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**47 Old Country, Inc. d/b/a Babi I; Jilly SN, Inc.; Babi Nail USA II Corp. d/b/a Babi II and Chinese Staff and Workers Association.** Case 29–CA–030247

September 26, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN  
AND BLOCK

On April 3, 2012, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief, and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order as modified.<sup>3</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, 47 Old Country, Inc. d/b/a Babi I, Jilly SN, Inc., and Babi Nail USA II Corp. d/b/a Babi II, Carle Place and Glen Head, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 26, 2012

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Mark Gaston Pearce, Chairman

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Richard F. Griffin, Jr., Member

<sup>1</sup> The Board previously granted the Acting General Counsel's motion to strike from that brief evidence that was not accepted by the judge at the hearing and thus is not part of the record in this case.

<sup>2</sup> To the extent that the Respondents' exceptions can be read as addressing some of the judge's credibility findings, the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> We shall modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010).

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Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

*Rachel Zweighaft, Esq.*, for the General Counsel.

*Saul D. Zabell, Esq. (Pitta & Giblin, LLP)*, of New York, New York, for the Respondent.

*Aaron Halegua and Karen Cacace, Esqs., The Legal Aid Society*, of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based upon a charge and a first amended charge filed by the Chinese Staff and Workers' Association on May 24 and July 12, 2010, respectively, the Regional Director issued a complaint on December 30, 2010, which alleged that 47 Old Country, Inc. d/b/a Babi I; Jilly SN, Inc., Babi Nail USA II Corp. d/b/a Babi II (the Respondents) violated the Act in certain respects.

The complaint alleged, essentially, that the Respondents, a single-integrated business enterprise and a single employer, issued a disciplinary warning to an employee, and threatened employees with (a) closure of the business; (b) discharge; and (c) a reduction in wages. The complaint further alleged that the Respondents created an impression among their employees that their concerted activities were being kept under surveillance by the Respondents. Finally, the complaint alleged that the Respondents reduced the working hours of, and discharged four employees, namely, De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang.

I. PROCEDURAL BACKGROUND

On March 31, 2011, the Regional Director approved a bilateral Settlement Agreement (Agreement) executed by the Respondents, resolving the allegations made in the amended complaint.

The Agreement provided that the Respondents agree that:

In case of non-compliance with any of the terms of this Settlement Agreement, and after 14 days notice . . . of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on December 30, 2010. . . . Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without the necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations.

The Agreement required, *inter alia*, that the Respondents reinstate Bai Song Li upon his presentation of a valid nail specialty license within a reasonable period of time.<sup>1</sup>

By letter dated June 27, 2011, the Charging Party's attorney, Aaron Halegua, emailed a copy of the "valid nail specialty license" issued to Bai Song Li to the Respondents' attorney, Saul Zabell. The letter requested Li's immediate reinstatement. Thereafter, he was not reinstated.

On January 5, 2012, the Region's compliance officer wrote to Zabell, advising him that:

In a letter addressed to you and dated June 27, 2011, counsel for Bai Song Li made an unconditional offer to return to work on Li's behalf. Enclosed with the letter was a valid nail specialty license; however, to date, your clients have failed to reinstate Li at Babi I or Babi II. Full compliance with the Informal Settlement Agreement required your clients to reinstate Bai Song Li, upon his presentation of the license.

The letter asked for verification, by January 19, 2012, that the Respondents have reinstated Li. The letter concluded that if no such verification was received, the compliance officer would conclude that the Respondents do not intend to cure the default of their obligation to reinstate Li, and he would recommend that the Agreement be revoked, the complaint be reissued, and that the National Labor Relations Board (the Board) issue a default order against the Respondents.

On January 20, 2012, the Regional Director issued an Order Revoking Settlement and Re-Issuing Complaint and Notice of Hearing. The Order stated that the Respondents had failed to comply with the Agreement by failing to reinstate Bai Song Li upon his presentation of a valid nail specialty license.

