM Frame opened a business checking account under the name “BM Frame LLC TA [i.e., “trading as”] BB Frame,” making an initial deposit of \$500. (Ex. 27 to Kondo Decl.).

96. Beginning in January 2020, BM Frame’s checking account was used as the primary account for deposits and disbursements for construction projects. In the month of January 2020, there were eleven deposits made into the account that totaled \$162,600 and 97 withdrawal transactions that totaled \$135,318. (Exs. 27 & 30 to Kondo Decl.). The record does not disclose

³ The record does not reflect Mr. Roca having been associated with any other companies controlled by Quevedo-Garcia and does not indicate what, if any, involvement Mr. Roca had in the operations of BM Frame. The Secretary’s ability to discover and present evidence relating to Mr. Roca’s role in the formation and operation of BM Frame was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege against compulsory self-incrimination.

the sources of the deposits to the bank account. The Secretary's ability to discover and present evidence relating to the sources of these deposits was substantially impeded by Quevedo Garcia's invocation of his Fifth Amendment privilege against compulsory self-incrimination.

97. Starting in January 2020 and continuing to early August 2020, the employees who supplied labor for construction projects performed by BB Frame and/or BM Frame were paid out of BM Frame's business checking account. (Sydenstricker Decl. ¶¶ 14–21; Exs. 27, 29 & 30 to Kondo Decl.). From January 10, 2020 through August 16, 2020, BM Frame made payroll disbursements totaling \$185,980 to eleven individuals. (Exs. 27, 29 & 30 to Kondo Decl.). Six of the eight employees who had been on BB Frame's payroll through December 2019 received payroll disbursements in 2020 drawn on BM Frame's business checking account. Quevedo-Garcia's sister, who was a 30% owner of BB Frame but had not received any payroll disbursements from BB Frame's business checking account, receives payroll disbursements from BM Frame in 2020 that totaled \$17,100. (Exs. 25 & 29 to Kondo Decl.).

98. In a letter from the attorney for Quevedo-Garcia dated November 12, 2020 to an attorney for the Secretary, the attorney provided a copy of a paycheck written to Quevedo-Garcia dated January 13, 2020 that was drawn on BM Frame's checking account. The attorney represented that Quevedo-Garcia was currently employed by BM Frame, and he erroneously represented that Quevedo-Garcia was not a "principal" of BM Frame. (In truth, Quevedo-Garcia owned 75% of the company).⁴ (Exs. 4 & 30 to Kondo Decl.).

99. In a letter from the attorney for Quevedo-Garcia to an attorney for the Secretary dated

⁴ The attorney is presumed not to have made a knowing misrepresentation to counsel for the Secretary. There is no indication that the attorney knew that Quevedo-Garcia had caused BM Frame to be formed or that Quevedo-Garcia was its majority owner. The record does not reflect the point in the litigation when the Secretary became aware that Quevedo-Garcia had created BM Frame and was its majority owner.

June 21, 2021, the attorney stated that “BM Frame is a closed business.” (Ex. F to Sec’y’s Mot. to Compel, July 7, 2021). No other information was provided regarding the closing of BM Frame. The Secretary’s ability to discover and present evidence on this matter of fact in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege in July 2021.

100. In Quevedo-Garcia’s verified interrogatory responses in November 2020, he falsely represented that he was not an “owner, member, partner, shareholder, officer, and/or director” of any companies other than Frame Q and BB Frame, both of which he declared in had been “closed.” (Ex. 4 to Kondo Decl.). In a later verified interrogatory response in April 2021, Quevedo-Garcia continued to falsely represent that he had no ownership interest or leadership position in any other business organizations other than Frame Q and BB Frame. (Ex. 31 to Kondo Decl.).

Other Alter Ego Theory Factors
Capitalization and Solvency

101. BB Frame’s 2019 federal tax return reflects the company had a balance sheet liability of \$27,500 for “capital stock” at both the beginning and the end of the tax year. (Ex. 7 to Kondo Decl.).

102. BB Frame never owned real property. (Exs. 4 & 7 to Kondo Decl.). Except for trucks, BB Frame never owned tools or equipment valued more than \$200. BB Frame utilized three trucks in its business, at least one of which remained registered to Frame Q, although BB Frame depreciated multiple vehicles on its 2019 federal tax return (and BM Frame depreciated one vehicle on its 2020 federal tax return). (Exs. 4, 7 & 11 to Kondo Decl.; Sydenstricker Decl.).

103. BB Frame’s business checking account had a negative balance throughout the course of the five OSHA inspections that precipitated these consolidated matters. (Ex. 28 to Kondo Decl.).

104. BB Frame's tax return for tax year 2019 reported gross receipts of \$388,533 and total income of \$297,087. The 2019 tax return reflects an ordinary business loss of \$1,181, after making deductions from total income that included deducting \$127,500 in compensation to Quevedo-Garcia. (Ex. 7 to Kondo Decl.).

105. BM Frame's federal tax return for tax year 2020 indicates that at the beginning of the tax year it had no balance sheet liability for capital stock but at the end of the tax year it had a balance sheet liability for capital stock of \$42,000. The Secretary's ability to discover and present evidence relating to the source of the funds for this stated capitalization of BM Frame was substantially impeded by Quevedo-Garcia's invocation of his Fifth Amendment privilege against compulsory self-incrimination.

106. In BM Frame's federal tax return for tax year 2020, the company reported gross receipts of \$426,451 and a total income of \$235,066. The tax return reflects ordinary business income of \$12,464, after making deductions from total income that included \$75,000 in compensation to Quevedo-Garcia. (The 25% owner of BM Frame, Hector Roca, received no compensation in 2020). (Ex. 11 to Kondo Decl.). Quevedo-Garcia reported his proportionate share of BM Frame's ordinary business income of \$12,464 in 2020 on his personal tax return for tax year 2020. (Ex. 1 to Kondo Decl.).

107. In a verified interrogatory response, Quevedo-Garcia stated that both Frame Q and BB Frame were "closed due to debt and insufficient income." (Ex. 31 to Kondo Decl.).

108. Quevedo-Garcia caused BB Frame to be voluntarily dissolved at least in part to avoid collection of the proposed penalties of \$2,004,225. Those proposed penalties later became final orders against BB Frame after BB Frame had been voluntarily dissolved. (Quevedo-Garcia Mot. ¶¶ 11-14; Anger Decl.). The Secretary's ability to discover and present evidence relating to the

reasons that Quevedo-Garcia determined to dissolve BB Frame was substantially impeded by Quevedo-Garcia's invocation of his Fifth Amendment privilege against compulsory self-incrimination.

Corporate Officers, Formalities and Corporate Records

109. Quevedo-Garcia was BB Frame's president and its only officer. BB Frame's other member, Magda Quevedo-Garcia, had no role in the operation of the company. (Exs. 4 & 31 to Kondo Decl.).

110. BB Frame held no formal meetings of its two members. (Ex. 31 to Kondo Decl.).

111. BB Frame maintained no operating agreement, by-laws, resolutions, amendments, meeting minutes, or meeting memoranda. (Exs. 4, 5 & 32 to Kondo Decl.).

112. Most of the contracts into which BB Frame entered with suppliers and other contractors were verbal agreements only. (Ex. 31 to Kondo Decl.).

Siphoning of Corporate Funds

113. As indicated supra in ¶ 12, Quevedo-Garcia and his sister Magda own a company called Q Properties LLC (Q Properties) that has its principal office at the Quevedo-Garcia Residence. Quevedo-Garcia owns 60% and Magda owns 40%. (Exs. 1, 3 & 14 to Kondo Decl.). Q Properties is in the business of renting and selling real estate, and in its 2020 federal tax return it reported receiving rents from residential real estate with the address 54 Lincoln Avenue, Cliffside Park, New Jersey. Quevedo-Garcia did not identify his ownership interest in Q Properties in his verified responses to two sets of interrogatories (responses dated Nov. 20, 2020 and Apr. 26, 2021), but rather in those responses he falsely represented that he did not have an ownership interest in any companies other than Frame Q and BB Frame. (Exs. 4 & 31 to Kondo Decl.). The attorney for Quevedo-Garcia later falsely represented to counsel for the Secretary in a letter dated June 21, 2021 that Q Properties "is not and was not owned" by Quevedo-Garcia. (Ex. F to Sec'y's

Mot. to Compel, Jul 7, 2021). (It is presumed that Quevedo-Garcia's attorney was unaware of the falsity of that representation when he made it.)

