

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CLASSIC LATH & PLASTERING, INC.,
and its alter egos FRAGATA CONSTRUCTION,
INC., RYAN BUILDERS, INC., R & S DRYWALL,
INC., and OCTAVIO FRAGATA, as an individual

and

Cases 1-CA-42734
1-CA-43095
1-CA-43503
1-CA-43786

CARPENTERS LOCAL UNION NO. 94,
NEW ENGLAND REGIONAL COUNCIL
OF CARPENTERS, a/w UNITED
BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

Susan Lawson, Esq. and Emily Goldman, Esq.,
for the General Counsel.

Octavio Fragata, of Gulf Breeze, Florida, for
the Respondents.¹

Thomas Savoie, of Warwick, Rhode Island, for
the Charging Party.

DECISION

Statement of the Case

PAUL BUXBAUM, Administrative Law Judge. This case was tried in Boston, Massachusetts, on September 22 and 23, 2008. The original charge was filed August 8, 2005, with amendments and additional charges filed September 6 and December 12, 2005, February 22 and October 5, 2006, and February 16, 2007. The Regional Director issued a complaint on December 21, 2005, and issued subsequent amended and consolidated complaints on August 28, 2006, and November 7, 2007.² At the commencement of the trial, counsel for the General

¹ No representative appeared on behalf of R & S Drywall, Inc. Octavio Fragata disclaimed any ownership interest in that corporation and indicated that he was not representing it. Nevertheless, given the potential impact of adverse findings against that company on the remaining Respondents, as a practical matter I permitted Mr. Fragata to defend all of the Respondents during the course of these proceedings. See, for example, my ruling at Tr. 256.

² In connection with the issuance of each of these complaints, the Regional Director provided notices to the Respondents informing them of their right to representation by counsel. (GC Exhs. 1(j), (u), and (dd).) Respondents Classic Lath & Plastering, Inc., Fragata Construction, Inc., and Ryan Builders, Inc., were represented by counsel at the time that they

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Counsel moved to further amend the second amended consolidated complaint in a number of respects.³ This motion was unopposed. (Tr. 15-16.) On review of the record and in light of the Respondents' lack of opposition, I granted the motion to amend as being appropriate under the standards set forth in *Folsom Ready Mix, Inc.*, 338 NLRB 1172 at fn. 1 (2003). Once I granted the motion, on September 23, 2008, the Regional Director filed an amended second consolidated complaint that incorporates the amendments and represents the final version of the allegations against the Respondents. (GC Exh. 1(tt).)

Because there are a number of Respondents in this case, I will abbreviate their names for ease of reference and clarity. The lead Respondent, Classic Lath & Plastering, Inc., will be referred to as "Classic." The alleged alter ego corporations, Fragata Construction, Inc., Ryan Builders, Inc., and R & S Drywall, Inc., will be referred to respectively as "Fragata Construction," "Ryan," and "R & S." The individual respondent, Octavio Fragata, will be referenced as "Mr. Fragata."

In response to the complaints, Classic, Fragata Construction, and Ryan, through their former counsel, have filed answers denying the material allegations. R & S has never filed a response.⁴ Mr. Fragata filed a pro se answer on December 7, 2007. Applying the Board's "more lenient standard applicable to pro se respondents," I find that his answer is legally sufficient as it does specifically address the substance of the key allegations of the complaint. *Eckert Fire Protection Co.*, 329 NLRB 920 at fn. 1 (1999).

Turning now to the nature of the controversy, the General Counsel alleges that Classic voluntarily entered into a contract causing it to be bound by certain collective-bargaining agreements with the Union. It is further alleged that, since May 2005, Classic has withdrawn recognition from the Union and has repudiated those collective-bargaining agreements. In addition, Classic allegedly failed to respond to the Union's written request for certain information that is relevant to its role as representative of employees of the Company. This course of conduct is asserted to have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Beyond this, the General Counsel alleges that Fragata Construction, Ryan, and R & S are continuations of, and alter egos to, Classic. Finally, it is alleged that Mr. Fragata has operated the corporate respondents in a manner that failed to respect their separate corporate identities. As a consequence, it is argued that it is necessary to impose individual liability on him in order to avoid fraud or injustice to injured parties. As previously noted, these allegations are denied by the Respondents.

responded to the first two complaints. Subsequently, they have proceeded without such representation. Respondent, R & S Drywall, Inc., has never formally participated in this proceeding, either through counsel or otherwise. The individual respondent, Octavio Fragata, has represented himself throughout. In addition to the notices provided by the Regional Director, I informed Mr. Fragata of the right of each Respondent to be represented by counsel during a pretrial telephone conference. At trial, Mr. Fragata and the corporate respondents that he represented elected to proceed without an attorney. (Tr. 7-10.)

³ The General Counsel had earlier provided written notice of intent to seek these amendments. (GC Exh. 1(qq).)

⁴ Although R & S has never formally participated in this litigation, it is inappropriate to enter a default judgment against it. See *Metro Demolition Co.*, 348 NLRB 272 (2006) (Board refuses to enter default against nonanswering respondent whose alleged liability was "derivative and stemmed from its alleged status as a single employer with (or alter ego of) another respondent who filed a timely answer").

For the reasons set forth in detail in this decision, I find that Classic did bind itself to the obligations contained in the collective-bargaining agreements. Subsequently, Classic failed to comply with the requirements set forth in those agreements and repudiated them. Classic also failed to meet its obligation to provide the Union with relevant information that it had requested. I also conclude that the General Counsel has proven that Fragata Construction, Ryan, and R & S represent continuations of, and alter egos to, Classic. As a result, their failure to comply with the obligations assumed by Classic under the collective-bargaining agreements was also unlawful. Finally, I have determined that Mr. Fragata treated each of the corporate respondents as mere extensions of himself and that it is necessary to impose personal liability on him for the corporations' unlawful actions in order to prevent an inequitable result.

On the entire record,⁵ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Mr. Fragata, I make the following

Findings of Fact

I. Jurisdiction

I find that Classic is a Massachusetts corporation that has been engaged in the carpentry business as a contractor in the construction industry with an office and place of business in Westport, Massachusetts, where it has annually purchased and received at various locations within the Commonwealth of Massachusetts goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.⁶ I further find that Fragata Construction has been engaged in the carpentry business as a contractor in the construction industry with an office and place of business in Westport, Massachusetts, where it has annually purchased and received at various locations within the Commonwealth of Massachusetts goods and services valued in excess of \$50,000 from points outside the Commonwealth of Massachusetts.⁷ In addition, I find that Ryan is a Massachusetts corporation that has been engaged in the carpentry business as a contractor in the construction industry with an office and place of business in Westport, Massachusetts, where it has annually purchased and received at various locations within the Commonwealth of Massachusetts goods and services valued in excess of \$50,000 from points outside the Commonwealth of Massachusetts.⁸ Finally, I find

⁵ The transcript of the trial is generally accurate, but several errors require correction. At p. 310, l. 22, "may" should be "they." At p. 339, l. 7, "was in" should be "wasn't." At p. 418, l. 16, "could" should be "couldn't." At p. 492, l. 18, "is asking" should be "is not asking." Finally, the statement made at p. 312, ll. 20-21, is the response of the witness to counsel's question posed at ll. 17-19. All other transcription errors are not significant or material. It should also be noted that the reporter inadvertently entered two separate copies of GC Exhs. 41, 42, and 43 into the record. In his brief, the General Counsel requests that I admit into evidence a single page of GC Exh. 51(a) that was inadvertently omitted. (GC Br. at p. 50, fn. 41.) As this is unopposed and there is no possibility of prejudice involved, I grant this request.

⁶ The General Counsel presented proof of Classic's corporate status. Classic's answer to the amended consolidated complaint admitted the facts and legal conclusions regarding interstate commerce. (GC Exh. 1(w), p. 2.) Finally, during the course of the trial, Mr. Fragata stipulated to the jurisdictional allegations regarding Classic. (Tr. 441.)

⁷ Once again, former counsel for Fragata Construction admitted the jurisdictional facts in his answer to the amended consolidated complaint. (GC Exh. 1(w), p. 2.) Mr. Fragata also stipulated to the jurisdictional allegations. (Tr. 446—447.)

⁸ Again, on behalf of Ryan, former counsel admitted to the jurisdictional facts in the answer

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that R & S is a Massachusetts corporation that has been engaged in the carpentry business as a contractor in the construction industry with an office and place of business in Westport, Massachusetts, where it annually purchased and received at various locations within the Commonwealth of Massachusetts goods and services valued in excess of \$50,000 from points
 5 outside the Commonwealth of Massachusetts.⁹ In conclusion, I find that all of the corporate respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

10 II. Alleged Unfair Labor Practices

A. *The Facts*

15 The central issue in this case involves the conduct of Classic's labor relations. The Company was organized as a Massachusetts corporation on May 19, 1999. At the time of its founding, all of the corporate offices were held by Luis Freitas. (GC Exh. 6, p. 6.) Almost immediately, a notice was filed with the secretary of the Commonwealth reporting that Mr. Fragata had become the treasurer and secretary of the Company. (GC Exh. 6, p. 8.) Six
 20 months later, on January 18, 2000, a further certificate of change was filed showing that all of the corporate offices were now held exclusively by Mr. Fragata. In addition, he was listed as the sole director of the corporation. (GC Exh. 6, p. 13.) From that point forward, the evidence clearly established that Mr. Fragata was in total control of Classic. As he put it, "I have no dispute that I did Classic." (Tr. 25.)

25 Classic was almost entirely engaged in the business of commercial construction. Substantial portions of its projects involved carpentry work, including metal and wood framing and installation of insulating materials and drywall. Almost immediately after assuming total control of the corporation, Mr. Fragata hired Christine Prevost as the Company's office manager and secretary.¹⁰ As she described it, her duties included, "accounts payable, receivable, bank
 30 reconciliations, the payroll." (Tr. 76.) She also drafted the Company's checks using a computer software program.

35 to the amended consolidated complaint. (GC Exh. 1(w), p. 2.) At trial, Mr. Fragata also entered into a stipulation regarding the jurisdictional allegations concerning Ryan. (Tr. 447.)

40 ⁹ As R & S did not formally participate in the case, there are no admissions or stipulations on its behalf regarding jurisdiction. I have based my findings on the pertinent testimony of a corporate officer, Sonia Tavares Fragata. (Tr. 552.) Beyond this, it is noteworthy that the Board has approved another administrative law judge's observation that, where corporations are determined to be alter egos, "the jurisdiction over one corporation necessarily attached to an alter ego." *G.M. Trimming, Inc.*, 279 NLRB 890, 892 (1986). See also the Board's adoption of another judge's observation that, in alter ego situations, "[j]urisdiction attaches automatically." *Scott Printing Corp.*, 237 NLRB 593, 594 (1978), enf. denied on other grounds, 612 F.2d 783 (3d Cir. 1979).

45 ¹⁰ Prevost provided detailed and extensive testimony about virtually every significant issue in this case. I was impressed with her demeanor and presentation, particularly her effort to avoid any bias or partisanship. She had a detailed grasp of the facts and was able to shed valuable light on the documentary evidence, much of which she had created in her role as office manager. Her reliability as a witness was further underscored by the fact that most of her
 50 testimony was both uncontroverted and extensively corroborated by documents and other testimony. I found her to be an entirely credible witness.

When established in 1999, Classic's principal place of business was shown as 1265 Pleasant Street in Fall River, Massachusetts. This property was owned by Mr. Fragata. In March 2000, the Company notified the Commonwealth that the principal place of business had moved to 1002 State Road in Westport. (GC Exh. 6, p. 14.) This address was part of a larger parcel of properties also owned by Mr. Fragata consisting of 992, 994, and 1002 State Road. Prevoost testified that the Company's office was located in a room above a garage. The property also included residences, a shed, and land used for storage of vehicles and equipment.

Early in its corporate existence, Classic did not have any relationships with labor unions. As Prevoost described, "[w]e were an open shop company." (Tr. 78.) In the fall of 2001, the Company participated in a project being overseen by Peabody, a union general contractor. Since Peabody required that the subcontractors employ union labor, Classic contracted with a union firm to perform its obligations related to the Peabody project. When this subcontractor failed to complete the work, Classic was faced with a dilemma. Mr. Fragata chose to solve this problem by having Classic enter into its own collective-bargaining relationship with the Carpenters Union.

Classic's agreement with the Union was consummated during a meeting held at the Company's office on November 18, 2001. Mr. Fragata was present on behalf of Classic. The Union was represented by one of its organizers at the time, Gary DeCosta, and by its director of contract relations, Louis Catanzaro. Of these participants, only DeCosta testified at the trial. Apart from being uncontroverted, his testimony was clear, precise, and consistent with other evidence regarding the events he described. I credit his account of this crucial meeting in all respects.¹¹

DeCosta testified that he raised an issue of particular concern to himself arising from his knowledge of Mr. Fragata's past business dealings. As he described it,

I knew Mr. Fragata's history of owning several construction companies So I was very clear with the fact that he could not own and operate a non-union company while he was under agreement with the Carpenters Union—a carpentry related non-union company I explained to him the terms of the agreement that any company that he controlled or was a principal in, would be bound by the terms of this agreement.

(Tr. 392.) DeCosta reported that Mr. Fragata responded that, "[h]e was aware of it and he said he was going to make a go of this and he was going to be a big union company." (Tr. 393.)

After this discussion, Mr. Fragata was asked to sign a document entitled, "United Brotherhood of Carpenters & Joiners of America New England Regional Council of Carpenters Agreement." Because it is only a single-page document, union officials refer to it as the "short-

¹¹ In his posthearing brief, Mr. Fragata presents a vastly different version of the events of that day, contending that the meeting was "hostile" and that he was "threatened." (R. Br. at p. 1.) Of course, this account cannot form part of the evidentiary record as it was not given under oath and subject to cross-examination. Furthermore, the contention that the Union bullied Mr. Fragata into signing the agreement is inconsistent with the actual circumstances. It may be true that Mr. Fragata felt pressure to reach an agreement with the Union due to the status of his project with Peabody, but this is simply an ordinary business dilemma and does not represent any improper coercion on the part of the Union.

form agreement.” (Tr. 372.) The central provision of that document is the acknowledgement that the employer, “accepts and agrees to abide by the collective bargaining agreements between the various contractor associations and the unions . . . wherever those contracts shall apply.” (GC. Exh. 50, par. 1.) A complete list of the applicable collective-bargaining agreements is provided on the reverse side of the short-form agreement. In addition, the short-form agreement describes in detail the procedures involved once a current collective-bargaining agreement reaches its termination date. Thus, it provides:

The Employer agrees that it shall abide by any amendments or successor agreements negotiated by the contractor associations and the local unions If th[e] contracts expire and a successor agreement has not been negotiated, the terms of the previous agreement shall continue to be in effect until a successor agreement is negotiated.

(G.C. Exh. 50, par. 1.)

Of particular importance to an understanding of the events in this case, the short-form agreement contains the following provision regarding the steps required for a party to give notice of termination:

The duration of this New England Regional Council Agreement in each local union’s geographical area shall be co-extensive with the terms set out in each of the collective-bargaining agreements . . . unless either party to this Regional Council Agreement gives notice of termination of this agreement in the geographical area of a particular local in accordance with the applicable notice provisions in the collective bargaining agreements.

(GC Exh. 50, par. 2.)

Finally, the short-form agreement addresses two other matters that have arisen in this litigation. Paragraph 5 notes that, “in order to prevent any device or subterfuge to avoid the protection and preservation” of union work opportunities, the agreement is applicable to all companies in which the signatory employer, “either directly or indirectly,” maintains “a significant degree of ownership, management or control.” (GC Exh. 50, par. 5.) In addition, the agreement notes that the employer “recognizes that the Union, pursuant to the National Labor Relations Act, has the right to request that the Employer provide it with information relating to whether it manages and/or coordinates contracts or work or selects subcontractors.” (GC Exh. 50, par. 5.)

DeCosta reported that Mr. Fragata was given “plenty of time” to read the agreement and that he did not express any lack of understanding of its requirements. (Tr. 430.) DeCosta described Mr. Fragata’s attitude and conduct as,

what I remember of it was that he was pretty confident that, yeah, no problem, I’m going to make this work and it’s going to be good. And he signed it.