The Order concluded that inasmuch as the Respondent failed to comply with certain terms of the Agreement and cure its default, the Regional Director revoked the Agreement and asserted that the allegations in the reissued complaint may be deemed to be true by the Board.

The Order stated that the only issue that the Respondents may contest is whether they defaulted upon the terms of the Agreement and/or if they received notice to cure the default.

The Respondents' answer to the reissued complaint denied that they defaulted in complying with the terms of the Agreement, but admitted receipt of the January 5 letter advising them of their obligation to cure their default.

As set forth below, I find and conclude that the Respondents defaulted upon the terms of the Agreement by not reinstating Li, and also that they received notice to cure the default and have not done so.

On February 29, 2012, a hearing was held before me in Brooklyn, New York. On the entire record, including my observation of the demeanor of the witnesses, and the briefs received from counsel for the Acting General Counsel and the Respondent, I make the following

<sup>1</sup> The three other workers had already been reinstated.

## II. ANALYSIS AND DISCUSSION

### A. *The Acting General Counsel's Case*

The Agreement requires the Respondents to reinstate Bai Song Li upon his presentation of a valid nail specialty license within a reasonable period of time. On June 27, 2011, Attorney Halegua made an unconditional offer to return to work on Li's behalf, and included in the correspondence a copy of Li's valid nail specialty license.

This tender of the offer to return to work and Li's license was sufficient to trigger the Respondents' obligation to immediately reinstate Li. The Respondents failed to do so and now raise certain arguments in their defense. These arguments were raised for the first time in this proceeding, at the instant hearing.

### B. *The Respondents' Arguments*

The Respondents make several arguments which they claim excuse them from their obligation to reinstate Li. They assert that Li should have, himself, presented his nail license and that his attorney's presentation of the license was insufficient. The Respondents also argue that they received Li's offer to return to work at a time when Babi I was being operated by the prospective purchaser of the salon, and the offer was received when the Respondents' attorney was on vacation and could not have responded to the offer. Further, in this regard, they claim that they could not have reinstated Li upon receipt of his June 27 offer to return because Babi I was sold on July 1.

It is significant to note that the Respondents apparently at no time prior to the hearing raised any of these issues. For 8 months after they received Li's license, from June 27, 2011, to February 2012, they did not claim that he did not make a proper offer to return to work because he failed to personally present his license. Nor did they raise any of the above arguments in their answer to the reissued complaint.

#### 1. *The sufficiency of the offer to return*

Pursuant to the express terms of the Agreement, the Respondents were required to reinstate Bai Song Li upon "his presentation of a valid nail specialty license within a reasonable period of time."

Li's license bears an effective date of May 20, 2011. He testified that he received it in late May or early June 2011, and called Yean Ling Tsoi (Christie), the nail manager at Babi I. Li told her that he received his license and asked when he could return to work. Thereafter, he received no offers of reinstatement.

As set forth above, on June 27, Attorney Halegua sent an email to Respondents' attorney, Zabell, requesting that Li "be put back to work immediately" to which was attached an image of Li's license. Li admitted that he did not present his license to any of the Respondents' representatives, and that although he was present with Zabell in a Federal court proceeding in the summer of 2011 he did not present it to Zabell because he was not asked to do so.

The owner of Babi I, Kui Soon Cho (Rosemary) testified that she told Manager Tsoi, when the employees were returning to work pursuant to the Agreement, that she should "have everyone bring their license," but also stated that she never told

Christie that she needs to see the actual license. Cho also stated that she did not believe that she saw the license of another employee who was reinstated pursuant to the Agreement.

The Respondents seem to argue that, under a strict reading of Li's obligation under the Agreement, *he* was required to present the license to the Respondents, and that his attorney's presentation of the license did not meet the requirements of the Agreement.

I do not agree. Halegua was at all times acting as counsel to the Charging Party, the Chinese Staff and Workers' Association. As such, he was authorized to represent Li. Thus, Halegua signed the Agreement and sent the email to Zabell which contained Li's license and set forth Li's unconditional offer to return to work.

