

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ASHER CANDY, INC. AND SHERWOOD BRANDS, INC., A Single Employer, and SHERWOOD BRANDS, LLC, Alter Ego of SHERWOOD BRANDS, INC., both d/b/a SHERWOOD BRANDS, INC. LLC; SHERWOOD BRANDS, INC., Debtor-in-Possession and SHERWOOD BRANDS, LLC, Debtor-in-Possession

and

Case No. 29-CA-26761

LOCAL 102, BAKERY, CONFECTIONARY,
TOBACCO WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO

MOTION FOR DEFAULT JUDGMENT

PLEASE TAKE NOTICE that the undersigned Counsel for the Acting General Counsel, upon the below-listed facts, and the annexed documents and exhibits referred to herein, hereby moves that:

The National Labor Relations Board, herein called the Board, issue a Second Supplemental Decision and Order, prior to and without the necessity of a hearing, containing findings of fact and conclusions of law in accordance with the allegations of the Notice of Hearing in the above-captioned case, and ordering Sherwood Brands, Inc. d/b/a Sherwood Brands, Inc. LLC and its alter ego Sherwood Brands, LLC d/b/a Sherwood Brands, Inc. LLC; Sherwood Brands, Inc., Debtor-in-Possession; and Sherwood Brands, LLC, Debtor-in-Possession, their officers, agents, successors and assigns (collectively “the Respondents”) to comply with the Board’s outstanding February 19, 2009 Supplemental Order in this matter, as enforced by the Second Circuit Court of Appeals Judgment.

In support of said Motion, Counsel for the Acting General Counsel shows and alleges that:

1. On October 24, 2006, the National Labor Relations Board (“the Board”), issued its Decision and Order (348 NLRB 993) directing Asher Candy, Inc. and Sherwood Brands, Inc. LLC, a

single employer, their officers, agents, successors, and assigns, to make whole their laid off unit employees with severance pay, vacation,¹ and backpay calculated in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). A copy of this Decision and Order is attached as Exhibit A.

2. On November 27, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its Judgment (Docket Nos. 06-1368 and 06-1393) enforcing, in full, the Decision and Order of the Board referred to above in paragraph 1 against Asher Candy, Inc. and Sherwood Brands, Inc., a single employer. A copy of this Judgment is attached as Exhibit B.

3. A controversy having arisen over the amount of backpay and other monies owed under the Board's Order and the Court Judgment, a Compliance Specification issued on March 28, 2008.

4. On February 19, 2009, the Board issued its Supplemental Decision and Order (353 NLRB 959) directing Asher Candy, Inc. and Sherwood Brands, Inc. LLC, a single employer, their officers, agents, successors, and assigns, to make whole 46 named employees by paying them \$279,523.20, consisting of \$239,385.60 in severance pay, and \$40,137.60 in *Transmarine* backpay, plus interest accrued to the date of such payment. A copy of this Supplemental Decision and Order is attached as Exhibit C.

5. On October 15, 2009, the United States Court of Appeals for the Second Circuit issued its Judgment (Docket No. 09-1307-ag) enforcing, in full, the Board's Supplemental Decision and Order against Asher Candy, Inc. and Sherwood Brands, Inc. LLC. A copy of this Judgment is attached as Exhibit D.

6. Further controversy having arisen as to whether Respondents should be required to comply with the Court Judgment enforcing the Board's Supplemental Order, the Regional Director for Region 29, pursuant to the authority conferred by the Board, issued a Notice of Hearing on

¹ Respondents have already satisfied their vacation pay obligation.

August 17, 2011. A copy of this Notice of Hearing and an Affidavit of Service thereof are attached as Exhibit E and F.

7. The envelope that was mailed to Sherwood Brands, Inc., and Asher Candy, Inc. which contained the Notice of Hearing was returned as not deliverable. However, the Notice of Hearing was successfully served on Sherwood Brands Inc.'s counsel, James Greenan.

8. In a letter dated August 25, 2011, Glenn M. Anderson, counsel for Sherwood Brands, LLC, informed the Board that Sherwood Brands, LLC had filed a Chapter 11 Bankruptcy Petition with the United States Bankruptcy Court for the District of Maryland and the Board's action should be stayed pursuant to 11 USC §362(a) pending further order of the United States Bankruptcy Court. A copy of this correspondence is attached hereto as Exhibit G.

9. In a letter dated September 2, 2011, counsel for the Acting General Counsel, responded to Mr. Anderson's correspondence and advised him that:

a. "Board unfair labor practice hearings are excepted from the automatic stay provision of the Bankruptcy Code. See, e.g., NLRB v. 15th Ave. Iron Works, Inc., 964 F.2d 1336, 1337 (2d Cir. 1992); NLRB v. P*I*E Nationwide, 923 F. 2d 506 (7th Cir. 1991) (Chapter 11 reorganization)." and

b. "the Board may prosecute an unfair labor practice case, proceed to a final decision and liquidate the backpay amount, as long as it does not seek collection outside the Bankruptcy court. Continental Hagen Corp., 932 F. 2d at 834, 835 (quoting Penn Terra Ltd. v. Dept. of Env. Resources, 733 F 2d 267, 275 (3d Cir. 1984); accord P*I*E Nationwide, 923 F. 2d at 512; Edward Cooper Painting, 804 F. 2d at 934." A copy of this letter is attached hereto as Exhibit H.

10. During a September 6, 2011 phone call with the undersigned counsel for the Acting General Counsel, James Greenan acknowledged receipt of the September 2, 2011 letter identified in paragraph 9 which explains that Board proceedings are not stayed by the Bankruptcy Code.

11. Pursuant to Section 102.56 of the Board's Rules and Regulations, Respondent's time to file an answer to the Notice of Hearing expired on September 7, 2011.

12. In a letter dated September 8, 2011, counsel for the Acting General Counsel, advised Respondents' counsel Glenn M. Anderson and James Greenan, that:

a. although Answers to the Notice of Hearing were due from the Respondents by September 7, 2011 none had been filed, and

b. if an Answer was not filed by September 15, 2011, Counsel for the Acting General Counsel would file a Motion for Default Judgment with the Board. A copy of said letter is attached hereto as Exhibit I.

13. In a letter dated September 16, 2011, James M. Greenan, counsel for Respondents Sherwood Brands, Inc., Debtor-in-Possession and Sherwood Brands, LLC, Debtor-in-Possession, stated that "No Answers are required by the debtor entities. All proceedings before the National Labor Relations Board against the Answer dated entities are Stayed as a matter of law." A copy of said letter is attached hereto as Exhibit J.

14. To date, none of the Respondents have filed an Answer to the said Notice of Hearing. None of the Respondents have made an application for an extension of time to file an Answer.

15. The Notice of Hearing, pursuant to Section 102.56(c) of the Board's Rules and Regulations, gave notice to the Respondents that if they did not file a timely Answer, then "the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the notice of hearing are true."

16. Based upon the foregoing, and the exhibits herein, the Motion for Default Judgment should be granted.

17. As an appropriate remedy for the allegations of the Notice of Hearing, it is requested that the Board issue a Second Supplemental Order:

a. Directing Sherwood Brands, Inc., an adjudicated single employer with Asher Candy, Inc., its officers, agents, successors, and assigns, to make whole the 46 employees named in the Board's February 19, 2009 Supplemental Order, by paying them \$279,523.20, consisting of \$239,385.60 in severance pay, and \$40,137.60 in *Transmarine* backpay, plus interest accrued to the date of such payment;

b. Finding Sherwood Brands, LLC, d/b/a Sherwood Brands Inc. LLC, an alter-ego of Sherwood Brands, Inc.; Sherwood Brands, LLC, Debtor-in-Possession; and Sherwood Brands, Inc., Debtor-in-Possession, their officers, agents, successors, and assigns, to be jointly and severally liable with Respondents Asher Candy, Inc.; Sherwood Brands, Inc. LLC; and Sherwood Brands, Inc., d/b/a Sherwood Brands, Inc., LLC, to make whole the 46 employees named in the Board's February 19, 2009 Supplemental Order, by paying them \$279,523.20, consisting of \$239,385.60 in severance pay, and \$40,137.60 in *Transmarine* backpay, plus interest accrued to the date of such payment; and

c. Directing Respondents to comply with such other Orders of the Board as it deems appropriate in the circumstances of this case.

WHEREFORE, Counsel for the Acting General Counsel respectfully moves the Board to grant the relief prayed for herein as follows:

(a) Rule upon this Motion prior to the opening of any hearing and prior to the taking of any evidence;

(b) Find pursuant to Section 102.56 of the Board's Rules and Regulations that the allegations in the Notice of Hearing are true;

(c) Issue findings of fact and conclusions of law in accordance with the allegations of said Notice of Hearing; and

(d) Issue an appropriate Order against Respondents, as set forth in paragraph 17 of this motion.

Dated at Brooklyn, New York, this 26th day of September 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynda Tooker". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Lynda Tooker
Counsel for the Acting General Counsel
National Labor Relations Board, Region 29
Two MetroTech Center, Suite 5100
Brooklyn, New York 11201

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| <u>EXHIBIT</u> | <u>DESCRIPTION</u> |
|----------------|---|
| A | Board Order, 348 NLRB 993, dated October 24, 2006 |
| B | Judgment of the United States Court of Appeals for the District of Columbia, Docket Nos. 06-1368 and 06-1393, dated November 27, 2007 |
| C | Board Order, 353 NLRB 959, dated February 19, 2009 |
| D | Judgment of the United States Court of Appeals for the Second Circuit, Docket Nos. 09-1368 and 09-2831, dated October 15, 2009 |
| E | Notice of Hearing, dated August 17, 2011 |
| F | Affidavit of Service of for Exhibit E |
| G | “Suggestion of Bankruptcy for Sherwood Brands LLC” and Certificate of Service dated August 25, 2011 |
| H | Letter from Lynda Tooker to Glenn M. Anderson, dated September 2, 2011 |
| I | Letter from Lynda Tooker to James Greenan, Esq. and Glenn M. Anderson, Esq., dated September 8, 2011 |
| J | Letter from James M. Greenan, to Linda Tooker, dated September 16, 2011 |

EXHIBIT A

**Asher Candy, Inc. and Sherwood Brands, Inc., LLC,
a single employer and Local 102, Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO.** Case 29-CA-26761

October 24, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND KIRSANOW

On November 3, 2005, Administrative Law Judge Howard Edelman issued the attached decision. The Respondents filed exceptions and a supporting brief; the General Counsel filed an answering brief; and the Respondents filed a reply brief to the answering brief.

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 briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order² as modified and set forth in full below.³

¹ We affirm the judge's finding that the Respondents Asher Candy and Sherwood Brands constitute a single employer. We find that at least three of the four criteria that the Board uses to determine single employer status are present in this case. See *Radio & Television Union v Broadcast Service*, 380 U.S. 255, 256 (1965). In addition to their admitted common ownership and common management, the Respondents share the critical factor of centralized control of labor relations. See *RBE Electronics of S.D.*, 320 NLRB 80 (1995).

