UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, *ex rel.* RALPH BILLINGTON, MICHAEL ACEVES, and SHARON DORMAN Plaintiff, v. HCL TECHNOLOGIES LTD. and HCL AMERICA, INC., Defendants.	Civil Action No. 3:19-CV-1185 (MPS) JURY TRIAL DEMANDED Filed: September 7, 2021

FOURTH AMENDED COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT

Pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733, Plaintiff-Relators Ralph Billington, Michael Aceves, and Sharon Dorman bring this *qui tam* Complaint on behalf of the United States against Defendants HCL Technologies Ltd. and HCL America, Inc. (collectively "HCL") and allege as follows:

INTRODUCTION

1. This action concerns HCL's egregious and widespread fraud against the United States in applying for and securing work visas. HCL engages in visa fraud so that it can import and employ cheap labor (primarily from India) in the U.S. and avoid having to employ higher-priced Americans.

2. HCL's fraudulent scheme involves three types of visas: H-1B, L-1, and B-1 visas. With respect to each type of visa, HCL submits to the government fraudulent applications and supporting documents each falsified specifically to meet the requirements of the visa type HCL is seeking. For example, in its visa applications and supporting documents, HCL falsely represents that: (a) visa recipients will be paid a required salary in accordance with U.S. law; (b) jobs exist (which do not) that visa recipients will assume and perform in the U.S.; and (c) visa recipients will perform specific tasks, have managerial responsibilities, or have subject matter expertise as required by the specific visa type HCL seeks. In addition, HCL applies for cheaper visas for positions and work for which more expensive H-1B visa applications are required, which enables HCL to defraud the government out of its rightful application fees and also to avoid the legislative cap on the number of the more expensive visas the government awards annually.

3. HCL's scheme has allowed it to grow and maintain a robust "visa ready" workforce in India comprised of employees who have been issued visas by the United States government without yet having any work in the country. These employees are available to fill open U.S. jobs on a moment's notice, and at a meager wage, so that HCL can minimize employing Americans. This practice has allowed HCL to reduce its own costs by employing cheap labor from India in the U.S. rather than having to pay higher American salaries.

4. Each such "visa ready" employee represents a violation of law and several acts of fraud by HCL against the United States government.

5. HCL's scheme has deprived the government of significant tax revenue, substantial visa application fees, and its interest in work visas in violation of 31 U.S.C. § 3729(a)(1)(G), 31 U.S.C. § 3729(a)(1)(A), and 31 U.S.C. § 3729(a)(1)(B).

6. Relators seek to recover all damages, civil penalties, and other remedies available under the False Claims Act from HCL.

THE PARTIES

7. The Plaintiff in this action is the United States of America, by and through Relators Ralph Billington, Michael Aceves, and Sharon Dorman. Mr. Billington is a former HCL senior executive and a resident of Tennessee. Mr. Aceves is a former Service Delivery Manager for HCL and a resident of Texas. Ms. Dorman also resides in Texas and worked for HCL as a Deputy Manager.

8. Defendant HCL Technologies Ltd. is a multinational company that provides information technology ("IT") services, products, and engineering, including business consulting and outsourcing services, to clients located worldwide. HCL Technologies Ltd. is headquartered in Noida, India and maintains its U.S. headquarters in Sunnyvale, California.

9. Defendant HCL America, Inc. is a wholly-owned subsidiary of HCL Technologies Limited and was incorporated in California in 1988. HCL America, Inc. has 26 offices within the United States and is also headquartered in Sunnyvale, California. HCL America, Inc. provides business services similar to HCL Technologies Limited, including consulting and information technology services.

10. At all times relevant thereto, HCL conducted business in the State of Connecticut and submitted fraudulent visa petitions and supporting documentation in the State.

JURISDICTION AND VENUE

11. This action arises under the False Claims Act, 31 U.S.C. § 3729 *et seq*.

12. Subject Matter Jurisdiction. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 3732(a) (False Claims Act), 28 U.S.C. § 1345 (United States as Plaintiff), and 28 U.S.C. § 1331 (Federal Question).

13. Personal Jurisdiction. This Court has personal jurisdiction because HCL regularly provides information technology and consulting services in this District and the allegations set forth in this Complaint partially arise from and relate to that conduct.

14. Venue. Venue is proper in the District of Connecticut under 28 U.S.C. § 1391(b)-(c) and 31 U.S.C. § 3732(a) because HCL conducts business within this District, and committed acts giving rise to this Action within this District, in violation of 31 U.S.C. § 3729.

FACTUAL ALLEGATIONS

A. HCL's Business Model

15. HCL has 26 offices and employs approximately 20,000 employees in the United States. HCL earned over $10 billion in revenue in the past fiscal year and derives approximately 63% of its revenue from the United States.

16. HCL contracts with America corporations to provide IT-related services. HCL's "delivery workforce" provides these IT services to clients. HCL also employs a

sales workforce to generate business, secure new clients, and maintain existing client relationships.

17. American corporations rely on HCL to provide IT resources and services in lieu of maintaining in-house IT personnel. HCL's work for corporate clients is project-based, meaning a client will contract with HCL to perform specific tasks or projects, and HCL's employees are staffed to a client for a particular project position. To fill a position servicing a client, HCL considers both internal candidates (existing HCL employees) and external candidates (applicants to HCL), selecting only one person to fill a given position on the project.

18. HCL competes for business based on price. By minimizing its own costs for providing technological services, HCL is able to offer lower prices to clients and still earn a substantial profit. Employee pay is a primary cost in HCL's service offerings of its services to U.S.-based clients. If HCL can employ people who are willing to work for less, it can better compete for corporate clients and reap larger profits.

19. India is a poor country with low salaries. In the technology industry, Indians earn much less than Americans. Thus, in order to reduce its costs of providing technology services in America, HCL has adopted a business model in which it mostly employs Indian citizens in the United States for whom it has secured a visa, as these employees are paid a fraction of what American technology workers demand.

20. The majority of HCL's 20,000-person U.S. workforce consists of visa workers. *See* Ex. 3 at 2 (workforce of about 1,000 on UTC project is "<5%" "Local Nationals," "Previously 0%"). Of those visa workers, the vast majority come from India.

21. To work in the United States, Indian citizens require work visas issued by the federal government. HCL applies for and secures three types of visas for its foreign workforce: H-1B, L-1, and B-1 visas.

22. H-1B visas. H-1B visas are intended to bring foreign workers to the United States to perform services in specialty occupations when there are insufficient workers in the U.S. to perform a specific job. *See* 8 C.F.R. § 214.2(h)(1)(ii)(B); 8 C.F.R. § 214(i)(1). As part of each H-1B visa application, the petitioner must establish that an actual job at a specific location is available for the person for whom the company seeks the visa. *See* 20 C.F.R. § 655.730(c)(4) (discussing required content of Labor Condition Applications that accompany visa petitions). H-1B visa petitions cannot be filed for speculative or future work. *See* PM-602-0157 at 4, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Feb. 22, 2018), https://bit.ly/2JoOxLn ("When a beneficiary will be placed at one or more third-party worksites, the petitioner must demonstrate that it has specific and non-speculative qualifying assignments in a specialty occupation for the beneficiary for the entire time requested on the petition.").

23. In applying for an H-1B visa, HCL must submit a Labor Condition Application ("LCA") in which it describes the visa worker's intended occupation and employment location and attests that: (a) the job for which a visa is sought actually

exists and (b) that HCL will pay the visa holder a "prevailing wage" (*i.e.*, at least as much as HCL pays American workers for the same work in the same geography). *See id.*; 20 C.F.R. § 655.731(a). H1-B dependent employers (those with 51 or more workers whose workforce consists of at least 15% H-1B visa holders) such as HCL must provide additional attestations on the LCA, including that the employer will not displace U.S. workers with the H-1B employee and that the employer engaged in good faith efforts to recruit a U.S. worker for the position before filing the LCA. *See* 20 CFR § 655.738; 20 CFR § 655.739. H-1B dependent employers can avoid providing these additional attestations, however, if the LCA is only used for an "exempt" H-1B employee – *i.e.*, an individual who holds a master's degree or who will be paid $60,000 or more annually once in the U.S. *See* 20 CFR § 655.737.