(Tr. 438.) In fact, two originals were executed with each party receiving one of them.

Two further steps were taken in order to implement this agreement. Classic prepared a list of projects that were pending or for which it had already submitted bids. This was transmitted to the Union and formed the basis for analysis of those jobs that Classic would be permitted to continue to perform on a nonunion basis. (GC Exh. 65.) In addition, union officials
5 examined corporate records in the State's database in order to determine whether Mr. Fragata owned any other companies engaged in carpentry work. The purpose of this investigation was to ensure that any such companies also signed the short-form agreement.

Upon completion of these preliminaries, Classic commenced its operations as a union-
10 affiliated company. It performed its work in accordance with the terms of the applicable collective-bargaining agreements and paid wages and benefits as required by those agreements. Prevost testified that she became responsible for the purchase of benefit stamps and for the preparation of monthly reports to the Union. DeCosta reported that, to his
15 knowledge, Classic never failed to comply with the provisions of the agreements regarding the payment of those benefits. The extent of Classic's participation in its relationship with the Union is revealed by examination of the Union's benefit funds records which show that Classic paid a total amount of \$851,729.03 to those funds. (GC Exh. 64.)

At the time that Classic bound itself to the short-form agreement, there were applicable
20 collective-bargaining agreements in effect in Massachusetts and Rhode Island. By executing the short-form agreement, Classic became a contractual party to those agreements as well. For Rhode Island, the applicable contract was an agreement between the Association of General Contractors and Local 94. (GC Exh. 44.) That contract had an effective date of June 4, 2001, and a termination date of June 5, 2005. It provided that a party to the agreement must give
25 written notice of intent to terminate the agreement on or before April 5, 2005. Failure to provide such notice signified acceptance of the contract's terms for another 1-year period with an identical notice provision 60 days prior to the expiration of that yearly extension. (GC Exh. 44, art. 33.) The Rhode Island agreement also prohibited the subcontracting of work to nonsignatory firms and contained the same language found in the short-form agreement
30 regarding the need to prevent subterfuge through the creation or use of other companies in order to perform carpentry work in which the employer exercised "a significant degree of ownership, management or control." (GC Exh. 44, art. 28.)

By the same token, Classic's assent to the short-form agreement bound it to observe the
35 terms of the collective-bargaining agreement between Associated General Contractors of Massachusetts and the Union's various locals in that jurisdiction. (GC Exh. 48.) That contract had an effective date of October 1, 2001, and a termination date of August 31, 2005. It provided that notice of intent to terminate the contract must be given in writing on or before July 1, 2005. If such notice was not provided, the contract would be extended for another year with an
40 identical notice provision. (GC 48, art. 31.) It also contained the "subterfuge" provision that prohibited the use of other companies that are owned, managed, or controlled by the signatory employer in order to perform nonunion carpentry work within Massachusetts. (GC Exh. 48, art. 29.)

Matters continued in this posture with Classic performing carpentry work in Rhode Island
45 and Massachusetts as a union-affiliated contractor until the early months of 2004. On March 25 of that year, articles of incorporation were filed for a company named Fragata Construction Co., Inc. Mr. Fragata's brother, Fernando Fragata, was listed as holding all of the company's corporate offices. The principal place of business was shown as 1002 State Road in Westport,
50 a property owned by Mr. Fragata.

Prevost testified that once Fragata Construction came into existence, she began to work

for that firm as well as continuing her duties for Classic. She performed the same duties for the new company. She noted that the original purpose for the new company was to enable Fernando to operate a company that did taping and finishing of sheetrock. The company was an open shop, but it performed no carpentry work. Later, Fragata Construction did begin to employ carpenters. Prevoist explained that she knew this because she did the payroll for those employees. Among the carpenters hired by Fragata Construction were two men who were also employed in that occupation by Classic, Benny and Erlin Mendosa. Prevoist testified that if these carpenters worked on a union job, they were paid union wages and benefits by Classic. If they worked on a nonunion job, they were paid an "open shop wage" by Fragata Construction and received no benefits. (Tr. 98.)

Prevoist's testimony was impressively corroborated by the account provided by Benny Mendosa. He testified that, sometime in 2004, he was working as a carpenter for Classic at a project involving a Lowe's store. Mr. Fragata asked him to switch to a job for Fragata Construction because work was slow. Mendosa refused, explaining that he wanted only union work. Mr. Fragata warned him that he would be laid off and would be ineligible for unemployment benefits because he had refused to take employment that was available for him with Fragata Construction.

The relationship among Mr. Fragata, Classic, and Fragata Construction was clarified by the filing on January 20, 2005 of Fragata Construction's 2004 annual corporate report. While that document continued to list his brother, Fernando, as the corporation's only officer, it was signed by Mr. Fragata himself. He further described his role in the company as both the "owner" and its incorporator. (GC Exh. 7, p. 10.) Matters were further illuminated by a payment on January 26 from Classic to Fragata Construction in the amount of \$8,928.31 for "materials." (GC Exh. 39, p. 2.) Prevoist testified that the reason for this transfer of funds was that, "[t]he materials were purchased through Classic because Fragata's accounts were not set up at that point, to vendors." (Tr. 132.)

The nature of the close connection between Classic and Fragata Construction began to be revealed to the Union when DeCosta paid a visit to a jobsite at a Hampton Inn in Raynham, Massachusetts, in the same month. He encountered Erlin and Benny Mendosa who were in the process of hanging drywall. They told him they were currently working for Fragata Construction.

In March 2005, Classic made two substantial additional transfers of funds to Fragata Construction to enable that company to purchase materials. On March 2, Classic deposited \$16,525.62 for that purpose. (GC Exh. 39, p. 6.) On the last day of the month, Classic's deposit to Fragata Construction was in the amount of \$12,626.05 for the same purpose. (GC Exh. 39, p. 10.) In the following month, on April 14, Classic made yet another transfer to Fragata Construction in the amount of \$17,057.86. (GC Exh. 39, p. 12.)

At the same time, the Union received additional reasons to become concerned about Classic's compliance with its contractual obligations. Thomas Savoie, the Union's business representative and organizer in Rhode Island, testified that in April 2005 he received a tip that Classic was performing work at a jobsite in Warwick. Savoie and a colleague went to investigate and encountered carpenters engaged in their work. As Savoie described it, when asked who they were employed by,

one of them started to say Classic Lath, and even before they could get much more out than that, somebody, I believe it was their foreman, came up to him and corrected them and told them, that no, no, no, they were actually working for Fragata

Construction . . . Classic Lath isn't in business. And [it] doesn't do work anymore. Doesn't do union work anymore.¹²

(Tr. 331-322.)

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After this conversation, Savoie telephoned Mr. Fragata in order to confront him about Classic's apparent violation of the agreement with the Union. He testified that Fragata told him that Fragata Construction was not his company and claimed that he was just working for his brother. Savoie disputed this, asserting that it was actually his own company. Fragata replied that, "I couldn't prove that." (Tr. 339.) He added that, "he wasn't going to do any more union work. That he didn't like the union anymore."¹³ (Tr. 340.)

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It is important to note that, while these events were transpiring, the deadline for providing notice of intent to terminate the contractual relationship between Classic and the Union in Rhode Island, April 5, 2005, passed without either party having exercised its rights to provide such notification. Despite this, Classic made its final remittance report for payment of union benefits in Rhode Island on May 5, reflecting benefits earned by its employees for the payroll period ending April 29. (GC Exh. 63, p. 4.) It has not paid such benefits since that time.

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Given the Union's concerns regarding the situation, on May 12, 2005, one of its attorneys, Aaron Krakow, Esq., addressed a letter to Classic advising the Company that the Union, "is currently investigating the extent to which union companies and their officers and principals may be operating, managing or controlling a non-union company." (GC Exh. 59, p. 1.) He went on to assert that, "your Company is operating a non-union company, Fragata Construction, Inc." (GC Exh. 59, p. 1.) Krakow made a demand that Classic provide responses to a series of 79 questions contained in an attached questionnaire. Those questions were designed to obtain information regarding the issue addressed in Krakow's letter. It is undisputed that Classic has never responded to this demand for information.

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On June 5, the parties' 2001 collective-bargaining agreement covering Rhode Island reached its termination date. At the same time, the multiemployer association concluded a new agreement effective on that date and running until June 7, 2009. (GC Exh. 45.) It contained the same pertinent provisions regarding the prohibition of subcontracting with nonunion firms, payment of union wages and benefits, prohibition of subterfuges designed to avoid union obligations, and mechanism for providing notice of intent to terminate. Pursuant to its commitments set forth in the short-form agreement with the Union, Classic automatically became obliged to comply with the terms of this collective-bargaining agreement.

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During the period immediately preceding and succeeding the effective date of the new collective-bargaining agreement, Classic continued to engage in substantial financial transactions with Fragata Construction. For example, on May 11, Fragata Construction deposited \$27,713.60 to Classic in order to fund Classic's purchase of materials on behalf of Fragata Construction.¹⁴ (GC Exh. 39, p. 14.) On May 31, Classic loaned Fragata Construction the sum of \$10,000. (GC Exh. 39, p. 15.) Two days later, Fragata Construction deposited \$17,770.34 to Classic's account. (GC Exh. 39, p. 18.) Prevost testified that, while the register shows this to be a loan, given the odd amount of the deposit, it probably represented a payment to be used to purchase materials for Fragata Construction's use. On June 17, Fragata

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¹² I have considered this hearsay only for the light it sheds on Savoie's subsequent actions.

¹³ Savoie's account of his conversation with Mr. Fragata is uncontroverted, and I credit it.

¹⁴ The purpose of this transfer of funds was explained by Prevost. (Tr. 150.)

Construction made another deposit of \$38,867.71 to Classic for purchase of materials. (GC Exh. 39, p. 19.) This was followed on June 23 by a loan from Fragata Construction to Classic in the amount of \$3500. (GC Exh. 39, p. 19.) Five days later, Fragata Construction deposited \$46,453.92 to Classic's account. The register shows this as, "Materials and Loan." (GC Exh. 39, p. 19.) Prevoist confirmed the dual nature of this transaction. Her testimony also shed light on the informal nature of the financial relationship between the two companies by her admission that she could not recall or discern the amount of these funds that represented a loan as compared with those intended for the purchase of materials.

During this period in the middle of 2005, the evidence demonstrates that Classic ceased its performance under the collective-bargaining agreements and intensified its financial relationship with Fragata Construction. This was confirmed by contemporaneous statements made to employees by Mr. Fragata. Benny Mendoza testified that Fragata convened a meeting of Classic's employees. He told them that he would "have no more business with the union." (Tr. 488-489.) He added that, "everybody that he wanted to continue working with him[,] they need to go work for, for the brother company—his Fragata Construction. Or you need to go for [un]employment." (Tr. 489.)

As was the case with the Rhode Island contract, the deadline for the provision of written notice under the Massachusetts agreement passed on July 1. It is undisputed that Classic did not provide such notification. Two months later, the agreement reached its termination date and was succeeded by a new collective-bargaining agreement with a term extending from September 1, 2005, through August 31, 2009. (GC Exh. 49.) By virtue of its commitments under the short-form agreement, Classic became obliged to meet the obligations specified in that new contract, including the terms regarding payment of union wages and benefits, subcontracting only to union firms, refraining from subterfuges designed to avoid union obligations, and mechanism for providing notice of intent to terminate.

During this period, on August 8, 2005, the Union commenced this litigation by filing a charge against Classic alleging a violation of Section 8(a)(5) of the Act arising from Classic's failure to respond to Attorney Krakow's demand for information related to the operation of a nonunion company by Classic. (GC Exh. 1(a).) Perhaps prompted by this formal salvo from the Union, Classic gave its first written indication that it was terminating its relationship with the Union. This came in the form of an Employer's Remittance Report sent to the Union's benefit funds by Prevoist on August 26, 2005. The report did not show payment of any benefits to employees and was characterized as a "final report" by the placement of a checkmark in the box for designation of such final reports. (GC Exh. 33.) Prevoist testified that the reason she filed this as a final report was that, "Octavio said he wasn't going to be bidding any more union work." (Tr. 81.)

Shortly after Classic provided this first written indication of its position, the Union filed an amended charge alleging that the Company had repudiated its collective-bargaining agreements and was operating on a nonunion basis through another name. (GC Exh. 1(d).) In the following month, Prevoist made an effort to dispel any possible doubts about Classic's relationship with the Union. She filed a Massachusetts Employer's Monthly Stamp Remittance Report showing no benefit payments for its employees. In a large note written on the body of this document, she reported that, "[w]e are no longer in the union. Please close all accounts."¹⁵

¹⁵ DeCosta testified that Prevoist's notations on remittance reports were ineffective to provide notice to the Union for a variety of reasons. The reports were sent to the benefit funds which are separate entities from the Union as required by law. In addition, Prevoist was not an

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(GC Exh. 34.) Counsel for the General Counsel asked Prevost why she made this notation:

COUNSEL: And, can you tell us why you wrote that on this report?

5 PREVOST: Cause we weren't going to be doing any more union work.

COUNSEL: And, how did you know that?

PREVOST: Octavio had said that.

10 COUNSEL: To you[?]

PREVOST: Yes.

15 (Tr. 83-84.) A short while thereafter, Prevost returned another remittance report to the benefit funds with a similar notification stating that, "[w]e are no longer in the union. Please stop sending forms. Thank you." (GC Exh. 35.)

20 On November 1, Mr. Fragata gave an affidavit to a Board agent regarding the investigation of the Union's unfair labor practice allegations, including those involving the relationship between Classic and Fragata Construction. Exactly 2 weeks later, articles of incorporation were filed with the Commonwealth of Massachusetts on behalf of a company named Ryan Builders, Inc. This document showed Mr. Fragata as holding all of the corporate offices and also being the sole director of the corporation. The corporation's principal place of business was shown as Mr. Fragata's property located at 992 State Road in Westport. (GC Exh. 8.) Prevost was again hired to serve that company as office manager and secretary.

30 A month later, Savoie wrote to Mr. Fragata providing a detailed account of the evidence that he had acquired regarding the relationship among Classic, Fragata Construction, and Mr. Fragata personally. (GC Exh. 60.) This was closely followed by the filing of a second amended charge alleging that Fragata Construction was an unlawful alter ego of Classic. (GC Exh. 1(g).) Thereafter, the Regional Director issued her first complaint alleging that Fragata Construction was Classic's alter ego. (GC Exh. 1(j).)

35 In the period immediately after the incorporation of Ryan, the records show a pattern of transactions among Classic, Fragata Construction, and Ryan. One such notation bears significance well out of proportion to the small size of the funds involved, a mere \$150.50. On December 29, 2005, a check in that amount was written by Fragata Construction to an attorney, Dorothy Tongue, Esq. (GC Exh. 41, p. 35.) Prevost testified that the purpose of this expenditure was "[t]o get up Ryan Builders."¹⁶ (Tr. 188.)

45 Fragata Construction's role in the creation of Ryan is further illustrated in far more fiscally substantial fashion by a check it wrote in the amount of \$14,741 to the Southeastern Insurance Agency on December 30, 2005. Fragata Construction's records show the purpose of this payment to be, "Deposits for Ryan Builders." (GC Exh. 41, p. 35.) Prevost confirmed that

authorized corporate official empowered to provide such notification. Finally, and most importantly, the notification completely failed to comply with the notice requirements in the collective-bargaining agreements. I agree with his reasoning and his conclusion.

50 ¹⁶ The Commonwealth of Massachusetts' records confirm that Attorney Tongue filed the articles of incorporation for Ryan. (GC Exh. 8, p. 11.)

the money was for the purchase of workers' compensation, general liability, and umbrella coverage for Ryan.

5 On the last day of the year, the relationship among the three firms was memorialized in writing in a document entitled, "Plan of Reorganization." (GC Exh. 80.) This reorganization involved the transfer of all assets and liabilities from both Classic and Fragata Construction to Ryan. In remarkably clear and frank language, the document explains the reason for this action as follows:

10 The purpose of this reorganization as agreed upon by the boards of directors of Fragata Construction Co. Inc., Classic Lathe [sic] & Plastering, Inc. and Ryan Builders, Inc. is as follows:

- 15 1) To take the corporations in a different direction from a sales and marketing standpoint which includes but, is not limited to, the changing of the name of the corporation and redirection of corporate focus.
- 20 2) To broaden the Corporations' labor pool to enhance growth and create new opportunities.