Although the Respondents contend that Asher Candy's general manager and human resources director made day-to-day personnel decisions, Uriel Frydman, Sherwood Brands' president, chief executive officer, and chairman of the board made major decisions concerning labor relations for Asher Candy. See *Good Life Beverage Co.*, 312 NLRB 1060, 1073 (1993); *Soule Glass & Glazing Co.*, 246 NLRB 792, 795 (1979). Frydman admitted that either he or the Sherwood Brands board had to approve collective-bargaining agreements, the wage terms of the parties' memorandum of agreement, and nonemergency overtime, severance, layoff, and plant closure decisions for Asher Candy. See *Naperville Ready Mix, Inc.*, 329 NLRB 174, 180 (1999), enfd 242 F.3d 744 (7th Cir. 2001), cert. denied 534 U.S. 1040 (2001); *American Stores Packing Co.*, 277 NLRB 1656, 1657 (1986). In addition, the Respondents admitted that Sherwood Brands made pension contributions, paid health insurance, deducted union dues, and funded the payroll for Asher Candy. See, e.g., *Wyandanch Engine Rebuilders, Inc.*, 328 NLRB 866, 873 (1999). Based on this evidence, we agree with the judge that the General Counsel proved the existence of centralized control of labor relations.

We need not reach the issue of whether the parties' memorandum of agreement extended the terms of the expired 1999-2002 contract because the terms and conditions of employment established by that contract survived its expiration. *NLRB v Katz*, 369 U.S. 736 (1962); *Inner-City Broadcasting*, 281 NLRB 1210 (1986).

² We agree with the judge that a remedial order consistent with *Transmarine Navigation Corp.*, 170 NLRB 389 (1968) is appropriate. But we leave to compliance the relationship between the Order's *Transmarine* remedy and its make-whole provisions ordering payment

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Asher Candy, Inc. and Sherwood Brands, Inc., LLC, a single employer, New Hyde Park, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide to Local 102, Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, AFL-CIO (the Union), adequate notice of a layoff of employees from, and closure of, Respondent Asher Candy and an opportunity to bargain concerning the effects of those decisions.

(b) Refusing to pay its employees severance and vacation pay consistent with the terms established by the Union's most recent collective-bargaining agreement with Respondent Asher Candy.

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

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

(a) On request, bargain in good faith with the Union about the effects of its decision to lay off its employees and close Respondent Asher Candy's facility.

(b) Pay backpay to the laid-off employees in the manner set forth in the remedy section of this decision.

(c) Make whole their employees for their failure to pay severance and vacation pay consistent with the terms established by the Union's most recent collective-bargaining agreement with Respondent Asher Candy as set forth in the remedy section of this decision.

(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

of severance and vacation pay by the Respondents. See *Sawyer of Napa, Inc.*, 321 NLRB 1120, 1121 fn. 3 (1996), and cases cited therein. Cf. *Brandau Printing*, 342 NLRB 867, 868 (2004).

Chairman Battista observes that, although the Respondents were obligated to pay severance only if severed employees lost employment in the industry subsequent to plant closure, the Respondents did not argue that the severed employees retained employment in the industry after the plant closed.

³ We have modified the judge's recommended order to more closely conform to the Board's standard remedial language. We have also substituted a new notice to employees to comport with these modifications.

form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at their own expense, and after being signed by the Respondents' authorized representative, signed and dated copies of the attached notice marked "Appendix"⁴ to all unit employees who were employed by Respondent Asher Candy during the years 2004 and 2005.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

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 fail to provide Local 102, Bakery, Confectionery, Tobacco workers and Grain Millers International Union, AFL-CIO (the Union), with adequate notice of a layoff of employees from, and closure of, Asher Candy, Inc. and an opportunity to bargain concerning the effects of those decisions.

WE WILL NOT refuse to pay our employees severance and vacation pay consistent with terms established by the Union's most recent collective-bargaining agreement with Asher Candy, Inc.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL bargain in good faith with the Union on request about the effects of our decision to lay off our employees and close Asher Candy, Inc.'s facility.

WE WILL pay backpay to our laid-off employees, with interest.

WE WILL make whole our employees for our failure to pay severance pay and vacation pay consistent with the terms established by the Union's most recent collective-bargaining agreement with Asher Candy, Inc., with interest.

ASHER CANDY, INC. AND SHERWOOD BRANDS, INC., LLC

Nancy Lipin, Esq., for the General Counsel

Uziel Frydman, President (Sherwood Brands, Inc.), for the Respondent.

Ray Aquilino, Business Agent, for the Charging Party.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried in Brooklyn, New York, on May 24, 25, and June 1, 2, and 3, 2005.

On February 2, 2005 and on April 11, 2005, Local 102, Bakery, Confectionery, Tobacco Workers and Grain Millers International Union AFL-CIO (the Union), filed charges against Asher Candy, Inc. and Sherwood Brands, Inc., a single employer.

Consistent with these charges the Regional Director for Region 29 issued on April 12, 2005, a complaint and amended complaints on May 24 and June 1, 2005 alleging violations of Section 8(a)(1) and (5) of the Act.

The issues presented in the complaints are whether Respondent Asher and Respondent Sherwood are a single employer.

Whether Respondent Employers, as a single employer failed to provide severance and accrued vacation pay upon the closure of Respondent Asher, as provided by its collective-bargaining agreement between Respondent Asher and the Union in violation of Section 8(a)(1) and (5) of Act

Whether Respondent Employers closed the Respondent Asher facility without notice to the Union and laid off its total work force without giving the Union the opportunity to bargain about the affects of such action.

It is admitted in Respondents answer that at all material times, Respondent Asher, a domestic corporation, with its principal office and place of business located at 1815 Gilford Avenue, New Hyde Park, New York (the New Hyde Park facility), has been in the business of manufacturing and selling candy canes in the State of New York, and that during the past year, which period is representative of its annual operations generally, Respondent Asher, in the course and conduct of its operations, purchased and received at its New Hyde Park facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York.

It is also admitted that at all material times, Respondent Sherwood, a domestic corporation, with its principal office and place of business located at 1803 Research Boulevard, Suite

201, Rockville, Maryland (the Maryland facility), has been engaged in the business of manufacturing and marketing confectionary products, and that during the past year, which period is representative of its annual operations generally, Respondent Sherwood, in the course and conduct of its operations, purchased and received at its Maryland facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Maryland.

I find that Respondent Employers are engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted that Uziel Frydman is the president of both Respondent Asher and Respondent Sherwood. In addition, Frydman tried this case on behalf of Respondent Employers.¹

It is admitted that Christopher J. Willi is the chief financial officer for both Respondent Asher and Respondent Sherwood.

It is also admitted that James Spampinato is the general manager of Respondent Asher.

It is also admitted that the above-named individuals are supervisors within the meaning of Section 2(11) of the Act.

The relevant facts of this case, with the exception of when or if Respondent Employers gave notice to the Union of its intention to lay off and close the Asher facility, were entirely admitted by Frydman in his opening statement, and by questions put to him, Willi and Spampinato by General Counsel, pursuant to Federal Rules of Procedure 611(c), and testimony by Frydman, Willi and Spampinato when presenting their case, as well as cross-examining General Counsel's witnesses.

Over the last approximately 20 years, Asher had several different owners. In April of 2002, Respondent Sherwood bought Asher. At the time of the purchase, Jim Spampinato and several partners owned Asher. Spampinato, a longtime Asher employee, has held various positions with Asher, including president, plant manager, operations manager, and comptroller. After Sherwood bought Asher, Spampinato worked as Respondent Asher's general manager. In his capacity as general manager, he was responsible for the day-to-day operations of the plant. Asher generally operated on a seasonal basis, hiring employees from January through April, and laying employees off in and around October. Asher's work force was very stable and there were many long-term, skilled employees who returned year-after-year to make and ship candy canes. In addition, there was no history of strikes or other labor unrest at Asher. Respondent Asher's New Hyde Park facility closed on October 29, 2004.

Respondent Sherwood manufactures, markets and distributes numerous lines of candies, cookies, and gift baskets. Until March of 2005, Respondent Sherwood was publicly traded on the American Stock Exchange. Respondent Sherwood has several subsidiaries, including facilities located in Virginia, Massachusetts, Rhode Island, Maryland, and the 2002 purchase of Respondent Asher. After Respondent Asher closed, the manufacturers of candy canes formerly manufactured by Respondent Asher are now manufactured at Respondent Sherwood's facilities in Brazil.

The Union represented the employees at the Asher facility since 1992, in a unit consisting of:

All full-time and part-time production and maintenance employees including all temporary employees, excluding office sales employees and supervisors as defined in Section 2(11) of the Act.

When Respondent Sherwood purchased Respondent Asher it assumed the union contract which expired on June 30, 2002.

Shortly before this contract expired, Ray Aquilino, the union representative negotiated with Willi and Spampinato and executed a signed document titled "Memorandum of Agreement between Local 102 and Asher." The first provision in the MOA states: "Terms of contract—3 years." There were five other terms, four of which related to wages, and one to a "Rest Period."

The Union contends that the MOA was a continuation of the 1999–2002 collective-bargaining agreement as modified by the MOA, and expired on June 30, 2005.

Frydman, representing Respondent Employers contends that the contract expired June 30, 2002, and was not renewed, that there was no existing collective-bargaining agreement after June 30, 2002. In this connection he makes two contentions. First that the MOA was not titled as a collective-bargaining agreement and therefore the MOA means nothing. Secondly, he contends that neither he nor Willi signed a document titled collective-bargaining agreement a contract between the Union and Respondent Asher. It is true that the Union prepared a single document which contained the provisions of the 1999–2002 agreement and the modifications set forth in the MOA with an expiration date of June 30, 2005, which Willi, Frydman, and Spampinato refused to sign. Notwithstanding their signatures on the terms of the MOA, I find the MOA which provides a term of 3 years is clearly a collective-bargaining agreement which includes all the 1999–2000 terms as modified by the MOA.

Moreover, when Frydman was examined by counsel for the General Counsel he admitted the terms of 1999 bargaining agreement as modified by the MOA were being complied with. Spampinato also admitted under cross-examination that all the terms of the 1999–2002 agreement as modified by the MOA, were being complied with "until this problem about the severance package." Frydman specifically admitted that vacation pay was due under the MOA as modified by the 1999–2000 collective-bargaining agreement, herein called "Respondent Asher's collective bargaining agreement," and testified that it would be paid stating that, "the amount is not too much." To date accrued vacation pay has not been paid to the employees.

Further evidence that Frydman knew he was liable for the severance pay is set forth in Respondent Employers' Securities Exchange Commission, (SEC) Form 10K dated October 28, 2004, signed by Frydman within a few days after Asher's closure on October 29, 2004 states:

As of October 8, 2004, the Company had approximately 61 full-time employees and approximately 112 part-time or seasonal employees. Of the Company's full-time workforce, 16 are located at the Company's principal office in Rockville, MD. The Company has approximately 36 full and part-time

¹ Frydman is not an attorney.

employees in Virginia, approximately 75 full, part-time and seasonal employees in Rhode Island and Massachusetts and 46 full, part-time and seasonal employees in its New Hyde Park, NY facility. Management believes that the Company's relationship with its employees is good. The 40 employees at the Asher Candy facility are the Company's only employees represented by labor unions under a collective-bargaining agreement. The closure of the Asher Candy facility in New Hyde Park, New York, in November 2004 will have an effect on the entire 40 employees at the facility. The Company will provide the required State of New York timetable for severance associated with each remaining employee under the union contract at the time the facility is closed. The Union contract stipulates that severance will be based on seniority of employment at the New Hyde Park, New York facility. The potential liability to the Company for severance could be up to approximately \$155,000. [Emphasis added.]²

I conclude Respondent Employer's failure to pay severance and vacation pay is a unilateral change in violation of Section 8(a)(1) and (5) of the Act. See *Champion International Corp.*, 339 NLRB 672 (2003), a case similar to this instant case, finding that the failure to pay employees earned vacation pay, and unilaterally implementing preconditions for severance pay are unilateral changes in violation of Section 8(a)(1) and (5) of the Act.

