

U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of: :  
  
Administrator, Wage and Hour Division, :  
United States Department of Labor, :  
  
Prosecuting Party, : OALJ DOCKET  
  
v. :  
 : No. 2022-TNE-00003  
  
KDE Equine, LLC d/b/a Steve Asmussen Stables, :  
Respondent. :  
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**CONSENT FINDINGS AND ORDER**

The parties, Respondent KDE Equine, LLC (“Respondent”) and the Principal Deputy Administrator of the Wage and Hour Division, U.S. Department of Labor (“Administrator” or “Wage Hour”), (collectively, the “Parties”), represent that they have reached an accord to resolve the above-captioned matter, and to that end, hereby stipulate and agree that:

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 *et seq.* (“the INA”), as amended by the Immigration Reform and Control Act of 1986, P.L. 99-603, 100 Stat. 3359. Jurisdiction over the hearing in this matter is vested in the U.S. Department of Labor Office of Administrative Law Judges by the INA at §§ 103(a)(6), 214(c) and 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503.

2. On November 24, 2021, Wage Hour issued a Determination Letter to Respondent alleging violations of the H-2B provisions of the INA, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b) and 1184(c)(14), assessing back wages and civil money penalties. Specifically, the Determination

Letter alleged Respondent committed violations of certain Applications for Temporary Employment Certification, ETA Form 9142B with Appendix B, and associated USCIS Petitions for a Nonimmigrant Workers,<sup>1</sup> in violation of 29 C.F.R. § 503.16(j), (l), (o), (q), (s), (w), (x); 20 C.F.R. § 503.19; and 20 C.F.R. §655.6. The Determination Letter also provided notice that Respondent would be debarred from obtaining labor certifications for a period of three years, pursuant to 29 C.F.R. § 503.24.

3. On December 22, 2021, Respondent timely requested a hearing with respect to the allegations of violations set forth in the Determination Letter.

4. Since January 2023, the parties have been actively engaged in arms-length negotiations regarding a potential resolution of this matter. The Parties now agree to these Consent Findings, to resolve Wage Hour's investigation pursuant to the H-2B program, obtain Respondent's assurance of future compliance with the provisions of the H-2B program, obtain the prompt payment of reimbursements and civil money penalties due, and avoid the time and expense of protracted litigation.

5. Respondent further states that it is agreeing to the execution and stipulation of these Consent Findings and Order solely for the purposes of compromise, and to eliminate the burden and expense of further litigation. Respondent does not admit the factual allegations in the Administrator's November 24, 2021 Determination Letter or any amendments to that

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<sup>1</sup> Wage Hour's investigation covered Respondent's Applications for Temporary Certification listed below and their corresponding I-129 Petitions.

<b>9142B Application</b>	<b>I-129 Petition</b>
H-400-16344-469621	EAC-17-10251930
H-400-17344-018398	EAC-18-17651627
H-400-18299-851255	EAC-19-18351687 & EAC-19-18352101

Determination Letter. The parties agree that this agreement shall not be construed as an adjudication on the merits of any violation by Respondent.

6. The Administrator hereby amends its November 24, 2021 Determination Letter to allege that Respondent owes \$129,776.58 in unpaid reimbursements to workers (due to Respondent's employees listed in Exhibit A), and civil money penalties in the total amount of \$75,223.42. The Administrator also hereby amends its November 24, 2021 Determination Letter to withdraw the debarment determination pursuant to 29 C.F.R. § 503.24. No other amendments are made to the Determination Letter.

7. Respondent withdraws its exceptions to the November 24, 2021 Determination Letter and agrees to pay \$129,776.58 in unpaid reimbursements and \$75,223.42 in civil money penalties within one month of the date of this order according to the procedures set forth in Paragraph 8 of these Consent Findings and Order.

8. Respondent shall make payments as follows:

a. Reimbursements:

Within 30 calendar days after issuance of an order entering this Consent Judgment, Defendants shall send a check made out to "Wage and Hour Division – Labor" with "Case No. 1879159 Reimbursements" written on the face of each check. The check shall be sent to US Department of Labor, Wage and Hour Division NE RO, 1835 Market Street, 19th Floor, Mailstop WHD/19, Philadelphia, PA 19103-2968.

b. Civil money penalty payment:

Within 30 calendar days after issuance of an order entering this Consent Judgment, Defendants shall make send a check made out to "Wage and Hour Division – Labor" with "Case No. 1879159 CMPs" written on the face of each check. The check shall be sent to US Department of Labor, Wage and Hour Division NE RO, 1835 Market Street, 19th Floor, Mailstop WHD/19, Philadelphia, PA 19103-2968.