114. Between August 2, 2018 and July 11, 2019, Quevedo-Garcia caused \$84,600 to be transferred from BB Frame to Q Properties by issuing the following checks written on BB Frame's business checking account (Ex. 33 to Kondo Decl.):

a. Check dated August 2, 2018 for \$44,000. In the check's "memo" line, Quevedo-Garcia handwrote the words "Profits."

b. Check dated August 6, 2018 for \$9,600. In the check's "memo" line, Quevedo-Garcia handwrote what appears to be the words "2 Months Deposit Rent and one month rent at" 54 Lincoln Avenue, Cliffside Park.

c. Check dated April 25, 2019 for \$26,000. In the check's "memo" line, Quevedo-Garcia handwrote the word "Profits 2018."

d. Check dated July 1, 2019 for \$7,000. The check's "memo" line reflects the handwritten words "Monthly garage rent."

e. Check dated July 11, 2019 for \$8,000. The check's "memo" line reflects the handwritten words "Rent for May & June garage at 54 Lincoln Ave Cliffside Park."

115. The Secretary's ability to discover and present evidence of greater detail regarding the reasons for these disbursements to Q Properties described in the preceding ¶ 114(a)–(e) in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia's invocation of his Fifth Amendment privilege.

116. After depleting BB Frame's checking account in late 2019 and beginning to use BM Frame's business checking account for deposits and disbursements relating to corporate construction activities, Quevedo-Garcia also began to use BM Frame's checking account to make

some payments that lack any apparent connection to the corporate framing work, as follows:

a. By check dated April 20, 2020, Quevedo-Garcia caused to be transferred to Q Properties the sum of \$2,000. (Ex. 34 to Kondo. Decl.).

b. By five checks written between April and August 2020, Quevedo-Garcia caused to be transferred a total of \$18,000 to Q Properties II (a company that is described supra in ¶ 13). (Ex. 35 to Kondo Decl.). One of those checks was for the sum of \$11,000 and the memo line of the check bore the handwritten note “Loan to Q Properties II LLC.” Another check had no notation in the memo line. Three checks totaling \$7,000 bore handwritten notations in their respective memo lines indicating they were for rent payments for real property in Fairview, New Jersey at 315 7th Street. (Quevedo-Garcia testified in another Commission proceeding in September 2017 that he had resided at that address in Fairview, New Jersey [Ex. 17 at 8 to Kondo Decl.])

c. In the spring of 2020, Quevedo-Garcia wrote four checks from BM Frame’s checking account totaling \$11,600 for the apparent benefit of Q Nails (a company that is described supra at ¶ 14). Two checks that were payable to Q Nails totaled \$5,900 and reflect the handwritten word “loan” in their memo lines. Another check payable to Q Nails in the sum of \$3,000 has no entry in the memo line. The fourth check in the sum of \$2,700 is payable to an individual (whose name not reflected in any other documentation of record) and in the memo line is handwritten the words “June rent for Q Nail Boutique.” (Ex. 36 to Kondo Decl.).

117. The Secretary’s ability to discover and present evidence of greater detail regarding the reasons for the disbursements from BM Frame’s bank account described in the preceding ¶ 116(a)–(c) in support of his motion for summary judgment was substantially impeded by Quevedo-Garcia’s invocation of his Fifth Amendment privilege.

118. While Quevedo-Garcia moved monies from BB Frame and BM Frame bank accounts

to other family-owned businesses, and he also disbursed monies from those accounts for the benefit of those other companies, in some instances other family-owned businesses disbursed their funds for the apparent benefit of BB Frame, as described below.

a. The application fee for BB Frame’s home improvement license was paid in March 2019 by a check drawn on the bank account of Q Nails. (Ex. 8 to Kondo Decl.).

b. An electronic payment in the amount of \$2,470.32 for BB Frame’s state payroll taxes for the fourth quarter of 2019 was made on January 30, 2020 from a bank account of Q Nails. (Ex. 37 to Kondo Decl.).

119. From June 2018 through August 7, 2020, Quevedo-Garcia caused himself to be paid a salary of \$2,500 per week from the payroll accounts of BB Frame and BM Frame. (Exs. 7, 25, 29 & 33 to Kondo Decl.).

DISCUSSION

Summary Judgment Standard & Procedures

Commission Rule 40(j) provides that Rule 56 of the Federal Rules of Civil Procedure (Rule 56) governs motions for summary judgment in Commission proceedings. 29 C.F.R. § 2200.40(j).

Rule 56(a) provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

In determining whether there exists a genuine dispute of material fact, “the substantive evidentiary standards that apply to the case” apply also to assessment of the evidence on motion for summary judgment. *Anderson v. Liberty Lobby, Inc. (Liberty Lobby)*, 477 U.S. 242, 255 (1986) (ruling that the substantive evidentiary standard of “clear and convincing evidence” for a libel claim must be applied in adjudicating a motion for summary judgment on that claim).

The moving party has the initial burden to show the absence of any genuine dispute concerning any material fact. *Celotex Corp. v. Catrett (Celotex)*, 477 U.S. 317, 325 (1986) (discussing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970)). If the moving party discharges the initial burden of showing that it is entitled to judgment as a matter of law, then the non-moving party “may not rest upon mere allegation or denials of his pleading, but ... must set forth specific facts showing that there is a genuine issue for trial.” *Liberty Lobby*, 477 U.S. at 248. Thus, when faced with a properly supported motion for summary judgment, the non-moving party must “present affirmative evidence” that shows there is a genuine dispute for trial. *Id.* at 257. Such “affirmative evidence” includes “depositions, documents, electronically stored information, affidavits or declarations, stipulations ... admissions, interrogatory answers, or other materials” as described in Rule 56(c)(1)(A). *Manua's, Inc.*, 27 BNA OSHC 1469, 1472-73 (No. 18-1059, 2018) (nonmovant cannot overcome summary judgment merely based on the possibility that material facts it has not yet identified exist but instead must present facts essential to justify its opposition), *aff'd*, 948 F.3d 401 (D.C. Cir. 2020).

Rule 56(e) sets forth the potential consequences of a non-moving party’s failure to make the required affirmative showing of specific facts in response to a properly supported motion for summary judgment:

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may ...

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) issue any other appropriate order.

For a party opposing a properly supported motion for summary judgment to show the existence of a genuine dispute of material fact, the evidentiary material favoring the non-moving party must be sufficient to permit a finder of fact to find in the non-moving party's favor. *Liberty Lobby*, 477 U.S. at 249. But if that evidentiary material "is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted). A mere combination of "conclusory allegations, improbable inferences, and unsupported speculation" will not defeat a properly supported summary judgment motion. *Calvi v. Knox County*, 470 F.3d 422, 426 (1st Cir. 2006).

In considering a motion for summary judgment a court is "required to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." *Stern v. Trustees of Columbia Univ.*, 131 F.3d 305, 312 (2d Cir. 1997); *see also Liberty Lobby*, 477 U.S. at 255 (1986) (the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor"), and *Ford Motor Co.*, 23 BNA OSHC 1593, 1594 (No. 10-1483, 2011) (stating that "a judge is not to decide factual disputes," but rather must "determine whether any such disputes exist"). "[N]ot only must there be no genuine dispute as to the evidentiary facts, but there must also be no controversy as to the inferences to be drawn from them." *Ford Motor*, 23 BNA OSHC at 1594, citing *Schwabenbauer v. Bd. of Educ. of City Sch. Dist. of City of Olean*, 667 F.2d 305, 313 (2d Cir. 1991).

When, as here, both parties move for summary judgment, "each party's motion must be independently evaluated under" these same principles. *Ford Motor*, 23 BNA OSHC at 1594. "A judge is not obligated to grant judgment as a matter of law to either side, and may deny both motions." *Id.*

Establishing “Employer” Status Based on Alter Ego Theory

Where civil penalties under the Act have been assessed against a corporate employer for that corporate employer’s violation of OSHA standards, the Commission has authority under the Act to “pierce the corporate veil” to hold an individual (or a different business organization) responsible for the corporate employer’s violations and responsibility for resulting penalties. *Altor, Inc.*, 23 BNA OSHC 1458 (No. 99-0958, 2011); *see also United States v. Cusack*, 806 F. Supp. 47, 51 (D.N.J. 1992) (determining that the corporate structure of an employer may be disregarded to impose criminal liability on an individual as an “employer” under section 17(e) of the Act upon proof that the individual’s “role in a corporate entity (particularly a small one) may be so pervasive and total that [the individual] is in fact the corporation and is therefore an employer” subject to criminal liability under section 17(e)).

Whether to pierce the corporate veil to find an individual (or other entity) to be an “employer” as defined in the Act involves the application of federal common law that articulates an “alter ego” theory of liability. *See United States v. Pisani (Pisani)*, 646 F.2d 83, 88 (3d Cir. 1981). In the Third Circuit, which is one of the courts to which judicial review of a final decision of the Commission in this matter may be sought, the substantive evidentiary standard of proof to establish alter ego liability is “clear and convincing evidence.”⁵ *Trustees of Nat. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk (Lutyk)*, 332 F.3d 188, 192 (3d Cir. 2003).