Closure of Respondent Asher

Frydman and Spampinato admitted under cross-examination by the General Counsel that they laid off the employees and effectively closed the Asher facility on October 29, 2004. Spampinato admitted that he knew "a while before" the actual closure date was scheduled to take place. Frydman admitted he never informed the Union of the closure, although it was he who made the decision to close the Asher facility sometime before Spampinato had knowledge.

Aquilino credibly testified he first became aware of the closure of the Asher facility on or about October 29. When he visited the Asher facility he observed that a few employees were moving machinery about. It was clear that production was over.

I find at this time October 29, the deed was done and that effective bargaining could not take place. *First National Maintenance Corp.*, 452 U.S. 666, 681 (1981).

Moreover, under these circumstances, the Union cannot be found to have waived any right to bargain as Respondent Employers presented it with a fait accompli. See, e.g., *Champion International Corp.*, 339 NLRB 672 fn. 29 (2003), and cases cited therein. I find that Respondent Employers violated Section 8(a)(1) and (5) of the Act in this regard.

To remedy this violation it is requested that Respondent Employers be ordered to bargain with the Union, on request, about the effects of its decision to close. In addition, Respondent Employers should be ordered to pay backpay to the laid off employees in the manner prescribed in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

² This SEC form is also evidence of a single employer.

The Single Employer Issue

The criteria that establish a single employer are set out in *RBE Electronics of S.D., Inc.*, 320 NLRB 80 (1995), and *Mercy Hospital of Buffalo*, 336 NLRB 1284 (2001), as follows:

The Board applies four factors in evaluating whether two entities constitute a single Employer: 1) interrelation of operations; 2) common management; 3) centralized control of labor relations and 4) common ownership or financial control. *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991).

No one factor is controlling, and all factors do not have to be met in order for two entities to constitute a single employer. However, the Board has held that the first three factors are the most significant, and the third factor—centralized control of labor relations—is "of particular importance because it tends to demonstrate 'operational integration.'" *RBE Electronics of S.D., Inc.*, supra; *Hydrolines, Inc.*, supra; *Mercy Hospital of Buffalo*, supra.

During this 5-day trial Frydman, acting as the representative of Respondent during his opening statement, his testimony under Section 611(c) and his own testimony in defense of the allegations alleged in the complaint, made admission after admission which was corroborated by the testimony of Willi and Spampinato. Given all the evidence it is clear that Respondent Employers constitute a single employer under the requirements of *RBE Electronics*, supra.

In addition, there were voluminous records submitted by both the General Counsel and Respondent that corroborate the testimony in the trial record.

There is no credibility as to the facts relating to the single employer issue.

Counsel for the General Counsel in her brief, concisely states as follows:

In this case, the record evidence is clear that there is no arm's length relationship between Respondent Employer, and all four factors used to evaluate single employer status are present. First, the top management at Respondent Sherwood and Respondent Asher are the same—Uziel Frydman, Amir Frydman and Chris Willi—and Respondent Sherwood made all pension and dues payments to the Union on Sherwood Brands checks, approved all expenditures of any significance, processed and funded Respondent Asher's payroll from a Sherwood corporate account, transferred employees among its facilities, made the decision to eliminate certain shifts and approved overtime hours in non-emergency situations. Respondent Sherwood also made the decision to close Respondent Asher and not pay severance to the employees. In several recent documents filed with the SEC, Respondent Sherwood consistently characterized Respondent Asher as part of Sherwood itself. Its website also shows that Sherwood markets its products, including Asher Candy Canes, as Sherwood Brands products and directs its message to Sherwood Brands customers.

Based on the above, it is clear that all four factors have been met and that Respondent Employers cannot, under any view of

the undisputed facts, be considered to have an arm's length relationship.

Respondent's defense to this entire case was essentially that he, Frydman, had an absolute right to terminate the Asher facility, of Sherwood's facilities without notice to the Union, and that such termination would exclude any contract liability. Respondent's reason for the closure of the Asher facility was that the price of sugar in the United States was too high and much cheaper in Brazil.

Accordingly, I conclude that Respondent Asher and Respondent Sherwood are a single employer and as such was bound by the terms of the 1999-2002 agreement as modified by the MOA which expired in June 30, 2005.

Accordingly, I find that Respondents are required to meet the obligations of the collective-bargaining agreement and pay to its employees, vacation pay and severance pay as set forth in the bargaining agreement.

Additionally, I find the failure to make such payments constitute unilateral changes in violation of Section 8(a)(1) and (5) of the Act. See *Champion International Corp.*, supra.

CONCLUSIONS OF LAW

1. At all times material herein Respondent Asher is an employer as defined in Section 2(2), (6), and (7) of the Act.

2. Respondent Sherwood is an employer as defined in Section 2(2), (6), and (7) of the Act.

3. At all times material herein Respondent Asher and Respondent Sherwood constitute a single integrated business enterprise and a single employer within the meaning of the Act.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. At all times material herein, Respondent Asher and Respondent Sherwood have been parties to a collective-bargaining agreement with the Union, covering a unit of Respondent Asher's employees:

All full-time and part-time production and maintenance employees, including all temporary employees, excluding office sales employees and supervisors as defined by Section 2(11) of the Act.

6. On or about October 29, 2004, Respondent Employers terminated Respondent Asher's business operations and laid off

its unit employees without notice to the Union of the termination of its business operations and the layoff of its employees³ in violation of Section 8(a)(1) and (5) of the Act.

7. Respondent Employers failed to pay to Respondent Asher's employees, accrued vacation pay and severance pay as set forth in Respondent Asher's collective-bargaining agreement in violation of Section 8(a)(1) and (5) of the Act.⁴

REMEDY

Having found Respondent Employees have engaged in the unfair labor practices described above I shall recommend an Order requiring Respondent Employers to cease and desist and to take certain affirmative action described below.

1. With respect to the termination and closure of Respondent Asher facility Respondent Employers must bargain with the Union on request, about the effects of its decision to close the Asher facility. In addition, Respondent Employers shall be ordered to pay backpay to the laid-off unit employees in the manner set forth and prescribed in *Transmarine Navigation Corp.*, supra.

2. Pay to its employees all vacation and severance pay due pursuant to the terms of the parties' collective-bargaining agreement.

3. With respect to Respondent Employers layoff of employees and its failure to pay its employees accrued vacation pay and severance pay pursuant to the terms of Respondent Asher's collective-bargaining agreement with the Union, backpay, vacation pay and severance pay will be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1956), with interest as prescribed by *New Horizon for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication]

³ Approximately four unit employees worked until on or about early February 2005 moving machinery and performing cleaning operations. Production work ceased on October 29, 2004.

⁴ By a facsimile dated October 9, 2005, Respondent Employers state that during the week of October 10, 2005 they will pay accrued vacation pay

EXHIBIT B

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-1368

September Term, 2007

FILED ON: NOVEMBER 27, 2007

[1082491]

ASHER CANDY, INC. AND
SHERWOOD BRANDS, INC.,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

Consolidated with 06-1393

On Petition for Review and Cross-Application for Enforcement
of an Order of the National Labor Relations Board

Before: RANDOLPH, ROGERS and GRIFFITH, *Circuit Judges*.

J U D G M E N T

This petition for review and cross-application for enforcement were considered on the record from the National Labor Relations Board and on the briefs and arguments of the parties. It is

ORDERED AND ADJUDGED that the petition for review be denied and the Board's cross-application for enforcement be granted.

Petitioners Asher Candy, Inc. and Sherwood Brands, Inc. (Companies) dispute the Board's finding that they (1) constitute a single employer; (2) failed to engage in meaningful effects bargaining with Local 102, Baker Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO (Union) about their

decision to close the Asher facility; and (3) violated § 8(a)(1) and (5) of the National Labor Relations Act by refusing to pay severance to terminated Asher employees. The Board's findings are supported by substantial evidence in the record.

The Board considers four factors to determine whether single employer status exists: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership. *RC Aluminum Indus., Inc. v. NLRB*, 326 F.3d 235, 239 (D.C. Cir. 2003). "Not all four criteria must be satisfied for the Board to find a single employer." *Id.*

First, the Companies concede common ownership. Second, a finding of common management is supported by Uziel Frydman's service as president of each company and Chris Willi's service as chief financial officer of each company. Further, only Sherwood's board had the authority to shut down Asher, and the record shows that the general manager at Asher required Sherwood approval for major repairs or purchases. Third, centralized control of labor relations is evident from the Asher general manager's inability to enter into a collective bargaining agreement without the approval of Sherwood's board of directors. *See Am. Stores Packing Co.*, 277 N.L.R.B. 1656, 1657 (1986).

Sherwood's board of directors made the decision to close Asher but did not give Asher employees or the Union notice until the day of closing. Notice on the day of closing is insufficient to give the Union an opportunity to bargain regarding the effects of the closing. *Williamette Tug & Barge Co.*, 300 N.L.R.B. 282, 283 (1990).

The Companies' refusal to pay severance to employees constituted a unilateral change in a term of employment that violated § 8(a)(1) and (5). *Honeywell Int'l, Inc. v. NLRB*, 253 F.3d 125, 127, 131 (D.C. Cir. 2001). When Sherwood acquired Asher, Sherwood assumed the severance terms of Asher's 1999-2002 collective bargaining contract. The severance terms survived expiration of the contract and could not be unilaterally altered. *Id.* at 127. The Companies acknowledged their duty to pay severance in their 2004 SEC filing. The 2002 memorandum of agreement between the Union and the Companies did not address severance. Thus, the Companies have a legal obligation to pay severance on the terms of the expired contract. *Id.* at 128, 133. These continued benefits are ensured "absent an impasse in bargaining or a new agreement." *Id.* at 133.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk

EXHIBIT C

Asher Candy, Inc. and Sherwood Brands, Inc. LLC, a single employer and Local 102, Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO. Case 29-CA-26761

February 19, 2009

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On June 18, 2008, Administrative Law Judge Steven Davis issued the attached supplemental decision. The Respondents filed exceptions.

The Board has considered the supplemental decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the supplemental decision of the administrative law judge and orders that the Respondents, Asher Candy, Inc. and Sherwood Brands, Inc. LLC, a Single Employer, New Hyde Park, New York, and Rockville, Maryland, their officers, agents, successors, and assigns, shall make whole the employees as set forth in appendices A, B, and C of the administrative law judge's recommended Order and in the amounts set forth there, plus interest accrued to the date of such payment, minus the tax withholdings required by Federal, State, and local laws.

¹ The Respondents' request for a new hearing or to reopen the record is denied.

The Respondents did not appear at the hearing in this proceeding and the General Counsel moved for default judgment. At the hearing, the judge granted "summary judgment." We adopt the judge's finding in his supplemental decision that no evidence has been presented by the Respondents to refute any of the allegations in the compliance specification. Although the General Counsel on May 14, 2008, extended the deadline for filing an answer to May 21, 2008, and the Respondents filed an answer to the specification by letter dated May 19, 2008, that answer does not specifically state the basis for any disagreement with most of the calculations in the specification, pursuant to Sec. 102.56 of the Board's Rules and Regulations. In any event, as they did not appear at the hearing, the Respondents did not establish that the backpay or severance pay amounts set forth in the specification were inconsistent with terms of the governing collective-bargaining agreement, nor did they otherwise present evidence supporting any defenses that the amounts set forth in the specification are inaccurate in any respect. Accordingly, we adopt the judge's Order.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Nancy Lipin, Esq., for the General Counsel.
Ray Aquilino, President, of Local 102.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. On October 24, 2006, the Board issued its Decision, 348 NLRB 993 (2006), in which it ordered Asher Candy, Inc. and Sherwood Brands, Inc., LLC, a single employer (Respondents) to (a) on request, bargain in good faith with the Union about the effects of their decision to lay off their employees and close Respondent Asher Candy's facility, (b) pay backpay to the laid-off employees, and (c) make whole their employees for their failure to pay severance and vacation pay consistent with the terms established by the Union's most recent collective-bargaining agreement with Respondent Asher Candy. The only issue before me is the Respondents' obligation to pay backpay and severance pay.