At no time did the Respondents or Zabell question Attorney Halegua's authority to represent Li or contest the legality of his presentation of Li's license or the unconditional offer to return to work he made in Li's behalf.

The Board has long held that offers to return to work may be made on behalf of employees by a union, and need not be made personally. *Ford Bros.*, 294 NLRB 107, 129 (1989); *Colonial Haven Nursing Home, Inc.*, 218 NLRB 1007, 1011 (1975); *Little Rock Airmotive, Inc.*, 182 NLRB 666, 672 (1970). Here, where Attorney Halegua was counsel to the Charging Party, he certainly had the authority to act on behalf of Li.

I also cannot find, as argued by the Respondents, that Li did not present his license within a reasonable period of time as required by the Agreement. The Agreement does not define the term "reasonable period of time." Li's license is effective May 20, 2011. The license was emailed to the Respondents' attorney's office, 38 days later. Although Li's license is effective May 20, it is unknown when he actually received it. He testified that he received it in late May or early June. There is no evidence that he delayed applying for his license. Accordingly, he may have been in possession of the license for fewer than 38 days. Under these circumstances, it cannot be held that Li failed to present the license within a reasonable period of time.

## 2. The transfer of ownership and control of Babi I

The Respondents also argue that Attorney Halegua sent the offer to return on behalf of Li at a time when Zabell could not reply because he was out of the office on vacation, and that by the time he returned, Babi I had been sold, thereby excusing the Respondents of their obligation to reinstate Li.

As part of this argument, the Respondents assert that Li worked only at Babi I, and since that Company was sold, their obligation to reinstate Li has ended.

First, there is some dispute as to whether Li worked solely at Babi I. Li testified that he worked at Babi I and also worked at Babi II in Glen Head, although he could not recall the address of that salon or the hours he worked there. However, he stated that when Babi II was very busy he was asked to work there.<sup>2</sup>

Li's testimony that he worked at Babi II is supported by the former owner of Babi I, Kui Soon Cho, who testified that, although there was no regular interchange of workers between

Babi I and Babi II, on about one or two occasions, one or two employees of Babi I were asked by the manager of that salon to work at Babi II for 1 or 2 hours when Babi II had a large party with 10 or 20 guests and needed more workers to help with the large group. I recognize that Cho did not believe that Li was sent from Babi I to Babi II on such occasions, but I credit Li's testimony that he was. In support of this finding I note that Cho stated that due to illness, she was not present at Babi I very often. Thus, Li could have been assigned to Babi II when she was absent from the salon.

The manager of Babi I, Tsoi, testified first that Li worked only at Babi I. However, she also testified that, pursuant to a request from the manager of Babi II who needed help with a large party, she sent employees from Babi I to work there a couple of times. She was not certain whether Li was one of the workers she sent to Babi II.

I need not resolve this conflict as to whether Li worked at Babi II. The Respondents agreed to reinstate Li to his former position as nail technician, they operate at least two nail salons, and he could have been reinstated to Babi I or Babi II. Importantly, the compliance officer's letter of January 5, advised the Respondents' attorney that they "have failed to reinstate Li at Babi I or Babi II."

Accordingly, the Respondents had a clear obligation to reinstate Li to Babi I or Babi II.

The evidence reflects that after Halegua sent the offer to return on June 27, he was emailed by Zabell's office that Zabell was out of the office that week due to a vacation. In reply, Halegua stated that he believed that Zabell's vacation was to start the next day, June 28, adding, "[W]e would like to see our plaintiffs put back to work immediately. Therefore, we would appreciate if you or he could communicate this to the Defendants [Respondents here] before he leaves." In response, Zabell's office wrote that Zabell's "vacation started today and he has not been in the office all day."

Kui Soon Cho, the owner of Babi I, testified that in about mid-June 2011, she ceased operating that salon, and the new, prospective owner of that salon began operating it. The closing of the sale of Babi I took place on July 1, 2011.