“The ‘clear and convincing evidence’ standard is the intermediate burden of proof, in between ‘a preponderance of the evidence’ and ‘proof beyond a reasonable doubt.’” *Araujo v.*

⁵ One Commissioner has noted that the Third Circuit’s “clear and convincing evidence” standard of proof for alter ego liability “does not appear to be the norm in other circuits.” *Altor*, 23 BNA OSHC at 1480 n. 7 (Comm’r Atwood) (dissenting from Commission’s decision that alter ego liability was not proven).

N. J. Transit Rail Operations, Inc. (Araujo), 708 F.3d 152, 159 (3d Cir. 2013). The quality of evidence for meeting the “clear and convincing” standard is such evidence as shows that “the truth” of the facts claimed is “highly probable.” *Id.*, quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984).

The federal common law analysis for piercing a corporate veil has two prongs:

(1) determining whether “a company has not operated as an entity separate from its shareholders,” and (2) determining whether “the situation presents an element of injustice or fundamental unfairness.” *Altor*, 23 BNA OSHC at 1461, citing *Pisani*, 646 F.2d at 88.

In considering the first prong, which pertains to determining whether “a separate corporate personality no longer exists,” *id.*, the Commission has noted that the Third Circuit “weighs several factors” as follows:

(1) gross undercapitalization; (2) insolvency; (3) failure to observe corporate formalities; (4) non-payment of dividends; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) corporation acts as a mere facade for the operations of the dominant stockholder or stockholders.

*Id.*⁶ The Third Circuit has observed that these factors do not constitute “elements of a rigid test,” *Lutyk*, 332 F.3d at 194, and indeed do not constitute a “test” at all, but rather are considered “to

⁶The D.C. Circuit is another court to which Quevedo-Garcia may seek judicial review of a final order of the Commission in these proceedings under section 11 of the Act. In *Labadie Coal Co. v. Black*, 672 F.2d 92, 96 (D.C. Cir. 1982), the D.C. Circuit articulated a two-prong test for alter ego liability that echoes the test described by the Third Circuit in *Pisani*:

(1) is there such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist?; and (2) if the acts are treated as those of the corporation alone, will an inequitable result follow? Relevant to the first question is the issue of the degree to which formalities have been followed to maintain a separate corporate identity. The second question looks to the basic issue of fairness under the facts.

determine whether the debtor corporation is little more than a legal fiction.” *Lutyk*, 332 F.3d at 197. The Third Circuit has noted further that the factors do not constitute “the exclusive approach to corporate veil piercing.” *Am. Bell Inc. v. Fed'n of Tel. Workers of Pa. (Am. Bell)*, 736 F.2d 879, 886 (3d Cir. 1984).

The second prong of the Third Circuit’s analysis—that the situation presents an element of injustice or fundamental unfairness—includes situations in which disregarding the corporate form would “prevent circumvention of a statute or avoidance of a clear legislative purpose.” *Pisani*, 646 F.2d at 88 (concluding the Medicare statute would be circumvented if the corporate form were not disregarded to hold an individual responsible for Medicare overpayments that had been made to the corporation), citing *United States v. Normandy House Nursing Home, Inc. (Normandy House)*, 428 F. Supp. 421 (D. Mass. 1977) *disapproved on a different issue*, *United States v. Hughes House Nursing Home, Inc.*, 710 F.2d 891, 894 (1st Cir. 1983); *see also Altor*, 23 BNA OSHC at 1461 n. 6 (noting that the Third Circuit and New Jersey have similar “tests” for piercing the corporate veil, and observing that the New Jersey approach involves determining “whether recognizing the corporate form would perpetuate fraud or injustice, or otherwise circumvent the law”); *Quinn v. Butz*, 510 F.2d 743, 758 n. 95 (D.C. Cir. 1975) (noting that among the situations in which federal courts have disregarded the corporate form “are those wherein the corporate fiction would enable circumvention of a statute”). The Third Circuit has noted further that piercing the corporate veil may be in order “when recognition of the corporate entity would defeat public policy.” *Am. Bell*, 736 F.2d at 886, quoting *Zubik v. Zubik*, 384 F.2d 267, 272 (3d Cir. 1967).

“It is valid to organize a corporation for the purpose of avoiding personal liability.” *Pardo v. Wilson Line of Washington, Inc.*, 414 F.2d 1145, 1149 (D.C. Cir. 1969). Indeed, the very name given to the kind of business entity that is involved here—*limited liability* company—indicates as

much. Moreover, “the mere fact than an individual is the sole stockholder of a corporation will not by itself make him liable as the alter ego of the corporation.” *Normandy House*, 428 F. Supp. at 424; accord *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co. (DeWitt Truck)*, 540 F.2d 681, 685 (4th Cir. 1976) (“the mere fact that all or almost all of the corporate stock is owned by one individual or a few individuals, will not afford sufficient grounds for disregarding corporateness”).

Accordingly, “penetration of the corporate veil is a step to be taken cautiously,” *Quinn v. Butz*, 510 F.2d at 759, and analysis “must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception.” *Zubik v. Zubik*, 384 F.2d at 273; accord *Am. Bell* 736 F.2d at 886 (“court may only pierce the veil in ‘specific, unusual circumstances’, lest it render the theory of limited liability useless”), and *Altor*, 23 BNA OSHC at 1461 (“corporate entity should be recognized and upheld unless specific, unusual circumstances call for an exception”).

“In deciding whether to pierce the corporate veil, courts are basically concerned with determining if equity requires that the shareholders’ traditional insulation from personal liability be disregarded and with ascertaining if the corporate form is a sham, constituting the facade for the operations of the dominant shareholder.” *Kaplan v. First Options of Chi., Inc. (Kaplan)*, 19 F.3d 1503, 1521 (3d Cir. 1994), *aff’d*, 514 U.S. 938 (1995), quoting *Wheeling–Pittsburgh Steel Corp. v. Intersteel, Inc.*, 758 F. Supp. 1054, 1057 (W.D.Pa.1990). “In short, the evidence must show that the corporation’s owners abused the legal separation of a corporation from its owners and used the corporation for illegitimate purposes.” *Kaplan*, 19 F.3d at 1521.

“[T]he requirements for corporate veil piercing are demanding ones” to be sure, *Altor* 23 BNA OSHC at 1461, but proof of “fraudulent intent” is not an essential component of establishing

alter ego liability under federal common law. *Lutyk*, 332 F.3d at 194 (“our test does not require proof of actual fraud as a prerequisite for piercing the corporate veil”); *accord*, *DeWitt Truck*, 540 F.2d at 684 (“proof of plain fraud is not a necessary element in a finding to disregard the corporate entity”), citing *Anderson v. Abbott*, 321 U.S. 349, 362 (1944); *Labadie Coal Co. v. Black*, 672 F.2d 92, 99 (D.C. Cir. 1982) (“fraud is not a prerequisite in a suit to disregard a corporate fiction”).

In *DeWitt Truck*, the Fourth Circuit noted that circumstances justifying “disregard [of] the corporate fiction ... vary according to the circumstances of each case, and every case where the issue is raised is to be regarded as sui generis to be decided in accordance with its own underlying facts.” 540 F.2d at 684 (internal footnotes omitted).

Quevedo-Garcia’s Motion for Summary Judgment

Because it is the Secretary’s burden to prove alter ego liability, for Quevedo-Garcia to prevail on his motion for summary judgment on the Secretary’s alter ego claim, he must show initially “that there is an absence of evidence to support the [Secretary’s] case.” *Celotex*, 477 U.S. at 325 (1986). Quevedo-Garcia can satisfy this initial burden by showing that there exists no clear and convincing evidence that would support findings in favor of the Secretary on the material facts. *See* Rule 56(c)(1)(B) (one method of demonstrating that a fact cannot be genuinely disputed is by “showing ... that an adverse party cannot produce admissible evidence to support the fact”).

Quevedo-Garcia’s motion for summary judgment fails to satisfy the initial burden of showing that the Secretary will be unable to produce clear and convincing evidence to impose alter ego liability. Quevedo-Garcia’s motion appears grounded at least in part on the proposition that proof of fraud is essential to imposing alter ego liability. (*See* Quevedo-Garcia Mot. ¶¶ 21–22). However, as noted earlier, proof of fraudulent intent is not essential to establishing alter ego liability under federal common law. *Lutyk*, 332 F.3d at 194.