On November 27, 2007, the United States Court of Appeals for the District of Columbia Circuit entered a judgment (06-1368) enforcing in full the Board's Decision and Order.

On March 28, 2008,¹ a compliance specification and notice of hearing was issued directing that a hearing be held on May 21, later postponed to May 28. On April 15, Uziel Frydman, the Respondents' president, requested that the hearing be postponed to late July because of his unavailability. Attached to the request was Frydman's detailed itinerary listing international business commitments on various dates from April 22 to mid-July. However, his schedule did not list any obligations for the period May 29 through June 14.

Accordingly, on April 24, the Regional Office postponed this hearing to June 4, and extended, to May 12, the Respondents' time to file an answer to the specification.

On June 1, 5 weeks after the June 4 date was set and 3 days before the scheduled hearing, Frydman requested a postponement to July 21 because (a) his request for 46 subpoenas had not been complied with by the Regional Office, (b) Human Resources Director Vargulish left on her "summer planned vacation" on May 30, and would not return until June 30, (c) he needed additional time to file an answer to the specification, and (d) he will be on vacation in Israel beginning June 14.

Counsel for the General Counsel filed an opposition to the postponement request, joined by the Charging Party. On June 3, Judge Joel Biblowitz faxed an Order denying the request and directing that the hearing proceed on June 4. The fax confirmation notice was received in evidence which stated that it was received by the Respondents.

The hearing was held, as scheduled, on June 4. At the hearing, counsel for the General Counsel stated that she called the Respondents that day and spoke to Frydman who told her that he would not be present at the hearing, but that he intended to appeal Judge Biblowitz' Order and also assert other "irregularities" by the Regional Office. No appearance at the hearing was made by the Respondents. At the hearing counsel for the General Counsel moved for a default judgment on the ground that the Respondents had not filed an answer to the specification.

¹ All dates hereafter are in 2008, unless otherwise stated.

The Request for Postponement

I affirm Judge Biblowitz' denial of the Respondents' request for postponement.

First, the Respondents claim that 46 subpoenas they requested were not received. Evidence received at the hearing establishes that the 46 subpoenas were sent by the Regional Office on May 22 by FedEx. Delivery was attempted at 11:10 a.m. on May 23, but according to a FedEx document the "customer was not available or business closed." Indeed, Frydman asserts in his June 1 letter that the package "came after I left to a meeting out of the office." [sic] Clearly, the subpoenas were delivered during business hours and someone should have been present to accept them. Moreover, another delivery was attempted at 11:26 a.m. on May 27, but according to a letter from FedEx "delivery could not be completed as the consignee refused to accept the parcel."² Clearly, the failure to receive the subpoenas, assuming that is a valid ground for postponement, was the fault of the Respondents.

It should be noted that on May 14, counsel for the General Counsel sent the Respondents 15 subpoenas by regular mail. Those subpoenas, sent to the Respondents' correct address, were not returned by the Postal Service. Respondents denied receiving them.

Second, the fact that Human Resources Director Vargulish left on a "planned vacation" on May 30 is not a valid reason for the request. The June 4 hearing date was set on April 24, nearly 5 weeks before Vargulish left. Clearly, if this was indeed a "planned" vacation her departure date would have been known to the Respondents on April 24, and either her vacation could have been rescheduled, or a postponement request, on that ground, could have been made at that time.

Third, the fact that the Respondents needed additional time to file their answer is not a ground to postpone the hearing. The original date for filing an answer was April 18. That date was extended to May 12. Whether the papers subsequently filed constituted a sufficient answer will be discussed below. Finally, the June 4 hearing date would not have interfered with Frydman's vacation beginning on June 14.

Accordingly, I find that the request for postponement is entirely devoid of merit and was properly denied.

The Motion for Default Judgment

Counsel for the General Counsel maintains that no answer was filed by the Respondents, and at the hearing moved for a default judgment on that ground. The answer was originally due on April 18. The time for filing an answer was thereafter extended to May 12. She advised the Respondents, in writing, that if no answer was filed, she would request summary judgment at the June 4 hearing.

By letters dated May 8 and 21, the Respondents requested the issuance of subpoenas. The May 8 letter arguably raised a

² Following the hearing, in a letter to Judge Biblowitz dated June 5, Frydman stated that "I was not in the office until the afternoon of May 27, and the clerk at the office who was asked to sign the envelope refused correctly to do so because the FedEx envelope was not marked to SHERWOOD but to me personally and no signature was clearly shown on the envelop as a requirement to accept it" [sic] The letter has been included in the evidence file as GC Exh 6

contractual defense to the severance pay part of the specification. It states that, according to the contract, employees "were not entitled to any severance if they find and or move to another job. Under this contract provision Asher/Sherwood are entitled to find out if the Asher employees were employed after termination by Asher. The above-requested subpoenas will be part of the discovery that Sherwood plan to use to discover all facts re the employment of Asher ex-employees after their termination." [sic]

In fact, the contract states as follows:

In the event the Employer ceases to do business as a result of which its employees lose employment in the industry, or in the event of removal of the plant by the Employer to a point beyond commuting distance for a majority of the employees of such plant, severance pay in accordance with the following schedule shall be paid to those employees in the employ of the Employer who have completed the periods of employment with the Employer prescribed in the following schedule.

The Board found that after Respondent Asher closed its New Hyde Park, New York plant on October 29, 2004, "the candy canes formerly manufactured by Respondent Asher are now manufactured at Respondent Sherwood's facilities in Brazil." The Board also found that Respondents Asher and Sherwood are a single employer. *Supra* at 995-996

The specification alleges that pursuant to the parties' contract, employees were entitled to severance pay following the closure of the plant. The Board's Decision directed that the Respondents make their employees whole for their failure to pay severance pay "consistent with the terms established by the Union's most recent collective-bargaining agreement with Respondent Asher Candy . . ." *Supra* at 993.

It is the General Counsel's burden to prove gross backpay. The specification sets forth the method of calculation and the calculations for the amounts sought for severance pay, and for backpay pursuant to *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). At the hearing, counsel for the General Counsel stated that all the computations as to severance pay were made consistent with the terms established by the Union's most recent collective-bargaining agreement with Respondent Asher. The specification properly sets forth the backpay period. The calculations also properly state the manner in which severance pay was calculated—multiplying the number of severance weeks each discriminatee was eligible to receive pursuant to the contract by their weekly wage rates which were calculated on the basis of a 40-hour week multiplied by the applicable hourly wage rate.

Section 102.56 of the Board's Rules and Regulations requires that as to all matters within the knowledge of the Respondents, including the various factors entering into the computation of gross backpay, the answer shall specifically state the basis for any disagreement, setting forth the Respondents' position as to the applicable premises and furnishing the appropriate supporting figures.

The Respondents did not file an answer as to any of the specification's specific computations concerning gross backpay, including the backpay period, the employees' dates of hire and termination, years of employment with the Respondents,

their hourly wage rate, weekly pay, the number of severance weeks they were entitled to as set forth in the contract based on their years of employment, or the precise amounts of backpay and severance pay owed to them. Accordingly, all the gross backpay calculations are undenied, and they are deemed to be true. Section 102.56

According to the contract, the employees were entitled to severance pay if either they lost employment in the industry or the plant was removed beyond their commuting distance. It is the Respondents' burden to prove deductions to backpay. *Mastro Plastics*, 136 NLRB 1342, 1346 (1962). Accordingly, it is their burden to prove, according to the contract, that the discriminatees are not entitled to contractual severance pay because they continued to be employed in the industry and that the plant was not removed beyond the employees' commuting distance. The Respondents recognized that they had this burden of proof by requesting subpoenas in order to examine records and question their former employees as to jobs they held after the plant closed. However, it appears that, had the Respondents defended this case, it would have been unlikely that they could have proven that their relocated facility in Brazil was within its New York-based employees' commuting distance.

Inasmuch as the Respondents did not appear at the hearing to present any evidence as to their defense, I find and conclude that they have not met their burden of proving that the backpay or severance pay amounts were inconsistent with the terms of the contract or that they were inaccurate in any respect. Accordingly, this alleged defense has no merit and it is rejected.

Similarly, the Respondents' May 21 letter states that four employees quit in June 2004, and are not entitled to backpay or

severance pay. The letter does not identify the four employees or offer any other evidence of their alleged resignations, and since the Respondents did not appear at the hearing, no such evidence was presented there. Accordingly, the Respondents have not presented any evidence to support this alleged defense, and it is rejected.

Conclusions

No sufficient answer having been filed to any of the computations set forth in the compliance specification, and no evidence having been presented by the Respondents at the hearing to refute any of the allegations in the specification, all such allegations are deemed to be admitted to be true and are hereby found to be true. The Respondents shall be obligated to pay to the employees the amounts set forth in appendices A, B, and C of the compliance specification, attached, with interest.

Based on the above, I issue the following recommended³

ORDER

The Respondents, Asher Candy, Inc. and Sherwood Brands, Inc., LLC, a single employer, New Hyde Park, New York, and Rockville, Maryland, their officers, agents, successors, and assigns, shall make whole the employees set forth in the attached appendices A, B, and C, and in the amounts set forth there, plus interest accrued to the date of such payment, minus the tax withholdings required by Federal, State, and local laws.

³ 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.

Appendix A

Asher Candy, Inc.: Years of Service/Severance Weeks

| <i>Last Name</i> | <i>First Name</i> | <i>Date of Hire</i> | <i>Date of Term</i> | <i>Employment Years Met</i> | <i>Severance Weeks</i> |
|------------------|-------------------|---------------------|---------------------|-----------------------------|------------------------|
| Adriem | Marise | 06/16/1975 | 10/28/2004 | 20 | 15 |
| Arriola | Juan | 04/24/1978 | 10/28/2004 | 20 | 15 |
| Arriola | Maria | 01/01/1988 | 10/28/2004 | 16 | 12 |
| Arteaga | Jose | 07/26/1984 | 10/21/2004 | 20 | 15 |
| Arteaga | Rosinda | 03/14/1994 | 10/21/2004 | 10 | 10 |
| Benitez | Concepcion | 02/27/1995 | 10/12/2004 | 9 | 6 |
| Calixte | Jean | 03/13/1998 | 10/28/2004 | 6 | 3 |
| Carbajal | Yolanda | 05/10/1993 | 10/21/2004 | 11 | 10 |
| Castillo | Custudio | 08/19/1991 | 10/21/2004 | 14 | 10 |
| Concepcion | Gloria | 01/13/1994 | 10/21/2004 | 10 | 10 |
| Debe | Emanette | 03/29/1993 | 10/21/2004 | 11 | 10 |
| Debe | Ruben | 02/24/1992 | 10/12/2004 | 12 | 10 |
| Duperval | Francoer | 07/03/1996 | 10/12/2004 | 8 | 6 |
| Emmanuel | Mimose | 07/20/1995 | 10/12/2004 | 9 | 6 |
| Estrada | Angela | 03/29/1993 | 10/21/2004 | 11 | 10 |
| Fleurissant | Jean | 02/25/1976 | 10/28/2004 | 20 | 15 |
| Flores | Maria | 05/18/1995 | 10/12/2004 | 9 | 6 |
| Gomez | Helen | 10/27/1988 | 10/21/2004 | 15 | 12 |
| Gomez | Maria | 03/12/1992 | 10/21/2004 | 12 | 10 |
| Gonzalez | Maribel | 05/11/1993 | 10/21/2004 | 11 | 10 |
| Guevara | Fidel | 08/16/1989 | 10/21/2004 | 15 | 12 |