The Respondents rely on an email sent by Halegua on July 13, 2011, which reads as follows:

As per our discussion yesterday, please send us confirmation about (1) whether the closing for the sale of the salon at 47 Old Country Road has closed and (ii) if so, evidence that the amount represented to the Court has been put in your escrow account.

If your clients still do own and operate the nail salon, then we would expect a response to Plaintiffs' request for reinstatement which was sent along with evidence of Mr. Song's employment authorization and Mr. Li's license.

The Respondents argue that Halegua's "request for a response" to Li's offer to return implied that if the salon located at 47 Old Country Road was no longer owned by the Respondents, Halegua was waiving any right that Li had to reinstatement.

Clearly, Halegua's inquiry is unrelated to the Respondents' commitment, under the Agreement, or its legal obligation, to

<sup>2</sup> The Respondents' counsel's leading question that Babi I "was the one location that you worked at" was answered in the affirmative by Li. I do not accept that as evidence that he worked only at Babi I.

reinstate Li. In addition, as set forth above, if the Respondents no longer owned Babi I, Li could have been reinstated to Babi II. No reason was offered by the Respondents as to why they could not have reinstated Li to Babi II. There was no evidence that Li was unqualified to work at Babi II, a nail salon. As noted above, the evidence establishes that the technicians were occasionally sent to work from Babi I to Babi II.

I reject the Respondents' argument, in their brief, that the "nail salons are not interchangeable and nail technicians worked at individual locations, not as Babi Nails as a single or consolidated entity." First, there was no record evidence that the salons were not interchangeable. Nor was there evidence that the work performed by the nail technicians at the two salons was not interchangeable. It is clear that Li was qualified as a nail technician and that his skills could be utilized at any nail salon. This is particularly true as he worked at Babi II in helping out during a party there. Further, inasmuch as the Respondents' answer has been considered as withdrawn, I find that they are, as alleged, a single-integrated enterprise and a single employer.

#### *C. Obligation to Reinstate*

The Agreement clearly identifies the Respondents as Babi I, Babi II, and Jilly SN, all nail salons. In addition, the Agreement clearly set forth the Respondents' obligation to reinstate Li to his former job. I find that Li made a valid, unconditional offer to return to work within a reasonable period of time, simultaneously providing a copy of his valid nail specialty license.

I accordingly find and conclude that the Respondents have failed to comply with their obligation to reinstate Bai Song Li, and have therefore failed to comply with the terms of the Agreement.

#### *D. Conclusions*

Based on the above, I find that the Respondents have failed to comply with the terms of the Agreement by not reinstating Bai Song Li upon his presentation of a valid nail specialty license. The evidence also establishes that the Respondents have not cured their default.

The Agreement provides that in the event of the Respondent's noncompliance with its terms, the complaint be reissued, and its allegations will be deemed admitted and its answer to such complaint will be considered withdrawn. The Board may then find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Respondents on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations.

### III. RULING ON THE ORDER REVOKING SETTLEMENT

#### Findings of Fact

Pursuant to the terms of the Agreement, I find that all of the allegations of the amended complaint are deemed to be true, as set forth below.

#### Jurisdiction

Respondent Babi I, a domestic corporation, with its principal office and place of business located at 47 Old Country Road,

Carle Place, New York, has been engaged in the business of providing nail salon and related services to customers.

Respondent Jilly SN, a domestic corporation, with its principal office and place of business located at 47 Old Country Road, Carle Place, New York, has been engaged in the business of providing nail salon and related services to customers.

Respondent Babi II, a domestic corporation, with its principal office and place of business located at 338 Glen Head Road, Glen Head, New York, has been engaged in the business of providing nail salon and related services to customers.

On August 10, 2010, by letter, the Respondents asserted that they are not employers engaged in commerce, and that the Board lacks jurisdiction over them.