24. An LCA must be sent electronically by the employer to employees at the worksite where the H-1B visa holder will be employed or posted at two conspicuous locations at the prospective worksite for ten days before being certified by the Department of Labor. 20 CFR § 655.734. And each H-1B visa petition must be accompanied by an approved LCA. *See* Form I-129 Instructions for Petition for Nonimmigration Worker at 7, USCIS, *available at* https://www.uscis.gov/sites/default/files/files/form/i-129instr.pdf. Failure to include the certified LCA with the visa petition will led to its denial by the United States Citizenship and Immigration Services ("USCIS").

25. In addition to LCAs, the federal government will review other evidence submitted with the visa application to demonstrate that a job actually exists for the

intended visa recipient, including letters (sometimes called invitation letters) setting forth job duties, qualifications, salary, supervisor, etc. of the H-1B worker.

26. The government issues only 65,000 H-1B visas each year (plus an additional 20,000 for individuals with graduate degrees from American universities). The government awards H-1B visas through a lottery process, which is extremely competitive. Companies can begin applying for H-1B visas on April 1 of a calendar year, and the government closes the application process once the H-1B cap is met. The cap is generally met within the first five business days. For example, in 2019, the H-1B filing period opened on April 1, and the USCIS announced on April 5 that it had received sufficient H-1B visa petitions to reach the 65,000 cap. In total, 190,098 H-1B visa petitions were received by USCIS during the 2019 filing period, and 65,000 H-1B visas were then awarded through a lottery.

27. H-1B visas are awarded by the government in October. Thus, it takes six months from the date on which an H-1B visa application is submitted to the government for its approval. The delay obtaining an H-1B visa need can far exceed this six month application-to-approval time frame considering that USCIS only accepts H-1B applications for a short window in April of each year. Thus, H-1B needs that arises in May (or later) of a given year will have to wait roughly 1.5 years (until two Octobers hence) even to have a chance for an H-1B visa through the lottery process.

28. H-1B visa holders may work in the United States for a maximum initial stay of three years, followed by another three year extension, and then on a year-to-

year basis for those visa holders seeking permanent U.S. residency. H-1B visa petitions are submitted under penalty of perjury and cost $2,460 per application.[1]

29. L-1 visas. L-1 visas are intended for a substantially narrower range of work and workers than H-1B visas. There are two types of L-1 visas: L-1A and L-1B visas. L-1A visas are available only for management-level employees—*i.e.*, those that principally supervise and control the work of other personnel, including the hiring, firing, and/or promotion of subordinate employees, or "if no other employee is directly supervised, [he or she must] function at a senior level within the organization hierarchy or with respect to the function managed." *See* 8 C.F.R. § 214.2(l)(1)(ii)(B). L-1B visas, on the other hand, are reserved for subject matter experts—*i.e.*, employees with "an advanced level of knowledge or expertise in the organization's processes or procedures." *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). The L-1B petitioner "has . . . [the] burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, [] that the beneficiary's position requires such knowledge[, and] that qualities of [the company's] own processes or products require this employee to have knowledge beyond what is common in the industry." File No. [REDACTED] at 8-9, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Oct. 14, 2014), https://bit.ly/3p19MCl.

30. As with H-1B visas, an L-1 visa applicant is required to provide detailed documentation in support of the application.

[1] *See* H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (last accessed Jan. 27, 2021), *available at* https://bit.ly/3qp3qhg (listing $460 filing fee, $1,500 American Competitiveness and Workforce Improvement Act fee, and $500 Fraud Prevention and Detection fee).

31. Given the limited scope of work for which an L-1 visa can be awarded, the government has no cap on the number of L-1 visas it issues each year. L-1 visas also do not have a prevailing wage requirement like H-1B visas. L-1 visa holders may work in the United Sates for a maximum initial stay of three years, which may be extended once (for L-1B visas) or twice (for L-1A visas) in increments of two years. L-1 petitions are also submitted under penalty of perjury and cost $1,460 per application ($1,000 less than an H-1B visa application).[2]

32. B-1 visas. The B-1 visa is a short-term visitor visa that allows a foreign national to temporarily enter the United States for limited business purposes, such as attending a business meeting or conference, negotiating a contract, or participating in short-term training. B-1 visa holders may not perform skilled or unskilled labor while in the United States. *See* 8 U.S.C. § 1101(a)(15)(B); 9 Dep't of State, Foreign Affairs Manual § 402.2-5(A) (May 13, 2019). As such, B-1 visa holders are prohibited from performing *any* billable client work for their employer while in the U.S.

33. A B-1 visa applicant is required to provide detailed documentation in support of the application that the employee will be traveling to the U.S. for purposes that comport with B-1 visa law.

[2] *See* H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (last accessed Jan. 27, 2021), *available at* https://bit.ly/3qp3qhg (listing $460 filing fee and $500 Fraud Prevention and Detection fee).

34. B-1 visas cost $160 per application ($2,300 less than H-1B applications), and can be applied for and obtained year-round.[3]

B. Relator Ralph Billington

35. HCL hired Relator Ralph Billington in May 2016 as an Associate Vice President and Client Partner in its manufacturing vertical. In that role, he was responsible for developing new business and ensuring the success of existing client projects.

36. In his first year with HCL, Mr. Billington was responsible for HCL's business with EMC Corporation (later acquired by Dell).

37. EMC Corporation is a data storage company in the greater Boston, Massachusetts area.

38. After the first year, Mr. Billington took over HCL's business with United Technologies Corporation ("UTC").

39. UTC is an aerospace company in Hartford, Connecticut. Mr. Billington reported to Siba Satapathy, HCL's Senior Vice President – Aerospace & Defense.

40. Mr. Billington oversaw about 1,000 HCL employees on the UTC project.

41. Mr. Billington's position gave him considerable access to, and knowledge of, HCL's visa and staffing practices.

42. As part of his job, Mr. Billington had responsibility for ensuring his projects' profitability and regularly reviewed reports concerning project margins and financials.

[3] *See* Fee for Visa Services, UNITED STATES DEPARTMENT OF STATE – BUREAU OF CONSULAR AFFAIRS (last accessed Jan. 27, 2021), *available at* https://bit.ly/3o71eZf.

43. He was also intimately involved in contract negotiations, which included staffing matters, as part of his responsibility to secure new business for HCL.

44. Mr. Billington left HCL in January 2019 upon his retirement, which was motivated in significant part by the illegal practices he observed at HCL.

C. Relator Michael Aceves

45. Relator Michael Aceves worked for HCL as a Service Delivery Manager from 2011 through August 2019 in Dallas, Texas.

46. In his Service Delivery Manager role, Mr. Aceves supported five tracks (*i.e.*, technology groups) and was responsible for working directly with account managers to support current business and to grow new business.

47. The two main accounts Mr. Aceves serviced were Oncor Electric Delivery Company ("Oncor") and Keurig / Dr. Pepper, but he also worked on the Pepsi client account briefly prior to his termination in August 2019.

48. As part of his job supporting and growing new business, Mr. Aceves oversaw the addition of HCL resources to client accounts, including the hiring and staffing of visa-dependent employees on those accounts. He was responsible for reviewing and approving LCAs at client sites in support of H1-B visa petitions and securing client invitation letters in support of HCL's visa petitions.

49. HCL terminated Mr. Aceves' employment in August 2019 after removing him from the Dr. Pepper client project and placing him in an unallocated status referred to as being on the "bench."