In any event, in the Secretary's cross-motion for summary judgment (which served also as the Secretary's response to Quevedo-Garcia's cross-motion), the Secretary produced clear and convincing evidence that would support a finding that Quevedo-Garcia acted with some fraudulent intent: Quevedo-Garcia falsely told an OSHA official who conducted at least some of the underlying inspections that the corporate entity performing the work at the inspected worksites was Frame Q.⁷ But Quevedo-Garcia knew that this representation was false. He had caused Frame Q to be dissolved months earlier, and he knew that his own salary and the employees' wages were being paid from the bank accounts of either BB Frame or BM Frame. In addition to affirmatively misrepresenting that the employer on site was Frame Q, Quevedo-Garcia also failed to disclose to inspecting OSHA officials the material fact that the corporate entity performing the construction work was BB Frame (and/or BM Frame, which had been formed on December 24, 2019). The only reasonable inference from Quevedo-Garcia's intentional misrepresentation and failures to disclose a material fact is that he was attempting to deceive OSHA officials and thwart them in accurately identifying the corporate employer that was doing the construction work at these worksites.

⁷ CO Sydenstricker's Declaration is clear and convincing evidence that Quevedo-Garcia harbored some fraudulent intent in his communications with inspecting OSHA officials. Quevedo-Garcia has presented no evidentiary material to controvert that component of the declaration and there is otherwise no evidentiary material in the record on the cross-motions to establish a genuine dispute of that stated fact as is set forth in Sydenstricker's declaration. It is therefore undisputed for purposes of the cross-motions that Quevedo-Garcia misrepresented to OSHA officials that Frame Q was the corporate entity doing the construction work. *See* Rule 56(e)(2) ("If a party ... fails to properly address another party's assertion of fact ... the court may ... consider the fact undisputed for purposes of the motion").

As described supra in Facts ¶ 6, Quevedo-Garcia invoked his Fifth Amendment right against compulsory self-incrimination during the discovery phase of this litigation.⁸ In a non-

⁸ Papers of record in this matter show that Quevedo-Garcia was charged in state court in New Jersey on December 19, 2019 with the following criminal charges:

- third degree crimes of intent to evade tax liability of \$87,927.05 for both tax years 2017 and 2018;
- third degree crime of failing to report \$824,857.76 in income for tax year 2017;
- third degree crime of failing to report \$985,892.40 in income for tax year 2018;
- third degree crime of conspiracy to commit structuring with the purpose of promoting or facilitating engaging in conduct with purpose to evade state and federal transaction reporting requirements regarding currency transactions by breaking down at least \$424,000 in currency into smaller sums of cash on at least 52 separate occasions then deposited at two different financial institutions on multiple dates between or about April 2018 to September 2019;
- second degree crime of conspiracy to commit money laundering by engaging in transactions involving property known or which a reasonable person would believe to be derived from criminal activity with the intent to facilitate or promote criminal activity by cashing 661 checks at a check casher in the aggregate of at least \$5.7 million then structuring deposits into at least two separate financial institutions in the name of another person or persons or entities for the purpose of facilitating or promoting New Jersey tax offenses;
- first degree crime of money laundering respecting the sum of \$5.7 million (as described in preceding bullet item).

Quevedo-Garcia's sister has been charged with the same crimes that are described in the last three charges in the above list of charges lodged against Quevedo-Garcia. Both Quevedo-Garcia and his sister have filed applications to be admitted to a pre-trial intervention program. (See material filed by counsel for Respondent under cover of letter dated July 28, 2021).

Quevedo-Garcia first formally invoked the Fifth Amendment privilege through counsel in a filing made on July 16, 2021, which his counsel re-affirmed in a letter dated July 28, 2021, both of which were filed with the Commission in opposition to discovery motions filed by the Secretary. Although the parties originally agreed that the Secretary would depose Quevedo-Garcia, Quevedo-Garcia later reneged upon invoking the Fifth Amendment privilege. The Secretary then filed a motion for leave to take Quevedo-Garcia's deposition, but the undersigned essentially sustained Quevedo Garcia's assertion of the privilege and denied the motion in an order dated August 13, 2021. That same order similarly sustained Quevedo-Garcia's assertion of the Fifth Amendment privilege with respect to responses to certain interrogatories. Another order dated October 5, 2021 similarly upheld Quevedo-Garcia's assertion of the privilege in denying the

criminal matter such as this, Quevedo-Garcia’s invocation of his Fifth Amendment privilege allows the drawing of adverse inferences for his refusal to respond to probative evidence offered against him. *See Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (*Palmigiano*) (“[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them”); *Rad Servs., Inc. v. Aetna Cas. & Sur. Co.*, 808 F.2d 271, 274 (3d Cir. 1986). But before any such adverse inference may be drawn, the record must contain independent evidence to support any negative inference. *See United States v. Stelmokas (Stelmokas)*, 100 F.3d 302, 311 (3d Cir. 1996) (“Thus, as long as there was independent evidence to support the negative inferences beyond the invocation of the privilege against self-incrimination, the inferences could be drawn”); *Palmigiano*, 425 U.S. at 318 (observing that the entry of judgment based only on the invocation of the privilege and “without regard to the other evidence” exceeds constitutional bounds).

Quevedo-Garcia’s invocation of the Fifth Amendment privilege permits the inference here that if he were asked why he falsely represented to OSHA officials that the employer at the construction sites was Frame Q, that his responses would lend support to the Secretary’s alter ego claim.

Secretary’s motion that requests for admissions that Quevedo-Garcia had refused to admit or deny be deemed admitted.

Quevedo-Garcia’s invocations of the privilege were sustained principally on the ground that his framing business had links to the financial crimes of which he stands charged. *See Hoffman v. United States*, 341 U.S. 479, 488 (1951) (stating that the privilege must be sustained if it is not “perfectly clear, from a careful consideration of all the circumstances in the case ... that the answer(s) cannot possibly have such tendency to incriminate”). Despite the invocation of the Fifth Amendment privilege, the Secretary obtained some relevant documentation in Quevedo-Garcia’s responses to requests to produce documents, in declarations by Quevedo-Garcia made in his verified responses to interrogatories, and by subpoenaing financial documents from an accountant and from two banks.

If Quevedo-Garcia's motion had met the initial burden of demonstrating the absence of clear and convincing evidence to pierce the corporate veil of BB Frame, then to defeat Quevedo-Garcia's motion the Secretary would have been required to "present affirmative evidence" that would be sufficient to support findings in favor of the Secretary on the material facts. *Liberty Lobby*, 477 U.S. at 257 (1986) ("[T]he plaintiff, to survive the defendant's motion, need only present evidence from which a jury might return a verdict in his favor"). As is next discussed, the Secretary's opposition to Quevedo-Garcia's motion (which was combined with his cross-motion for summary judgment) sets forth ample facts to support findings in favor of the Secretary on the facts that are material to the alter ego claim. But more significantly, the Secretary's cross-motion establishes that the Secretary is entitled to judgment as a matter of law on the claim that Quevedo-Garcia is an employer under an alter ego theory of liability and is personally responsible for BB Frame's violations and the resulting imposed penalties, as is discussed next.

Secretary's Motion for Summary Judgment

The Secretary's motion seeks judgment as a matter of law that Quevedo-Garcia was an "employer" as defined in section 3(5) of the Act and thus subject to the compliance requirements of section 5(a) and liable for penalties assessed under section 17(a)–(d). 29 U.S.C. §§ 652(5), 654(a), 666(a)–(d).

The Secretary argues that Quevedo-Garcia was an "employer" under two different but somewhat related theories. The Secretary argues first that Quevedo-Garcia was the statutory employer of the employees at the construction sites under the common law agency analysis set forth in *Nationwide Mut. Ins. Co. v. Darden* (*Darden*), 503 U.S. 318 (1992). The Secretary argues second that Quevedo-Garcia was a statutory employer of the employees at the construction sites

under a common law alter ego analysis that the Commission recognized in *Altor*, 23 BNA OSHC 1458.

Both theories would achieve the Secretary's objective of imposing personal liability on Quevedo-Garcia. Under alter ego theory, Quevedo-Garcia's liability under the citations would be coextensive with BB Frame's liability (which has been established by final orders in Commission cases 21-0635, 21-0636, 21-0637, 21-0638, and 21-0639). *See Altor*, 23 BNA 1548 (affirming certain citations and penalties against two corporations that constituted a "single employer," but determining the evidence was insufficient to support finding that two individuals who operated those corporations were also employers under an alter ego theory).

In contrast, Quevedo-Garcia's liability under *Darden* would conceptually preclude holding BB Frame liable for the same violations and penalties (all of which have now become final orders against BB Frame).⁹ *See, e.g., Froedtert Mem. Lutheran Hosp., Inc. (Froedtert)*, 20 BNA OSHC 1500, 1508 n. 4 (No. 97-1839, 2004) (utilizing the common law agency doctrine of *Darden* in determining that a hospital was the employer of temporary housekeepers who worked at the hospital on referral from temporary employment agencies; expressly deciding *not* to adjudicate an alternative "joint employment" theory of liability in which both the hospital *and* the temporary employment agencies would be deemed to be statutory employers of the temporary housekeepers).