9. The Administrator shall distribute the reimbursements described in Paragraph 6 to

the persons named in the attached Exhibit A, or to their estates if that be necessary, in her sole discretion, and any money not so paid within a period of three years from the date of its receipt, because of an inability to locate the proper persons or because of their refusal to accept it, shall then be deposited in the Treasury of the United States, as miscellaneous receipts. Respondent and any of its agents or anyone acting on its behalf will not, directly or indirectly, solicit or accept the return or refusal of any sums paid or due under these Consent Findings.

10. Within 30 calendar days of the date these Consent Findings are ordered, Respondent shall provide Wage Hour the social security number, if such is available, and all known contact information (including but not limited to addresses, phone numbers, e-mails, and other electronic contact information such as WhatsApp) of each former or current employee listed in Exhibit A. Respondent shall also identify for Wage Hour whether each individual listed in Exhibit A is a former or current employee.

11. Respondent agrees to permit Wage Hour personnel to meet with Respondent's current employees at mutually agreeable date(s)/time(s), as necessary to enable WHD to accomplish the distribution of reimbursement checks. Respondent understands that multiple visits by Wage Hour personnel will be necessary, e.g., an initial visit or visits to collect the necessary signed paperwork from employees, and then a subsequent visit or visits to deliver the individual checks after they are prepared. Respondent also understands that if workers in Exhibit A are working for KDE at different locations, Wage Hour may need to visit multiple locations to distribute checks. The parties agree to work together in good faith in the spirit of maximizing the success of check distribution to the employees on Exhibit A.

12. Respondent represents that to the best of its knowledge, it is currently in compliance with the requirements of the H-2B program and applicable regulations, including but not limited to the requirement to pay or reimburse H-2B workers for inbound and outbound transportation

costs, 29 C.F.R. 503.16(j)(1)(i) and (ii). Respondent further certifies that it will remain in compliance with the requirements of the H-2B program and applicable regulations as long as it continues to participate in the H-2B program.

13. Respondent shall implement the Enhanced Compliance Terms, attached as Exhibit B, for at least three years following the date these Consent Findings are ordered.

14. The parties understand and agree that the above-captioned matter, *Administrator v. KDE Equine, LLC d/b/a Steve Asmussen Stables*, OALJ Case No. 2022-TNE-00003, is the only matter resolved through these Consent Findings.

15. Nothing in these Consent Findings and Order or the Enhanced Compliance Terms shall in any way limit the authority or rights of Wage Hour (or any other agency) to conduct investigations of Respondent within such agency's enforcement authority, or to take appropriate enforcement actions or remedies with respect to any violations disclosed by such investigations, except that Wage Hour will not conduct any additional investigations concerning Respondent's compliance with the Applications for Temporary Employment Certifications or I-129 petitions at issue in this case, *i.e.* the TECs and petitions listed in footnote 1, *supra*.

16. These Consent Findings (and the incorporated Enhanced Compliance Terms) constitute the entire agreement between the Administrator and Respondent relating to this matter and supersede and replace any other understandings or agreements, whether written or oral, relating to the resolution of this matter.

17. These Consent Findings do not relieve Respondent, its successors, or any subsidiary, of any obligation under the H-2B program.

18. The Parties agree that an Order disposing of this proceeding in accordance with these Consent Findings shall have the same force and effect as an order made after a full hearing in accordance with 29 C.F.R. §§ 18.71(b)(1) and 503.49(b)(1).

19. The entire record on which this Order may be based shall consist solely of the Determination Letter, as amended herein, and these Consent Findings and Order, 29 C.F.R. §§ 18.71(b)(2) and 503.49(b)(2).

20. The Parties hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter, or any right to challenge or contest the validity of these Consent Findings and Order entered into in accordance with this Agreement, 29 C.F.R. §§ 18.71(b)(4) and 503.49(b)(3)-(4).

21. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

22. The Office of Administrative Law Judges retains jurisdiction over this matter, and may issue any additional orders or decrees necessary to implement the Consent Findings and Order (including the Enhanced Compliance Terms).


23. Respondent acknowledges that it has been represented by counsel and fully understands its obligations under these Consent Findings and the Enhanced Compliance Terms.

The undersigned expressly acknowledge and represent that they are authorized to execute these Consent Findings on behalf of the listed parties.