D. Relator Sharon Dorman

50. HCL hired Relator Sharon Dorman in July 2011 as a contractor and converted her to a full-time employee in 2012.

51. Ms. Dorman worked for HCL as a Deputy Manager in Dallas, Texas, serving as the project and service delivery coordinator for Energy Future Holdings ("EFH") and its subsidiary Oncor client accounts for the majority of her tenure with the company. Ms. Dorman also filled a project coordinator role at Dean Foods for her last six months with HCL.

52. In her Deputy Manager role, Ms. Dorman was responsible for printing and posting LCAs and LCA notices, and having LCAs signed before sending them to the immigration department on the EFH and Oncor client accounts. She also regularly communicated with HCL's immigration department and was intimately involved in HCL's visa practices.

53. HCL terminated Ms. Dorman on December 1, 2017 after having removed her from the Dean Foods project and having placed her on the "bench."

E. HCL's Fraudulent Scheme

54. HCL's business model is predicated on being able to use cheap foreign labor to staff positions in the United States, affording HCL a competitive advantage in the IT services industry. HCL recognizes that its "reliance on visa resources" is "extreme." *See* Ex. 2 at 3.

55. The United States visa system, though, is not designed to enable large-scale reliance on visa workers, much less visa workers who will accept a fraction of the pay demanded by Americans. For starters, only H-1B visas are generally

available for the type of work HCL needs to service clients in the U.S.—*i.e.*, nuts-and-bolts, day-to-day IT project work for which clients pay HCL. But H-1B visas are in limited supply, are difficult to secure given the competitive lottery process by which they are awarded, and have prevailing wage requirements that far exceed what HCL pays its foreign employees for whom it seeks visas.

56. In addition, it takes a long time to secure visas—not just H-1B visas (which take between 6 months and 1.5 years to receive after a visa need first arises), but also L-1 and B-1 visas. HCL thus has to take the time to prepare paperwork, collect documentary evidence and wait for government review of the paperwork before learning the fate of individual visa applications. And visa approval is always uncertain. Sometimes the government will ask for additional supporting documentation (referred to as Requests for Evidence or "RFEs") before making a visa decision, and the government could always deny a visa application. During Mr. Billington's tenure with HCL, HCL began "experiencing more RFEs," or requests for evidence supporting visa applications from the USCIS. *See* Ex. 6 at 1; Ex. 27 at 927 ("[redacted]").

57. And H-1B visa applications, of course, must go through the competitive lottery process, such that HCL can only expect to receive a fraction of the H-1B visas for which it applies.

58. In servicing clients in the U.S., HCL does not have the luxury of time or uncertainty because as soon as it secures a client's business, HCL must have staff

available to fulfill the client's service needs. Otherwise, HCL risks losing the business altogether.

59. Given these pressures, HCL has elected to engage in a vast visa fraud scheme to create a cheap foreign workforce to whom visas have been issued by the U.S. government when the purported jobs or work against which the visas were issued do not in fact exist. As a result of this scheme, HCL visa holders are free to travel to the U.S. to perform future work when it becomes available, minimizing HCL's burden of having to hire or staff its client's project with more expensive Americans.

60. HCL refers internally to foreign workers who have been issued a visa without any work available in the U.S. as being "visa ready"—*i.e.*, ready with approved (but unused) visas to travel to the U.S. on a moment's notice to perform work when it becomes available in the future. HCL maintains a substantial number of so-called "visa ready" workers in India to fill positions in the U.S. as they arise. *See, e.g.*, Ex. 4 at 2 ("We have some urgent immediate requirements for UTC SIS at onsite (Burnsville, MN). We need HCL internal visa holders currently available at US or visa ready(L1) engineers at India for these positions."); Ex. 5 ("I found 2 internal suitable candidates . . . . LCA amendment and travel arrangements may take 4-6 weeks . . . . [T]hey start from offshore and travel onsite after 4-6 weeks."); Ex. 28 at 117 [redacted]").

61. When staffing client projects in the U.S., these visa ready individuals are given preference for open positions, to the disadvantage of both HCL applicants and U.S. employees who do not require a visa. *See, e.g.*, Ex. 29 at 11 [redacted] Ex. 30 [redacted] Ex. 31 at 084 [redacted] Ex. 32 at 083 [redacted]); Ex. 33 at 11 [redacted]; Ex. 34 [redacted]).

62. When HCL secures a visa for a position and client for which it has no present staffing need, the employee either remains "visa ready" abroad until a position becomes available in the U.S., at which point an amended visa petition and LCA is filed to reflect the actual location where the employee will be working in the U.S. *See, e.g.*, Ex. 25 at 4-5 (S. Dorman: "Greetings ISG. Sanjay Gupta's LCA situation is similar to Gopinath Venkatesh. Their original LCA was submitted under

EFH but they have since bee[n] transferred to the Oncor project. With your permission, or a new LCA form, I can post LCA I-200-14185-830174 with the correct address and change the number of H-1B sought to '2.'"); Ex. 35 at 031 [redacted]).

63. The existence of HCL's bench of "visa ready" individuals in India was and is well-known throughout the company and freely discussed in staffing emails. *See, e.g.*, Ex. 19 ("I found 2 internal suitable candidates[.] . . . Both of them are in India and have valid H1 visa. LCA amendment and travel arrangements may take 4-6 weeks."); Ex. 20 ("We have some urgent immediate requirements for UTC SIS at onsite (Burnsville, MN). We need HCL internal visa holders currently available at US or visa ready(L1) engineers at India for these positions."); Ex. 36 at 3 [redacted]); Ex. 37 at 1 [redacted]).

64. HCL's scheme includes three types of fraud: (i) failing to pay H-1B visa recipients required salaries (thereby saving on employee costs and reducing federal taxes paid); (ii) falsification of jobs and work for which visas are sought; and (iii) applying for L-1 visas for work for which an H-1B visa is required and B-1 visas for work for which an H-1B or L-1 visa is required (thereby reducing the amount paid to the federal government in visa application filing fees).

i. Underpayment of H-1B Visa Workers

65. Given the difficulties in securing work visas, including the annual H-1B visa cap, HCL cannot employ only visa workers in the U.S. It must also employ "local hires," which largely consist of Americans. In order to obtain an H-1B visa, HCL must certify to the government that, once an H-1B visa holder is in the United States, HCL will pay the employee at least as much as it pays local hires performing the same work in the same geography. *See* 20 C.F.R. § 655.731(a). However, HCL has no intention of paying H-1B visa workers as much as local hires, as H-1B visa workers are willing to work for much less than their American counterparts.

66. As HCL admits, [redacted] compared to HCL's local hires. Ex. 58 at 669; *see also* Ex. 59 at 245 [redacted]).

67. HCL often refers to its visa holding employees as "landed resources" and analyzes how much less it can pay its "landed resources" compared to local hires. *See, e.g.,* Ex. 60 at 972 [redacted]); Ex. 61 at 325 ("Cost of local hiring significantly higher than landed"); Ex. 43 at 9 [redacted]

68. Because local hires are more expensive than visa workers, HCL has implemented company-wide guidelines for its H-1B nominations to minimize the local hires it must employ in roles where the difference in pay between local hires and H-1B visa holders is greatest. Ex. 57 at 1. Specifically, HCL analyzed the roles that cost substantially more to employ local hires over employees on H-1B visas, and maximized the H-1B nominations for these roles to minimize its local hires employed in those roles. *See id.* (HCL's H-1B nominations have been "carefully constructed along with the delivery teams focusing on" the "[c]ost of local hiring [being] significantly higher than landed [resources (i.e., visa workers] / margin impact on specific customers."). Through this analysis, for each line of business ("LOB"), HCL "crunched down the number of roles" for which it sought H-1B visas, resulting in "~90% of nominations . . . on 20 or less roles and skills." *Id.*