(GC Exh. 80, p. 4.)

25 If the record required any more demonstrative evidence of the interrelationship among the corporations involved in this case, it was provided during the following month. At that time, the Union's officials were given information that Mr. Fragata was performing carpentry work at a jobsite for a Wingate Hotel in Rhode Island. Savoie went to investigate and was told by a foreman that the work was being done by Ryan. A few days later, the Union took photographs of a delivery truck at the jobsite. As illustrated in those photos, the truck is plainly marked as belonging to Classic. (GC Exh. 61.)

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During this period in early 2006, the financial records continue to confirm the nature of the relationships. On January 4, Fragata Construction wrote a check in the amount of \$30,000 to Ryan with a notation that this was a "[t]ransfer to new company." (GC Exh. 41, p. 36.)¹⁷ Prevoist confirmed that the intent was to use the money to "pay Ryan's bills with it." (Tr. 189.) She also verified that Ryan had not performed any services for Fragata Construction prior to the receipt of these funds. This transaction was followed by a similar transfer of funds a week later. On January 11, Fragata Construction transferred an additional \$25,000 to Ryan. (GC Exh. 42, p. 2.) Shortly thereafter, on January 20, Fragata Construction made a \$12,000 transfer to Ryan "to cover checks." (GC Exh. 41, p. 36.)¹⁸ This was followed by another \$30,000 transfer from Fragata Construction to Ryan on January 27. (GC Exh. 41, p. 37.)¹⁹

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While Fragata Construction was busy transferring funds to Ryan, Ryan was making transfers of its money to Classic. On January 24, it made a deposit of \$1000 into Classic's account. (GC Exh. 40, p. 1.) Equally striking, 2 days later Ryan paid a tax bill owed by Fragata. Its records show that it issued a check to the Commissioner of Revenue Service of the State of

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50 ¹⁷ The transfer of these funds is verified in Ryan's accounts as well. (GC Exh. 42, p. 1.)

¹⁸ Again, this transfer is confirmed in Ryan's accounts. (GC Exh. 42, p. 4.)

¹⁹ This is also confirmed in Ryan's accounts. (GC Exh. 42, p. 6.)

Connecticut in the amount of \$106. The purpose of this payment is listed as, “4th ¼ [Quarter] Fragata . . . CT payroll taxes.” (GC Exh. 42, p. 6.) At the same time, Ryan paid Fragata’s payroll taxes to Rhode Island in the amount of \$3,135.21. (GC Exh. 42, p. 6.) Finally, Ryan also took this occasion to pay Fragata Construction’s taxes owed to Massachusetts issuing three checks in the total amount of \$3,958.08. (GC Exh. 42, p. 6.)

The following month saw a continuation of this pattern of intermingling of corporate funds. On February 1, Fragata Construction deposited \$30,000 to Ryan’s account. (GC Exh. 41, p. 37.)²⁰ Prevost testified that, at this point, Fragata Construction was no longer performing any work. She reported that it transferred these funds to Ryan for payroll and startup expenses. The practice of Ryan using its funds to pay the tax liability of the other corporations was also repeated during the month of February. On February 22, Ryan issued a series of checks to pay taxes owed by Fragata Construction and Classic to the governments of Massachusetts, Rhode Island, and Connecticut. (GC Exh. 42, p. 12.) By what one can only characterize as a felicitous coincidence, on this date the Union filed a charge against Ryan alleging that it was the unlawful alter ego of Classic and Fragata Construction. (GC Exh. 1(r).)

Two days later, the corporations engaged in another telling series of financial transactions. Ryan deposited \$10,000 into Classic’s account. (GC Exh. 40, p. 1.) Prevost explained that this money was used by Classic to make a loan payment to Sovereign Bank. At the same time, Fragata Construction transferred \$65,000 to Ryan. (GC Exh. 41, p. 8.) This was followed on March 15 by another deposit from Fragata Construction to Ryan in the amount of \$70,000. (GC Exh. 41, p. 38.) In the same month, Ryan again gave Classic funds in the amount of \$6000 that it used to cover its loan obligations to Sovereign Bank. (GC Exh. 40, p. 1.) The pattern repeated in April, when Ryan deposited \$15,000 in Classic’s account to cover the loans. (GC Exh. 40, p. 1.) In a manner that illustrates the utter lack of respect given to corporate formalities by these companies, on April 6, Ryan wrote checks to the Commonwealth of Massachusetts to pay the annual report fees for Classic and Fragata Construction.²¹ (GC Exh. 42, p. 21.)

In May, a new chapter of corporate maneuvering commenced with the filing of articles of organization for a company named R & S Drywall, Inc. (GC Exh. 76.) The corporate offices and membership on the board of directors were shared between Duarte Oliveira and Sonya Tavares. These individuals are Mr. Fragata’s cousin and his future second wife. The firm’s principal place of business is listed at 260 State Road in Westport. Once again, Prevost was hired to serve as the company’s office manager and secretary.

In her testimony, Prevost provided clear insight into the rationale for the creation of the new firm and its manner of operation. She reported that the Union had become aware of the existence and activities of Fragata Construction. Their officials made numerous phone calls to Mr. Fragata to complain about the violation of the short-form agreement. Mr. Fragata explained to Prevost that, “[w]e were going to close that company.” (Tr. 104.) Instead, Mr. Fragata told

²⁰ Confirmed in Ryan’s accounts. (GC Exh. 42, p. 8.)

²¹ As further illustration of the pattern of behavior involved in this case, it should be noted that these two checks were not written consecutively. The annual report fees were paid by checks numbered 1749 and 1751. Check 1750 was written by Ryan to Mr. Fragata’s former wife for the purpose listed as “Child Support.” (GC Exh. 42, p. 21.) This aspect of the case, the use of corporate funds to pay the individual expenses of Mr. Fragata, will be discussed in detail in the section of this decision that addresses his personal liability for the unfair labor practices of the corporations.

her that he intended to establish a new corporation named R & S. Furthermore, he would not put the new entity in his own name, “[b]ecause the unions wouldn’t be able to come after us, if it was in other people’s names.” (Tr. 105.) Prevost also provided probative testimony regarding the actual functioning of R & S. She noted that Mr. Fragata ran the company and “directed the men.” (Tr. 106.) He also decided which projects the firm would bid on. Preparation of the bids was done by Oliveira, Tavares, or himself.

On the day after R & S commenced its corporate existence, it entered into a contract with Ryan. By the terms of this single-page document, Ryan purported to hire R & S to perform its obligations with respect to the construction of a Hampton Inn in Norwood, Massachusetts. The document is obviously not representative of an arm’s-length transaction as it fails to specify even the most basic contractual terms, including the amount of money to be paid for the performance of the work. It is signed by Mr. Fragata in his role as president of Ryan and by Tavares in her role as “clerk” of R & S. (GC Exh. 23.) Nothing could more strongly suggest the sham nature of this transaction than the concept that an experienced contractor such as Mr. Fragata would enter into a contractual relationship with another corporation based on the signature of a mere clerk.

Were confirmation of the true nature of this arrangement necessary, it was clearly provided in the testimony of Josue Quinones. He reported that, in May 2006, he was employed as a carpenter on a Hampton Inn project in Massachusetts. His employer switched from Ryan to R & S. He described the changeover as being:

Just on the paycheck. No one told us that the company was changing names. It just—we just change location where to get picked up in the morning to go to work One day we get our paychecks and they have a different company name.

(Tr. 500.) He also confirmed that both employers did not pay union wages or benefits.

Beyond all this, the familiar pattern of financial transactions among the corporate entities resumed with R & S now playing a prominent role. On May 4, Ryan made a payment to R & S in the amount of \$40,000. (GC Exh. 42, p. 8.)²² On the next day, Ryan made another transfer to R & S in the amount of \$45,000 in order to “[c]over payroll.” (GC Exh. 42, p. 28.) Prevost confirmed that the payroll in question was that of R & S. An identical transaction for the same purpose took place exactly a week later. (GC Exh. 42, p. 3.) And exactly a week after that, Ryan transferred \$35,000 to R & S to cover the payroll. (GC Exh. 42, p. 28.) Prevost noted that, by this time, Ryan was no longer performing any work of its own.

While Ryan was funding the operations of the new corporation, it also continued to provide payments to Classic. On May 24, it transferred \$15,000 to Classic to cover the loans from Sovereign Bank. (GC Exh. 42, p. 28.) At the same time, it transferred \$60,000 to R & S for payroll. (GC Exh. 42, p. 28.) On June 2 and 8, Ryan again paid R & S’ payroll in the amounts of \$30,000 and \$43,000. (GC Exh. 43, p.p. 7 & 9.)

At about this time, it is possible to infer that Mr. Fragata had decided to abandon his scheme to continue operations in New England by creating and operating nonunion corporations. The first concrete indication of this decision was the filing on May 12, 2006, of

²² Tellingly, this payment is confirmed in the very first entry on R & S’ books. (GC Exh. 43, p. 1.)

articles of voluntary dissolution for Ryan. (GC Exh. 8.) These were signed by Mr. Fragata as chairman of the board of directors.²³

5 While Ryan was being dissolved, Fragata Construction was continuing to transfer money to Classic and R & S. On June 30, it made a deposit of \$10,100 to Classic. (GC Exh. 40, p. 2.) On the same day, it transferred \$25,000 to R & S to “[c]over payroll.” (GC Exh. 41, p. 38.) Again, Prevost confirmed that the payroll being covered was that belonging to R & S. Another transfer to R & S in the amount of \$35,000 took place on July 7. (GC Exh. 43, p. 14.) This was followed by \$9000 for payroll on July 15. (GC Exh. 41, p. 39.)

10 The next step in the process of unwinding his complicated affairs in New England took place in July 2006 when Mr. Fragata moved to Florida. As he put it, “I’ve been out of business since ’06.”²⁴ (Tr. 26.) Frigata’s change of residence was followed by the decision to lay off Prevost in August. Although she was laid off from full-time employment by the companies, she continued to perform part-time work until October or November 2006.

15 On August 16, 2006, Classic filed articles of voluntary dissolution and a final corporate annual report, both signed by Mr. Fragata. (GC Exh. 6.) At the same time, Fragata Construction filed the same documents, also signed by Mr. Fragata.²⁵ (GC Exh. 7.) In what is perhaps a fitting capstone to these events, Ryan wrote a series of checks to the state government to pay the fees associated with these filings. (GC Exh. 42, p. 32.) And, on the next day, Ryan also transferred \$10,300 to R & S to cover its payroll. (GC Exh. 42, p. 32.) While R & S was continuing to receive infusions of funds from the other companies, it also made transfers to them. On August 31, it paid \$5500 to Classic. (GC Exh. 40, p. 4.)

25 As the corporate conglomerate continued to unravel, this litigation continued to grow. On August 28, 2006, the Regional Director filed an amended consolidated complaint containing allegations against Classic, Fragata Construction, and Ryan. (GC Exh. 1(u).) On September 25, Fragata Construction closed its checking account. (GC Exh. 41, p. 41.) This was followed on October 5 by the Union’s filing of a charge against Mr. Fragata personally. (GC Exh. 1(x).) On November 2, R & S made a number of filings with the Commonwealth. In particular, it filed a statement of changes that showed Sonya Tavares as holding all of the corporate offices and assuming the role of the sole member of the board of directors. That document also changed the corporation’s principal place of business to Mr. Frigata’s property located at 992 State Road. (GC Exh. 76.) The reason for these changes became evident on December 30, when Mr.

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23 Although Ryan had been dissolved, it continued to fund the other companies, including a \$3000 deposit to Classic on June 21 and a \$65,000 payroll transfer to R & S on June 22. (GC Exh. 42, pp. 29 & 30.) Beyond this, on July 18, Ryan went so far as to pay off two loans made by Sovereign Bank to Classic. The amounts of the payoffs were \$40,330.99 and \$23,191.77. (GC Exh. 42, p. 31.) And, beyond even that, Ryan transferred \$120,000 to R & S on July 21. (GC Exh. 42, p. 31.) This was followed by another transfer a week later in the amount of \$23,000. (GC Exh. 42, p. 31.)

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24 The reference here is to business in New England. There is certainly evidence that Mr. Fragata continues to form corporations and engage in business in the State of Florida.

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25 Once again, the fact that these companies purported to be dissolved did not stop the pattern of payments to each other. These included an August 24 transfer of \$39,010 from Ryan to R & S for payroll and payables. (GC 42, p. 32.) There was a similar transfer on September 8 in the amount of \$2500 and another on September 14 for \$9000. (GC Exh. 42, pp. 32 & 33.) Ryan deposited \$5000 to Classic on September 28 and \$5000 to R & S on October 31. (GC Exhs. 40, p. 5 and 42, p. 34.)

Fragata married Tavares. (GC Exh. 27.)

On February 16, 2007, the Union filed its ultimate charge, alleging that R & S was an alter ego of Classic. (GC Exh. 1(aa).) On August 7, R & S filed articles of voluntary dissolution signed by Tavares. (GC Exh. 76.) Finally, on November 7, the Regional Director filed a second amended consolidated complaint that incorporates allegations against Classic, Fragata Construction, Ryan, R & S, and Mr. Fragata personally. (GC Exh. 1(dd).)

B. Legal Analysis

1. Classic's alleged violations of Section 8(a)(5)

The General Counsel's fundamental allegations of employer misconduct in this case concern the failure of Classic to comply with its statutory obligations with regard to the relationship that it chose to enter with the Union. In particular, the complaint asserts that, since approximately May 2005, Classic withdrew recognition from the Union and has failed to apply the terms of its agreement to the employees of the four named respondent corporations. (GC Exh. 1(tt), par. 27(b).) Beyond this, the complaint alleges that, in October 2005, Classic gave notice to the Union that it was "terminating" and "repudiating" its agreement with the Union. (GC Exh. 1(tt), par. 27(a).)

There is no dispute that Classic, through its owner, entered into the so-called short-form agreement with the Union on November 18, 2001.²⁶ The uncontroverted testimony establishes that Mr. Fragata assumed these obligations voluntarily and even enthusiastically. Thereafter, he continued to manifest his intent to maintain the contractual relationship with the Union by complying with the terms of the short-form contract and its underlying collective-bargaining agreements. This is particularly well illustrated by the fact that Classic remitted over \$850,000 to the Union's benefit funds on behalf of its employees.

While the General Counsel alleges that Classic engaged in a sub rosa termination of its relationship with the Union in approximately May 2005, the evidence suggests that this course of conduct began to evolve somewhat earlier. The decision to cease operation as a union-affiliated employer was effectuated by the transfer of Classic's operations to Fragata Construction. It will be recalled that Fragata Construction came into existence in 2004 as a corporation that listed Fernando Frigata as its sole corporate official. (GC Exh. 7.) Thus, it is particularly significant that, on January 20, 2005, it filed its first annual report which was signed by Mr. Octavio Fragata as both "[o]wner" and "[i]ncorporator." (GC Exh. 7.) This apparent change in management and direction of Fragata Construction reflects Mr. Fragata's decision to terminate his relationship with the Union by transferring Classic's operations to the nonunion company previously operated by his brother.²⁷ This was made particularly clear 6 days later when Classic made a deposit into Fragata Construction's account in the amount of \$8,928.31 for the purchase of materials for a construction job.²⁸ (GC Exh. 39, p. 2.)

²⁶ To underscore this point, I note that Classic's former attorney filed an answer to one of the versions of the complaint in this case wherein he stated, "Classic admits that it entered into a collective bargaining agreement with the Union." (GC Exh. 1(l), pp. 1-2.)

²⁷ Prevost explained that, at the point when Octavio Fragata "began to run" Fragata Construction, Fernando "wasn't getting along with Octavio" and left that firm entirely. (Tr. 100.)

²⁸ In fact, in an affidavit given on November 1, 2005, Mr. Fragata admitted that, even earlier, "[i]n 2004, Fragata started to do a little bit of carpentry work." (GC Exh. 25, p. 4.)