A subpoena duces tecum was served upon the Respondents by certified mail on August 11, 2010, requiring and directing them to appear before a hearing officer on August 25, 2010, and to produce certain documents relevant to the Respondents' assertion referred to above, at that time.

Since August 25, 2010, the Respondents have failed to produce the documents referred to in the subpoena duces tecum referred to above, nor have they filed a Petition to Revoke said subpoena.

During the past calendar year, the Respondents, in the course and conduct of their business operations referred to above, purchased and received at the Carle Place and Glen Head facilities, goods, products, and materials amounting to more than de minimis, directly from enterprises located outside the State of New York.

At all times material, the Respondents have been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

At all material times, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of the operations; have shared common premises and facilities; have provided services for, and made sales to, each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

By virtue of their operations as described above, the Respondents constitute a single-integrated business enterprise and are a single employer within the meaning of the Act.

#### The Alleged Unfair Labor Practices

1. The charge was filed by the Chinese Staff and Workers' Association (CSWA) on May 24, 2010, and was served upon the Respondents by regular mail on May 27, 2010.

2. A first amended charge was filed by CSWA on July 12, 2010, and was served upon the Respondents by regular mail on July 16, 2010.

3. At all material times, the following individuals have held the positions set forth opposite their respective names, and have been supervisors of the Respondents within the meaning of Section 2(11) of the Act, and agents of the Respondents, acting on their behalf:

Kui Soon Cho (a/k/a Rosemary)—Co-owner and Supervisor  
In Bae Kim (a/k/a Frank)—Co-owner and Supervisor

4. On about December 21, 2009, the Respondents' employees De Ping Song, Bai Song Li, Chun Sen Zhu, Yan Zhang, Yang Xu, and Jie Li, concertedly fled a lawsuit against the Respondents in the U.S. District Court for the Eastern District of New York, in 09-cv-05566, alleging violations of Federal wage and hour, and other discrimination laws.

5. On about December 23, 2009, the Respondents, through their agent, In Bae Kim, at the Carle Place facility:

- (a) Issued a disciplinary warning to employee De Ping Song.
- (b) Threatened employees with closure of the businesses.

6. On about December 26, 2009, the Respondents, through their agent, Kui Soon Cho, at the Carle Place facility, threatened employees with discharge.

7. In about January 2010, the Respondents, by their agent, Kui Soon Cho, threatened employees with discharge and closure of their businesses.

8. On about January 7, 2010, the Respondents, by their agent, Kui Soon Cho, threatened employees with a reduction in wages.

9. On about January 20, and on about February 4, 2010, the Respondents, by their agent, In Bae Kim, at the Carle Place facility, created an impression among their employees that their concerted activities conducted for the purpose of mutual aid or protection, were being kept under surveillance by the Respondents.

10. In about January 2010, the Respondents reduced the working hours of employees De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang.

11. In about the end of January 2010, the Respondents discharged Yan Zhang.

12. On about February 1, 2010, the Respondents discharged Bai Song Li, Chun Sen Zhu, and De Ping Song.

13. (a) Since the dates of the discharges referred to in paragraphs 11 and 12, above, through the dates set forth below, the Respondents have failed and refused to reinstate the below-named employees to their former or substantially equivalent position of employment:

Yan Zhang—April 10, 2011  
 Chun Sen Zhu—April 10, 2011  
 De Ping Song—April 12, 2011

(b) Since the dates of the discharges referred to in paragraphs 11 and 12, above, the Respondents have failed and refused to offer to reinstate Bai Song Li to his former or substantially equivalent position of employment.

14. The Respondents engaged in the conduct described above in paragraphs 5(a), and 10 through 13, because the employees named in paragraph 4 engaged in the conduct described above in paragraph 4, and to discourage employees from engaging in these or other concerted activities.

15. By the conduct described above in paragraphs 5 through 13, the Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. The unfair labor practices of the Respondents, described above, affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### CONCLUSION OF LAW

By the conduct described above in paragraphs 5 through 13, the Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

#### REMEDY

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.