69. For example, HCL grouped 70% of all H-1B nominations for the Apps & SI LOB to just 6 skills groups, "where local hiring [wa]s 70% more expensive than landed" resources, thereby minimizing the number of local hires it needed to employ in these roles. *Id.* at 4, 10; *see also id.* at 10 (Oracle skill 64% more expensive for citizens vs. visa workers). This LOB was allocated 1,770 H-1B visa nominations that year, given the fact that for all positions within Apps & SI, the "[additional resource cost] difference between Landed and Local hires" was 58%, meaning that locals were, on average 58% more expensive than visa workers to employ. *Id.* at 4. HCL's analysis of the pay differential between its local hires and H-1B visa holders is in the following chart that compares the additional resource cost ("ARC") of employing "visa workers"

over "citizens" for Apps & SI LOB roles, with the fifth column reflecting the percentage amount HCL pays citizens over H-1B visa holders for the associated role:

Skill	Citizen				Landed - Visa Dependent		
	#	Average ARC	% HC	Citizen Vs Landed ARC	#	Average ARC	% HC
Grand Total	766	120,976			1,851	82,426	
Developer - Senio	92	115,713	22%	43%	169	81,070	41%
Technical Lead	132	122,661	14%	51%	343	81,023	36%
Support Engineer	35	119,933	19%	52%	91	79,036	50%
Project Manager	45	131,147	16%	56%	122	83,866	44%
Track Lead	41	126,362	17%	52%	127	82,878	54%
Technical Consul	19	122,768	15%	58%	35	77,927	27%
Developer - Junio	21	110,796	32%	26%	27	87,769	41%
Project Lead	30	128,656	13%	62%	73	79,231	31%
Lead Consultant	17	117,250	17%	42%	52	82,843	52%
Support Engineer	5	91,955	21%	7%	9	85,883	38%
Test Lead	19	127,740	13%	52%	60	83,918	41%
Project Manager	14	131,522	15%	46%	64	89,782	68%
Tester - Senior	7	119,443	10%	50%	29	79,476	42%
Consultant - Seni	4	107,000	17%	37%	6	77,920	26%
Business Analyst	15	133,040	16%	74%	26	76,616	28%
Technical Archite	25	119,442	22%	43%	48	83,438	43%
Program Manage	15	130,054	19%	53%	47	85,127	59%
Test Manager	11	142,177	19%	67%	28	84,939	49%
SDM	8	124,919	13%	46%	42	85,434	67%
Functional Consu	3	120,800	10%	54%	11	78,242	37%

70. HCL conducts analyses like that reflected in the above chart for other LOBs, and the results of the analyses are substantially similar. *See id.* at 5-6 (for Engineering and R&D Services ("ERS") LOB, "local hiring [wa]s 30% more expensive than landed" and finding an almost $40,000 difference in salaries for one skill set); *id.* at 4, 12, 13 (for Infra LOB, local hiring on average 30% more expensive than local

resources, and 71% more expensive for employees performing Senior Functional Consultant roles).

71. HCL has also compared, by job band, the salaries of local hires and visa-dependent employees. Ex. 39 at 3. HCL noted that there was a [redacted] associated with utilizing underpaid H-1B visa workers in lieu of citizens. *See id.* [redacted]. Most of HCL's H-1B visa holders are in [redacted] (as indicated below). *See id.*

[redacted]

72. Given the costs saving associated with using H-1B visa holders, HCL recommended in March 2016 that [redacted] *Id.* HCL concluded that [redacted]

[redacted] *Id.* at 4.

73. Thus, while HCL knows that it underpays its H-1B visa workers in violation of U.S. visa laws, this practice is the norm within HCL. *See, e.g.*, Ex. 57 (discussing underpayment in ERS, Apps & SI, and Infra LOBs); Ex. 39 at 1, 3 (creating [redacted]); Ex. 63 at 509 at (discussing underpayment of 61 H-1B visa workers in Texas where "[a]ssured salary" was lower than "LCA wages"); Ex. 64 at 639-42 [redacted].

74. In fact, an internal audit of HCL in 2017 revealed that "[o]n review of the current wages paid to local and expat employees and current compensation model, . . . wages paid to locally hired employees were 20 to 25 % higher as compared to expat employees working in the same role at same location." Ex. 65 at 1. *see also* Ex. 66 at 673.

75. HCL's [redacted] Ex. 67 at 267.

76. HCL is well aware that its H-1B visa workers must be paid the higher of the prevailing wage rate or the actual wage rate for the position, but consciously disregards this requirement in order to defraud the government:

[redacted]

[redacted]

Ex. 68 at 448.

77. Given its fraudulent underpayment of wages, HCL refused to share visa employee salary information with those who did not facilitate the fraudulent scheme and goes to considerable lengths to keep its fraudulent underpayment of H-1B visa workers secret. For example, despite Mr. Billington's responsibility for profits and losses on the UTC project, and his role in negotiating contracts, HCL refused to provide him with salary data for its H-1B visa workers. When Mr. Billington requested such data, he was told it was provided on a "need to know" basis, and that he did not need to know this information. However, Mr. Billington was able to discern this information based on HCL's billing rates for visa holders vs. non-visa holders and expected profit margins. And when Mr. Billington questioned HCL executives, including CFO Goutam Rungta, about pay-related discrepancies, suggesting that H-1B employees were not being paid the required wage, his questions were ignored.

78. In addition, in 2018, Mr. Billington sought to hire an American for his sales team—Gregory Handloser. Mr. Billington's manager, Siba Satapathy, refused to approve the hire. When Mr. Billington asked why, Mr. Satapathy told him it was because "Americans are too expensive," and that he could hire two Indian visa workers for the price of one American. Mr. Satapathy said that as a last resort, Mr. Billington could hire an Indian local (*i.e.*, a non-visa dependent Indian located in the United States).

ii. Falsification of Jobs and Work

79. Given the substantial difference in the amount HCL pays visa holders over local hires, HCL has sought to maximize the number of visas it applies for and secures, including H-1B and L-1 visas. This has required that HCL falsifies jobs (and work) for which visas are sought. Fake jobs and duties are identified in LCAs posted at client sites[4] and in applications and materials submitted to the government as evidence that the jobs for which visas are sought actually exist in the U.S. This practice occurs throughout the organization, and executives in various business units are asked to sign visa application paperwork and approve LCAs for jobs that do not exist. *See, e.g.*, Ex. 38 at 689-90 [redacted]; Ex. 57 at 5 ("545 [H-1B] nominations [in Engineering and R&D Services] are for the same customer the resources are currently working on, 320 are for new customers and *107 nominations are unmapped to customers*") (emphasis added); *id.* at 1 (H-1B nominations based on "[e]xpected headcount growth in US").

80. For instance, it is typical for HCL to file *three times* as many H-1B visa applications as its actual demand to maximize the number of visas it receives in the

[4] Specifically, even when HCL has no immediate staffing need, it will post LCAs at client sites which certify, in purported compliance with 20 CFR § 655.731(a), the prospective visa worker's intended occupation, employment location, and wage rate in the U.S. When there is a legitimate staffing need at a client site, HCL exaggerates the number open positions on its LCA filings. *See* Ex. 41 (excerpt of [redacted]

lottery process. *See* Ex. 57 at 3 (recommending the filing of 1,770 H-1Bs for net demand of 590). Ex. 39 at 5 [redacted] Ex. 40 at 758 [redacted]

81. Once onshore, H-1B visa holders often perform roles that do not match the job listed on their LCA and visa petition, given that the jobs for which visas were sought did not actually exist. *See, e.g.*, Ex. 42 at 606-07 [redacted]

82. In support of applications seeking visas for jobs that do not actually exist, HCL often submits fraudulent invitation letters with false representations concerning the work that visa recipients would be performing in the U.S. Mr. Billington was one of a number of executives directed to sign such letters, including for visa applicants who Mr. Billington did not know and who never reported to him onsite, contrary to representations made in the fraudulent invitation letters.