As Classic's operations continued to be transferred to Fragata Construction over the next months, the Union began to become concerned over the continuing vitality of its contractual relationship with Classic. These anxieties were heightened in April 2005 when a person identified as a foreman for Fragata Construction told Savoie that Classic "[d]oesn't do union work anymore." (Tr. 332.) Upon hearing this, Savoie spoke to Mr. Fragata directly. He confronted him with the allegation that he was operating a nonunion company. Rather than denying this reality, Mr. Fragata responded that Savoie would be unable to prove it. Of particular importance, Mr. Fragata added that, "he wasn't going to do any more union work. That he didn't like the union anymore." (Tr. 340.)

Any remaining doubt that Classic had resolved to repudiate its contractual relationship with the Union at this time was dispelled by two confirmatory events. First, the records of the Union's benefit funds reveal that the last payments received from Classic on behalf of its employees were made in May 2005. (GC Exh. 63.) Second, one of Classic's carpenters, Mendoza, testified that at approximately this time Mr. Fragata convened a meeting of Classic's employees and informed them that that he would have "no more business with the union." (Tr. 488-489.) Making his position abundantly clear, he told the employees that if they wished to continue working for him, they needed to seek employment by Fragata Construction.

Based on this pattern of uncontroverted testimony and documentary evidence, I do not hesitate to find that, no later than May 2005, Classic had unilaterally terminated its relationship with the Union. As the complaint indicates, in the succeeding months Classic provided written indications of this decision to the Union's benefit funds. On August 26, Prevost filed a benefit stamp report that purported to be a final report. (GC Exh. 33.) Two months later, based on specific statements made to her by Mr. Fragata, Prevost submitted a benefit report that contained the statement that, "[w]e are no longer in the union, please close all accounts." (GC Exh. 34.)

There is no doubt that Mr. Fragata intended these notations on the stamp reports and his verbal statements to union officials to constitute notice of Classic's termination of its relationship with the Union. As he put it in his pro se answer to the second amended complaint,

Classic, on our monthly stamp reports, notified the Union that business would cease operations I also contacted Local 94 several times earlier in the year verbally stating that Classic no longer wished to be part of the Union and that it would cease operations.

(GC Exh. 1(ff).)

The evidence clearly establishes that, commencing no later than May 2005, Classic ceased to comply with its agreements with the Union and gave verbal and written notification to the Union of its repudiation of those agreements. The question remains whether this course of conduct was unlawful. In answering that question, it is apparent that Classic's attempts to terminate its agreements did not conform to the requirements for such termination set forth in the agreements. Classic failed to give the type of timely written notice required by the short-form agreement that it signed and also failed to give timely written notice as required by the underlying collective-bargaining agreements that it became bound to honor by its assent to that short-form agreement.

It is noteworthy that there is not really any dispute that Classic's efforts to extricate itself from its relationship with the Union failed to conform to the contractual requirements. In a bit of

compelling, credible, and uncontroverted testimony, Prevost described a conversation with Mr. Fragata wherein he told her that a union official had asserted that Classic's notice of termination was defective. As she described, Mr. Fragata asked Prevost to read the short-form agreement in order to evaluate the official's contentions. She did as he requested. She testified as to what happened when she reported her conclusions to Mr. Fragata:

COUNSEL: Did you have a conversation with Mr. Fragata after you had read the contract and, if so, what did you say?

PREVOST: I told him that we did have to withdraw and it had to be written. It was suppose[d] to be done within so many days prior to the collective bargaining expiration date. And, that we hadn't done that.

COUNSEL: And, what was Mr. Fragata's response?

PREVOST: We're still in the Union, then.

COUNSEL: That's what his response was?

PREVOST: Yes.

COUNSEL: Did he express any concern to you about the fact that— Well, let me ask you this. Do you recall his exact response?

PREVOST: Oh, shit. We're screwed We're just going to close the company.

COUNSEL: Okay. Did he tell you what he was going to do with the employees who were working at Classic Lath?

PREVOST: They were going to be laid off, or they were going to have to find employment with his brother's company . . . Fragata Construction.

(Tr. 91.)

While there can be no doubt that Classic's conduct violated the terms of its contract with the Union, the question remains whether it also violated the terms of the Act. Section 8(a)(5) and (d) of the Act generally obligate an employer to comply with the terms of an agreement that it reaches with a union. In Section 8(f), the Act authorizes companies and unions in the construction industry to enter into agreements with each other even if the union has not established majority status among the employees of the company.²⁹ Interestingly, prior to 1987, the Board had held that, absent a showing of majority support for the union, such an employer in the construction industry retained the right to unilaterally terminate its relationship with a

²⁹ There is no doubt that the Companies named in this complaint are involved in the construction industry. See *Teamsters Local 83 (Stanley Matuszak)*, 243 NLRB 328, 330 (1979). Indeed, for an example of a case involving an employer engaged in commercial drywall installation that was found to have committed unfair labor practices similar to those alleged here, see *Design Drywall Ltd., Inc.*, 301 NLRB 437 (1991).

union. *R. J. Smith Construction Co.*, 191 NLRB 693 (1971), enf. denied 480 F.2d 1186 (D.C. Cir. 1973). In that year, in its landmark case of *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. 843 F.2d 770 (3d Cir. 1988), cert. denied 488 US 889 (1988), the Board reversed course, holding that agreements made pursuant to Section 8(f) would henceforward be enforceable by application of Section 8(a)(5). The Board explained:

In reaching this conclusion, we note first that the obligations we impose on an 8(f) employer through our application of Section 8(a)(5) to 8(f) agreements are limited to prohibiting the unilateral repudiation of the agreement until it expires or until that employer's unit employees vote to reject or change their representative. Importantly, this limited obligation is not imposed on unwitting employers. Rather, it is a reasonable quid pro quo that is imposed only when an employer voluntarily recognizes the union, enters into a collective-bargaining agreement, and then sets about enjoying the benefits and assuming the obligations of the agreement.

282 NLRB at 1387. (Footnote omitted.) As a consequence, in the language of *Deklewa*, once Classic signed an agreement with the Union, "[t]his contract was binding, enforceable, and not subject to unilateral repudiation by the Respondent." 282 NLRB at 1389.

It is perhaps necessary to address one remaining question, whether the short-form agreement was the sort of contract that created obligations arising from the underlying collective-bargaining agreements that are enforceable under the terms of *Deklewa*. The type of agreement signed by Classic is not unusual. As another administrative law judge has explained in a decision subsequently adopted by the Board:

It is a relatively common practice in the construction industry for an employer, which is not a member of an employer association, to bind itself to agreements negotiated between an employer association and a union. These employers will do so by signing what is referred to as a "me too" or "short form" agreement. These "me too" agreements often bind employers to successor master contracts negotiated between the employer association and union and are enforced by the Board. See *W. J. Holloway & Son*, 307 NLRB 487, 489 (1992), where an acceptance agreement bound an employer to a master agreement and successor agreements; *Construction Labor Unlimited*, 312 NLRB 364, 367 (1993), enf. 41 F.3d 1501 (2d Cir. 1994), where an acceptance agreement bound an employer to the current master agreement and "any successor agreement(s)"; *Neosho Construction Co.*, 305 NLRB 100 (1991), where a stipulation bound an employer to "all future master agreements"; and *Z-Bro, Inc.*, 300 NLRB 87, 89 (1990), enf. 950 F.2d 726 (8th Cir. 1991), where an agreement bound an employer to the current master agreement and to "any renewals, additions, modifications, extensions and subsequent [master] agreements."

Gem Management Co., 339 NLRB 489, 496 (2003), enf. 107 Fed. Appx. 576 (6th Cir. 2004). From this, it is clear that Classic assumed obligations under the short-form agreement, the collective-bargaining agreements referenced in that short-form, and any extensions or successor agreements as delineated by the terms of that short-form agreement or those referenced collective-bargaining agreements.

5 In concluding this discussion, it is useful to cite an example of employer conduct that mirrors the course of action undertaken by Classic in this case. In *Consumers Asphalt Co.*, 295 NLRB 749 (1989), the employer, Consumers, entered into an agreement with a union that bound it to observe the terms of the collective-bargaining agreement between that union and an association of general contractors. Subsequently, as the Board described it, “Consumers transferred employees from its payroll to that of its alter ego Buchanan in order to evade obligations under [the collective-bargaining agreement] and repudiated that contract in violation of Section 8(a)(5) and (1) of the Act.” 295 NLRB at 749. As just indicated, the Board found that this was an unlawful evasion of the collective-bargaining obligation imposed by the Act.

10 Based on the great weight of the credible evidence, I find that Classic entered into a short-form agreement with the Union that bound it to observe the terms of the various collective-bargaining agreements referenced in that document. For a number of years, Classic lived up to its contractual duties. By no later than May 2005, Classic engaged in a pattern of conduct that constituted violations of those duties and was, in effect, a termination and repudiation of its obligations under the short-form agreement and the collective-bargaining agreements. As of 15 October 2005, it had expressly repudiated all of those agreements by verbal statements and written transmissions to the Union’s benefit funds. In failing to comply with the agreements and in terminating and repudiating those agreements in a manner not authorized by their terms, 20 Classic acted in violation of Section 8(a)(5) of the Act.

25 In addition to its contention that Classic violated the Act by failing to comply with commitments related to the terms and conditions of employment for its workers that it assumed when it assented to the short-form agreement, the General Counsel also contends that Classic failed to meet its statutory obligation to provide the Union with certain information alleged to be necessary to the performance of its duties as the representative of those employees. The specific types of information being sought by the Union related to its concern that Classic was operating a nonunion alter ego company in order to evade its contractual obligations.

30 The Supreme Court has stressed the importance of the Act’s requirement that an employer provide information necessary to permit a labor organization to police compliance with such contractual obligations. As the Court observed:

35 There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. Similarly, the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.

40 *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). (Citations omitted.)

45 The employer’s duty to furnish information requested by the union is limited to those materials that are relevant to the union’s representation of its unit members. Where, as here, the information being sought does not relate directly to the terms and conditions of employment of those members, the union must establish the relevancy of the items being sought. As the Board has explained,

50 when the representative requests information that does not concern the terms and conditions of employment for the bargaining unit employees—such as data or information pertaining to nonunit employees—there is no presumption of relevance, and the

potential relevance must be shown. The burden to show relevance is not exceptionally heavy, and [t]he Board uses a broad discovery-type of standard in determining relevance in information requests.

5 *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006). (Internal quotation marks and citations omitted.)

10 With these principles in mind, it is necessary to examine the nature and propriety of the Union's requests for information that are at issue in this case. There can be no doubt that when Classic signed the short-form agreement, it assumed an obligation under the Act to provide relevant information. Indeed, the agreement specifically discussed the duty to furnish the particular type of information being sought in this case by providing that:

15 The Employer recognizes that the Union, pursuant to the National Labor Relations Act, has the right to request that the Employer provide it with information relating to whether it manages and/or coordinates contracts or work or selects subcontractors.

(GC Exh. 50, par. 5.)

20

The evidence shows that the Union began to receive serious indications of a potential contract violation relating to the relationship between Classic and Fragata Construction. In January 2005, DeCosta visited a jobsite at a Hampton Inn in Raynham, Massachusetts. While there, he observed Erlin and Benny Mendoza hanging drywall. They told him that they were being employed to do this work by Fragata Construction. In the following April, Savoie received a tip that Classic was working on a project in Warwick, Rhode Island. When he visited the site, he saw carpenters engaged in construction activity. When he asked them the name of their employer, he was initially told that it was Classic. Immediately thereafter, a person that Savoie believed to be a foreman corrected this, explaining that the men were working for Fragata Construction and adding that Classic was no longer doing union work. Armed with this information, Savoie telephoned Mr. Fragata and confronted him regarding the relationship between Classic and Fragata Construction. Instead of disclaiming any improper relationship, Fragata simply told Savoie that he could not prove the existence of such a connection. He added a comment that he no longer liked the Union and "wasn't going to do any more union work." (Tr. 340.)

35

40 Just a few weeks later, on May 12, the Union's lawyer sent a letter to Classic. The letter made a formal demand for information related to the relationship between Classic and Fragata Construction. It began by explaining the importance to the Union of deterring employers from evading their contractual obligations by "operating, managing or controlling" nonunion firms to perform carpentry work. (GC Exh. 59, p. 1.) It then advised Classic that, "[i]t has come to our attention that your Company is operating a non-union company, Fragata Construction, Inc." (GC Exh. 59, p. 1.) As a result, it demanded that Classic furnish information regarding its relationship with Fragata Construction by answering a series of questions set forth in an attached questionnaire. Finally, the letter warned that a failure to respond would constitute a violation of the Act, leading to legal action by the Union.

45

50 In its pleadings filed in this case, Classic has twice admitted that it received this letter. (GC Exhs. 1(l), p. 2 & (o).) When it failed to respond in any way to the letter's demand for information, the Union filed a charge alleging that the refusal to furnish the information was an unfair labor practice. This charge was filed on August 8. (GC Exh. 1(a).)

The issue of whether the Union's letter demanding information was in compliance with its duty to establish the relevance of the data being sought falls within an area of law in which there exists a degree of tension between the views of the Board and some appellate courts.³⁰ In *Cannelton Industries*, 339 NLRB 996, 997 (2003), a case involving the same alter-ego issues presented by this information request, the Board took note of this area of conflict while outlining its continuing adherence to the following standard:

When a union requests information relating to an alleged single-employer or alter-ego relationship, the union bears the burden of establishing the relevance of the requested information. A union cannot meet its burden based on a mere suspicion that an alter-ego or single-employer relationship exists; it must have an objective, factual basis for believing that the relationship exists. Under current Board law, however, the union is not obligated to disclose those facts to the employer at the time of the information request. Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief. Ultimately, it is the Board's role, not the employer's, to act as the arbiter of whether the union's evidence supports a reasonable belief. (Citations omitted.)

I readily conclude that the union officials in this case possessed reasonable grounds to believe that Fragata Construction was being operated as an alter ego of Classic for purposes of evading Classic's contractual obligations. Prior to making the demand for information, those officials had spoken to carpenters engaged in construction as employees of Fragata Construction. Savoie gave Mr. Fragata an opportunity to explain the relationship during their telephone conversation. He advised Mr. Fragata that he had learned that Fragata was "directing the men . . . and running the work." (Tr. 339-340.) He also noted that, "my corporate research had show[n] that you signed as the owner of that company." (Tr. 33.) As a result, Savoie asserted that Classic was in violation of the collective-bargaining agreement. In response, Mr. Fragata declined to deny the relationship, merely opining that Savoie could not prove it. He also told Savoie that he was not going to do any more union work.

Based on this evidence, I find that the Union possessed a reasonable belief that Fragata Construction was being operated as an alter ego of Classic in direct violation of Classic's contractual obligations and to the detriment of the members of the bargaining unit that the Union represented. In my view, the situation is indistinguishable from that presented in *Oklahoma Fixture Co.*, 333 NLRB 804 (2001), enf. denied on other grounds 74 Fed. Appx. 31 (10th Cir. 2003), where the Board found an unlawful refusal to provide information about an alleged alter-ego relationship based on a union's similar degree of investigation and acquisition of knowledge.