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

| | | | | | |
|-------------|-----------|------------|------------|----|----|
| Guevara | Juana | 07/27/1989 | 10/28/2004 | 15 | 12 |
| Jennings | Frederick | 05/09/1988 | 10/21/2004 | 16 | 12 |
| Johnson | Susan | 06/09/1975 | 10/28/2004 | 20 | 15 |
| Johnson | Timothy | 06/20/1995 | 10/12/2004 | 9 | 6 |
| Martinez | Rosa | 11/19/1990 | 10/28/2004 | 13 | 10 |
| Miranda | Reyna | 10/25/1988 | 10/28/2004 | 16 | 12 |
| Morgan | Donald | 06/18/1984 | 02/02/2005 | 20 | 15 |
| Myrthil | Jeanina | 07/18/1995 | 10/12/2004 | 9 | 6 |
| Oliver | Anthony | 01/07/1997 | 10/21/2004 | 7 | 3 |
| Ortiz | Marcos | 04/05/1978 | 10/28/2004 | 20 | 15 |
| Perez | Olivia | 06/21/1984 | 10/28/2004 | 20 | 15 |
| Pierre | Gerard | 05/20/1974 | 01/11/2005 | 20 | 15 |
| Quintanilla | Ana | 07/17/1995 | 10/12/2004 | 9 | 6 |
| Regina | Francesco | 08/24/1994 | 10/28/2004 | 10 | 10 |
| Rosa | Marinela | 09/24/1990 | 10/21/2004 | 14 | 10 |
| Salmeron | Maria | 03/29/1993 | 10/21/2004 | 11 | 10 |
| Shivnarain | Puran | 11/25/1985 | 10/12/2004 | 18 | 12 |
| Stevens | Angela | 03/31/1981 | 10/28/2004 | 20 | 15 |
| Strachan | David | 01/29/1980 | 01/31/2005 | 20 | 15 |
| Tummings | John | 02/24/1975 | 01/31/2005 | 20 | 15 |
| Ventura | Sylvia | 05/17/1995 | 10/12/2004 | 9 | 6 |
| Waldron | Kenmore | 04/26/1971 | 02/02/2005 | 20 | 15 |
| Washington | Mae | 06/30/1975 | 10/28/2004 | 20 | 15 |
| Watson | Brenda | 08/15/1966 | 10/28/2004 | 20 | 15 |
| Williams | Merrell | 02/10/1982 | 10/26/2004 | 20 | 15 |

Appendix B

Asher Candy, Inc.: Hourly Rates and Weekly Pay

| <i>Last Name</i> | <i>First Name</i> | <i>Hourly Rate</i> | <i>Weekly Pay</i> |
|------------------|-------------------|--------------------|-------------------|
| Adriem | Marise | \$ 14 26 | \$ 570 40 |
| Arriola | Juan | 15 46 | 618 40 |
| Arriola | Maria | 10 36 | 414 40 |
| Arteaga | Jose | 13 13 | 525 20 |
| Arteaga | Rosinda | 7 65 | 306 00 |
| Benitez | Concepcion | 7 50 | 300 00 |
| Calixte | Jean | 7 85 | 314 00 |
| Carbajal | Yolanda | 7 80 | 312 00 |
| Castillo | Custudio | 9 40 | 376 00 |
| Concepcion | Gloria | 7 60 | 304 00 |
| Debe | Emanette | 7 80 | 312 00 |
| Debe | Ruben | 8 85 | 354 00 |
| Duperval | Francoer | 7 10 | 284 00 |
| Emmanuel | Mimose | 7 50 | 300 00 |
| Estrada | Angela | 7 80 | 312 00 |
| Fleurissant | Jean | 15 20 | 608 00 |
| Flores | Maria | 7 50 | 300 00 |
| Gomez | Helen | 9 80 | 392 00 |
| Gomez | Maria | 7 80 | 312 00 |
| Gonzalez | Maribel | 7 80 | 312 00 |
| Guevara | Fidel | 10 30 | 412 00 |
| Guevara | Juana | 9 30 | 372 00 |
| Jennings | Frederick | 11 55 | 462 00 |
| Johnson | Susan | 14 01 | 560 40 |
| Johnson | Timothy | 9 60 | 384 00 |
| Martinez | Rosa | 8 80 | 352 00 |
| Miranda | Reyna | 9 80 | 392 00 |
| Morgan | Donald | 12 82 | 512 80 |

| | | | |
|-------------|-----------|----------|-----------|
| Myrthil | Jeanina | 7 10 | 284 00 |
| Oliver | Anthony | 9 05 | 362 00 |
| Ortiz | Marcos | 15 29 | 611 60 |
| Perez | Olivia | 11 16 | 446 40 |
| Pierre | Gerard | 14 37 | 574 80 |
| Quintanilla | Ana | 7 65 | 306 00 |
| Regina | Francesco | 9 80 | 392 00 |
| Rosa | Marinela | 11 80 | 472 00 |
| Salmeron | Maria | 7 80 | 312 00 |
| Shwnarain | Puran | 16 16 | 646 40 |
| Stevens | Angela | 12 88 | 515 20 |
| Strachan | David | 17 85 | 714 00 |
| Tummings | John | 20 71 | 828 40 |
| Ventura | Sylvia | 7 50 | 300 00 |
| Waldron | Kenmore | 15 97 | 638 80 |
| Washington | Mae | 14 01 | 560 40 |
| Watson | Brenda | 14 78 | 591 20 |
| Williams | Merrell | \$ 13 50 | \$ 540 00 |

Appendix C

Asher Candy, Inc.: Severance and Transmarine Moneys Owed

| <i>Last Name</i> | <i>First Name</i> | <i>Hourly Rate</i> | <i>Weekly Pay</i> | <i>Severance Weeks</i> | <i>Severance Payout</i> | <i>Transmarine</i> | <i>Total</i> |
|------------------|-------------------|--------------------|-------------------|------------------------|-------------------------|--------------------|--------------|
| Adriem | Marise | 14 26 | 570 40 | 15 | \$ 8,556 00 | \$ 1,140 80 | \$ 9,696 80 |
| Arriola | Juan | 15 46 | 618 40 | 15 | 9,276 00 | 1,236 80 | 10,512 80 |
| Arriola | Maria | 10 36 | 414 40 | 12 | 4,972 80 | 828 80 | 5,801 60 |
| Arteaga | Jose | 13 13 | 525 20 | 15 | 7,878 00 | 1,050 40 | 8,928 40 |
| Arteaga | Rosinda | 7 65 | 306 00 | 10 | 3,060 00 | 612 00 | 3,672 00 |
| Benitez | Concepcion | 7 50 | 300 00 | 6 | 1,800 00 | 600 00 | 2,400 00 |
| Calixte | Jean | 7 85 | 314 00 | 3 | 942 00 | 628 00 | 1,570 00 |
| Carbajal | Yolanda | 7 80 | 312 00 | 10 | 3,120 00 | 624 00 | 3,744 00 |
| Castillo | Custudio | 9 40 | 376 00 | 10 | 3,760 00 | 752 00 | 4,512 00 |
| Concepcion | Gloria | 7 60 | 304 00 | 10 | 3,040 00 | 608 00 | 3,648 00 |
| Debe | Emanette | 7 80 | 312 00 | 10 | 3,120 00 | 624 00 | 3,744 00 |
| Debe | Ruben | 8 85 | 354 00 | 10 | 3,540 00 | 708 00 | 4,248 00 |
| Duperval | Francoer | 7 10 | 284 00 | 6 | 1,704 00 | 568 00 | 2,272 00 |
| Emmanuel | Mimose | 7 50 | 300 00 | 6 | 1,800 00 | 600 00 | 2,400 00 |
| Estrada | Angela | 7 80 | 312 00 | 10 | 3,120 00 | 624 00 | 3,744 00 |
| Fleurissant | Jean | 15 20 | 608 00 | 15 | 9,120 00 | 1,216 00 | 10,336 00 |
| Flores | Maria | 7 50 | 300 00 | 6 | 1,800 00 | 600 00 | 2,400 00 |
| Gomez | Helen | 9 80 | 392 00 | 12 | 4,704 00 | 784 00 | 5,488 00 |
| Gomez | Maria | 7 80 | 312 00 | 10 | 3,120 00 | 624 00 | 3,744 00 |
| Gonzalez | Maribel | 7 80 | 312 00 | 10 | 3,120 00 | 624 00 | 3,744 00 |
| Guevara | Fidel | 10 30 | 412 00 | 12 | 4,944 00 | 824 00 | 5,768 00 |
| Guevara | Juana | 9 30 | 372 00 | 12 | 4,464 00 | 744 00 | 5,208 00 |
| Jennings | Frederick | 11 55 | 462 00 | 12 | 5,544 00 | 924 00 | 6,468 00 |
| Johnson | Susan | 14 01 | 560 40 | 15 | 8,406 00 | 1,120 80 | 9,526 80 |
| Johnson | Timothy | 9 60 | 384 00 | 6 | 2,304 00 | 768 00 | 3,072 00 |
| Martinez | Rosa | 8 80 | 352 00 | 10 | 3,520 00 | 704 00 | 4,224 00 |
| Miranda | Reyna | 9 80 | 392 00 | 12 | 4,704 00 | 784 00 | 5,488 00 |
| Morgan | Donald | 12 82 | 512 80 | 15 | 7,692 00 | 1,025 60 | 8,717 60 |
| Myrthil | Jeanina | 7 10 | 284 00 | 6 | 1,704 00 | 568 00 | 2,272 00 |
| Oliver | Anthony | 9 05 | 362 00 | 3 | 1,086 00 | 724 00 | 1,810 00 |
| Ortiz | Marcos | 15 29 | 611 60 | 15 | 9,174 00 | 1,223 20 | 10,397 20 |
| Perez | Olivia | 11 16 | 446 40 | 15 | 6,696 00 | 892 80 | 7,588 80 |
| Pierre | Gerard | 14 37 | 574 80 | 15 | 8,622 00 | 1,149 60 | 9,771 60 |
| Quintanilla | Ana | 7 65 | 306 00 | 6 | 1,836 00 | 612 00 | 2,448 00 |

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

| | | | | | | | |
|------------|-----------|-------|--------|----|--------------|-------------|--------------|
| Regina | Francesco | 9 80 | 392 00 | 10 | 3,920 00 | 784 00 | 4,704 00 |
| Rosa | Marineta | 11 80 | 472 00 | 10 | 4,720 00 | 944 00 | 5,664 00 |
| Salmeron | Maria | 7 80 | 312 00 | 10 | 3,120 00 | 624 00 | 3,744 00 |
| Shivnarain | Puran | 16 16 | 646 40 | 12 | 7,756 80 | 1,292 80 | 9,049 60 |
| Stevens | Angela | 12 88 | 515 20 | 15 | 7,728 00 | 1,030 40 | 8,758 40 |
| Strachan | David | 17 85 | 714 00 | 15 | 10,710 00 | 1,428 00 | 12,138 00 |
| Tummings | John | 20 71 | 828 40 | 15 | 12,426 00 | 1,656 80 | 14,082 80 |
| Ventrua | Sylvia | 7 50 | 300 00 | 6 | 1,800 00 | 600 00 | 2,400 00 |
| Waldron | Kenmore | 15 97 | 638 80 | 15 | 9,582 00 | 1,277 60 | 10,859 60 |
| Washington | Mae | 14 01 | 560 40 | 15 | 8,406 00 | 1,120 80 | 9,526 80 |
| Watson | Brenda | 14 78 | 591 20 | 15 | 8,868 00 | 1,182 40 | 10,050 40 |
| Williams | Merrell | 13 50 | 540 00 | 15 | 8,100 00 | 1,080 00 | 9,180 00 |
| TOTAL | | | | | \$239,385 60 | \$40,137 60 | \$279,523 20 |

EXHIBIT D

MANDATE



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD)
)
Petitioner)
)
v.)
)
ASHER CANDY, INC/SHERWOOD BRANDS,)
INC., LLC, A SINGLE EMPLOYER)
)
Respondent)

No. 09-1307-ag

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before: Roger J. Miner, Robert A. Katzmann, Reena Raggi, Circuit Judges.