83. For instance, on February 15, 2018, Mr. Billington was required to sign a letter in support of an H-1B visa application for Pavan Kumar Karanam Chennampalli, a delivery-side employee. Ex. 7 at 1. Even though Mr. Billington did

not oversee delivery-side employees, the letter claimed that Mr. Chennampalli "[would] be reporting to [Mr. Billington]" and that he would "be responsible for all his /her activities during the period of assignment." Ex. 8 at 1. When Mr. Billington pushed back on signing the letter, he was told that this was "a practice from ages," and that the "person who signs [the paperwork] should be based out in USA." Ex. 7 at 1.

84. Mr. Chennampalli's H-1B visa application was subsequently denied, as several months later, on or about April 2, 2018, Mr. Billington was required to sign a letter in support of *another* visa application for Mr. Chennampalli—this time for an L-1B visa. Ex. 9 at 2. Before signing, Mr. Billington asked a colleague for confirmation that the representations in the letter about Mr. Chennampalli were "correct and truthful," but he never received a response. *Id*. at 1. Like the letter in support of the H1-B visa, the L-1B letter falsely claimed that Mr. Billington "[would] be reporting to [Mr. Billington]" and that he would "be responsible for all his /her activities during the period of assignment." Ex. 11 at 1.

85. On March 8, 2018, Mr. Billington was directed to sign H-1B visa application paperwork for two more delivery-side employees, Vijay Kumar Bojjagani and Samantha Thoutam. Ex. 12 at 2. Mr. Billington requested that "someone from delivery" sign the paperwork "since I do not know thes[e] individuals and do not know the basis for [their] visa application[s]." Ex. 12 at 1. Ultimately, at HCL's urging, Mr. Billington signed the paperwork, which falsely attested to the experience and work responsibilities of both individuals. Ex. 13; Ex. 14.

86. Mr. Billington complained about the fraudulent nature of the submissions, including on March 14, 2018, after being asked once again to sign visa paperwork for an individual that he did not know. Ex. 15. Mr. Billington responded that he did not know the "context" of the visa application and that "[i]f immigration called me today I would have no clue and that would not be good." *Id.* Mr. Billington reiterated that it would be hard for him to support visa applications for individuals, and departments with which he was unfamiliar. *Id.*

87. Mr. Billington also raised concerns about HCL's practice of falsifying jobs and work to other Client Partners and to HCL's Chief Risk Officer, Kevin McGee on a boat cruise in Washington, D.C. in or around October 2017. Mr. Billington subsequently followed-up with Mr. McGee about his concerns on two separate occasions, but he was summarily dismissed and the practices continued. Mr. Billington also complained to Arthur Filip, Executive VP, Chief Marketing Officer, and Head of the Client Partner Program, but his concerns were again dismissed.

88. In his managerial role, Mr. Aceves was similarly asked to falsify jobs and work in order to staff visa-dependent employees on client accounts. For example, Mr. Aceves was frequently asked to review and approve LCA postings in support of H-1B visa petitions on the Oncor client account for positions that did not exist. Mr. Aceves also saw that LCAs were regularly posted at employees' desks, rather than in common areas such as break rooms, as required by law. *See* 20 CFR § 655.734.

89. In or around 2013, Mr. Aceves raised concerns about the fraudulent job postings to the Delivery Unit Head for HCL's Energy Vertical, Tushar Trivedi.

Specifically, after Mr. Trivedi asked Mr. Aceves to approve a list of positions that did not exist on the Oncor account, Mr. Aceves pushed back, asking whether HCL had signed a new project or was increasing its staffing for incoming work—*i.e.*, whether the positions were real. Mr. Trivedi refused to respond, and ordered Mr. Aceves to approve the list. When Mr. Aceves refused, Mr. Trivedi threatened to fire him, and the following week, HCL transferred the responsibility of approving LCAs to an Indian account manager, Prashant Kacherikar. Mr. Trivedi oversaw multiple accounts, including all of HCL's oil, gas, and electric company client accounts, meaning, upon information and belief, that HCL's fraudulent practices were widespread throughout the company's Energy Vertical.

90. Mr. Aceves also observed that visa recipients that HCL staffed on the Oncor client account frequently lacked the requisite "specialized knowledge" and experience required for their roles. Mr. Aceves observed that these visa workers had to be trained by an offshore colleague in India each day in order to perform their roles in the U.S., and that there were non-visa workers without positions available locally to fill HCL's staffing needs.

91. Like Mr. Billington and Mr. Aceves, Ms. Dorman was required to make false representations about jobs and job duties for visa recipients. For example, Ms. Dorman was repeatedly asked by HCL to post LCAs for positions that did not exist on the EFH and Oncor client accounts. *See* Ex. 23 at 4 ("Regarding the 2 referenced LCAs, can you please provide the names of the individuals who are identified for each? One LCA is for 10 Systems Architects and the other is for 5 Network

Administrators. I have been advised that this account has not requested this number of people to transfer onshore"). This type of fraud was widespread at HCL, particularly on the Oncor client account—while Oncor was comprised of about 50 onsite employees, HCL posted LCAs in 2013 listing 37 available positions and 96 in 2014—far more positions than actually existed. *See* Ex. 21 (2013 LCA filings for Oncor account in Dallas); Ex. 22 (2014 LCA filings for Oncor account in Dallas). When Ms. Dorman asked her supervisor at EFH why she was being asked to post LCAs when there was no staffing need on the account, she was told not to worry about it, and to continue posting the LCAs.

92. HCL's immigration group as well as other HCL employees admitted to Ms. Dorman in 2014 that HCL often filed visas for positions that did not exist. *See* Ex. 23 at 3 ("PFB list of employees aligned under these LCAs. We have initiated blanket LCAs considering future request also."); Ex. 24 at 1 ("LCA is initiated with 10 slots, keeping future requirement.").

93. In addition, Ms. Dorman is aware of multiple individuals who worked on the EFH and Oncor client accounts pursuant to visas that HCL secured by overstating the skills and experience of the visa recipients. As a result, these employees have repeatedly been transferred to new projects in the U.S. after being released by the clients for lacking the requisite skills. One such individual, Anarag Bhanot, was removed from two separate client accounts at the clients' request for his inability to perform well on the projects.

iii. Applying for L-1 and B-1 Visas in Lieu of H-1B Visas

94. H-1B visa applications ($2,460) are substantially more expensive than L-1 applications ($1,460) and B-1 applications ($160), and H-1B visa applications are subject to the time consuming, highly competitive, and highly uncertain lottery process. Accordingly, as part of its "visa ready" visa process and to reduce visa application fees, HCL fraudulently seeks L-1 and B-1 visas for employees who ultimately perform work for which H-1B visas are required.

95. **L-1 Visas**: L-1 visas are exceedingly limited in scope, particularly compared to the scope of work allowed under H-1B visas. H-1B visas are for specialty occupations that requires highly specialized knowledge and a bachelor's degree or higher. *See* 8 U.S.C. § 1184(i)(1); 8 C.F.R. § 214.2(h)(4)(iii)(A). In comparison, L-1A visas require that an actual job exist in which a prospective visa recipient primarily *supervises and controls* the work of others, as compared to completing technical client project work. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B). L-1B visas are available only to individuals with highly specialized, *uncommon* knowledge within HCL, and the position for which the visa is sought must require such knowledge. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). These narrow visa categories, however, do not deter HCL from seeking L-1 visas for employees who will perform H-1B-level work. *See, e.g.*, Ex. 43 at 7 [redacted] HCL ranks 7th among its competitors in L-1 visa usage, having obtained 1,974 L-1 visas between 2002 and 2011. Ex. 57 at 18.

96. This fraudulent practice is evidenced by the fact that L-1 visa holders are utilized by HCL when there is an H-1B visa demand and H-1B visas should instead be used to meet these staffing needs. Ex. 44 at 234 [redacted] Ex. 45 at 020 [redacted]

97. Moreover, HCL often employs workers in the U.S. on an L-1 visa for a period of three years, but then converts those workers to H-1B visas to extend their stay in the U.S. (without a change in role). *See, e.g.*, Ex. 46 at 488 ([redacted] Ex. 47 [redacted] Ex. 48 at 399 (seeking to convert L-1 to H-1B visa for employee whose L-1 is expiring at the end of the year).