Statutory Employer Analysis under Darden

In determining whether an entity has an employment relationship with an identified worker to the exclusion of some other entity, "the Commission has consistently applied the common law agency doctrine" set forth in *Darden. FreightCar Am., Inc.*, No. 18-0970, 2021 WL 2311871, at

⁹ The Commission's rules of procedure permit the assertion of incongruous alternative theories of liability. *See* 29 C.F.R. § 2200.30(e) (allowing parties to "state as many separate claims or defenses that it has regardless of consistency").

*2 (OSHR, Mar. 3, 2021) (applying *Darden* in ruling that the Secretary had failed to prove that a parent company was the statutory employer of certain workers whose wages were paid by the parent's subsidiary company); *All Star Realty Co.*, 24 BNA OSHC 1356, 1358-59 (No. 12-1597, 2014) (applying *Darden* factors in assessing whether two individuals, who were not otherwise identified to be employees of any other entity, were statutory employees of the cited company).

The common law agency doctrine of *Darden* “incorporate[s] traditional agency law criteria for identifying master-servant relationships.” 503 U.S. at 319. The Court in *Darden* identified the following factors as being “relevant to this inquiry”:

the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Darden, 503 U.S. at 323-24. The Commission has noted “that there is no precision to the weighing of all of these factors.” *Froedtert*, 20 BNA OSHC at 1508.

The evidentiary material presented on the cross-motions reflects genuine disputes of material fact respecting whether the workers at the construction sites had a master-servant relationship with Quevedo-Garcia to the exclusion of BB Frame. For example, the workers' wages were disbursed from corporate bank accounts. (Exs. 24, 25 & 29 to Kondo Decl.). Also, corporate entities obtained liability insurance and worker's compensation insurance respecting the workers. (See insurance documentation filed by Quevedo-Garcia in opposition of Secretary's motion dated Oct. 28, 2021). While Quevedo-Garcia was the only individual authorized to hire, terminate, direct, train or discipline the workers at the various construction sites, on this record there are

genuine disputes of fact about whether he exercised that authority as an agent of BB Frame or as a de facto sole proprietor. The whole of the evidence is susceptible of differing inferences on whether it was Quevedo-Garcia, not BB Frame (or BM Frame), that had a conventional master-servant relationship with the workers at the construction sites under a *Darden* analysis, thus precluding granting summary judgment to the Secretary on this theory. *See Ford Motor*, 23 BNA OSHC at 1594.

Alter Ego Analysis of Altor

The preceding conclusion that genuine disputes of material fact exist with respect to the Secretary's *Darden* theory does not preclude reaching a different conclusion on the Secretary's alter ego theory. As previously noted, unlike statutory employer status under *Darden* that identifies a single employer to which an identified employee has a master-servant relationship, alter ego theory involves assigning statutory employer status with respect to an identified employee to more than a single employer. Specifically, under alter ego theory, statutory employer status with respect to the same employee(s) is assigned to *both* (1) a corporate employer, *and* (2) an individual or other business organization for whom the corporate employer is an alter ego. *See, e.g., Altor*, 23 BNA OSHC at 1461 (recognizing applicability of alter ego theory for holding individuals liable for a corporate employer's violations and penalties under the Act, but concluding the evidence was insufficient to establish alter ego liability on the individuals). The Secretary seeks to hold Quevedo-Garcia responsible for the same violations and penalties that have become final orders against BB Frame in Commission cases 21-0635, 21-0636, 21-0637, 21-0638, and 21-0639. Assigning statutory employer status under the Act to more than one employer as to the same employees is a permissible outcome under alter ego theory.

For the Secretary to prevail on his cross-motion for summary judgment on alter ego theory, he must make an initial showing that the only reasonable conclusion arising from the summary

judgment record is that it constitutes “clear and convincing evidence” to impose alter ego liability on Quevedo-Garcia. If the Secretary succeeds in making this initial showing, Rule 56 does not permit Quevedo-Garcia to “rest upon mere ... denials of his pleading,” but rather he “must set forth specific facts showing that there is a genuine issue for trial.” *Liberty Lobby*, 477 U.S. at 248. To make such a showing, Quevedo-Garcia must cite “to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ... admissions, interrogatory answers, or other materials” that demonstrate the existence of a genuine issue for trial. Fed. R. Civ. P. 56(c)(1)(A); *see also Manua's*, 27 BNA OSHC at 1472-73.

Although alter ego liability entails a multifaceted analysis, and “every case where the issue is raised is ... sui generis to be decided in accordance with its own underlying facts,” *Dewitt Truck*, 540 F.2d at 684, in a proper case summary judgment may be granted to the party that is alleging alter ego liability. *See Travelers Prop. Cas. Co. of Am. v. Quickstuff, LLC*, No. CV 14-6105, 2016 WL 7231605, at *9 (D.N.J. Dec. 14, 2016) (granting summary judgment to the plaintiff on its claim to pierce corporate veil of an LLC). An analysis of the record on summary judgment under the two-pronged analysis for alter ego liability follows.

First Prong of Alter Ego Analysis:
Eight Factors Concerning the Existence of a Separate Corporate Personality

Gross Undercapitalization

Undercapitalization of a corporate entity is a factor in alter ego analysis to prevent shareholders from retaining the profits of the business “without having any real capital in the undertaking” and therefore risking nothing of their own. *DeWitt Truck*, 540 F.2d at 689; *see also Laborers’ Pension Fund v. Lay-Com, Inc.*, 580 F.3d 602, 612 (7th Cir. 2009) (“[I]f the shareholders do not invest enough equity, such that the corporation is undercapitalized, there is no

basis for rewarding them by limiting their liability, and, in fact, doing so would only encourage risky behavior”). Assessing the adequacy of capitalization generally involves looking to the initial capitalization at the time of organization, but “[s]ubsequent capitalization may also be relevant to [the] inquiry,” in that “evidence of inadequate subsequent capitalization may be indicative of initial undercapitalization.” *Matter of Multiponics, Inc.*, 622 F.2d 709, 717 (5th Cir. 1980). Also, “proof of subsequent undercapitalization may be further proof of inequitable conduct, such as actions of gross mismanagement, self interest, and the like.” *Id.* at 718.

The only direct evidence of BB Frame’s initial capitalization is contained in its 2019 federal tax return which states that the company had a balance sheet liability of \$27,500 for “capital stock” at both the beginning and the end of the tax year. (Ex. 7 to Kondo Decl.). Quevedo-Garcia certified in BB Frame’s certificate of dissolution filed with the state of New Jersey in November 2020 that “all assets have been discarded and have been applied to creditors or distributed to its members.”¹⁰ (Ex. 10 to Kondo Decl.).

There is no direct evidence respecting the level of capitalization that is appropriate for a company of BB Frame’s size, business activity, and location. *Cf. Altor*, 23 BNA OSHC at 1462 (noting “there is no evidence as to the amount of capital required for a similarly sized company in the same industry” as the subject corporations); *Lutyk*, 332 F.3d at 198 (noting the absence of evidence respecting the amount of capital necessary to engage in the corporate activity involved). Thus, with respect to the “gross undercapitalization” factor, the record on the motion for summary

¹⁰ Assuming the information on the tax return and on the certificate of dissolution to be true, then by the time that BB Frame was dissolved in November 2020 the \$27,500 representing capital stock had been liquidated either by paying creditors or being distributed to the owners—Quevedo-Garcia and his sister.

judgment does not support alter ego liability.¹¹ *Cf. Lutyk*, 332 F.3d at 196–98 (imposing alter ego liability even though the evidence did not establish gross undercapitalization).

*Failure to Observe Corporate Formalities;
Absence of Corporate Records*

BB Frame held no meetings of members, so of course there are no corporate records that would evidence such meetings, such as minutes or corporate resolutions. (Exs. 31 & 32 to Kondo Decl.). BB Frame had no operating agreement (which is the equivalent of corporate by-laws for an LLC). (Ex. 32 to Kondo Decl.). According to Quevedo-Garcia, BB Frame’s contracts with other contractors or suppliers were mostly oral contracts grounded in “longtime relationship between the parties.” (Ex. 31 to Kondo Decl.).