The Respondents, having discriminatorily discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

As set forth above, the Agreement provided, that in the event of noncompliance with any of its terms, the Board could "issue an Order providing a full remedy for the violations found as is customary to remedy such violations, including, but not limited to the remedial provisions of this Settlement." Thus, pursuant to such language, it is appropriate to provide the "customary" remedies of reinstatement, full backpay, expungement of the Respondent's personnel records, and notice posting. *Tuv Taam Corp.*, 340 NLRB 756, 757 (2003).

Although such full remedies include reinstatement and full backpay, I note that there was evidence that three employees, Yan Zhang, Chun Sen Zhu, and De Ping Song were already reinstated. To the extent that they have been validly and properly reinstated, the Respondents need not offer them reinstatement. To the extent that employees have been paid backpay, they shall be credited with such amounts as they have received. If any further backpay is due them, such sums shall be paid pursuant to this "full backpay" remedy. In the complaint, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. The Board has declined to order such relief. *Open Door Retail Group*, 358 NLRB No. 9, slip op. at 2 fn. 1 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondents, 47 Old Country, Inc. d/b/a Babi I and Jilly SN, Inc., Carle Place, New York, and Babi Nail USA II Corp. d/b/a/ Babi II, Glen Head, New York, their officers, agents, successors, and assigns, shall

<sup>3</sup> 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.

1. Cease and desist from
  - (a) Issuing disciplinary warnings to employees because of their protected concerted activities.
  - (b) Threatening employees with closure of the businesses because of their protected concerted activities.
  - (c) Threatening employees with discharge because of their protected concerted activities.
  - (d) Threatening employees with a reduction in wages because of their protected concerted activities.
  - (e) Creating an impression among their employees that their concerted activities conducted for the purpose of mutual aid or protection were being kept under surveillance.
  - (f) Reducing the working hours of employees because of their protected concerted activities.
  - (g) Discharging employees and failing and refusing to reinstate them, at various times, to their former or substantially equivalent positions of employment because of their protected, concerted activities.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Within 14 days from the date of the Board's Order, offer De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
  - (b) Make De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
  - (c) Within 14 days from the date of the Board's Order, remove from their files any reference to the unlawful disciplinary warning to De Ping Song, and to the unlawful discharges of De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang, and within 3 days thereafter notify them in writing that this has been done and that their discharges will not be used against them in any way.
  - (d) 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.
  - (e) Within 14 days after service by the Region, post at its facilities in Carle Place, New York, and Glen Head, New York, copies of the attached notice marked "Appendix" in both English and Chinese.<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in con-

<sup>4</sup> 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."

spectuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent 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 Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 10, 2011.

(f) 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 Respondent has taken to comply.

Dated, Washington, D.C. April 3, 2012

#### 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 issue disciplinary warnings to you because you complain together with other employees about your wages and working conditions.

WE WILL NOT threaten to close our business because you complain together with other employees about your wages and working conditions.

WE WILL NOT threaten to discharge you because you complain together with other employees about your wages and working conditions.

WE WILL NOT threaten to reduce your wages because you complain together with other employees about your wages and working conditions.

WE WILL NOT make it look like we are watching you talk about your wages and other terms and conditions of employment.

WE WILL NOT reduce your working hours because you complain together with other employees about your wages and working conditions.

WE WILL NOT fire you because you complain together with other employees about your wages and working conditions.

WE WILL offer De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions,

without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL remove from their files any reference to the unlawful disciplinary warning issued to De Ping Song, and the unlaw-

ful discharges of De Ping Song, Bai Song Li, Chun Sen Zhu, and Yan Zhang, and WE WILL, within 3 days thereafter notify them in writing that this has been done and that their discharges will not be used against them in any way.

47 OLD COUNTRY, INC. D/B/A BABI I; JILLY SN, INC.;  
BABI NAIL USA II CORP. D/B/A BABI II