98. HCL is well aware of the cost-savings associated with applying for L-1 visas in lieu of H-1B visas. *See* Ex. 49 at 901 [redacted]; Ex. 50 at 921 ("We should maximize the filings before December 2015 so as to maximize the benefit of reduction in L-1 visa costs.").

99. Mr. Billington observed that HCL routinely sought L-1 visas—in lieu of H-1B visas—for low-level software engineers and developers whose roles were not supervisory (as required for an L-1A visa) and did not require uncommon knowledge (as required for an L-1B visa). For example, and discussed in Paragraphs 83 through 84, Mr. Billington was required to sign a letter in support of Mr. Chennampalli's L-1B visa application after his H-1B visa application was rejected. *See* Ex. 8 at 1; Ex. 9 at 2. Despite the vastly different requirements for L-1B visas and H-1B visas, the letters in support of both described the *exact same* experience, qualifications, and job responsibilities—both stated that the candidate had "an expertise in specialized technologies used by the Client [and] a Bachelor of Engineering Degree in Mechanical field which helps [him] to understand & deliver services expected by the Client" which is a "must to provide technical solutions to clients." *Compare* Ex. 8 at 1 (H-1B letter), *with* Ex. 11 at 1 (L-1B letter). In reality, Mr. Chennampalli's role at HCL was that of a low-level engineer, mostly coding for and testing software—work that falls squarely within the scope of an H-1B visa and far short of what is required for an L-1B visa.

100. Mr. Billington also observed HCL's practice of exaggerating and falsifying the roles and qualifications in L-1 visa applications for employees who performed work for which an H-1B visa was required. On information and belief, this practice is widespread throughout HCL. For example, in early 2018, Mr. Billington was asked to sign L-1B visa extension paperwork for Arjun Krishnan, who had been working in a sales role in the United States for HCL for the previous five years, a role

that required an H-1B visa. Mr. Krishnan's L-1B visa application falsely stated that Mr. Krishnan had the requisite "specialized knowledge" working with artificial intelligence ("AI") required for an L-1B visa, and that his role in the U.S. required such experience. Before agreeing to sign the L-1B extension paperwork, Mr. Billington questioned Mr. Krishnan about his experience, pointing out that Mr. Krishnan had been in and would continue to perform a sales role that did not actually require AI expertise. Mr. Krishnan confirmed that he did not have such expertise and that it was not necessary for his actual role, and further stated that it was HCL's usual practice to misrepresent an employee's skill set on a visa application or extension to avoid a denial from USCIS. Mr. Billington refused to sign the paperwork and reported the fraud to Human Resources, but no action was taken by HCL.

101. **B-1 Visas**: B-1 visas are available only for employees engaged in non-billable, short-term business activities in the U.S. such as attending a business meeting or conference, negotiating a contract, or participating in short-term training; they are not available to employees seeking to perform billable client work. Nonetheless, once HCL secures B-1 visas for employees, it has them travel to the United States to perform paid client work that requires an H-1B or L-1 visa. *See, e.g.*, Ex. 51 at 102-03 [redacted] Ex. 52 at 655-56 [redacted]; Ex. 53 at 165 [redacted]

[redacted] Ex. 54 at 678 [redacted] Ex. 55 at 807-08 [redacted] *id.* at 790 [redacted]

102. HCL is well aware that this practice is illegal. *See, e.g.*, Ex. 56 [redacted]; Ex. 51 at 202-03 [redacted] But despite this knowledge, and concerns from USCIS, HCL continues to seek B-1 visas for employees to work in the U.S. *See* Ex. 35 at 032 [redacted]

103. The employee's visa application materials, which HCL submits or causes to be submitted, falsely represent that the trip's purpose comports with the B-1 visa requirements (e.g., for business travel or to attend a conference). But HCL improperly utilizes B-1 visas throughout the organization, even assigning B-1 workers to do highly sensitive work for aerospace companies such as UTC and Boeing

that would otherwise be performed by U.S. workers or legitimate H-1B or L-1 visa holders.

104. HCL misuses B-1 visas to evade the requirements, costs, limitations, scrutiny, and inconvenience of the H-1B and L-1 visa programs. Mr. Billington observed that HCL would secure B-1 visas for employees whose H-1B or L-1B visa applications had been rejected and for employees who were not selected for an H-1B visa as part of the government's annual lottery process. HCL secured a B-1 visa, for example, for Arjun Krishnan in early 2018 after his L-1B visa extension was denied by USCIS. This allowed him to (illegally) travel back and forth to the U.S. to perform his sales role while the company concurrently applied for an H-1B visa for him.

105. HCL's use of B-1 visa holders also increases its profits, avoids the costs of securing H-1B or L-1B visas (which cost thousands of dollars more than B-1 visas), offers greater employee mobility, provides an unfair advantage over competitors, and avoids tax liabilities. For instance, even though HCL's B-1 visa holders are performing labor in the United States, these individuals remain on HCL's Indian payroll, allowing HCL to pay them substantially less than their U.S.-based colleagues and to avoid U.S. tax liabilities.

106. HCL goes to considerable lengths to keep its fraudulent use of B-1 visa workers secret. For instance, Mr. Billington observed that, to avoid governmental scrutiny, HCL regularly rotated B-1 visa workers into and out of the United States so that these employees appeared to remain only temporarily in the U.S. After several weeks in the United States, B-1 visa workers travel to India for a few days

and then return to the United States to continue working. This practice allows HCL to fraudulently utilize B-1 visa workers for skilled and unskilled labor in the U.S. on a long-term basis.

107. When Mr. Billington raised concerns about HCL employees' frequent trips back to India after short stints of work in the United States, HCL management provided a series of implausible excuses, including weddings, family illnesses, and even deaths in the family—often of the *same* family members. *See, e.g.*, Ex. 16 at 1 ("everyone from India . . . planned to go home for a week in the middle of the assessment. Then Ram has a family wedding").

108. Mr. Billington repeatedly raised concerns about HCL utilizing individuals on B-1 visas for billable work in the U.S. with HCL management. For instance, he pushed back on such a plan in June 2018. Ex. 17 at 2-3. After HCL's immigration department signed off on the proposal, Mr. Billington informed other HCL managers of the problem, telling them that it was "the third example in the last three months of non-compliance." *Id.* at 1, 2-3. He went on to state that "I think we need some visa compliance re training on when a Business visa can and cannot be used," *id.*, but HCL never instituted any such training and HCL's illegal conduct continued.

109. In January 2019, shortly before his retirement, Mr. Billington emailed his boss, Siba Satapathy, regarding another instance of non-compliance:

> Apparently the plan was to fast track a business visa and have him work on that in the short term. That is inappropriate as you know. Honestly I am done with the games and do not plan to dig any deeper since every time I do I discover[] worse behavior.

Ex. 18. Mr. Satapathy never responded. Mr. Billington also reported HCL's H-1B, L1-B, and B-1 visa fraud to HCL's Chief Risk Officer, Kevin McGee on multiple occasions. To Mr. Billington's knowledge, Mr. McGee took no action in response to his complaints.

110. Mr. Aceves also observed B-1 visa fraud at HCL. During his tenure with the company, he witnessed Indian workers travelling to the U.S. to perform client project work. For example, in 2019, HCL brought two Indian workers, Parmaivam Madhavan and Chandrasekar Ramamurthy, to the U.S. on B-1 visas to perform work on the Keurig / Dr. Pepper client project (a Microsoft Office 365 migration project). Both employees performed billable work in violation of U.S. visa law.