Quevedo-Garcia acknowledges that “there is evidence of a failure to observe corporate formalities,” though he contends that there is no evidence that this failure was “malicious” or involved an “effort to defraud OSHA or the Secretary.” (Quevedo-Garcia Mot. 8). Accepting as true for purposes of analysis that there was no malicious or fraudulent intent attached to BB Frame’s failure to observe corporate formalities, the absence of such formalities nevertheless bears on whether Quevedo-Garcia, as the sole officer of BB Frame and its majority owner, took measures for BB Frame “to maintain a separate corporate identity,” which is the crux of the first prong of alter ego analysis. *Labadie Coal Co. v. Black*, 672 F.2d at 97 (observing that “the formalities are themselves an excellent litmus of the extent to which the individuals involved

¹¹ The lack of evidence on this factor may be due at least in part upon Quevedo-Garcia’s invocation of the Fifth Amendment privilege in pre-hearing discovery and the consequent thwarting of the Secretary’s efforts to obtain relevant information, as previously described. Nevertheless, there is no independent evidence in the record respecting the degree of capitalization appropriate for a company of BB Frame’s size, business activity, and location, and thus drawing an adverse inference from Quevedo-Garcia’s silence is not permissible. *See Stelmokas*, 100 F.3d at 311.

actually view the corporation as a separate being”); *Altor*, 23 BNA OSHC at 1461 (noting that the first prong of alter ego analysis pertains to determining whether “a separate corporate personality no longer exists”). The “disregard of corporate formalities or failure to maintain corporate records” may justify piercing the corporate veil “if it is also shown that a corporation's affairs and personnel were manipulated to such an extent that it became nothing more than a sham used to disguise the alter ego's use of its assets for his own benefit.” *Kaplan*, 19 F.3d at 1521; *but cf. Zubik*, 384 F.2d at 271 n. 4 (stating the “lack of formalities in a closely-held corporation has often not been found to have much consequence”), cited by the Commission in *Altor*, 23 BNA OSHC at 1462, n. 10 (noting that the “Third Circuit has afforded varying weight to a closely held company’s failure to observe corporate formalities”).

One prominent instance of a combined failure to observe corporate formalities and to maintain corporate records is that BB Frame adopted no resolution authorizing the company to transfer to Q Properties (another LLC of which Quevedo-Garcia and his sister were the only members) any of the five checks totaling \$84,600 that were issued over a 12-month period in 2018 and 2019. (Ex. 33 to Kondo Decl.). A reasonable inference from such substantial transfer of funds from one closely-held company to another is that the transfers were not in furtherance of the transferring company’s corporate purpose. Quevedo-Garcia has not argued that the record on the motion permits any other reasonable inference, and he has certainly not presented any evidentiary material that would support an opposing inference. Having presented no such evidence as Rule 56 requires that he do to address the Secretary’s evidence supporting that inference, that reasonable inference is deemed undisputed for purposes of the motion pursuant to Rule 56(e)(2). Moreover, Quevedo-Garcia’s declared refusal based on his Fifth Amendment privilege to respond to questions permits the adverse inference that his responses to questions regarding these cash

transfers from BB Frame to Q Properties would support the Secretary's claim for alter ego liability. See *Stelmokas*, 100 F.3d at 311.

Non-functioning of Other Officers and Directors

The “non-functioning of other officers and directors” factor does not weigh in support of alter ego liability. Although Quevedo-Garcia's sister was 30% owner of BB Frame, she had no legal duty to have any role in the operations of the company. The record on summary judgment reflects that only Quevedo-Garcia, as BB Frame's president and its only officer, had operational or managerial responsibilities. (Ex. 31 to Kondo Decl.).

Non-payment of Dividends

As to the “non-payment of dividends” factor, BB Frame has made no cash distributions of profits (which is an LLC's equivalent of a corporate dividend) to either of its two members. (Ex. 31 to Kondo Decl.).

The absence of any distribution of profits (i.e., dividends) is not by itself generally accorded much weight for piercing the corporate veil of a closely-held company. *Lutyk*, 332 F.3d at 196 (noting that non-payment of dividends by a closely-held corporation is “not unusual, and not a strong factor in favor of piercing the corporate veil of such a company”); accord *Altor*, 23 BNA OSHC at 1462; but cf. *Lutyk*, 3332 F.3d at 196 (noting that “many jurisdictions actually hold that the payment of dividends at a time when a corporation is insolvent favors piercing the corporate veil”).

While BB Frame made no cash distributions to its two members, BB Frame paid Quevedo-Garcia a weekly salary of \$2,500 from June 8, 2018 through December 20, 2019 (for a total of \$202,500 over that period). After that, from January 10, 2020 to August 8, 2020, Quevedo-Garcia received a weekly salary of \$2,500 that was disbursed from BM Frame's checking account. BB Frame's other member, Magda Quevedo-Garcia, received no salary or

wages from BB Frame, but she did receive \$17,100 in wages from BM Frame over 19 weeks in 2020. (Exs. 7, 25 & 27 to Kondo Decl.).

The “failure to pay dividends while paying substantial sums, whether by way of salary or otherwise, to the dominant stockholder, all fitting into a picture of basic unfairness,” may be appropriately considered in determining whether to impose individual liability under an alter ego theory. *DeWitt Truck*, 540 F.2d at 687.

Here, there is no evidence that Quevedo-Garcia’s \$2,500 weekly salary was unreasonable for the president of a company of BB Frame’s size, business activity, and location. There being no independent evidence in the summary judgment record indicating the salary to be unreasonable, no adverse inference is made based on Quevedo-Garcia’s invoking his Fifth Amendment privilege and refusing to be deposed and subject to questioning respecting the reasonableness of his salary. *See Stelmokas*, 100 F.3d at 311.

*Siphoning of Funds;
Insolvency*

In its 2019 federal tax return, BB Frame reported gross receipts of \$388,553 and a total income of \$297,087. After deductions from this total income figure (which included a deduction of \$127,500 in compensation to Quevedo-Garcia) the tax return reflected an ordinary loss of \$1,181 for the year. (Ex. 7 to Kondo Decl.).

BB Frame’s business checking account had a balance of over \$20,000 on November 1, 2019. But by the end of that month the account had a negative balance. The account continued to maintain a negative balance in varying amounts until the bank forced the account closed in March 2020, when the account had a negative balance of \$1,830.77. (Ex. 28 to Kondo Decl.).

The first of the underlying inspections here was opened in early December 2019, before Quevedo-Garcia formed BM Frame, but at a time when BB Frame had no money in its bank

account. Over the duration of the five underlying inspections here, BB Frame was a shell of a company, with no assets of significant value other than trucks (at least one of which remained registered to Frame Q, and all of which continued to display Frame Q's logo).

BB Frame's bank account had become depleted in November 2019 in part because BB Frame had transferred \$84,600 to Q Properties between August 2018 and July 2019 (as previously addressed in the discussion pertaining to the failure to observe corporate formalities).

After forming BM Frame in late December 2019, Quevedo-Garcia began financing the framing business entirely using BM Frame's bank account.¹² (Exs. 27 & 28 to Kondo Decl.). In the month of January 2020, there were eleven deposits made into BM Frame's account totaling \$162,600 and 97 withdrawal transactions totaling \$135,318. (Exs. 27 & 30 to Kondo Decl.). (The summary judgment record does not reflect the sources of any of the deposited funds.)

While there is no 2020 tax return in the record for BB Frame, there is one for BM Frame for that tax year. In tax year 2020, BM Frame reported gross receipts of \$426,451, total income of \$235,066, and ordinary business income of \$12,464. (Ex. 11 to Kondo Decl.).

BB Frame's insolvency throughout the period of the five underlying inspections was a consequence of Quevedo-Garcia's transfer of the financing of framing operations from BB Frame's bank account to BM Frame's bank account. There is no evidence in the summary judgment record that BM Frame was ever insolvent. It is reasonably inferable that BM Frame's solvency and profitable operations in 2020 were achieved at the expense of the solvency of

¹² The only exception to BM Frame's complete financing of framing operations that is apparent in the summary judgment record is that on January 30, 2020, a payment of \$2,470.32 for BB Frame's payroll taxes for the fourth quarter of 2019 was disbursed from a bank account of Q Nails, which is owned by Quevedo-Garcia's sister, who also owned 30% BB Frame. (Ex. 37).

BB Frame, which Quevedo-Garcia choreographed to insolvency in 2019. Quevedo-Garcia has pointed to no affirmative evidence to controvert this reasonable inference.

After Quevedo-Garcia began using BM Frame's bank account to conduct BB Frame's framing business, he began causing money from BM Frame's bank account to be disbursed to other family-owned companies. The record on the motion for summary judgment is devoid of evidence that these payments were in furtherance of the corporate operations of either BB Frame or BM Frame. Given the absence of any affirmative evidence offered by Quevedo-Garcia in opposition to the Secretary's motion for summary judgment to indicate that these disbursements were for a legitimate corporate purpose, the only reasonable inference to draw from the evidence is that the disbursements did not benefit BB Frame. See Fed. R. Civ. P. 56(e)(2). Moreover, Quevedo-Garcia's invocation of the Fifth Amendment privilege and his declared refusal to respond to questions that would pertain to such transfers of funds permits the adverse inference that the purposes of those cash transfers would support the Secretary's alter ego claim. *See Stelmokas*, 100 F.3d at 311.