This cause was submitted upon the motion of the National Labor Relations Board for entry of a default judgment against Respondent, Asher Candy, Inc/Sherwood Brands, Inc., LLC, a single employer, its officers, agents, successors, and assigns, enforcing its order dated February 19, 2009, in Case No. 29-CA-26761, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Asher Candy, Inc/Sherwood Brands, Inc., LLC, a single employer, its officers, agents, successors, and assigns, shall make whole the individuals named in attached appendices A, B, and C by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws: (See attached Appendices A, B and C).

Mandate shall issue forthwith.

SO ORDERED:

FOR THE COURT:
CATHERINE O'HAGAN WOLFE

By: Joy Fallek
Joy Fallek, Administrative Attorney

10/15/09
Date

Catherine O'Hagan Wolfe, Clerk
DEPUTY CLERK

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk

[Signature]
DEPUTY CLERK

CERTIFIED: 12/10/09 (KA)

ISSUED AS MANDATE: 10/15/09 YL

Appendix A

Asher Candy, Inc.: Years of Service/Severance Weeks

| <i>Last Name</i> | <i>First Name</i> | <i>Date of Hire</i> | <i>Date of Term</i> | <i>Employment Years Met</i> | <i>Severance Weeks</i> |
|------------------|-------------------|---------------------|---------------------|-----------------------------|------------------------|
| Adriem | Marise | 06/16/1975 | 10/28/2004 | 20 | 15 |
| Arriola | Juan | 04/24/1978 | 10/28/2004 | 20 | 15 |
| Arriola | Maria | 01/01/1988 | 10/28/2004 | 16 | 12 |
| Arteaga | Jose | 07/26/1984 | 10/21/2004 | 20 | 15 |
| Arteaga | Rosinda | 03/14/1994 | 10/21/2004 | 10 | 10 |
| Benitez | Concepcion | 02/27/1995 | 10/12/2004 | 9 | 6 |
| Calixte | Jean | 03/13/1998 | 10/28/2004 | 6 | 3 |
| Carbajal | Yolanda | 05/10/1993 | 10/21/2004 | 11 | 10 |
| Castillo | Custudio | 08/19/1991 | 10/21/2004 | 14 | 10 |
| Concepcion | Gloria | 01/13/1994 | 10/21/2004 | 10 | 10 |
| Debe | Emanette | 03/29/1993 | 10/21/2004 | 11 | 10 |
| Debe | Ruben | 02/24/1992 | 10/12/2004 | 12 | 10 |
| Duperval | Francoer | 07/03/1996 | 10/12/2004 | 8 | 6 |
| Emmanuel | Mimose | 07/20/1995 | 10/12/2004 | 9 | 6 |
| Estrada | Angela | 03/29/1993 | 10/21/2004 | 11 | 10 |
| Fleurissant | Jean | 02/25/1976 | 10/28/2004 | 20 | 15 |
| Flores | Maria | 05/18/1995 | 10/12/2004 | 9 | 6 |
| Gomez | Helen | 10/27/1988 | 10/21/2004 | 15 | 12 |
| Gomez | Maria | 03/12/1992 | 10/21/2004 | 12 | 10 |
| Gonzalez | Maribel | 05/11/1993 | 10/21/2004 | 11 | 10 |
| Guevara | Fidel | 08/16/1989 | 10/21/2004 | 15 | 12 |
| Guevara | Juana | 07/27/1989 | 10/28/2004 | 15 | 12 |
| Jennings | Frederick | 05/09/1988 | 10/21/2004 | 16 | 12 |
| Johnson | Susan | 06/09/1975 | 10/28/2004 | 20 | 15 |
| Johnson | Timothy | 06/20/1995 | 10/12/2004 | 9 | 6 |
| Martinez | Rosa | 11/19/1990 | 10/28/2004 | 13 | 10 |
| Miranda | Reyna | 10/25/1988 | 10/28/2004 | 16 | 12 |
| Morgan | Donald | 06/18/1984 | 02/02/2005 | 20 | 15 |
| Myrthul | Jeanina | 07/18/1995 | 10/12/2004 | 9 | 6 |
| Oliver | Anthony | 01/07/1997 | 10/21/2004 | 7 | 3 |
| Ortiz | Marcos | 04/05/1978 | 10/28/2004 | 20 | 15 |
| Perez | Olivia | 06/21/1984 | 10/28/2004 | 20 | 15 |
| Pierre | Gerard | 05/20/1974 | 01/11/2005 | 20 | 15 |
| Quintanilla | Ana | 07/17/1995 | 10/12/2004 | 9 | 6 |
| Regina | Francesco | 08/24/1994 | 10/28/2004 | 10 | 10 |
| Rosa | Marinela | 09/24/1990 | 10/21/2004 | 14 | 10 |
| Salmeron | Maria | 03/29/1993 | 10/21/2004 | 11 | 10 |
| Shrivnarain | Puran | 11/25/1985 | 10/12/2004 | 18 | 12 |
| Stevens | Angela | 03/31/1981 | 10/28/2004 | 20 | 15 |
| Strachan | David | 01/29/1980 | 01/31/2005 | 20 | 15 |
| Tummings | John | 02/24/1975 | 01/31/2005 | 20 | 15 |
| Ventura | Sylvia | 05/17/1995 | 10/12/2004 | 9 | 6 |
| Waldron | Kenmore | 04/26/1971 | 02/02/2005 | 20 | 15 |
| Washington | Mae | 06/30/1975 | 10/28/2004 | 20 | 15 |
| Watson | Brenda | 08/15/1966 | 10/28/2004 | 20 | 15 |
| Williams | Merrell | 02/10/1982 | 10/26/2004 | 20 | 15 |

Appendix B

Asher Candy, Inc.: Hourly Rates and Weekly Pay

| <i>Last Name</i> | <i>First Name</i> | <i>Hourly Rate</i> | <i>Weekly Pay</i> |
|------------------|-------------------|--------------------|-------------------|
| Adriem | Marise | \$ 14.26 | \$ 570.40 |
| Arriola | Juan | 15.46 | 618.40 |
| Arriola | Maria | 10.36 | 414.40 |
| Arteaga | Jose | 13.13 | 525.20 |
| Arteaga | Rosinda | 7.65 | 306.00 |
| Benitez | Concepcion | 7.50 | 300.00 |
| Calixte | Jean | 7.85 | 314.00 |
| Carbajal | Yolanda | 7.80 | 312.00 |
| Castillo | Custudio | 9.40 | 376.00 |
| Concepcion | Gloria | 7.60 | 304.00 |
| Debe | Emanette | 7.80 | 312.00 |
| Debe | Ruben | 8.85 | 354.00 |
| Duperval | Francoer | 7.10 | 284.00 |
| Emmanuel | Mimose | 7.50 | 300.00 |
| Estrada | Angela | 7.80 | 312.00 |
| Fleurissant | Jean | 15.20 | 608.00 |
| Flores | Maria | 7.50 | 300.00 |
| Gomez | Helen | 9.80 | 392.00 |
| Gomez | Maria | 7.80 | 312.00 |
| Gonzalez | Maribel | 7.80 | 312.00 |
| Guevara | Fidel | 10.30 | 412.00 |
| Guevara | Juana | 9.30 | 372.00 |
| Jennings | Frederick | 11.55 | 462.00 |
| Johnson | Susan | 14.01 | 560.40 |
| Johnson | Timothy | 9.60 | 384.00 |
| Martinez | Rosa | 8.80 | 352.00 |
| Miranda | Reyna | 9.80 | 392.00 |
| Morgan | Donald | 12.82 | 512.80 |
| Myrthil | Jeanina | 7.10 | 284.00 |
| Oliver | Anthony | 9.05 | 362.00 |
| Ortiz | Marcos | 15.29 | 611.60 |
| Perez | Olivia | 11.16 | 446.40 |
| Pierre | Gerard | 14.37 | 574.80 |
| Quintanilla | Ana | 7.65 | 306.00 |
| Regina | Francesco | 9.80 | 392.00 |
| Rosa | Marinela | 11.80 | 472.00 |
| Salmeron | Maria | 7.80 | 312.00 |
| Shivaram | Puran | 16.16 | 646.40 |
| Stevens | Angela | 12.88 | 515.20 |
| Strachan | David | 17.85 | 714.00 |
| Tummings | John | 20.71 | 828.40 |
| Ventura | Sylvia | 7.50 | 300.00 |
| Waldron | Kenmore | 15.97 | 638.80 |
| Washington | Mae | 14.01 | 560.40 |
| Watson | Brenda | 14.78 | 591.20 |
| Williams | Merrell | \$ 13.50 | \$ 540.00 |