111. Ms. Dorman also witnessed employees improperly working in the U.S. on B-1 visas during her tenure with HCL. In her Deputy Manager role, she was responsible for maintaining B-1 visa invitation letters, which stated that the employee would be traveling to the U.S. for purposes that comport with B-1 visa law, such as participating in trainings, meetings, or knowledge transfers. Once in the U.S., however, these employees often performed project work and did not perform the duties reflected in their invitation letters. For example, Ms. Dorman witnessed HCL bring employees to the U.S. on B-1 visas for two-week assignments servicing EFH. During this time, the employees would create design specs for projects, and HCL would "hide" them in a room away from the client while they worked.

F. Harm to the Government from HCL's Fraudulent Visa Practices

112. The government has suffered three distinct types of harm from HCL's fraudulent visa practices. First, HCL's underpayment of its H-1B visa workers has deprived the U.S. government of significant tax revenue. Specifically, by failing to pay its H-1B employees the required prevailing wage, HCL has reduced the amount of federal payroll tax it otherwise would have been required to pay the federal government. Having falsely misrepresented on visa applications that it would pay H-1B visa employees the required prevailing wage, HCL has successfully reduced its federal tax payments without any misrepresentation to or fraud on the Internal Revenue Service ("IRS"). That is, by paying H-1B visa holders less than the required prevailing wage, the IRS and tax laws, faithfully obeyed, simply required less of a contribution from HCL (and its employees) than would have been required had HCL paid H-1B visa holders what it told the federal government it would pay. For example, the IRS requires an employer to contribute 7.65% of each U.S. employee's salary in payroll taxes. Because HCL underpaid H1-B employees, the federal government's tax receipts on that required 7.65% was lower by the very operation of the tax laws. Similarly, HCL's underpayment of visa worker salaries has reduced the amount the government receives in income taxes.

113. Second, HCL has improperly applied for thousands of L-1 visas in lieu of applying for H-1B visas to perform work for which H-1B visas are required. HCL has also improperly applied for thousands of B-1 visas to perform work for which H-1B or L-1 visas are required. Each such fraudulent L-1 visa application deprives the government of $1,000 in filing fees, and each such fraudulent B-1 visa application

deprives the government of $2,300 in filing fees (H-1B) or $1,300 in filing fees (L-1). Thus, the government has lost significant visa application revenue as a result of this fraudulent practice.

114. Third, HCL's practice of creating "visa ready" workers by fraudulently obtaining visas has deprived the government of its interest in the fraudulently-obtained visas and its interest in controlling the distribution of such visas according to law. For example, by law, H-1B and L-1 visas may not be awarded for speculative or future work, and HCL's fraudulent acquisition of these visas has deprived other foreign nationals the ability to legally work in the U.S. HCL's conduct also harms U.S. workers who would otherwise fill the jobs assumed by individuals with fraudulently obtained visas.

G. Materiality of HCL's Visa Fraud

115. HCL's visa fraud is material in at least two ways.

116. HCL's fraudulent scheme has been wildly successful. Each year, HCL submits thousands of visa applications to the U.S. government and is consistently one of the top H-1B visa filers and recipients in the country. For example, HCL received 2,313 approved H-1B visa petitions in 2018, 4,392 approved petitions in 2017, and 3,492 approved petitions in 2016 (with comparably high numbers in prior years). *See* Ex. 1. HCL also submits a substantial number of L-1B applications each year.

117. Second, absent HCL's false representations to the federal government, HCL's visa applications would have been denied (discussed below) and HCL

otherwise would have paid substantially more in visa application fees (in applying for H-1B visas in lieu of fraudulent L-1 and B-1 visas).

118. **HCL's Misrepresentation of the Wages to be Paid to its H-1B Visa Workers**: HCL has knowingly and repeatedly mispresented the salary to be paid to its H-1B visa workers in order to avoid having these visa applications rejected. Because USCIS consistently denies H-1B visa petitions that fail to list the proper wage rate for the recipient, HCL was well aware that its visa petitions would be denied had it disclosed its fraudulent underpayment on the visa applications. *See e.g.*, MATTER OF G-H-P-, INC. at 12, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Oct. 31, 2018), https://tinyurl.com/yxsqjysv (denying H-1B petition and noting "the Petitioner was required to provide at the time of filing an LCA certified for the correct prevailing wage in order for it to be found to correspond to the petition. To permit otherwise may result in a petitioner paying a wage lower than that required by section 212(n)(l)(A) of the Act, 8 U.S.C. § l 182(n)(l)(A)"); File No. [REDACTED] at 11, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (May 26, 2015), https://tinyurl.com/y479m8ro (dismissing appeal of H-1B visa denial where proffered wage did not comply with the prevailing wage and the "attested salary . . . on the Form I-129 f[ell] well below that required by law for the position of Software Developer, Application"); *see also* Chart of USCIS Non-Precedent Decisions at 9-17 (Ex. 26) (listing examples of USCIS's denial of H-1B visa petitions for failure to pay proper wage rate). And HCL readily admits to this fraudulent practice. *See* Ex. 68 at 448 [redacted]

[redacted]

119. **HCL's Invention of Fictitious Jobs and Work to Support Visa Applications**: HCL's scheme to use application materials to petition for visas against fake jobs and work is critical to HCL's receipt of visas, since the government consistently denies visa petitions for speculative or future jobs and work—*i.e.*, when the petitioner fails to demonstrate actual employment for the beneficiary in the U.S. at the time of the visa filing. As reflected in decisions issued by the Administrative Appeals Office ("AAO") of USCIS, petitions for speculative work that are supported by fraudulent invitation letters such as those utilized by HCL (or other fraudulent materials) will be denied. *See*, *e.g.*, WAC 07 149 52522 at 2, 4, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (July 31, 2009), https://tinyurl.com/y63c6dtw (affirming denial of visa application where petitioner's letter and supporting evidence was "insufficient to establish eligibility for the benefit sought" and "no bona fide position" existed for the beneficiary at the time of the visa filing); MATTER OF S-S-, INC. at 5, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Dec. 9, 2015), https://tinyurl.com/y5w4mhps (affirming denial of H-1B petition where the petitioner failed to establish that "the petition was filed for non-speculative work for the

Beneficiary that existed as of the time of the petition's filing" and there was "insufficient documentary evidence in the record corroborating the availability of work for the Beneficiary for the requested period of employment"); *see also* Chart of USCIS Non-Precedent Decisions at 1-9 (Ex. 26) (listing examples of USCIS's denial of visa petitions for fake positions or speculative work).

120. **HCL's Application for L-1 Visas in Lieu of H-1B Visas**: HCL's misrepresentations to the government about the purported work an employee will perform once in the U.S. on an L-1 visa is material to its receipt of both L-1A and L-1B visas. This is because USCIS consistently denies L-1A visa petitions where the petitioner fails to establish that the beneficiary will perform managerial work in the U.S. *See*, *e.g.*, In Re: 15276970 at 4-5, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Jan. 14, 2021), https://tinyurl.com/y6qkkqyy (upholding denial of L-1A petition where "Petitioner ha[d] not provided sufficient evidence demonstrating that the Beneficiary will be employed in a managerial capacity" and documents indicated that the Beneficiary would be involved in operational tasks for the company in the U.S.); File No. [REDACTED] at 7-8, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Sept. 8, 2014), https://tinyurl.com/yxleuthl (dismissing appeal of denial of L-1A petition based on "the lack of specificity and the additional nonqualifying duties included in the beneficiary's resume [which] raise[d] questions as to the beneficiary's actual day-to-day responsibilities" and whether the beneficiary would be performing both managerial and non-managerial duties in the U.S.); File No. [REDACTED] at 6, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Aug. 28, 2015),

https://tinyurl.com/yxkaxt27 (finding "the petitioner ha[d] not established that the beneficiary will be employed in a qualifying managerial or executive capacity" and denying L-1A petition where only "vague job responsibilities" were provided for the beneficiary, and "[t]he actual duties themselves [were needed to] reveal the true nature of the employment"). HCL knows that L-1A visa applicants must be employed in a managerial or executive level role, and knows that visa petitions that fail to establish this level of responsibility are rejected or subject to RFEs, it falsifies the work to be performed by L-1A visa workers in the U.S. in order to obtain visas. Ex. 69 at 798-99 [redacted] Ex. 71 at 555 [redacted]