*Corporate Form a Mere Façade
for Operations of Quevedo-Garcia*

While evidence that a company is a mere façade for the operations of a dominant member is not essential to piercing the company's corporate veil, *Lutyk*, 332 F.3d at 194, there is abundant evidence here indicating exactly that.

As previously described in connection with other factors, before depleting BB Frame's bank account in November 2019, Quevedo-Garcia caused BB Frame and BM Frame to transfer cash to other family businesses for no discernable corporate purpose benefiting BB Frame. The \$84,600 transferred from BB Frame to Q Properties is the most prominent example. That transfer of monies is compelling evidence that BB Frame was not a legal entity separate from Quevedo-

Garcia, but rather that Quevedo-Garcia operated BB Frame as if it were an interchangeable extension of himself, manipulating BB Frame for his own purposes and not for the company's benefit.

Quevedo-Garcia's transitioning the financing of framing operations from BB Frame's bank account to BM Frame's bank account in early 2020, after OSHA had begun to inspect BB Frame worksites, echoed the transition that Quevedo-Garcia had implemented in 2018 when, after many of the proposed penalties against Frame Q had become final orders, he transitioned the framing business from Frame Q to BB Frame, even though all the while he continued to hold out the name "Frame Q" as the company involved in its construction projects. He went as far as to falsely tell an OSHA inspector during the first of the five underlying inspections here that Frame Q was the corporate entity performing the framing work at the inspected site.

Quevedo-Garcia *argues* that "Frame Q closed its business some years ago, after it became fundamentally insolvent due to a variety of contracts, debts, lease agreements and monies owed to OSHA for fines and penalties." (Quevedo-Garcia Mot. 5). The only evidence of any such debt (other than the OSHA penalties) is Frame Q's 2018 tax return that reflected a balance sheet liability for accounts payable at the end of the tax year in the amount of \$170,807. However, that figure was 44% less than the accounts payable liability of \$303,318 stated to have existed twelve months earlier at the beginning of that tax year. The 2018 tax return's "accounts payable" entry at the end of the tax year was the only significant balance sheet liability reflected on the return (other than a \$25,000 liability for capital stock, which Frame Q would have owed to Quevedo-Garcia as the sole owner). Frame Q's balance sheet liability for accounts payable at the *end* of 2018 represented 18% of its indebtedness for the combined figures for accounts payable and the unpaid OSHA penalties. In view of Frame Q's apparent success in reducing by 44% its balance sheet liability

for accounts payable between January 1 and December 31, 2018, after having collected gross receipts of \$528,895 that year, Frame Q has not shown that its claimed insolvency was substantially the result of any debt except the debt that resulted from the imposed OSHA penalties. Quevedo-Garcia having failed to properly address the Secretary's assertion of fact, there exists no genuine dispute of material fact that Quevedo-Garcia caused Frame Q to be dissolved and its framing business transferred to BB Frame to avoid collection of Frame Q's of liability for the imposed penalties. *See* Fed. R. Civ. P. 56(e); *Hartford Underwriters Ins. Co. v. Paystaffing, LLC*, No. 16-CV-1128-CCC-JBC, 2017 WL 773877, at *6 (D.N.J. Feb. 28, 2017) (finding that allegations that the business of one company was transferred another company, with both companies being owned by the same individual, essentially alleges that the companies were merely a façade for the operations of that individual).

The same conclusion holds with respect to Quevedo-Garcia's transitioning the financing of BB Frame's framing operations from BB Frame's bank account to BM Frame's bank account, a process that commenced after the first underlying inspection here was opened. While Quevedo-Garcia argues that BB Frame was "closed due to circumstances which were wholly unrelated to OSHA and/or its citations and ultimate fines," (Quevedo-Garcia Mot. 6), he points to no evidence that BB Frame was closed for any reason other than the underlying OSHA inspections and resulting citations and substantial proposed penalties. Other than the liability for capital stock (which BB Frame owed to Quevedo-Garcia and his sister), BB Frame's 2019 tax return reflected balance sheet liabilities at the end of the tax year of about \$22,000 against gross receipts of \$388,553 out of which Quevedo-Garcia had been paid a salary of \$127,500. (Ex. 7 to Kondo Decl.). The information on the tax return does not depict a company in financial distress as of the end of the tax year 2019, even though by that time Quevedo-Garcia had depleted BB Frame's bank

account in apparent preparation for financing framing operations entirely from BM Frame's newly opened bank account.

Quevedo-Garcia's argument that BB Frame was "closed due to circumstances which were wholly unrelated to OSHA and/or its citations and ultimate fines" might be interpreted to insinuate obliquely that the criminal charges filed against him in December 2019 were a factor in the decision to close BB Frame (though the company was not dissolved until almost one year later). (Quevedo-Garcia Mot. 6). There is no evidence presented to support any such argument, and the argument would be inconsistent with BM Frame having operated profitably in 2020, as reflected by its 2020 tax return. The only reasonable inference from the evidence presented by the Secretary in support his cross-motion for summary judgment was that Quevedo-Garcia began financing BB Frame's business operations with BM Frame's resources to avoid having to pay penalties that he reasonably expected would be proposed against BB Frame arising out of the underlying inspections here, and that Quevedo-Garcia later caused BB Frame to be dissolved for that same reason. Quevedo-Garcia has not addressed the Secretary's assertions of these facts with evidence tending to show the contrary, and so those facts are considered undisputed for purposes of the cross-motions for summary judgment. *See* Fed. R. Civ. P. 56(e)(2). Moreover, Quevedo-Garcia's invoking his Fifth Amendment privilege and declared refusal to respond to questions that would be posed to him regarding the transitioning of the framing business among the various corporate entities permits the adverse inference that his responses to questions regarding those transitions would support the Secretary's claim for alter ego liability. *See Stelmokas*, 100 F.3d at 311.

*Second Prong of Alter Ego Analysis: An Element of Injustice –
Circumvention of Statute/Avoidance of Clear Legislative Purpose*

The facts about which there is no genuine dispute show in clear and convincing fashion that it was the decisions, actions, and inactions of Quevedo-Garcia that resulted in Frame Q being

determined to have committed forty violations of construction industry standards in thirteen inspections over the course of about 66 months from 2013 to 2018. Seventeen of those forty violations were classified as repeated violations and two were classified as willful violations. As the only individual with the authority to direct, train or discipline employees of Frame Q (Ex. 31 to Kondo Decl.), the requisite state of mind to support the willful classifications was necessarily that of Quevedo-Garcia, whose state of mind was imputed to Frame Q. *Kaspar Wire Works, Inc.*, 18 BNA OSHC 2178, 2181 (No. 90-2775, 2000) ("The hallmark of a willful violation is the employer's state of mind at the time of the violation"), *aff'd*, 268 F.3d 1123 (D.C. Cir. 2001); *Cont'l Roof Sys., Inc.*, 18 BNA OSHC 1070, 1071 (No. 95-1716, 1997) ("Where the requisite state of mind is manifested through the actions of supervisory employees, it is imputed to the employer to the same extent as would be a supervisor's knowledge of violative conditions"). During inspections of Frame Q construction sites, Quevedo-Garcia acknowledged understanding that Frame Q employees were not complying with fall protection requirements, and he stated expressly that he had decided not to require the employees to implement compliant fall protection measures because he did not regard such measures to be worth the expense. (Sydenstricker Decl.).¹³

In April 2017 Quevedo-Garcia caused BB Frame to be created ten days after OSHA opened the twelfth of the thirteen inspections of Frame Q construction sites (inspection 1264265). In the summer of 2018, after most of the penalties proposed against Frame Q had become final orders, Quevedo-Garcia began to transfer money from Frame Q's bank account to BB Frame's bank account, and he started using BB Frame's bank account exclusively to pay employee wages and his own weekly salary of \$2,500. (Exs. 21 & 25 to Kondo Decl.). In January 2019, OSHA issued

¹³ The Secretary's evidence asserting this fact was not addressed by Quevedo-Garcia in his response to the Secretary's motion as required by Fed. R. Civ. P. 56(c), so it is deemed undisputed for purposes of the cross-motions pursuant to Rule 56(e)(2).

the last of Frame Q's thirteen citations, proposing penalties of \$261,451. The next month, in February 2019, the government brought a civil action against Frame Q in federal district court to collect some of the unpaid penalties that had become final orders. The next month, in March 2019, Quevedo-Garcia applied for a home improvement contractor license for BB Frame, and the month after that he formally dissolved Frame Q, thereby successfully thwarting the collection action that had been filed against Frame Q just two months earlier.