I further conclude that, even if one were to require that the Union furnish Classic with the

³⁰ I am quite familiar with the conflict in authorities on this issue. In *Earthgrains Co.*, 349 NLRB 389 (2007), the Board adopted my recommended order requiring the employer to provide certain information related to subcontracting based on somewhat conclusory statements made as justification by the union in its letter demanding the information. The Fifth Circuit reversed this portion of the order, holding that the union had failed to adequately explain the relevance of the information "contemporaneously" with the demand. *Sara Lee Bakery Group v. NLRB*, 514 F.3d 422, 431 (5th Cir. 2008).

underlying reasons that prompted its request for information about Fragata Construction, that standard has been met. Thus, while the Union's formal demand letter merely explained that the purpose of the request was to investigate the relationship between Classic and Fragata Construction, this had been preceded by the detailed telephone conversation between Savoie and Mr. Fragata. During that discussion, Savoie informed Fragata that he had been observed to be directing Fragata Construction's employees and running its jobs. Beyond this, he reported to Mr. Fragata that he had researched Fragata Construction's ownership in the State's corporate records and learned that it was owned by Mr. Fragata. The Union's letter, coupled with Savoie's earlier discussion, provided Classic with sufficient explanatory information to fully elucidate and justify the demand for information about the alleged alter-ego relationship.³¹

Having concluded that the Union's demand for information was both relevant to its duties and sufficiently explained and justified to the Employer, I must also determine whether the questionnaire was confined to appropriate demands for information. It poses a series of 79 questions designed to secure a wide variety of information regarding the operations of the two companies under investigation. Of crucial importance, I note that this precise series of 79 questions has been approved by the Board in the past. In *Brisco Sheet Metal*, 307 NLRB 361 (1992), a union was investigating the relationship between an employer who was bound by a collective-bargaining agreement and an alleged alter-ego company. The Board adopted the administrative law judge's conclusion that the union had established a reasonable basis for seeking the information described in the identical 79 questions.³² It also adopted the judge's order requiring the employer to answer the questionnaire. See also *Union Builders, Inc.*, 316 NLRB 406 (1995), enf. 68 F.3d 520 (1st Cir. 1995), where both the Board and the circuit court specifically approved the relevance of the Carpenters Union's 79-question information request regarding alter-ego issues; *ARC Rigging Corp.*, 2000 WL 33664163 (2000), where another administrative law judge ordered the employer to respond to the Carpenters Union's identical 79-question demand for information; and *H & R Industrial Services*, 351 NLRB 1222 (2007), where the Board approved a judge's finding that a failure to respond to the Union's 79-page questionnaire violated the Act. Based on my own review of the questions and these precedents, I conclude that Classic violated the Act when it failed and refused to respond to the Union's demand for information embodied in the 79 questions.

Before addressing the issues regarding the identity of those responsible for remedying the unfair labor practices that I have found to have been committed by Classic, it is necessary to comment on one final matter related to liability. In the answers to amended complaints filed by Classic's previous attorney, the Company pled what it characterized as "the Affirmative Defense of Statute of Limitations." (GC Exhs. 1(o) & (w).) I will construe this as a reference to Section 10(b) of the Act, a provision that prohibits the issuance of a complaint based on any alleged unfair labor practice that occurred more than 6 months prior to the filing of a charge.

Initially, I recognize that the Board typically holds that an affirmative defense that is

³¹ Perhaps in acknowledgement of the divide between the Board and some appellate courts, Savoie eventually followed up the initial demand letter to Classic by providing a very detailed account of the "information that led me to send the questionnaire to Classic Lath & Plastering concerning Fragata Construction." (GC Exh. 60.) That letter, dated December 2, 2005, clearly conforms to any appellate directive requiring a union seeking information to state to the employer the precise grounds for the request. Despite having received this detailed explanatory account, Classic still failed to provide any response to the Union at any time thereafter.

³² The administrative law judge attached the entire questionnaire to his decision as an appendix. 307 NLRB at 368-371.

5 raised in an answer to the complaint is subsequently waived if the issue is not argued to the judge at the trial or in a party's brief. *Wisconsin Bell, Inc.*, 346 NLRB 62 at fn. 8 (2005). While these Respondents have not addressed this defense at trial or subsequently, in an abundance of caution, I will assess the issue given that these parties are no longer represented by counsel.

5 The Board has summarized its standards for determining whether a claim is precluded by Section 10(b) as follows:

10 The 6-month limitations period prescribed by Section 10(b) begins to run only when a party has clear and unequivocal notice of a violation of the Act. The requisite notice may be actual or constructive. In determining whether a party was on constructive notice, the inquiry is whether that party should have become aware of a violation in the exercise of reasonable diligence. Constructive notice will not be found
15 where a delay in filing is a consequence of conflicting signals or otherwise ambiguous conduct. (Internal quotation marks and citations omitted.)

20 *CAB Associates*, 340 NLRB 1391, 1392 (2003).

25 In this case, the earliest indication of any concern regarding the status of Classic's compliance with its short-form agreement occurred in January 2005 when DeCosta visited the Hampton Inn jobsite in Raynham. While there, he observed two carpenters engaged in hanging drywall. They told him they were employed by Fragata Construction. While this could be suggestive of a change in Classic's operations, it must be recalled that the Company continued to purchase benefits stamps for its employees through May. I conclude that DeCosta's encounter with the carpenters in Raynham was not sufficiently probative of any contract violation so as to trigger an obligation to seek relief from the Board. Indeed, any suspicion that Classic was engaged in a repudiation of the agreement would have been substantially vitiated
30 by its ongoing practice of paying union benefits to employees.

35 More concrete notice of contract repudiation took place in April 2005 during the telephone conversation between Savoie and Mr. Fragata. Savoie testified that Fragata told him at that point that he was no longer going to perform union work. Immediately thereafter, in May 2005, Classic ceased remitting any benefit payments to the Union's funds. In August, Prevost sent those funds a form that indicated it was a final report. However, it was not until October that she made an effort to explicitly advise the Union's funds that, "[w]e are no longer in the union, please close all accounts." (GC Exh. 34.)

40 On May 12, the Union responded to this evolving situation by formally seeking information related to the relationship between Classic and Fragata Construction. When no response was forthcoming, it filed an unfair labor practice charge against Classic alleging violation of the Employer's duty to provide this information. That charge was filed on August 8, 2005. (GC Exh. 1(a).) Less than a month later, on September 6, the Union filed an amended
45 charge alleging that Classic had repudiated its obligations to the Union. (GC Exh. 1(d).)

50 I conclude that the first unambiguous evidence of Classic's repudiation occurred no earlier than May 2005. At that point, Mr. Fragata had informed Savoie that he was no longer going to work with the Union and Classic had ceased paying into the benefit funds. As the Board has observed, "a contract repudiation need not be an express, written repudiation but instead can be manifested by the respondent's conduct." *St. Barnabas Medical Center*, 343 NLRB 1125, 1129 (2004). The first point in time where Mr. Fragata's statement and Classic's

conduct combined to constitute a manifestation of repudiation was no earlier than this moment. As a consequence, the Union's formal allegation of contract repudiation filed with the Regional Office 4 months later was clearly timely.³³

5 2. The status of Fragata Construction, Ryan, and R & S as alter egos of Classic

10 Having found that Classic has committed unfair labor practices, including the repudiation of various contracts with the Union, it remains to be determined what persons or entities are legally responsible for remedying these violations. To begin with, the General Counsel alleges that three corporations, Fragata Construction, Ryan, and R & S, are merely disguised
15 continuances, and alter egos of, Classic. This is a significant contention because, as the Board has explained, "[i]f an employer is found to be an alter ego of another employer that has a contract with a union, the alter ego is also bound by that union contract." *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 8 (2007). The Supreme Court has endorsed the Board's
15 longstanding position on this issue, explaining that:

20 [Disguised continuance and alter-ego] cases involve a mere technical change in the structure or identity of the employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its ownership or management. In these circumstances, the courts have had little difficulty holding that the successor is in reality the same employer and is subject to all the legal and contractual obligations of the predecessor. [Citations omitted.]

25 *Howard Johnson Co. v. Hotel Employees*, 417 U.S. 249, 259 at fn. 5 (1974).

30 As this issue arises with some degree of regularity, the Board has developed a detailed set of criteria for evaluation of the relationship among corporations alleged to be alter egos. In *D. L. Baker, Inc.*, 351 NLRB 515, 520 (2007), it provided a comprehensive description of the applicable standards:

35 In deciding whether one employer is the alter ego of another, the Board considers whether the two enterprises have substantially identical management, business purpose, operations, equipment, customers, and supervision, as well as ownership. An employer's intent to evade its responsibilities under the Act by creating the alleged alter ego is also a relevant consideration, but such an intent is not requisite to an alter ego finding. The Board has found alter-ego status even though the entities have different owners when the owners are in a close familial relationship.
40 No single factor is determinative, and not all the indicia need to be present for the Board to find alter ego status. (Internal quotation marks and numerous citations omitted.)

45 I will now evaluate the evidence regarding each of these enumerated factors.

50 ³³ In fact, the Union's filing of the earlier charge alleging a failure to provide lawfully required information was sufficient to toll the running of Sec. 10(b) since the Respondent's delay in providing that information would serve to excuse an otherwise untimely filing of a subsequent charge alleging repudiation. See my discussion of this issue adopted by the Board in *Bouille Clark Plumbing, Heating, & Electric, Inc.*, 337 NLRB 743, 751 (2002), enf. 81 Fed. Appx. 377 (2d Cir. 2003), and the cases cited therein.

Because they are interconnected in the circumstances of this case, I will first consider the ownership, management, and supervision of the alleged alter-ego corporations as compared with that of Classic. Of course, the starting point must be the ownership, management, and supervision of Classic. Although Classic began its corporate existence with its offices being held by someone else, as of January 18, 2000, it filed a declaration with Massachusetts listing Mr. Fragata as its president, treasurer, clerk, and sole member of the board of directors.³⁴ (GC Exh. 6.) In the same month that Classic ceased making payments on behalf of its employees to the Union's benefit funds, it filed formal documents with the Commonwealth indicating that Mr. Fragata's future wife, Sonya Tavares, was now the corporation's president, treasurer, secretary, registered agent, and sole member of the board of directors. (GC Exh. 6.) Any attempt to take this change seriously is completely undermined by additional formal documents submitted to the Commonwealth on Classic's behalf in August 2006. These consisted of an annual corporate report and articles of voluntary dissolution. Both are signed by Mr. Fragata in his role as president of the corporation. (GC Exh. 6.)

Beyond the corporate filings, the evidence clearly demonstrated that Mr. Fragata was the sole owner and steward of Classic. He made all of the significant decisions and was in charge of the management of all corporate affairs. Indeed, the extent of his ownership and control is truly manifested by his regular and frequent diversion of corporate funds to pay for the personal expenses of himself and his family. This pattern and practice will be discussed at length in the next section of this decision concerning the issue of his personal liability in this case.

The second corporate entity to be considered is Fragata Construction. Apart from the obvious significance of its name, Fragata Construction's history also shows that, at all pertinent times, it was owned, managed, and directed by Mr. Fragata. It is true that at the time of its creation in March 2004, Fragata Construction's formal documents indicated that Mr. Fragata's brother, Fernando, held all of the corporate offices. (GC Exh. 7.) This is consistent with Prevost's testimony that the company was "formed for Fernando," and was initially intended to perform noncarpentry work exclusively.³⁵ (Tr. 97.)

Not long after its foundation, the ownership, management, and control of Fragata Construction shifted from Fernando to Octavio. As Mr. Fragata has explained, "[i]n 2004, Fragata started to do a little bit of carpentry work." (GC Exh. 25, p. 4.) As to the role of the two brothers, Benny Mendoza testified that when problems arose, the two men would have loud disagreements. Ultimately, Fernando would defer the decisions to Octavio, "every time." (Tr. 476.) Eventually, the brothers parted way due to their disagreements. Prevost noted that, at that point, Mr. Fragata "began to run the company" and "directed the men." (Tr. 101.) While there is some imprecision in establishing the exact date of this transition, consideration of the timing of financial transactions between the two corporations shows that it occurred at the time that Classic was ceasing its operations and Fragata Construction was taking over Classic's carpentry work.

³⁴ Later, in 2004, Classic filed an appointment of a registered agent. This was also Mr. Fragata. (GC Exh. 6.)

³⁵ While the company was formed in order to create a business opportunity for Fernando, Mr. Fragata made it clear in his affidavit that he was a major participant in the formation of the firm. As he put it, "In 2004, Fernando and I opened Fragata to do the non-union portion of the work." (GC Exh. 25, p. 4.)

The record is very clear as to the situation regarding ownership, management, and control of Fragata Construction by the latter part of 2005. On November 1, 2005, Mr. Fragata provided an affidavit in which he defined his role in the company as the “general operations person for Fragata Corporation . . . I’m running the work.” (GC Exh. 25, p. 1.) In the following month, Fragata Construction filed amended documents with the Commonwealth showing that Mr. Fragata had assumed all of the corporate offices and was the company’s registered agent as well. (GC Exh. 7.) Finally, on August 16, 2006, Mr. Fragata filed articles of voluntary dissolution for Fragata Construction. He signed these as the corporate president. (GC Exh. 7.)

Looking next at Ryan, the situation is crystal clear. That company, named for Mr. Fragata’s son, was incorporated in November 2005. Its articles of incorporation list Mr. Fragata as its president, treasurer, secretary, incorporator, and sole member of the board of directors. (GC Exh. 8.) Prevost testified that Mr. Fragata “directed the men” and decided on the jobs for which Ryan would prepare bids. (Tr. 106.) Beyond this, Mr. Fragata made a telling admission during the course of his cross-examination of Benny Mendoza. He confronted the witness with the following query:

Isn’t it true . . . that you mentioned to your cousin Erlin Mendoza that the unions were planning to put Ryan, *which was me at the time*, Builders out of business and try to get me back into the union? (Italics added.)

(Tr. 493.) Finally, having created and run Ryan, Mr. Fragata was also the individual who filed the articles of voluntary dissolution for the company in June 2006. (GC Exh. 8.)

The situation regarding the ownership and control of R & S is a bit different. While Mr. Fragata did not seriously contest his role as the person in control of the other firms during the pertinent periods and also acted as their representative during the trial of this case, he steadfastly maintained that he had no relationship with R & S.³⁶ As he put it in his pro se answer to the second amended complaint, “I had no titles in this company, and had no ownership of any stock.” (GC Exh. 1(ff).) While this may literally be true, it does not begin to tell the whole story.

R & S filed articles of incorporation with the Commonwealth on May 2, 2006. Those documents showed that Mr. Fragata’s cousin, Duarte Oliveira was corporate president and treasurer, while Mr. Fragata’s future wife, Sonya Tavares, was the secretary. Both Olivera and Tavares are listed as the firm’s directors. (GC Exh. 76.) By November, the situation changed. New filings with the state government on November 2, 2006, show Tavares as the company’s president, treasurer, secretary, registered agent, and sole director. (GC Exh. 76.) In the following month, Mr. Fragata and Tavares were married.³⁷ In August 2007, Tavares filed articles of voluntary dissolution for R & S in her role as president of the company. (GC Exh. 76.)

As to who made the corporate decisions for R & S, Prevost testified that this was Mr. Fragata’s role, even after he had moved to Florida. He accomplished this by frequent use of the telephone and fax machine. The critical evidence confirming that Mr. Fragata was the person

³⁶ Fragata inadvertently undermined his own contentions on this issue during his cross-examination of Prevost by asking her, “What was the ultimate reason that *we* left R & S open? Was it because *I* wanted to make money, which *I* knew *I* couldn’t work here because of the Union?” (Tr. 255.) (Emphasis added.)

³⁷ Tavares was 22 years old at the time of their marriage.

who was meaningfully in charge of R & S is found in the Company's financial records. As discussed in detail at the appropriate points in this decision, R & S engaged in a series of financial transfers among the companies owned and controlled by Mr. Fragata. Perhaps even more tellingly, R & S participated in the practice of those companies paying the personal and familial expenses of Mr. Fragata out of corporate funds and accounts.

In sum, the evidence as to corporate ownership, management, and supervision, establishes that all four companies were owned by Mr. Fragata or his relatives, including his future wife. During the pertinent time period, actual stewardship of the companies was entirely Mr. Fragata's responsibility. In *Fallon-Williams, Inc.*, 336 NLRB 602, 602 (2001), it was noted that, "[t]he Board has not hesitated to find alter ego status even though entities had different owners, when the owners were in a close familial relationship." In *US Reinforcing, Inc.*, 350 NLRB 404, 406 (2007), the Board observed that it had never inferred alter ego status based on "the context of unmarried cohabitating couples." The decision went on to note that, while alter-ego status had not been proven in that case, "we do not address whether such a relationship can ever support an inference of substantially identical ownership and control." 350 NLRB at 406. In my view, the evidence in this case, including the subsequent marriage of the concerned individuals, calls for just such a finding. This is particularly true where Tavares testified, but never made any assertion that she was the actual guiding officer or manager of the company. Indeed, her hesitant, passive, and subservient demeanor and presentation underscored the impression that she was simply being used as a figurehead by Mr. Fragata.