Appendix C

Asher Candy, Inc.: Severance and Transmarine Moneys Owed

| <i>Last Name</i> | <i>First Name</i> | <i>Hourly Rate</i> | <i>Weekly Pay</i> | <i>Severance Weeks</i> | <i>Severance Payout</i> | <i>Transmarine</i> | <i>Total</i> |
|------------------|-------------------|--------------------|-------------------|------------------------|-------------------------|--------------------|--------------|
| Adriem | Marise | 14.26 | 570.40 | 15 | \$ 8,556.00 | \$ 1,140.80 | \$ 9,696.80 |
| Arriola | Juan | 15.46 | 618.40 | 15 | 9,276.00 | 1,236.80 | 10,512.80 |
| Arriola | Maria | 10.36 | 414.40 | 12 | 4,972.80 | 828.80 | 5,801.60 |
| Arteaga | Jose | 13.13 | 525.20 | 15 | 7,878.00 | 1,050.40 | 8,928.40 |
| Arteaga | Rosinda | 7.65 | 306.00 | 10 | 3,060.00 | 612.00 | 3,672.00 |
| Benitez | Concepcion | 7.50 | 300.00 | 6 | 1,800.00 | 600.00 | 2,400.00 |
| Calixte | Jean | 7.85 | 314.00 | 3 | 942.00 | 628.00 | 1,570.00 |
| Carbajal | Yolanda | 7.80 | 312.00 | 10 | 3,120.00 | 624.00 | 3,744.00 |
| Castillo | Custudio | 9.40 | 376.00 | 10 | 3,760.00 | 752.00 | 4,512.00 |
| Concepcion | Gloria | 7.60 | 304.00 | 10 | 3,040.00 | 608.00 | 3,648.00 |
| Debe | Emanette | 7.80 | 312.00 | 10 | 3,120.00 | 624.00 | 3,744.00 |
| Debe | Ruben | 8.85 | 354.00 | 10 | 3,540.00 | 708.00 | 4,248.00 |
| Duperval | Francoer | 7.10 | 284.00 | 6 | 1,704.00 | 568.00 | 2,272.00 |
| Emmanuel | Mimose | 7.50 | 300.00 | 6 | 1,800.00 | 600.00 | 2,400.00 |
| Estrada | Angela | 7.80 | 312.00 | 10 | 3,120.00 | 624.00 | 3,744.00 |
| Fleurissant | Jean | 15.20 | 608.00 | 15 | 9,120.00 | 1,216.00 | 10,336.00 |
| Flores | Maria | 7.50 | 300.00 | 6 | 1,800.00 | 600.00 | 2,400.00 |
| Gomez | Helen | 9.80 | 392.00 | 12 | 4,704.00 | 784.00 | 5,488.00 |
| Gomez | Maria | 7.80 | 312.00 | 10 | 3,120.00 | 624.00 | 3,744.00 |
| Gonzalez | Maribel | 7.80 | 312.00 | 10 | 3,120.00 | 624.00 | 3,744.00 |
| Guevara | Fidel | 10.30 | 412.00 | 12 | 4,944.00 | 824.00 | 5,768.00 |
| Guevara | Juana | 9.30 | 372.00 | 12 | 4,464.00 | 744.00 | 5,208.00 |
| Jennings | Frederick | 11.55 | 462.00 | 12 | 5,544.00 | 924.00 | 6,468.00 |
| Johnson | Susan | 14.01 | 560.40 | 15 | 8,406.00 | 1,120.80 | 9,526.80 |
| Johnson | Timothy | 9.60 | 384.00 | 6 | 2,304.00 | 768.00 | 3,072.00 |
| Martinez | Rosa | 8.80 | 352.00 | 10 | 3,520.00 | 704.00 | 4,224.00 |
| Miranda | Reyna | 9.80 | 392.00 | 12 | 4,704.00 | 784.00 | 5,488.00 |
| Morgan | Donald | 12.82 | 512.80 | 15 | 7,692.00 | 1,025.60 | 8,717.60 |
| Myrthil | Jeanina | 7.10 | 284.00 | 6 | 1,704.00 | 568.00 | 2,272.00 |
| Oliver | Anthony | 9.05 | 362.00 | 3 | 1,086.00 | 724.00 | 1,810.00 |
| Ortiz | Marcos | 15.29 | 611.60 | 15 | 9,174.00 | 1,223.20 | 10,397.20 |
| Perez | Olivia | 11.16 | 446.40 | 15 | 6,696.00 | 892.80 | 7,588.80 |
| Pierre | Gerard | 14.37 | 574.80 | 15 | 8,622.00 | 1,149.60 | 9,771.60 |
| Quintanilla | Ana | 7.65 | 306.00 | 6 | 1,836.00 | 612.00 | 2,448.00 |
| Regina | Francesco | 9.80 | 392.00 | 10 | 3,920.00 | 784.00 | 4,704.00 |
| Rosa | Marinela | 11.80 | 472.00 | 10 | 4,720.00 | 944.00 | 5,664.00 |
| Salmeron | Maria | 7.80 | 312.00 | 10 | 3,120.00 | 624.00 | 3,744.00 |
| Shivnarain | Puran | 16.16 | 646.40 | 12 | 7,756.80 | 1,292.80 | 9,049.60 |
| Stevens | Angela | 12.88 | 515.20 | 15 | 7,728.00 | 1,030.40 | 8,758.40 |
| Strachan | David | 17.85 | 714.00 | 15 | 10,710.00 | 1,428.00 | 12,138.00 |
| Tummings | John | 20.71 | 828.40 | 15 | 12,426.00 | 1,656.80 | 14,082.80 |
| Ventrua | Sylvia | 7.50 | 300.00 | 6 | 1,800.00 | 600.00 | 2,400.00 |
| Waldron | Kenmore | 15.97 | 638.80 | 15 | 9,582.00 | 1,277.60 | 10,859.60 |
| Washington | Mae | 14.01 | 560.40 | 15 | 8,406.00 | 1,120.80 | 9,526.80 |
| Watson | Brenda | 14.78 | 591.20 | 15 | 8,868.00 | 1,182.40 | 10,050.40 |
| Williams | Merrell | 13.50 | 540.00 | 15 | 8,100.00 | 1,080.00 | 9,180.00 |
| TOTAL | | | | | \$239,385.60 | \$40,137.60 | \$279,523.20 |

EXHIBIT E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

ASHER CANDY, INC. AND SHERWOOD BRANDS, INC., A Single Employer, and SHERWOOD BRANDS, LLC, Alter Ego of SHERWOOD BRANDS, INC., both d/b/a SHERWOOD BRANDS, INC. LLC; SHERWOOD BRANDS, INC., debtor in possession and SHERWOOD BRANDS, LLC, debtor in Possession

and

Case No. 29-CA-26761

LOCAL 102, BAKERY, CONFECTIONARY,
TOBACCO WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO

NOTICE OF HEARING

The National Labor Relations Board, herein called the Board, having on October 24, 2006, issued its Decision and Order (348 NLRB 993) directing Asher Candy, Inc. and Sherwood Brands, Inc. LLC, a single employer, their officers, agents, successors, and assigns, to make whole their laid off unit employees with severance pay, vacation¹, and backpay calculated in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968); and

The United States Court of Appeals for the District of Columbia Circuit having on January 26, 2008, issued its Judgment (Docket No. 06-1368) enforcing, in full, the Decision and Order of the Board against Asher Candy, Inc. and Sherwood Brands, Inc. finding them to be a single employer; and

A controversy having arisen over the amount of backpay and other monies owed under the Board's Order, a Compliance Specification issued on March 28, 2008; and

¹ Respondents have already satisfied their vacation pay obligation under the Judgment.

The Board, having on February 19, 2009, issued its Supplemental Decision and Order (353 NLRB 959) directing Asher Candy, Inc. and Sherwood Brands, Inc. LLC, a single employer, their officers, agents, successors, and assigns, to make whole 46 named employees by paying them \$279,523.20, consisting of \$239,385.60 in severance pay, and \$40,137.60 in *Transmarine* backpay, plus interest accrued to the date of such payment; and

The United States Court of Appeals for the Second Circuit having on September 10, 2009, issued its Judgment (Docket Nos. 09-1368 and 09-2831) enforcing, in full, the Board's Supplemental Decision and Order,

Now, further controversy having arisen as to whether Sherwood Brands, Inc. ("Sherwood Inc."), Sherwood Brands LLC ("Sherwood LLC"), Sherwood Brands, Inc., debtor in possession, and Sherwood Brands, LLC, debtor in possession, should be jointly and severally required to comply with the Court Judgment enforcing the Board's Supplemental Order, the undersigned, pursuant to Sections 102.52 and 102.54 of the Board's Rules and Regulations-Series 8, as amended, hereby issues this Notice of Hearing and alleges as follows:

1. (a) Sherwood Inc. is a North Carolina Corporation with its principal place of business located at 1803 Research Boulevard, Suite 201, Rockville, Maryland.

(b) On July 1, 2011, Sherwood Inc. filed a Chapter 11 Petition in the United States Bankruptcy Court for the District of Maryland in Case No. 11-28309.

2. (a) Sherwood LLC is a North Carolina Corporation with its principal place of business located at 1803 Research Boulevard, Suite 201, Rockville, Maryland.

(b) On July 1, 2011, Sherwood LLC filed a Chapter 11 Petition in the United States Bankruptcy Court for the District of Maryland in Case No. 11-28307.

3. At all times material herein, Sherwood Inc. operated as a holding company.

4. (a) Sherwood LLC is a wholly owned subsidiary of Sherwood Inc.

(b) Sherwood Brands of Rhode Island Inc. is a wholly owned subsidiary of Sherwood Inc.

(c) Sherwood Foods, Inc. is a wholly owned subsidiary of Sherwood Inc.

5. At all times material herein, the following individuals have held the position listed with their names for Sherwood Inc. and its wholly owned subsidiaries, including Sherwood LLC, Sherwood Brands of Rhode Island Inc. and Sherwood Foods, Inc.:

(a) Uziel Frydman: COO and President

(b) Amir Frydman: CEO and Vice-President

(c) Christopher Willi: CFO and Treasurer

6. At all times material herein, Sherwood Inc. and Sherwood LLC have done business as and have also been known as Sherwood Brands, Inc. LLC.

7. On November 3, 2006, Asher Candy, Inc. and Sherwood Inc. jointly filed with the United States District Court for the District of Columbia a Petition for Review of the Board Decision and Order, reported at 348 NLRB 993, that named Sherwood Brands, Inc. LLC as one of the two single employer Respondents.

8. At all times material herein, prior to December 2006, all revenues generated by Sherwood Inc.'s wholly owned subsidiaries, including Sherwood LLC, Sherwood Brands of Rhode Island Inc. and Sherwood Foods, Inc. were deposited into bank account(s) registered to Sherwood Inc.

9. At all times material herein, prior to December 2006, all payroll expenses incurred by Sherwood Inc.'s wholly owned subsidiaries, including Sherwood LLC, Sherwood Brands

of Rhode Island Inc. and Sherwood Foods, Inc. were paid from various bank accounts registered to Sherwood Inc.

10. (a) On or about December 20, 2006, Sherwood Inc. transferred \$20,756.00 from its collateral reserve account xxxxxx0849 at BB&T bank to Sherwood LLC Master account xxxxx1486 at BB&T Bank.

(b) On or about December 28, 2006, Sherwood Inc. transferred \$1,071,795.83 from its collateral reserve account xxxxxx0849 at BB&T Bank to Sherwood LLC Agent account xxxxx1516 at BB&T Bank.

(c) Between January 1, 2007, and March 9, 2007, Sherwood Inc. made deposits into its collateral reserve account xxxxxx0849 at BB&T Bank in the following amounts:

1. January 2007: \$ 18,181.98
2. February 2007: \$142,967.73
3. March 2007: \$ 12,923.25

(d) Between January 1, 2007, and March 9, 2007, Sherwood Inc. transferred all of the deposits listed in subparagraph (c) from its collateral reserve account xxxxxx0849 at BB&T Bank to Sherwood LLC Agent account xxxxx1516 at BB&T Bank.

(e) On or about March 9, 2007, when Sherwood Inc. closed its collateral reserve account at BB&T Bank, Sherwood Inc. caused all electronic vendor payments sent to its collateral reserve account to be credited to either the Sherwood LLC Agent account xxxxx1516 or Master account xxxxx1486 at BB&T Bank.

11. (a) At all material times prior to December 2006, Sherwood Inc., funded the payroll of its wholly owned subsidiaries Sherwood Brands of Rhode Island Inc. and Sherwood Foods, Inc. with funds from its BB&T Bank account xxxxxx8445

(b) At all material times since December 2006, Sherwood LLC, through its BB&T Bank Operating account xxxxx1451 has funded the payroll of Sherwood Inc.'s wholly owned subsidiaries Sherwood Brands of Rhode Island Inc. and Sherwood Foods, Inc.

12. (a) The transfer on December 28, 2006 of \$1,071,795.83 from Sherwood Inc. to Sherwood LLC described in paragraph 10(b) and (d) occurred at times when Sherwood Inc. was either insolvent or rendered insolvent by said transactions.

(b) The transfers of funds described in paragraph 10(b) and (d) were made without Sherwood Inc. receiving equivalent value from Sherwood LLC in exchange for the funds which it was transferred.

(c) The transfers of funds described in paragraph 10(b) and (d) constituted fraudulent conveyances against the interests of the Board.

13. (a) Sherwood Inc. does not currently have any funds on deposit with BB&T Bank.

(b) Sherwood Inc. does not currently have any funds on deposit at any non BB&T Bank.