121. Similarly, L-1B petitions that fail to satisfy the "specialized knowledge" requirement are also rejected by USCIS. *See*, *e.g.*, In Re: 13856515 at 5-6, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Jan. 7, 2021), https://tinyurl.com/y5l4keoc (upholding denial of L-1B petition where "the Petitioner ha[d] not established that the Beneficiary's formal education and experience with the foreign entity resulted in knowledge that is either special or advanced"); File No. [REDACTED] at 8-9, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (June 19, 2014) https://tinyurl.com/y26eogt9 (dismissing appeal of L-1B denial where "the petitioner ha[d] not . . . demonstrate[d] that [the beneficiary's] knowledge [wa]s uncommon or advanced" and noting that "[c]laiming . . . the beneficiary ha[d] technical knowledge of complex equipment is not sufficient to establish that he possesses specialized knowledge"); File No. [REDACTED] at 11, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Mar. 25, 2013),

https://tinyurl.com/y3werann (dismissing appeal and denying L-1B petition where "[t]he evidence submitted fail[ed] to establish . . . that the beneficiary possesses specialized knowledge or that he has and will be employed in a specialized knowledge capacity with the petitioner in the United States"). HCL knows what constitutes "specialized knowledge" yet still misrepresents this experience on its L-1B visa applications in order to avoid visa denials. *See* Ex. 70 [redacted]

122. **HCL's Application for B-1 Visas in Lieu of H-1B Visas**: HCL's representations on its visa applications that employees for whom it seeks a B-1 visa will travel to the U.S. only for permissible business purposes and not to perform billable work are material. This is because had HCL truthfully disclosed B-1 employees' anticipated work in the U.S. on their visa applications, the applications would be rejected, and the government would ban the individuals who had fraudulently obtained B-1 visas from entering the U.S., deeming these individuals "inadmissible." *See e.g.*, File No. [REDACTED] at 3, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Apr. 3, 2013), https://tinyurl.com/yxas5s3r (individual found inadmissible when "the applicant used a business visa for purposes not specified by its terms"); Matter of O-M-R- at 2, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Aug.9, 2017), https://tinyurl.com/y3tw2u6v (noting B-1 applicant "has been found inadmissible for fraud or misrepresentation, specifically for seeking admission to the United States in 2008 with a B-1 nonimmigrant business visa and concealing the fact that he had been working and intended to continue working in the United States

without authorization"); *see also* Chart of USCIS Non-Precedent Decisions at 18-19 (Ex. 26) (listing examples of USCIS's denial or revocation of fraudulent B-1 visa petitions); Compl., Dkt. #1, *United States of America v. Infosys Ltd.*, No. 4:13-cv-634 (E.D. Tex. Oct. 30, 2013)[5]; Settlement Agreement, Dkt. #2, *United States of America v. Infosys Ltd.*, No. 4:13-cv-634 (E.D. Tex. Oct. 30, 2013).[6] Moreover, because HCL has had B-1 visa applications denied where employees failed to establish they were traveling to the U.S. for business purposes only, HCL knows that its false representations are material. Ex. 62 at 698 [redacted]

CAUSES OF ACTION

COUNT I
(Violations of the False Claims Act, 31 U.S.C. §§ 3729-3733)

123. Relators re-allege and incorporate the foregoing paragraphs by reference as if fully set forth herein.

124. HCL has knowingly presented, or caused to be presented, to employees of the United States, false and fraudulent claims for property or approval, in violation of 31 U.S.C. § 3729(a)(1)(A). HCL has knowingly made, used, or caused to be made or used, false records or statements material to a false or fraudulent claim, in

[5] Available at https://www.ice.gov/doclib/news/releases/2013/131030plano2.pdf.
[6] Available at https://www.ice.gov/doclib/news/releases/2013/131030plano.pdf.

violation of 31 U.S.C. § 3729(a)(1)(B). HCL has knowingly made, used, or caused to be made or used, false records or statements material to an obligation to pay or transmit money or property to the government, and has knowingly concealed and improperly avoided or decreased an obligation to pay or transmit money or property to the government, in violation of 31 U.S.C. § 3729(a)(1)(G).

125. HCL, by and through its officers, agents, and employees authorized and ratified all the violations of the False Claims Act committed by its various officers, agents, and employees.

126. HCL's fraud deprived the government of its interest in thousands of H-1B, L-1, and B-1 visas. The fraudulently obtained H-1B and L-1 visas should have rightfully been awarded to individuals seeking non-speculative work in the United States. HCL's fraudulent conduct has further deprived the government of, and substantial tax revenue because HCL consistently underpays its thousands of its H-1B visa workers utilized in the U.S. each year. Given HCL's heavy reliance on H-1B visa workers in staffing U.S. positions, the lost tax revenue suffered by the government is considerable. HCL's conduct has also deprived the government of significant visa application filing fees each time the company improperly applied for an L-1 visa for a foreign employee who traveled to the U.S. to perform work for which an H-1B visa should have been sought (resulting in a loss of $1,000 for each fraudulent L-1 visa application) and each time the company improperly applied for a B-1 visa for a foreign employee who traveled to the U.S. to perform work for which an H-1B visa should have been sought (resulting in a loss of $2,300 for each fraudulent

B-1 visa application). Thus, the U.S. government has suffered millions of dollars in lost visa application fees and tax revenue — damages which continue to accrue.

127. For each False Claims Act violation, HCL is subject to penalties of up to $10,000 for each improper act and three times the amount of damages sustained by the government. These civil penalties are mandatory. *See* 31 U.S.C. § 3729(a)(1)(G); S. Rep. No. 96-615 at 2 & n.4 (1980) ("The imposition of this forfeiture is automatic and mandatory for each claim which is found to be false. The United States is entitled to recover such forfeitures solely upon proof that false claims were made, without proof of any damages. . . The Committee does not intend that the amount of forfeiture recovery be left to the discretion of the district court. Rather, for each false claim, a forfeiture shall be imposed.").[7]

[7] *See also S.* Rep. No. 99-345 at 8 (1986) ("The imposition of this forfeiture is automatic and mandatory for each claim which is found to be false. The United States is entitled to recover such forfeitures solely upon proof that false claims were made, without proof of any damages."); *id.* at 17 ("The Committee reaffirms the apparent belief of the act's initial drafters that defrauding the Government is serious enough to warrant an automatic forfeiture rather than leaving fine determinations with district courts, possibly resulting in discretionary nominal payments."); *United States v. Halper*, 664 F. Supp. 852, 853-54 (S.D.N.Y. 1987) (collecting cases and holding "that the imposition of $ 2,000 for each of the sixty-five false claims is mandatory").

PRAYER FOR RELIEF

WHEREFORE, Relators pray that the Court enter judgment against Defendants, and in favor of the United States and Relators as follows:

a. A declaratory judgment that the practices complained of herein are unlawful and violate 31 U.S.C. § 3729;

b. Imposition of the maximum amount of civil penalties permitted for each of HCL's False Claims Act violations;

c. Civil penalties in the amount of three times the actual damages suffered by the federal government as a result of HCL's actions;

d. A permanent injunction against HCL and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in unlawful policies, practices, customs, and usages set forth herein;

e. Relators seek a fair and reasonable amount of any award for their contribution to the government's investigation and recovery pursuant to 31 U.S.C. §§ 3730(b) and (d) of the False Claims Act, plus interest;

f. Award all reasonable attorneys' fees, expert witness fees, expenses, and costs of this action;

g. Pre- and post-judgment interest; and

h. Such other relief on behalf of the Relators and/or the United States of America as this Court deems just and appropriate.

JURY TRIAL DEMAND

Relators hereby demand a trial by jury.

Dated: September 7, 2021

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