I will next consider the evidence regarding the operations, equipment, and customers of the four companies. To begin, it is noteworthy that all of them operated during pertinent time periods, from headquarters located on property owned by Mr. Fragata at State Road in Westport. Indeed, Prevost testified that Fragata Construction moved its location to those premises at the specific direction of Mr. Fragata, "so we didn't have to pay rent, and so we could have it in one building." (Tr. 99.)

Prevost's authoritative testimony, based as it was on her experience as office manager for each of the four companies, also established that they shared the same vans and box truck. She reported that the vehicles were owned by Classic, but the other companies used them without paying any fees for this privilege. The situation was identical regarding a wide variety of other carpentry equipment, including lifts, stagings, and Hilti guns. Once again, although each of the other companies used Classic's carpentry equipment, there were no written agreements about this, nor were any funds exchanged. This was underscored in the testimony of Erlin Mendoza who reported that Ryan and R & S used the same vans and carpentry equipment. I asked him to clarify whether he meant the same type of vehicles and tools or the same actual pieces. He responded:

Same people, same equipment—there was not 2 com—for me there wasn't 2 companies, that's why it's hard to tell which company was which.

(Tr. 513.)

In addition to sharing the same premises, vehicles, and equipment, the companies actually shared the same funds. I have previously described a number of frequent and large financial transactions made among these supposedly separate corporate entities. This regular practice was put into perspective by Prevost. As she put it when asked why money was moved from one company to another, "[to] cover bills. Cover payroll. Some of them were to cover materials There were some that were transferred when the new corporations opened." (Tr.

119.)

5 Lastly, it is noteworthy that the four companies made a practice of employing the same personnel. Confirmation of this pattern was provided through testimony of several witnesses and is corroborated by examination of the hiring records of the firms. It was perhaps best illustrated by Sonya Fragata's testimony confirming that R & S had employed a number of supervisors, managers, and employees of the other companies.

10 It is also clear that, at the pertinent periods, each of the companies engaged in operations in the business of carpentry that were identical to those that had previously been performed by Classic. Thus, while Fragata Construction was originally created to perform noncarpentry work, it was quickly transmuted into a carpentry company. As Prevost described, during the period when Classic and Fragata Construction were both active, carpenters would receive union wages and benefits if they worked on a union job for Classic, but those same
15 carpenters would be paid lesser sums and would not receive benefits if they worked on a nonunion job for Fragata Construction. Similarly, Quinones reported that he worked for Ryan and R & S, but the jobs he worked on for both companies were identical.

20 The final analytical factor is the presence or absence of evidence showing a motive to evade contractual obligations or the requirements of the Act. The Board frequently (and somewhat dryly) notes that such evidence of motive is "a relevant consideration, but such an intent is not requisite to an alter ego finding." *D. L. Baker, Inc.*, 351 NLRB 515, 520 (2007). Of course, where reliable evidence of an actual intent to evade the law is in fact present, it is compelling proof in support of a finding of alter-ego status. In this case, such evidence is
25 present in abundance.

30 A useful starting point for assessing evidence of unlawful motivation is consideration of statements made by Mr. Fragata himself. Apart from his taunt to Savoie in which, rather than denying the creation of an alter ego, he simply asserted that it could not be proven, there are other highly suggestive statements. In his affidavit to the Board agent, he explained that Fragata Construction was developed "because the union work I was doing with Classic was losing money." (GC Exh. 25, p. 1.) He went on to explain, "I started to close Classic by getting smaller contracts after the first year when I saw that union support was against me[,] not for me[,] by giving me people who do not want to work."³⁸ (GC Exh. 25, p. 4.) While not definitive,
35 these comments, taken together, are certainly suggestive of a plan to close Classic and transfer its operations to Fragata Construction so as to avoid the Union.

40 A similar glimpse into Mr. Fragata's mindset is provided by examination of the document prepared in December 2005 entitled "Plan of Reorganization for Classic, Fragata, and Ryan." That plan contains the following discussion:

45 ³⁸ In *Diverse Steel, Inc.*, 349 NLRB 946, 947 at fn. 7 (2007), former Chairman Battista drew a useful distinction between evidence showing a motive to avoid perceived high labor costs and evidence showing a motive to evade the union itself. In his affidavit, Mr. Fragata's precise motive is less than clear. However, taking his statements in conjunction with a great deal of additional evidence, I conclude that he was expressing an unlawful intent to avoid the requirements of his contractual agreements and the terms of the Act. As former Chairman Battista put it, there is evidence of improper motive when the statements form part of the
50 evidence showing that "the Respondent used a ploy to get rid of the Union by artificially creating a new company to replace the old one." *Ibid.*

The purpose of this reorganization as agreed upon by the boards of directors of Fragata Construction Co. Inc., Classic Lathe [sic] & Plastering, Inc. and Ryan Builders, Inc. is as follows:

- 5 1) To take the corporations in a different direction from a sales and marketing standpoint which includes but, is not limited to, the changing of the name of the corporation and redirection of corporate focus.
- 10 2) To broaden the Corporations' labor pool to enhance growth and create new opportunities.

(GC Exh. 80, p. 4.) In furtherance of this plan, the document notes that Classic and Fragata were transferring all of their assets and liabilities to Ryan. Taken in the context of the evidence in this case, it is not difficult to see this statement of intent as being perilously close to an admission that the corporate names and structures were being changed in order to impact on the "labor pool." The General Counsel has clearly shown what the nature of that change to the labor pool was meant to be.

Beyond these rather strong hints contained in documents provided by Mr. Fragata, the credible testimony of Prevost presents the full picture of his thought process. Thus, she testified that she discussed the decision to close Fragata Construction and open Ryan with Mr. Fragata. When she asked him why he was doing this, he told her, "[c]ause the unions were after us." (Tr. 103.) Similarly, when R & S was established, Mr. Fragata explained to Prevost that he was unable to put the new company in his own name, "[b]ecause the unions wouldn't be able to come after us, if it was in other people's names."³⁹ (Tr. 105.)

Based on the body of convincing evidence showing that every factor probative of alter ego and disguised continuance is present in this case to a compelling degree, I find that Fragata Construction, Ryan, and R & S are each alter egos to, and disguised continuations of, Classic. In light of this finding, it is necessary and appropriate to issue remedial measures against them designed to ameliorate the harm caused to the Union and to the carpentry employees of the four companies.

3. The personal liability of Octavio Fragata

Having just found it necessary and appropriate to hold the four corporate respondents accountable for remediation of the unfair labor practices involved in this case, it is impossible to overlook the fact that it may be entirely unrealistic to expect any practical result from this determination. It will be recalled that Mr. Fragata filed articles of voluntary dissolution for Ryan on June 12, 2006 and for both Classic and Fragata Construction on August 16, 2006. Approximately a year later, on August 7, 2007, Sonia Fragata filed articles of voluntary

³⁹ There is evidence that Mr. Fragata had other motives for his corporate creations in addition to unlawful antiunion concerns. In his affidavit, he suggests a motive to remove assets from the reach of his then spouse whom he was in the process of divorcing. In his comments to Prevost regarding R & S, he observed that a company nominally owned by Tavares would be eligible to bid on "minority women-owned projects." (Tr. 105.) The Board holds that the presence of such additional and unrelated motives does not vitiate the impact of the existence of an unlawful motivation. See, *D. L. Baker, Inc.*, 351 NLRB at 520 (proof that employer's "primary intent" was to evade taxes does not alter the relevance of evidence showing that a secondary intent "was also to escape NLRB liability.")

dissolution on behalf of R & S.⁴⁰

5 With this state of affairs very likely in mind, the General Counsel seeks an additional order finding Mr. Fragata personally liable for the remediation of the unfair labor practices that were committed by the four corporate entities that he directed and controlled. As the counsels for the General Counsel put it:

10 By completely disregarding corporate legal formalities and by treating corporate funds as indistinct from his own, Respondent Fragata can be—and should be—held individually and personally liable for the money owed to the Union funds and to those employees who worked as carpenters for low wages and without other benefits guaranteed by the applicable collective-bargaining agreements.

15 (GC Br. at p. 3.)

20 In evaluating this demand, I am highly mindful that imposition of such personal liability is an extraordinary remedy that must be approached with circumspection. As the Board has recently emphasized, the insulation of stockholders from precisely this sort of corporate liability,

25 is a critical and longstanding element of the Federal common law of corporations. It reflects a careful policy decision that such protection is necessary in order to encourage business development and entrepreneurship, and is not to be dispensed with lightly. Thus, the party asserting that the corporate veil should be pierced, in this case the General Counsel, has the burden of proof, and that burden is a heavy one. (Citations and footnote omitted.)

30 *Flat Dog Productions, Inc.*, 347 NLRB 1180, 1182 (2006).

35 In determining whether the General Counsel has carried his heavy burden on the issue of personal liability, it is necessary to apply the “two-pronged test” enunciated by the Board in its leading case of *White Oak Coal Co.*, 318 NLRB 732 (1995), enf. 81 F.3d 150 (4th Cir. 1996). The two elements that must each be established are that the shareholder and the corporation failed to maintain separate identities, and that the maintenance of the corporate insulation from personal liability would sanction fraud, promote injustice, or allow an inequitable evasion of legal obligations. Crucial factors are the degree to which corporate formalities have been observed and whether individual and corporate funds, assets, and affairs have been commingled. See

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50 ⁴⁰ There are other strong indications that the corporate entities will not be in a position to provide monetary relief. Fragata Construction’s checking account was closed on September 25, 2006. Classic’s former attorney filed an answer to the amended consolidated complaint in which he reported that Classic, “has ceased business operations.” (GC Exh. 1(w), p. 2.) On October 23, 2007, the Superior Court of Norfolk, Massachusetts entered a judgment against Classic and Mr. Fragata on behalf of Sovereign Bank in the amount of \$566,793.04. Finally, I am about to detail the financial transactions directed by Mr. Fragata that served to strip the corporations of their assets, leaving their empty shells to undergo formal dissolution. It appears highly unlikely that any of the four corporate respondents retain any assets that could be applied to remedy the violations in this case.

D. L. Baker, Inc., 351 NLRB at 521 (2007).⁴¹

5 Since the Board has observed that, “[c]ommingling, treatment of corporate assets as one’s own, and undercapitalization often constitute the most serious forms of abuse of the corporate entity,” I will begin my analysis by examining Mr. Fragata’s record regarding these types of misconduct. Infra at 522. The evidence in this respect is overwhelming. As with other important aspects of this case, the key evidence consists of the persuasive and detailed testimony of Prevost as corroborated and supplemented by the corporate financial records. Thus, Prevost testified that Mr. Fragata used corporate assets to pay for his personal expenses, “[a]lmost every month.” (Tr. 113.) She recited numerous examples of the use of corporate funds to satisfy personal obligations. In the first instance, she reported that Mr. Fragata used such assets to support his other business activities such as his rental properties and his entrepreneurial activities in Florida. Secondly, he used this source of funding to satisfy obligations arising out of the dissolution of his marriage to his first wife. Finally, he spent corporate money freely to purchase highly personal items and services for his own use and enjoyment.

20 The financial records fully support Prevost’s testimony and present a picture of wanton disregard for corporate formalities and the legal obligations that underlie them.⁴² I will not specifically discuss the entire enormous volume of evidence that leads to this conclusion, nor will I attempt to parse those expenditures that, while highly suggestive of misuse, may have some conceivable corporate justification. A focus on the obvious pattern of abuse clearly suffices in concluding that the General Counsel has met his burden of proof regarding the flagrant abuse of the corporate structure by Mr. Fragata.

25 I will begin the analysis by turning first to Mr. Fragata’s use of corporate assets to support his portfolio of real estate investments. As just indicated, I will not include consideration of his properties on State Road in Westport as these were used to some degree by the corporations. Apart from them, he owned a variety of properties including his former family residence. The residence was purchased with his former wife for \$925,000 in 2002. It is located at 14 Hetty Green Drive in Dartmouth, Massachusetts. The house was part of a gated community managed by the Round Hill Association. On January 27, 2005, Classic issued a check in the amount of \$455.86 to purchase propane for the house. Indeed, the Company’s check register candidly notes that the purpose of the expenditure was to purchase fuel for “Octavio’s house.” (GC Exh. 39, p. 3.) Another check from Classic was issued on February 10, 2005, for the same purpose. (GC Exh. 39, p. 5.) A third check followed on March 2, 2005. (GC Exh. 39, p. 7.) At the same time, Classic issued a check to the Round Hill Association in the amount of \$804 to pay association fees for the house. (GC Exh. 39, p. 7.) It is noteworthy that this was followed on July 22, 2005, by another payment in the amount of \$3863 to Round Hill by Fragata Construction. Once again, the purpose is explained in that Company’s check register

41 The helpful discussion of the Board’s analytical methodology that is provided in *D. L. Baker*, includes a recitation of the so-called *Kansas City* factors, nine specific considerations that are useful in evaluating the degree of adherence to the separate corporate identity. 351 NLRB at 521, citing *NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047, 1052 at fn. 6 (10th Cir. 1993). I have considered these factors in performing the required analysis in this case.

42 I apologize in advance to the reader for the tedious nature of what follows. This is the part of a life in the legal profession that never gets mentioned in such television dramas as “Law & Order” or “Boston Legal.” I sometimes wonder how Perry Mason managed to avoid taking any cases that required laborious analysis of financial records in order to prove his client’s innocence.

with a notation that it was for, "Octavio's house." (GC Exh. 41, p. 3.)

5 Six months later, on January 26, 2006, it was the turn of Ryan to make the payment in the amount of \$2,559.21 to the Round Hill Association. Ryan's check register shows the purpose as, "Octavio." (GC Exh. 42, p. 6.) Ryan paid the Round Hill bill again on March 20, 2006. The amount was \$2644. (GC Exh. 42, p. 17.) In the following month, Ryan paid \$1,533.28 to Antonio Medeiros. The purpose was described in the register as, "Landscaping for Hetty Green Drive." (GC Exh. 42, p. 22.) Finally, as of July 6, 2006, the fourth corporation, R & S, issued a check in the amount of \$3838 to the Round Hill Association for the Hetty Green Drive property. (GC Exh. 43, p. 14.) Use of corporate funds to pay expenses related to this property also included a check from Ryan to Sovereign Bank in the amount of \$5,010.97 on August 10, 2006. The purpose is described in Ryan's register as, "Hetty Green mortgage." (GC Exh. 42, p. 32.) A month later, R & S paid Levesque's Tree Service for work performed at the Hetty Green property. (GC Exh. 43, p. 21.)

15 Apart from this home, Mr. Fragata owned two rental properties at 1263 and 1265 Pleasant Street in Fall River and another property on Reed Street in Bedford. Once again, the corporations made frequent financial contributions to support these personal holdings of Mr. Fragata. In January 2005, Classic wrote checks to pay for utilities and property taxes for Pleasant Street. (GC Exh. 39, pp. 1 & 3.) In the following month Classic twice paid Smith Lock for its services in changing locks on the rental units at Pleasant Street. (GC Exh. 39, pp. 4 & 5.) In March, Classic paid a utility bill and another fee for changing locks for the rental units. (GC Exh. 39, p. 7.) In April, Classic paid the property taxes owed to Fall River for the Pleasant Street units. (GC Exh. 39, p. 12.) In July, it was Fragata Construction's turn to write a check to Fall River for taxes on the rental properties. As its register explained, the payment in the amount of \$1,043.44 was for "Taxes Pleasant St." (GC Exh. 41, p. 3.) This was accompanied on the same day by a check from Fragata Construction to cover utilities for those properties. (GC Exh. 41, p. 3.)

30 It next fell to Ryan to pick up some of the costs for the Pleasant Street properties. On January 26, 2006, it wrote a check to Fall River in the amount of \$2,607.07 for tax liabilities. (GC Exh. 42, p. 6.) In the following month, Ryan funded investment activities involving the Reed Street rental property. It wrote checks covering roof repairs and eviction services. (GC Exh. 42, p. 11.) By June 2006, it was R & S that issued a check in the amount of \$787.81 for what was characterized in its register as, "Water & Sewer Pleasant St." (GC Exh. 43, p. 11.) This was followed by a check from R & S to the New England Gas Company for fuel for the Pleasant Street units. (GC Exh. 43, p. 14.) R & S also paid real estate taxes for the Pleasant Street investments on July 27, 2006. (GC Exh. 43, p. 16.) When a hot water tank at the Pleasant Street buildings needed replacement, R & S wrote the check for \$775. (GC Exh. 43, p. 21.) In October 2006, R & S paid both a tax bill and an electric bill for Pleasant Street. (GC Exh. 43, p. 23.)