After dissolving Frame Q and rendering the unpaid penalties of \$772,809 essentially uncollectable, Quevedo-Garcia continued operating the framing business that Frame Q had conducted since 2013 through BB Frame. He operated BB Frame's framing business in precisely the same fashion that he had operated Frame Q's business—by knowingly allowing or instructing BB Frame employees (who had formerly been Frame Q employees [see Exs. 24 & 25 to Kondo Decl.]) to work without complying with applicable workplace safety standards. The five inspections here of BB Frame construction sites that were conducted over about a three-month period from December 2019 through February 2020 resulted in BB Frame ultimately being determined to have committed 33 violations of construction industry standards, with twelve violations classified as repeated and eight classified as willful, resulting in penalties of \$2,004,225 that later became final orders against BB Frame. As the only person with authority to direct, train or discipline employees of BB Frame, the requisite state of mind to support the willful classifications against BB Frame was necessarily Quevedo-Garcia's state of mind, which was imputed to BB Frame. (Ex. 31 to Kondo Decl.). Quevedo-Garcia caused BB Frame to be dissolved prior to those violations and penalties becoming final orders against BB Frame in August 2021, thus effectively making any portion of those penalties uncollectable from the now dissolved BB Frame.

The only reasonable inference from Quevedo-Garcia's actions in forming, operating, and dissolving BB Frame, is that he consciously used its corporate form to evade personal responsibility and liability for chronic and intentional violations of applicable workplace safety standards. Although Quevedo-Garcia argues that the corporate transitions and maneuverings were "wholly unrelated to OSHA," he has presented no evidentiary material that would controvert this reasonable inference, and so that inference is considered undisputed for purposes of the cross-motions. Fed. R. Civ. P. 56(e)(2). The whole of the evidence on the cross-motions supporting this finding is clear and convincing evidence, which is to say that it highly probable that this finding is true. *Araujo*, 708 F.3d at 159 ("clear and convincing evidence" is such evidence as shows that "the truth" of the facts claimed is "highly probable"). Moreover, Quevedo-Garcia's invocation of the Fifth Amendment privilege and declared refusal to respond to questions that would pertain to his formation, operation, and dissolution of BB Frame permits the adverse inference that his responses would lend support to the Secretary's alter ego claim. *See Stelmokas*, 100 F.3d at 311.

Among the means that the Act advances Congress's declared "purpose and policy ... to assure so far as possible every working man and woman in the Nation safe and healthful working conditions" is by "providing an effective enforcement program." 29 U.S.C. § 651(b)(10). Penalties for violations are a key part of that enforcement program, and "are meant to inflict pocket-book deterrence." *Kaspar Wire Works, Inc. v. Sec'y of Labor*, 268 F.3d 1123, 1132 (D.C. Cir. 2001). "The purpose of a penalty is to achieve a safe workplace, and penalty assessments, if they are not to become simply another cost of doing business, are keyed to the amount an employer appears to require before it will comply." *Quality Stamping Prods. Co.*, 16 BNA OSHC 1927, 1930 (No. 91-414, 1994), citing *D & S Grading Co. v. Sec'y of Labor*, 899 F.2d 1145 (11th Cir. 1990).

Here, Quevedo-Garcia obdurately refused to enable and instruct employees of BB Frame to comply with applicable workplace safety standards. The increased frequency of inspections and likelihood of progressively more severe sanctions were ineffective in inducing him to enable and instruct BB Frame employees to comply with applicable standards. Instead of bringing the company into compliance, Quevedo-Garcia simply continued operating BB Frame just as he had operated Frame Q, by consciously and routinely flouting applicable standards. This disregard of mandatory standards, which are designed to provide workers safe and healthful working conditions, likely gave BB Frame an unfair competitive advantage over construction employers that comply with those standards. *See State Sheet Metal Co., Inc.*, 16 BNA OSHC 1155, 1161 (No. 90-1620, 1993) (consolidated) (“A primary goal of the Act was to eliminate any competitive disadvantage that a safety-conscious employer might suffer by requiring that every employer comply with the applicable OSHA standards”); *accord Walker Towing Corp.*, 14 BNA OSHC 2072, 2079 n. 11 (No. 87-1359, 1991).

Quevedo-Garcia had previously succeeded in avoiding having Frame Q pay almost all the penalties that had been assessed against it. His creation of BM Frame just weeks after OSHA began inspecting BB Frame construction sites in December 2019 appears to have been calculated maneuver to continue BB Frame’s business through BM Frame (but while still “doing business as” BB Frame) and to continue flouting applicable standards while insulating himself from personal liability for the resulting violations and penalties. Quevedo-Garcia’s invocation of the Fifth Amendment privilege and his declared refusal to respond to questions that would pertain to reasons for creating BM Frame and transferring the funding of framing operations from BB Frame’s bank account to BM Frame’s bank account permits the adverse inference that his

responses to such questions would support the Secretary's alter ego claim. *See Stelmokas*, 100 F.3d at 311.

Quevedo-Garcia's domination of companies that serially flouted applicable workplace standards and his decisions to dissolve two of those companies to avoid collection of any portion of the over \$2.7 million in imposed unpaid penalties circumvents the OSH Act and defeats its clear legislative purpose of assuring safe and healthful working conditions for workers. The only reasonable inference on the cross-motions for summary judgment is that the evidence is clear and convincing that Quevedo-Garcia dominated BB Frame and abused its corporate form to circumvent the OSH Act and to avoid the Act's stated legislative purpose and policy. Disregard of BB Frame's corporate form to hold Quevedo-Garcia personally liable for the company's violations and resulting penalties is necessary to prevent the continued or renewed circumvention of the OSH Act and avoidance of the Act's expressed legislative purpose and policy.

Clear and Convincing Evidence Supports Piercing Corporate Veil

The evidence considered on the cross-motions constitutes clear and convincing evidence that Quevedo-Garcia abused BB Frame's corporate form to circumvent the OSH Act and defeat its expressed legislative purpose and policy. The Secretary's motion for summary judgment thus presents clear and convincing evidence to support piercing the corporate veil of BB Frame. There is no reasonable view of the evidence that supports a contrary conclusion. Quevedo-Garcia has not addressed the Secretary's properly supported motion by producing or citing to other materials in the record (such as documents, depositions, interrogatory answers, affidavits, and the like as described in Fed. R. Civ. P. 56(c)(1)(A)) that indicates the contrary. The Secretary is entitled to judgment as a matter of law pursuant to Rule 56(a) & 56(e)(3) that Quevedo-Garcia was a statutory employer of the BB Frame employees so that he is personally responsible and liable for the violations alleged in the underlying citations and the corresponding proposed penalties.

ORDER

The foregoing decision constitutes findings of fact and conclusions of law on all material issues of fact, law, and discretion in accordance with Commission Rule 90(a)(1). 29 C.F.R. § 2200.90(a)(1).

The Respondent, Juan G. Quevedo-Garcia, having expressly stipulated to “waive[] any defense to the Citations and Notifications of Penalty other than the defense that [he] should not be held liable for the Citations and Notifications of Penalty in his individual capacity,” and having now been adjudicated to be personally liable for those citations and penalties, it is ORDERED as follows:

1. Case 20-1029. The Citation and Notification of Penalty issued to Quevedo-Garcia on June 2, 2020 arising out of inspection number 1450621 is AFFIRMED in its entirety and the proposed penalties totaling \$520,860 are ASSESSED.

2. Case 20-1030. The Citation and Notification of Penalty issued to Quevedo-Garcia on June 2, 2020 arising out of inspection number 1470364 is AFFIRMED in its entirety and the proposed penalties totaling \$433,146 are ASSESSED.

3. Case 20-1031. The Citation and Notification of Penalty issued to Quevedo-Garcia on June 2, 2020 arising out of inspection number 1464272 is AFFIRMED in its entirety and the proposed penalties totaling \$274,892 are ASSESSED.

4. Case 20-1032. The Citation and Notification of Penalty issued to Quevedo-Garcia on June 2, 2020 arising out of inspection number 1466351 is AFFIRMED in its entirety and the proposed penalties totaling \$369,739 are ASSESSED.

5. Case 20-1042. The Citation and Notification of Penalty issued to Quevedo-Garcia on June 2, 2020 arising out of inspection number 1470345 is AFFIRMED in its entirety and the proposed penalties totaling \$405,588 are ASSESSED.

SO ORDERED.

/s/ William S. Coleman

WILLIAM S. COLEMAN
Administrative Law Judge

DATED:

CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice of Decision, Decision and Order was sent to the parties listed below electronically using the Commission's E-Filing System on **February 25, 2022**.

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