**[SIGNATURES BELOW ON NEXT PAGE]**

Dated: August 3, 2023

For Respondent:

By:   
Clark O. Brewster, Esq.  
Brewster & De Angelis  
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*Attorneys for Respondent*

Dated August 3, 2023

For the Administrator

JENNIFER S. BRAND  
Associate Solicitor for Fair Labor Standards

JEFFREY S. ROGOFF  
Regional Solicitor

By: s/Jacob Heyman-Kantor

JACOB HEYMAN-KANTOR  
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*Attorneys for the Administrator*

EXHIBIT B  
ENHANCED COMPLIANCE TERMS

KDE Equine, LLC d/b/a Steve Asmussen Stables (“Respondent”), agrees to the following terms in order to achieve and maintain compliance with the Immigration and Nationality Act, 8 U.S.C. 1184(c), 20 CFR part 655, subpart A, 29 C.F.R. part 503, or any other regulation promulgated thereunder concerning temporary non-agricultural employment of H-2B workers (hereinafter, the “H-2B Program”):

1. **THREE-YEAR PERIOD.** Except as otherwise noted, these Enhanced Compliance Terms will remain in effect for three years following execution of the Consent Findings in the above-captioned matter.
2. **HIRING OF MONITOR.** Within 60 days of the Court’s approval of the Consent Findings and Order, Respondent will retain an independent monitor who has never been a KDE employee (e.g. an assistant trainer, a foreman, a groom, etc.), and is not related to any current or former KDE supervisor) with expertise in compliance with the H-2B Program. The monitor will also be fluent in Spanish, or shall arrange for an interpreter who is independent from KDE (*see* definition *supra*). Respondent will provide the name, contact information and resume for the Monitor to Wage Hour within forty-five days of hiring. If Respondent attempts in good faith to retain a monitor but is unable to do so within 60 days, it may request from Wage Hour an additional thirty days for good cause. Respondent shall have the right to terminate the Monitor for good cause. If the Monitor is no longer available or willing to serve as the Monitor, Respondent will within 45 calendar days after the prior Monitor’s unavailability, identify a new Monitor and provide the resume of the new monitor to Wage and Hour.

Upon hiring the Monitor, Respondent shall provide the Monitor with a copy of the instant Consent Findings and Order, and the Monitor shall sign a written certification that they have read and understood these Consent Findings and Order and their responsibilities as related to these Consent Findings and Order. During the three-year period following the date these Consent Findings are ordered, Respondent shall produce this certification to Wage Hour within 30 days of a request by Wage Hour. Respondent will also require their officers, managers, employees, representatives, and agents to fully cooperate with the Monitor. Respondent will be responsible for all of the Monitor’s expenses and fees.

3. **MONITORING.** The responsibilities of the Monitor will include:
  - A. Arranging and conducting confidential interviews of employees required under Paragraph 4.
  - B. Conducting two audits per year, to be completed by May 1 and



November 1 each year. The audits will include collecting and reviewing any information needed to determine whether Respondent is complying with the H-2B Program and Respondent's Temporary Employment Certification(s), such as whether Respondent's employees are being appropriately reimbursed for travel and subsistence costs, and whether any managers are improperly collecting fees from workers for costs that Respondent is required to bear.

- C. Investigating any report or complaint to the Monitor of Respondent's noncompliance.
  - D. Preparing reports to Wage Hour within thirty days of completing the audits described in Paragraph 3(B). These reports will describe the Monitor's general activities, including the training provided and the dates and names of employees who have been interviewed. If the Monitor determines that Respondent is not complying with the H-2B program, despite having been given thirty days to fix any problems, the Monitor shall provide all relevant information regarding the details of noncompliance and Respondent's compliance efforts to Wage Hour.
  - E. All such general activity reports and notifications of non-compliance will be provided to the U.S. Department of Labor, Wage and Hour Division, via email to [dempsey.william@dol.gov](mailto:dempsey.william@dol.gov), [agudelo.nelcy@dol.gov](mailto:agudelo.nelcy@dol.gov), and [whdvm.longislandnydo@dol.gov](mailto:whdvm.longislandnydo@dol.gov).
  - F. Planning, conducting, and overseeing all training required by these Enhanced Compliance Terms.
4. **CONFIDENTIAL INTERVIEWS.** The Monitor will interview each of Respondent's H-2B employees each year (except to the extent that a worker declines to be interviewed). Each year half of the interviews will be conducted by July 1, and the other half by October 1. The interviews will be subject to the following requirements and specifications:
- A. The Monitor will make a written record of all interviews conducted. The Monitor will disclose to Respondent all information that is necessary for Respondent to comply with these Enhanced Compliance Terms and/or the H-2B program, provided that the Monitor shall not disclose to Respondent any information that would reveal the identity of the employee who provided the information, unless the employee consents to such disclosure to Respondent.

If the Monitor determines that Respondent has violated the H-2B program, and that Respondent has not fixed and/or remedied these violations within thirty days of being served written notice of violations, the Monitor will provide all relevant information regarding the details of noncompliance and Respondent's compliance efforts to Wage Hour. This information shall be sent via email to [dempsey.william@dol.gov](mailto:dempsey.william@dol.gov), [agudelo.nelcy@dol.gov](mailto:agudelo.nelcy@dol.gov),

and whdvm.longislandnydo@dol.gov.