45 Turning to another subject, it is not surprising that the dissolution of Mr. Fragata's marriage to Maria Fragata would produce a variety of expenses. What is surprising, however, is that the corporations' funds were often used to satisfy those highly personal obligations. For example, on January 27, 2005, Classic issued a check in the amount of \$1000 to Andrew Peppard for his services as the guardian-ad-litem in the divorce proceeding. (GC Exh. 39, p. 3.) Later that month, the family court ordered Mr. Fragata to pay \$300 per week in alimony and child support. (GC Exh. 56.) The payment dated February 10, 2005, was made by Classic. (GC Exh. 39, p. 5.) Prevost testified that she wrote similar alimony and support checks on a weekly basis. These were written on corporate accounts and were in addition to Mr. Fragata's regular compensation payments. The documentary evidence corroborates this testimony

regarding Mr. Fragata's regular diversion of corporate funds in order to satisfy his obligations in family court.⁴³

5 In addition to alimony and support payments, Mr. Fragata used Classic's account to make a \$678.31 loan payment for Maria Fragata's Mercedes on March 31, 2005. More significantly, Mr. Fragata used corporate funds on a variety of occasions to pay his legal bills arising from the divorce. On July 20, 2005, Fragata Construction issued a check in the amount of \$2500 to his matrimonial lawyer, Peter Smola, Esq. (GC Exh. 41, p. 2.) On August 1, the Company wrote a check for \$882 to Mickelson Barnet, PC. Prevoist testified that this had something to do with the family court case and the check register confirms that the purpose of the payment was for, "Octavio's divorce." (GC Exh. 41, p. 6.) On October 14, 2005, Fragata Construction issued another payment to Smola in the amount of \$5,887.50. (GC Exh. 41, p. 19.)

15 By January 20, 2006, Ryan had begun to issue the child support and alimony payments from its account. (GC Exh. 42, p. 4.) The following month, Ryan also paid to renew the registration on Maria Fragata's Mercedes.⁴⁴ (GC Exh. 42, p. 8.) On March 20, Ryan issued its check to Smola in the amount of \$4270. (GC Exh. 42, p. 17.) Another check to Smola for the same amount issued from Ryan on May 12, 2006. (GC Exh. 42, p. 28.) In a vivid illustration of the scale of the diversion of Ryan's funds to pay for Mr. Fragata's divorce, another check was issued to Smola in the amount of \$16,403 on May 24, 2006. (GC Exh. 42, p. 28.) Rounding out the picture regarding payments to the divorce lawyer, R & S entered the scene on June 7, 2006, by writing its check in the amount of \$1575 to Smola.⁴⁵ (GC Exh. 43, p. 7.) Thus, all four of the corporate respondents in this case financed portions of Mr. Fragata's divorce proceeding.

25 While the use of corporate funds for Mr. Fragata's very personal legal problems clearly illustrates the failure to adhere to the corporate formalities, it is merely one piece of a larger mosaic of such evidence. For example, on February 23, 2005, Classic issued a check to pay for Mr. Fragata's acupuncture treatment. (GC Exh. 39, p. 5.) This was followed in the following month by Classic's check to Coastal Orthopaedics to pay for the amount not covered by medical insurance for treatment of his son's knee. (GC Exh. 39, p. 10.) In April and May, Classic made payments for Mr. Fragata's karate lessons. (GC Exh. 39, pp. 11, 12, & 13.)

35 Another source of multiple diversions of corporate funds involved Mr. Fragata's annual trips to Portugal. Prevoist testified that these trips had no business purpose. Despite this, Fragata Construction paid \$934 to Azores Express on August 17, 2005. (GC Exh. 41, p. 8.) This was followed by a check to Portuguese Tours, another two to the Holiday Inn Azores, and one to Hertz Car Rental. (GC Exh. 41, pp. 9, 12, & 13.) In the following year, it was Ryan's turn to provide funding for Mr. Fragata's annual trip. That Company wrote checks to Mr. Fragata with the notation that they were for, "Octavio Fragata Portugal." (GC Exh. 42, p. 33.)

43 I will not detail each and every \$300 check issued to Maria Fragata from corporate accounts. These are all plainly described in the check registers. Although the payments were originally made from Classic's account, this shifted to Fragata Construction's account as of July 7, 2005. (GC Exh. 41, p. 1.)

44 Prevoist explained that because the Fragatas were separated, there was no possibility that the Mercedes could have been used by Octavio for business purposes.

45 It should be recalled that Mr. Fragata has consistently maintained that he had no official position with R & S, nor did he own any stock in the firm. Without doubt, the firm's use of its funds to pay for Mr. Fragata's divorce demonstrates the extent of his actual dominion and control over R & S.

Mr. Fragata used corporate money to pay for a range of other personal expenses. On October 14, 2005, Fragata Construction issued a check to the Town of Westport for taxes owed on an automobile that Mr. Fragata purchased for his son. (GC Exh. 41, p. 19.) A few days later, the Company issued a check to the Commonwealth of Massachusetts in the amount of \$9700. The register entry gives the concise explanation that the payment was for, "Octavio's 2004 taxes." (GC Exh. 41, p. 19.) The Company also paid a total amount of \$6,676.16 to cover the uninsured portion of Mr. Fragata's expenses related to surgery on his knee. (GC Exh. 41, p. 33.)

Although Fragata Construction paid well over \$9000 for Mr. Fragata's 2004 state tax obligation, apparently this was not the entire amount owed. On January 13, 2006, Ryan issued another check to Massachusetts for \$1,253.29. The register showed this as, "Octavio 2004." (GC Exh. 42, p. 3.) Prevost confirmed that this was a personal tax liability, not a corporate one. Yet again, the pattern of personal expenditures funded by corporate accounts continued with R & S. On July 27, 2006, R & S issued a check to A. Fernandes. (GC Exh. 43, p. 16.) Prevost explained that Dr. Fernandes was the dentist who treated Mr. Fragata's children and the payment was for services not covered by insurance.

Apart from the blatant pattern of misuse of corporate funds to pay the highly personal expenses of Mr. Fragata, the financial evidence provides other probative indicia of abuse of the corporate form. In two recent cases, the Board has discussed the significance of undercapitalization and inappropriate financial dealings between a corporation and those who are in control of its affairs. I have already noted that, in *D. L. Baker, Inc.*, supra at 522, the Board characterized undercapitalization as one of the "most serious forms of abuse of the corporate entity." In addition to use of the corporation as a "personal piggybank," evidence of undercapitalization includes, "constant 'inflows' and 'outflows' . . . necessary because [the corporation] did not have enough capital to pay its bills when due," and "[u]ndocumented transactions and inadequate loan documentation." *Infra*. Similarly, in *A. J. Mechanical, Inc.*, 352 NLRB 874, 875 (2008), the Board also relied on these types of indicators of disregard of corporate formalities to impose personal liability. As the Board explained,

the record establishes that [the principal shareholder] made loans to the corporation from his personal accounts. However, there is no evidence that the loans adhered to accepted commercial or business standards regarding terms for repayment or interest. Specifically, there appears to have been no loan agreements, promissory notes, or paperwork of any type documenting what the loan was for or its terms.

This pattern formed a significant portion of the basis for a determination to impose personal liability. A strikingly similar pattern exists in this case.

As just indicated, it is expected that corporate transactions involving loans would be fully documented in the financial records of the firms. As to these companies, that is simply not the case. For instance, on April 30, 2005, Mr. Fragata loaned Classic the sum of \$20,000. (GC Exh. 39, p. 13.) While the deposit is reflected in Classic's check register, Prevost testified that there was no written loan agreement. She also reported that the reason for the loan was that, "[t]he company had no money." (Tr. 150.) This is all the more telling when one considers that on the day before this loan transaction, Classic had written a corporate check to Fall River to pay a tax obligation related to Mr. Fragata's personal investment in the Pleasant Street rental properties. (GC Exh. 39, p. 12.) Classic repaid this loan on May 11, 2005. However, the

repayment was merely the principal amount. There is no evidence of any interest charges. (GC Exh. 39, p. 13.) Just a few weeks later, on May 27, Mr. Fragata made a smaller undocumented loan to Classic in the amount of \$1000. (GC Exh. 39, p. 15.) In July, there was another loan in the larger amount of \$4000. (GC Exh. 39, p. 21.) Prevoist explained that the loan was
 5 necessary because Classic was running out of funds. It is apparent that this chain of financial transactions is precisely the sort of evidence that the Board finds highly probative on the issue of abuse of the corporate form.

A similar pattern of undercapitalization amid a series of undocumented loans occurred
 10 between Mr. Fragata and Fragata Construction. On October 7, 2005, Mr. Fragata made a payment of \$60,000 to the firm. The deposit entry indicates that this is a "Personal loan to Company." (GC Exh. 41, p. 18.) There is no other paperwork related to this large loan. It was followed later that month by two more loans in the amounts of \$10,000 and \$20,000 respectively. (GC Exh. 41, pp. 21 & 22.) Regarding the second of these, Prevoist explained that
 15 the Company had only \$2000 in its account at the time of the loan. As she described, "It needed the money. He gave us the money." (Tr. 185.) Remarkably, this all occurred at the same time that Fragata Construction paid Mr. Fragata's tax bill to the State in the amount of \$9700. (GC Exh. 41, p. 19.)

The transfers of large sums between Mr. Fragata and the corporations was not a one-way street. For example, on April 26, 2006, Fragata Construction made a transfer of \$60,000 to Mr. Fragata. Prevoist was unable to provide any explanation for this large payment and no explanation has been forthcoming from the participants in the transaction.

The events of June 8, 2006, provide a stark illustration of the extent of the misuse and abuse of the corporate form in this case. On that date, Ryan transferred \$43,000 to R & S to "[c]over payrolls" for R & S. (GC Exh. 42, p. 29.) At the same time, Ryan purported to loan Mr. Fragata the sum of \$100,000. Prevoist was unable to point to any documentation for this large loan, nor was she able to explain its purpose. The Respondents made no effort to shed light on
 30 the transaction. And, on the same day, Ryan made another transfer payment of \$100,000 to Sonya Tavares, Mr. Fragata's future wife. (GC Exh. 9.) Mrs. Fragata was asked to explain this transfer and was unable to shed light on the transaction. Given the amount involved, this struck me as peculiar. I pursued it with her as follows:

35 JUDGE: Do you remember receiving the money?

MRS. FRAGATA: I don't remember. This is—again, a couple of years ago. I really—don't remember.

40 COUNSEL: That's a lot of money. You don't remember what it was for?

MRS. FRAGATA: I really don't.

(Tr. 539.) Nevertheless, the explanation for all these transfers of funds lies in the financial
 45 records. It consists of a payment made by Ryan to the Commonwealth of Massachusetts on the following day. The check register explains that this payment was for fees associated with "Ryan's Dissolution." (GC Exh. 42, p. 29.) It does not require a degree in accounting to comprehend the purpose of the so-called loan of \$100,000 made by a company about to be dissolved to the person who controlled its operations and had made the decision to bring about
 50 its dissolution. Nor does it require a background in forensic accounting to explain a "loan" in an

identical amount to that person's girlfriend and future wife.⁴⁶

5 The evidence presented in this case leaves no room for doubt as to whether the General Counsel has met his burden of demonstrating that the first prong of the *White Oak Coal* test has been met. It is obvious that "the shareholder and corporation[s] have failed to maintain separate identities." *White Oak Coal*, supra. at 732. By a regular course of conduct consisting of diversion of corporate funds for personal purposes, undocumented loans and funds transfers, and undercapitalization, Mr. Fragata failed to adhere to the corporate formalities in his relationship with each of the four corporate respondents.

10 This does not, however, end the inquiry. Imposition of personal liability is an equitable form of relief. As the Board noted, it should only be imposed in circumstances where "adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations." *Infra*. This additional requirement reflects the Board's understanding that, in the words of former Chairman Schaumber, in the everyday world of small, closely held corporations, "it was not surprising that the Respondent's principals did not rigidly observe corporate formalities." *A. J. Mechanical, Inc.*, supra. at 876, fn. 14. The drastic remedy of imposition of personal liability must be reserved for those situations that involve more than mere excusable negligence. It requires a finding that "inequity must flow from the misuse of the corporate form, and the individuals charged personally must be found to have participated in the fraud, injustice, or inequity."⁴⁷ *Infra* at 876.

25 As is clear from this discussion, the focus of the remaining portion of the analysis must be on the question of whether Mr. Fragata's financial maneuvers would lead to an unfair result if personal liability were not imposed. I readily conclude that this would be the inevitable outcome. The evidence establishes that Mr. Fragata made a deliberate effort to divest the four corporate respondents of their assets by juggling those assets among the four companies and ultimately by transferring them directly to himself and his future wife. He did so as part of his course of conduct intended to relieve himself of all legal and financial obligations toward the employees of his companies and their union representative arising from the collective-bargaining agreements that he had directed Classic to voluntarily join. Having first plundered and then dissolved the four corporations, he has left the employees and the Union with no realistic prospect of financial remedy in this case. Having pocketed the assets that would otherwise have been available to

35 ⁴⁶ Despite Ryan's dissolution, there were subsequent similar unexplained financial transactions involving Ryan, Mr. Fragata, and Ms. Tavares. For example, on June 26, 2006, Ryan purported to loan Mr. Fragata the sum of \$100,007. (GC Exh. 42, p. 30.) Prevost testified that there was no documentation and she was unaware of the purpose for the loan. She reported that \$75,000 was repaid but she did not know if the remainder was ever repaid. Ryan made yet another loan to Mr. Fragata on July 1, 2006, in the amount of \$75,000. (GC Exh. 42, p. 31.)

45 ⁴⁷ In *Flat Dog Productions, Inc.*, 347 NLRB 1180 (2006), the Board also drew a useful distinction. It is frequently the case in proceedings such as this one that personal liability is being sought against the corporate officer who made the decisions to commit the unfair labor practices that prompted the lawsuit. Standing alone, this is not a sufficient basis to impose personal liability on that officer. As the Board noted, "[w]e recognize that the corporations committed the unfair labor practices through the conduct of [their chief executive], but that does not mean that the veil of those corporations can be pierced." *Infra* at 1185, fn. 18. Instead, "the inquiry properly focuses on whether fraud, etc., would result from the Board's recognition of the corporate form for remedial purposes when a respondent has been found to have misused that form." *Infra* at 1185.

provide the remedy, it is entirely equitable that he be personally held to account. Similarly, having used the corporations as his personal reservoirs of cash to fund his other investments and pay for his personal legal bills, travel, entertainment, and assorted expenses of daily living, Mr. Fragata cannot be heard to complain when he is required to reimburse the creditors of those corporations as remediation for the harm that the corporations have caused.

In concluding that personal liability should be imposed, I have considered the Board's response to similar requests. In particular, two cases point the way to the appropriate decision in the circumstances presented here. In *White Oak Coal Co.*, 318 NLRB 732 (1995), the owners made a practice of using corporate funds for their own highly personal purposes including the purchase of home furnishings, payment of dues in the International Hot Rod Association, and contributions to charity. As the Board described it, they "drew corporate funds for personal matters from whatever business account was solvent at the time." 318 NLRB at 734. Their improper use of corporate funds and their general manner of operating the corporations that they controlled resulted in the depletion of the companies' assets. The Board found that:

The natural, foreseeable, and inevitable consequence of the [owners'] use of corporate assets for personal gain, misuse of the corporate form, and disregard of corporate formality, is the diminished ability of the corporate alter egos to satisfy White Oak's statutory remedial obligations. Accordingly, we pierce the corporate veil and find the [owners] jointly and severally liable for White Oak's remedial obligations under the Act.

318 NLRB at 735.

By contrast, the Board declined to impose personal liability in *Flat Dog Productions, Inc.*, supra. In that case, the key consideration was that the owner of the corporations had not engaged in any abuse of the corporate form. The companies were not undercapitalized, nor were their funds used for personal purposes or transferred without fair consideration. As a result, the Board concluded:

Where, as here, there is no showing under *White Oak* that a shareholder has abused the privilege of doing business in the corporate form, we must respect the corporate entity and the shareholder's reasonable expectation that he or she will not lightly be held accountable for corporate debts.

347 NLRB at 1186.

In my view, it is clear that Mr. Fragata's conduct was entirely comparable to that of the owners in *White Oak Coal* and not at all similar to the behavior of the owner in *Flat Dog Productions*. Because Mr. Fragata consistently failed to demonstrate any degree of respect for the corporate form, there is no inequity in a decision to decline to extend the protections of that form to him when providing relief to the aggrieved parties in this case.⁴⁸ Instead, it is clear that

⁴⁸ In his posthearing brief, Mr. Fragata eloquently expressed his dismay at the prospect of personal liability, noting that, "I signed [the short-form agreement] as President of Classic—not as a personal guarantor—and feel that my rights are being infringed upon when I apparently do not have the protection of being incorporated." (R. Br. at p. 1.) While his expectation of

Continued

injustice would follow from any failure to impose such personal liability. I conclude that the General Counsel has met his heavy burden and has established that the interests of justice require the imposition of personal liability.

5 Conclusions of Law

1. No later than May 2005, the Respondent, Classic Lath & Plastering, Inc., withdrew recognition from the Union and failed to apply the provisions of its applicable collective-bargaining agreements with the Union to the terms and conditions of employment for its employees in violation of Section 8(a)(5) and (1) of the Act.

2. Since May 2005, the Respondent, Classic Lath & Plastering, Inc., has failed and refused to provide relevant information requested by the Union that is necessary for it to perform its obligations as representative of the employees of the Company in violation of Section 8(a)(5) and (1) of the Act.

3. The Respondents, Fragata Construction, Inc., Ryan Builders, Inc., and R & S Drywall, Inc., are each disguised continuances of, and alter egos to, Classic Lath & Plastering, Inc., and are bound by each of the collective-bargaining agreements applicable to Classic Lath & Plastering, Inc.

4. At all material times, the Respondents, Fragata Construction, Inc., Ryan Builders, Inc., and R & S Drywall, Inc., have refused to recognize the Union and have failed to apply the provisions of the applicable collective-bargaining agreements with the Union to the terms and conditions of employment for their employees in violation of Section 8(a)(5) and (1) of the Act.

5. The Respondents, Classic Lath & Plastering, Inc., Fragata Construction, Inc., Ryan Builders, Inc., and R & S Drywall, Inc., have failed to maintain identities separate from each other and from Octavio Fragata. In order to prevent fraud, injustice, or evasion of legal obligations, it is necessary to impose personal liability on Octavio Fragata for the unlawful acts committed by each of the corporate respondents.

Remedy

35 Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

40 Because I have found that the Respondents have violated Section 8(a)(5) and (1) of the Act by failing and refusing to apply the terms and provisions of the applicable collective-bargaining agreements with the Union to their employees who are performing work within the boundaries of the geographical areas covered by such agreements, they shall be ordered to abide by, and give full force and effect to, each of their collective-bargaining agreements with the Union and to any automatic renewals or extensions of those agreements, unless or until any of those agreements, renewals, or extensions have been lawfully terminated.

With respect to this portion of the remedy, the General Counsel recognizes that it is not protection from personal liability may have been initially reasonable, his own utter failure to comply with the legal requirements essential to the preservation of the corporate status has served to deprive him of his anticipated insulation from personal liability.

appropriate to order remedial measures regarding those collective-bargaining agreements that are referenced in the short-form agreement signed by Classic but that did not produce any actual contractual obligations because the Companies did not perform any carpentry work within the specified jurisdictions. Thus, General Counsel seeks a remedy limited to “the states in
5 which Respondents have performed carpentry work.” (GC Br. at p. 97.)

Conceding that there is no evidence that the Companies performed any carpentry work in the States of Maine, New Hampshire, and Vermont, the General Counsel does not seek any specific remedy relating to the collective-bargaining agreements listed in the short-form
10 agreement that apply within the boundaries of those jurisdictions. I agree with this view of the inappropriateness of remedial provisions for contracts whose provisions have never been breached. The General Counsel does seek specific remedial provisions regarding the collective-bargaining agreements applicable within the States of Massachusetts and Rhode Island. There is ample evidence that the Companies performed carpentry work in those states.
15 As a consequence, I will recommend imposition of specific remedial orders regarding the collective-bargaining agreements applicable in those two jurisdictions.

The difficulty here is posed by the nature of the record regarding the remaining New England jurisdiction, the State of Connecticut. Specific remedial language is being sought with respect to the contracts between Locals 24, 43, and 210 of the Union and the Connecticut
20 Construction Industries Association, Inc., and the AGC/CCIA Building Contractors Labor Division of Connecticut, Inc. In their thorough, lengthy, and comprehensive brief, counsels for the General Counsel cite only one reference to evidence that they submit would show that the Companies performed any applicable carpentry work within the State of Connecticut. (GC Br. at
25 p. 10, fn. 7.) They point to testimony provided by two officials of the Union, Savoie and DeCosta. Upon review of that testimony and the remainder of the record, I cannot conclude that the General Counsel has met his burden of demonstrating that the Companies breached any provisions of the contracts applicable within Connecticut. There is simply insufficient evidence that they performed any applicable carpentry work within that State.

Turning first to the testimony of Savoie, when asked in broad terms about this geographical issue, he began with a forthright account reporting that Classic, Fragata
30 Construction, Ryan, and R & S performed work in Massachusetts and Rhode Island. He did not mention any work in Connecticut. His remaining testimony on this question continued as follows:
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COUNSEL: Okay. You know if any of these four companies performed any work in Connecticut?

40 SAVOIE: I do now. I didn't know then, but I do now.⁴⁹

COUNSEL: And what's—what company or companies performed work in Connecticut?

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⁴⁹ The ambiguous nature of this response to counsel's leading question vividly illustrates the reason for the rule that generally prohibits a lawyer from posing such questions to his or her own witness. It is impossible to discern whether Savoie's response indicates that he recently
50 learned something about the Companies' purported operations in Connecticut or whether he inferred that they must have operated in that jurisdiction because counsel was now asking him about that location.

SAVOIE: I'm not sure. I think it might have been Ryan or R & S.

(Tr. 312.) When reduced to its essence, this testimony merely establishes that Savoie was unable to testify that any of the Companies performed carpentry work in Connecticut. He was simply, "not sure." (Tr. 312.)

The testimony on this issue from DeCosta was no more precise. When asked where Classic and Fragata Construction performed their carpentry work, he replied, "I know of Rhode Island and Massachusetts." (Tr. 385.) He then added:

I know from yesterday, looking through some of the evidence that was given from the checks, that there was a job in Connecticut for one of the companies. Right now I don't recollect which one of the compan[ies].

(Tr. 385.) Apart from his inability to describe which company may have been involved, DeCosta's brief account fails to provide any specific information about the job, including when it was performed and whether it involved any carpentry work.

The vague testimony from the two union officials whose own operations were limited to Rhode Island and Massachusetts was not bolstered by any other testimony. In particular, the General Counsel did not produce testimony from any official of the Union responsible for its operations in Connecticut. Beyond this, counsel did not elicit any testimony from employees of the Companies regarding any carpentry jobs in that State. On this record, I cannot find that any of the Respondents committed a breach of the collective-bargaining agreements covering Connecticut. As a result, the situation is identical that which applies to the contracts governing work in Maine, New Hampshire, and Vermont. Because the situation is the same, it is similarly inappropriate to recommend remedial language for any of the contracts covering those four jurisdictions.

As to additional affirmative relief, I shall order that a make-whole remedy shall be provided to the each of the unit employees of each of the Respondents for any loss of earnings or other benefits that they may have suffered as a result of the Respondents' failure to comply with the applicable collective-bargaining agreements since May 1, 2005.⁵⁰ This remedy shall include the payment of all contractually-required sums on behalf of these employees to the Union's various welfare funds that they have failed to make, including any additional amounts due to the funds on behalf of unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). The Respondents shall reimburse unit employees for any expenses resulting from their failure to make the required contributions as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971). Interest shall be awarded as prescribed in *New Horizons for the*

⁵⁰ In their brief, counsels for the General Counsel suggest that the commencement date for such relief be set as February 8, 2005. (GC Br. at p. 99.) They do not explain why they chose this date. My own review of the record does not indicate that any significant event occurred on the suggested date. While selection of the date necessarily involves some degree of arbitrariness, I have picked May 1, 2005, because it is consistent with the allegation in the complaint which asserts that the key unfair labor practices commenced in that month. (GC Exh. 1(tt), at par. 27(b).) Thus, the Respondents have been on notice that their unlawful conduct since that date is subject to remediation.

Retarded, 283 NLRB 1173 (1987).⁵¹ Finally, I shall order that the Respondents provide the Union with the information that it requested in its letter of May 12, 2005, and the accompanying questionnaire.

5 As is customary, I shall order the Respondents to post a notice as set forth in the appendix to this decision. Due to the nature of employment in the construction industry and the dissolution of the corporations involved in this case, I shall also order that copies of the notice, signed by the Respondents' authorized representative, shall be furnished to the Union so that, if desired, it may post the notice at its offices and meeting places. Finally, it appears that the corporate respondents are no longer in business. As is customary, I will order that notices be mailed to all affected employees of those corporations that are no longer in business.

10 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵²

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ORDER

20 The Respondents, Classic Lath & Plastering, Inc., Fragata Construction, Inc., Ryan Builders, Inc., and R & S Drywall, Inc., all of Westport, Massachusetts, and their officers, agents, successors, and assigns, and Octavio Fragata, of Gulf Breeze, Florida, individually, and his agents, successors, and assigns, shall

1. Cease and desist from

25 (a) Repudiating and refusing to honor the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America, and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc., unless and until they have ended their assent to such agreements pursuant to the terms of such agreements.

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(b) Repudiating and refusing to honor the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Construction Industries of Massachusetts, unless and until they have ended their assent to such agreements pursuant to

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40 ⁵¹ In what has become a recurring issue, the General Counsel requests that I depart from the Board's longstanding practice in this area by ordering the payment of compound interest. I have explained my reasons for denying this request in some detail in my decisions in *Frye Electric*, 352 NLRB 345, 358-359 (2008), and *Kentucky River Medical Center*, 2008 WL 2951423 (2008). I will simply add that the Board continues to reject this requested departure from the rule in *New Horizons*, observing that, "we are not prepared at this time to deviate from our current practice of assessing simple interest." *Morse Operations, Inc.*, 353 NLRB No. 40, slip op. at fn. 3 (2008). See also *Austin Printing Co.*, 353 NLRB No. 54, slip op. at fn. 3 (2008), where the Board cites numerous recent cases in which it has refused this request that it alter its current practice.

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50 ⁵² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

the terms of such agreements.

5 (c) Failing to provide the New England Regional Council of Carpenters and Local Union No. 94 information requested by it where such information is necessary for, and relevant to, the Union's performance of its duties as the collective-bargaining representative of the Respondents' employees in the unit defined as all employees coming within the classifications set forth in article I of each applicable collective-bargaining agreement described above in paragraphs (a) and (b).

10 (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

15 (a) Comply with all of the terms and conditions of the short-form agreement between the United Brotherhood of Carpenters and Joiners of America, New England Regional Council of Carpenters and Classic Lath & Plastering, Inc., executed on November 18, 2001; the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America and the Labor Relations
20 Division of the Associated General Contractors of Rhode Island, Inc.; and the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the
25 Construction Industries of Massachusetts, unless and until assent to those agreements has been properly terminated pursuant to the terms of such agreements.

30 (b) Make whole their unit employees by paying to them the amounts due by reason of the Respondents' failure since May 1, 2005, to comply with the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America, and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc., and any successor or follow-on agreements, as provided in the remedy section of this decision.

35 (c) Make whole their unit employees by paying to them the amounts due by reason of the Respondents' failure since May 1, 2005, to comply with the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Labor Relations Division of the
40 Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Construction Industries of Massachusetts, and any successor or follow-on agreements, as provided in the remedy section of this decision.

45 (d) Make whole the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America and its associated benefit funds by making the payments mandated by the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America, and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc., and any successor or follow-on agreements that the
50 Respondents have failed to make since May 1, 2005, as provided in the remedy section of this decision.

5 (e) Make whole the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America and its associated benefit funds by making the payments mandated by the collective-bargaining agreements between between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Construction Industries of Massachusetts, and any successor or follow-on agreements that the Respondents have failed to make since May 1, 2005, as provided in the remedy section of this decision.

10 (f) Make whole their unit employees by reimbursing them, with interest, for any expenses that they may have incurred that resulted from the Respondents failure to make required benefit fund payments since May 1, 2005.

15 (g) Provide to the New England Regional Council of Carpenters and Local Union No. 94 the information sought by the Union in its May 12, 2005 letter and questionnaire.

20 (h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

25 (i) Within 14 days after service by the Region, post at its facilities in Westport, Massachusetts, copies of the attached notice marked "Appendix."⁵³ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since May 1, 2005. The Respondents shall also sign and return to the Regional Director sufficient copies of the notice for posting by the New England Regional Council of Carpenters, if willing, at all places where notices to members are customarily posted.

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⁵³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

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Dated, Washington, D.C. February 12, 2009

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Paul Buxbaum
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT repudiate or refuse to honor the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America, and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc., unless and until we have ended our assent to such agreements pursuant to the terms of those agreements.

WE WILL NOT repudiate or refuse to honor the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Construction Industries of Massachusetts, unless and until we have ended our assent to such agreements pursuant to the terms of those agreements.

WE WILL NOT fail to provide information requested by the New England Regional Council of Carpenters and Local Union No. 94, where such information is necessary for, and relevant to, the Union's performance of its duties as the collective-bargaining representative of our employees in the unit defined as all employees coming within the classifications set forth in article I of each collective-bargaining agreement described above.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Federal labor law.

WE WILL comply with all of the terms and conditions of the short-form agreement between the United Brotherhood of Carpenters and Joiners of America, New England Regional Council of Carpenters and Classic Lath & Plastering, Inc., executed on November 18, 2001; the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc.; and the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the

Construction Industries of Massachusetts, unless and until assent to those agreements has been properly terminated pursuant to the terms of such agreements.

WE WILL make whole our unit employees by paying to them, with interest, the amounts due by reason of our failure to comply with the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America, and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc., and any successor or follow-on agreements, since May 1, 2005.

WE WILL make whole our unit employees by paying to them, with interest, the amounts due by reason of our failure to comply with the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Construction Industries of Massachusetts, and any successor or follow-on agreements, since May 1, 2005.

WE WILL make whole the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America and its associated benefit funds by making the payments mandated by the collective-bargaining agreements between the New England Regional Council of Carpenters, Local Union No. 94 of the United Brotherhood of Carpenters and Joiners of America, and the Labor Relations Division of the Associated General Contractors of Rhode Island, Inc., and any successor or follow-on agreements that we have failed to make since May 1, 2005.

WE WILL make whole the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America and its associated benefit funds by making the payments mandated by the collective-bargaining agreements between the New England Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc., the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., and the Labor Relations Division of the Construction Industries of Massachusetts, and any successor or follow-on agreements that we have failed to make since May 1, 2005.

WE WILL make whole our unit employees by reimbursing them, with interest, for any expenses that they may have incurred that resulted from our failure to make required benefit fund payments since May 1, 2005.

WE WILL provide to the New England Regional Council of Carpenters and Local Union No. 94 the information sought by the Union in its letter and questionnaire dated May 12, 2005.

Classic Lath & Plastering, Inc., and its alter egos,
Fragata Construction, Inc., Ryan Builders, Inc.,
R & S Drywall, Inc., and Octavio Fragata

(Employer)

Dated _____ By _____
(Representative) (Title)

JD-04-09
Boston, Massachusetts

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601

Boston, Massachusetts 02222-1072

Hours of Operation: 8:30 a.m. to 5 p.m.

617-565-6700.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.