- B. Respondent, its officers, managers, employees, representatives, and agents are prohibited from asking employees or anyone else whether they have been contacted by the Monitor or Wage Hour in connection with a confidential interview, whether they have spoken with the Monitor or Wage Hour, and whether they have been interviewed pursuant to the Enhanced Compliance Terms and the Monitor's responsibilities. This section does not prohibit Respondent from in good faith asking a worker where the worker was or what the worker was doing during work hours, even if the worker's response might indicate that the worker was speaking with the Monitor. If a worker's response indicates that the worker was speaking with the Monitor, Respondent shall not ask the employee any further questions about the worker's communications with the Monitor.
  - C. Respondent, its officers, managers, employees, representatives, and agents are also prohibited from acting in any manner to intimidate, instruct, or coerce an employee who may be interviewed or to retaliate against an employee who provided information to the Monitor or Wage Hour; and the Monitor may conduct any or all confidential interviews during or outside of work hours. Respondent will reasonably cooperate with the Monitor to facilitate these interviews. Among other things, Respondent will inform the Monitor where workers are working on a particular day and allow employees to take a break from their work to meet with the Monitor.
5. **TRAINING.** The Monitor shall hold live, interactive training sessions for all H-2B employees to provide an overview of Respondent's obligations under the H-2B Program. The training will include that
- A. Respondent is obligated under the H-2B Program to pay or reimburse inbound and outbound transportation and subsistence costs. If Respondent does not provide H-2B workers with inbound and outbound transportation at the start and end of the season, Respondent must, at a minimum, pay each worker no less than the most economical and reasonable common carrier transportation charges for the distances involved for inbound and outbound transportation, regardless of whether the worker has requested reimbursement or has retained receipts detailing the exact travel costs incurred. Under these Enhanced Compliance Terms, Respondent is required to provide any such payments to workers with a paystub stating the purpose of the payments.
  - B. Workers have the right to engage in activities protected by 29 C.F.R. § 503.16(n) without fear of retaliation, blacklisting, discharge, discrimination, and other prohibited conduct by an H-2B employer.

At the training, each H-2B employee will be again provided with a copy

of Respondent's job order in effect in Spanish or, if the employee does not understand Spanish, in a language the employee understands. At the training the Monitor will also provide each H-2B worker with the Monitor's phone number and business card, and inform each worker that they can submit confidential complaints to the Monitor, and that retaliation for cooperating with the Monitor is prohibited.

The Monitor shall hold such training sessions for all H-2B workers. All H-2B workers must receive this training each year that they are employed by Respondent. Time spent in training is compensable time.

All managerial staff who have a role in supervising H-2B workers shall participate in a training session at least once each year. The Monitor or the Monitor's employee will provide the training in English and Spanish. If any of Respondent's H-2B workers do not understand English or Spanish, the training will be provided in a language the employee understands. Each individual who attends a training session will sign an attendance sheet and sign confirmation that they have received the applicable job order. The Monitor will retain copies of these documents as well as retain all written materials discussed at each training session, and provide copies of these documents to Wage Hour within fifteen days of conducting each training.

6. **TRAINING BY WAGE HOUR.** In addition to the above, Wage Hour shall be allowed to provide a training to all of Respondent's H-2B workers. Within sixty days of the signing of the Consent Findings and Order, Respondent inform Wage Hour of a time and location when such training can be provided during regular business hours to at least 90% of the H-2B employees whom Respondent has petitioned to work for it. If necessary to accommodate workers' schedules and meet the 90% threshold, Wage Hour will be permitted to provide a second training. Respondent will cooperate with Wage Hour to schedule the training(s). Respondent will also provide all contact information (including the phone number and WhatsApp information) for each H-2B worker, so that Wage Hour can send a recorded message about H-2B rights to all workers who cannot attend the training(s).
7. **PARTICIPATION BAN.** Neither Toby Sheets nor Gerardo Morales Hernandez will have any duties concerning H-2B petitions or applications for temporary employment certification, the recruitment or hiring of H-2B workers on behalf of Respondent, or maintaining or creating documentation required under the H-2B Program, for as long as they are employed by or providing services to Respondent.
8. **RECORDS OF REIMBURSEMENTS.** From now on, when Respondent reimburses an H-2B worker for transportation, subsistence costs, or visa, visa processing, border crossing, or other related fees, Respondent will within thirty days provide the worker with a paystub stating the purpose of the payment and will retain copies of these

paystubs for three years in accordance with 20 C.F.R. § 655.56(b). This provision will remain in effect permanently.

9. **ANTI-RETALIATION.** Respondent agrees it will comply with the provisions of 29 CFR § 503.16(n) in full, and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against any person for providing information to or cooperating with the Monitor. Respondent acknowledges that it understands these anti-retaliation provisions and will abide by them
10. **ADDITIONAL PROVISIONS.** Respondent will provide the Consent Findings and Order and these Enhanced Compliance Terms to each person who is or who becomes an owner, officer, or director of Respondent, its successors, and any subsidiary.