14. Sherwood Inc., by fully depleting its accounts at BB&T Bank, as described in paragraphs 10, 12, and 13(a), has rendered itself insolvent and unable to satisfy its remedial obligations to the Board under the January 26, 2008, Court Judgment.

15. Based on the facts set forth above in paragraphs 1 through 6, and the conduct described above in paragraphs 10 through 14, Sherwood LLC is an alter-ego of Sherwood Inc., and is jointly and severally liable with Respondents Asher Candy, Inc., Sherwood Brands, Inc. LLC, Sherwood Inc., Sherwood Brands, Inc., debtor in possession, and Sherwood Brands, LLC, debtor in possession, to comply with the Board Order and Court Judgment.

16. By virtue of the fact that Sherwood Inc. is an adjudicated single employer with Respondent Asher Candy, Inc., Sherwood Inc. is bound by the Supplemental Board Order dated February 19, 2009, and the Court Judgment entered on September 10, 2009.

17. Based on the facts described above in paragraph 16, a second supplemental order should issue directing Sherwood Inc., a single employer, its officers, agents, successors, and assigns, to make whole its 46 named employees by paying them \$279,523.20, consisting of \$239,385.60 in severance pay, and \$40,137.60 in *Transmarine* backpay, plus interest accrued to the date of such payment.

18. Based on the facts and conduct set forth above in paragraph 15, a second supplemental order should issue directing Sherwood LLC, an alter ego of Sherwood Inc., and Sherwood LLCs officers, agents, successors, and assigns, to make whole the 46 named employees by paying them \$279,523.20, consisting of \$239,385.60 in severance pay, and \$40,137.60 in *Transmarine* backpay, plus interest accrued to the date of such payment.

ANSWER REQUIREMENT

Respondents Sherwood Inc., Sherwood Brands, Inc., debtor in possession, Sherwood LLC and Sherwood Brands, LLC, debtor in possession are notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, they must file an answer to the notice of hearing. The answer must be **received by this office on or before September 7, 2011, or postmarked on or before September 6, 2011.** Unless filed electronically in a pdf format, Respondents Sherwood Inc., Sherwood Brands, Inc., debtor in possession, Sherwood LLC and Sherwood Brands, LLC, debtor in possession should file an original and four copies of their answers with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov** tab, select **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by Respondents Sherwood Inc., Sherwood Brands, Inc., debtor in possession, Sherwood LLC and Sherwood Brands, LLC, debtor in possession or by a duly authorized agent or agents with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature(s), no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to this compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the notice of hearing are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 18th day of October 2011, at 10:00 a.m. at Two MetroTech Center - 5th Floor, Brooklyn, New York, and consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Notice of Haring, at which time, Respondents Sherwood Inc., Sherwood Brands, Inc., debtor in possession, Sherwood LLC and Sherwood Brands, LLC, debtor in possession and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this notice of hearing. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Brooklyn, New York, this 17th day of August, 2011.

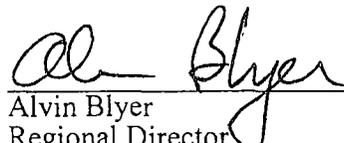

Alvin Blyer
Regional Director
National Labor Relations Board
Region 29
Two MetroTech Center, Suite 5100
Brooklyn, New York 11201-3838

EXHIBIT F

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASHER CANDY, INC. AND SHERWOOD BRANDS, INC., A Single Employer, and SHERWOOD BRANDS, LLC, Alter Ego of SHERWOOD BRANDS, INC., both d/b/a SHERWOOD BRANDS, INC. LLC; SHERWOOD BRANDS, INC., debtor in possession and SHERWOOD BRANDS, LLC, debtor in Possession
And

Case No 29-CA-26761

LOCAL 102, BAKERY, CONFECTIONARY,
TOBACCO WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO

Date of Mailing August 17, 2011

AFFIDAVIT OF SERVICE OF: NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified and regular mail upon the following persons, addressed to them at the following addresses:

Glenn M Anderson, Esq.
Miller, Miller & Canby
200 B Monroe Street
Rockville, MD 20850

By Regular Mail Only

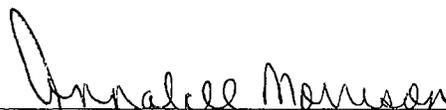
Glenn M Anderson, Esq.
Miller, Miller & Canby
200 B Monroe Street
Rockville, MD 20850

Sherwood Brands, LLC
1803 Research Blvd
Suite 201
Rockville, MD 20850-6106

Sherwood Brands, Inc., and
Asher Candy, Inc.
1803 Research Boulevard
Suite 201
Rockville, MD 20850
Attn: Uziel Frydman

Local 102, Bakery, Confectionary,
Tobacco Workers And Grain Millers
International Union, AFL-CIO
108-15 Cross Bay Boulevard
Ozone Park, New York 11417
Attn: Ray Aquilino

James Greenan, Esq.
McNamee, Hosea, Jernigan, Kim,
Greenan & Lynch, P.A.
6411 Ivy Lane
Suite 200
Greenbelt, MD 20770-1405



Subscribed and sworn to before me this 17th day
of AUGUST 2011

Designated Agent

National Labor Relations Board

EXHIBIT G

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Region 29

ASHER CANDY, INC. AND SHERWOOD
BRANDS, INC., LLC

And

Case No. 29-CA-26761

LOCAL 102 AFL-CIO

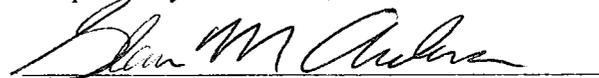
SUGGESTION OF BANKRUPTCY FOR SHERWOOD BRANDS, LLC

Please be advised that on July 1, 2011, Sherwood Brands, LLC, a Maryland limited liability company with its principal place of business in Rockville, Maryland, filed a Chapter 11 Bankruptcy Petition with the United States Bankruptcy Court for the District of Maryland at Greenbelt. The Case No. is 11-23807.

Pursuant to 11 USC §362(a), the filing of a bankruptcy petition generally stays the commencement or continuation of any civil or administrative action against the debtor.

As this action seeks to have Sherwood Brands, LLC held monetarily liable for the judgment entered against Asher Candy, Inc. and Sherwood Brands, Inc., LLC on a pre petition debt, this action should be stayed pursuant to 11 USC §362(a) pending further order of the United States Bankruptcy Court.

Respectfully Submitted,



Glenn M. Anderson
Miller, Miller & Canby
200-B Monroe Street
Rockville, MD 20850
301-762-5212
Attorney for Sherwood Brands, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August, 2011, a copy of the foregoing Suggestion of Bankruptcy was sent by ordinary mail, postage prepaid, to:

Ray Aquilino
Local 102 AFL-CIO
108-15 Cross Bay Blv.
Ozone Park, NY 11417

James Greenan, Esquire
McNamee, Hosea, et al
6411 Ivy Lane
Suite 200
Greenbelt, MD 20770-1405

A handwritten signature in cursive script, appearing to read "Glenn M. Anderson", written over a horizontal line.

Glenn M. Anderson

EXHIBIT H



United States Government

NATIONAL LABOR RELATIONS BOARD

2 Metrotech Center, 5th Floor

Brooklyn, New York 11201

www.nlr.gov

(718) 330-7713

September 2, 2011

VIA FAX TO (301)-424-9673 AND U.S. MAIL

Glenn Anderson
Miller, Miller & Canby
200-B Monroe Street
Rockville, MD 20850

ASHER CANDY, INC. AND SHERWOOD BRANDS, INC., A Single Employer, and SHERWOOD BRANDS, LLC, Alter Ego of SHERWOOD BRANDS, INC., both d/b/a SHERWOOD BRANDS, INC. LLC; SHERWOOD BRANDS, INC., debtor in possession and SHERWOOD BRANDS, LLC, debtor in Possession

Case No. 29-CA-26761

Dear Mr. Anderson:

A Notice of Hearing was issued in the above named case on August 17, 2011. You responded to this Notice of Hearing with a "Suggestion of Bankruptcy" stating that Sherwood Brands, LLC filed a Chapter 11 Bankruptcy Petition with the United States Bankruptcy Court for the District of Maryland at Greenbelt. You asserted that the National Labor Relations Board's action should be stayed pursuant to 11 USC §362 (a) pending further order of the United States Bankruptcy Court.

However, Board unfair labor practice hearings are excepted from the automatic stay provision of the Bankruptcy Code. See, e.g., NLRB v. 15th Ave. Iron Works, Inc., 964 F.2d 1336, 1337 (2d Cir. 1992); NLRB v. P*I*E Nationwide, 923 F. 2d 506 (7th Cir. 1991) (Chapter 11 reorganization). Section 362(b)(4) provides that the automatic stay does not apply to actions of "a governmental unit to enforce (its) regulatory power." The courts have found that the "NLRB is a governmental unit," and its actions are "undertaken to enforce the federal law regulating the relationship between an employer and an employee." NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934, 942 (6th Cir. 1986) (quoting NLRB v. Evans Plumbing Co., 639 F.2d 291, 293 (5th Cir. 1981)). Accordingly, the Board may prosecute an unfair labor practice case, proceed to a final decision and liquidate the backpay amount, as long as it does not seek collection outside the Bankruptcy court. Continental Hagen Corp., 932 F. 2d at 834, 835 (quoting Penn Terra Ltd. v.

Dept. of Env. Resources, 733 F.2d 267, 275 (3d Cir. 1984); accord P*I*E Nationwide, 923 F.2d at 512; Edward Cooper Painting, 804 F.2d at 934.

In as much as the Board proceedings are not subject to the automatic stay, a hearing will be conducted on October 18, 2011 on the allegations set forth in the August 17, 2011 Notice of Hearing. Additionally, Respondents Sherwood Inc., Sherwood Brands, Inc., debtor in possession, Sherwood LLC and Sherwood Brands, LLC, debtor in possession **must file an Answer by September 7, 2011**, as required by the Notice of Hearing. Failure to do so could result in a Board decision, pursuant to a Motion for Default Judgment, that the allegations in the Notice of Hearing are true.

Very truly yours,

A handwritten signature in black ink that reads "Lynda Tooker". The signature is written in a cursive, slightly slanted style.

Lynda Tooker
Board Attorney

EXHIBIT I



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 29
Two MetroTech Center - Suite 5100
Brooklyn, New York 11201-3838
Tel (718) 330-2862 Fax (718) 330-7579

September 8, 2011

James Greenan, Esq.
McNamee, Hosea, Jernigan, Kim,
Greenan & Lynch, P.A.
6411 Ivy Lane
Suite 200
Greenbelt, MD 20770-1405

Glenn M. Anderson, Esq.
Miller, Miller & Canby
200 B Monroe Street
Rockville, MD 20850

Re: ASHER CANDY, INC. AND SHERWOOD
BRANDS, INC., A Single Employer, and SHERWOOD
BRANDS, LLC, Alter Ego of SHERWOOD BRANDS, INC.,
both d/b/a SHERWOOD BRANDS, INC. LLC; SHERWOOD
BRANDS, INC., Debtor-in-Possession and SHERWOOD BRANDS,
LLC, Debtor-in-Possession

Case No. 29-CA-26761

Dear Sirs:

On August 17, 2011, the Regional Director for Region 29 issued a Notice of Hearing in the above-referenced matter. On page 6 - Answer Requirement- of the Notice of Hearing, you were notified that pursuant to Section 102.56 of the National Labor Relations Board ("Board") Rules and Regulations, you were required to file an answer to be received by this office on or before September 7, 2011, or postmarked on or before September 6, 2011. No answer has been received.

Section 102.56(c) of the Board's Rules and Regulations state in pertinent part that "[i]f the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate."

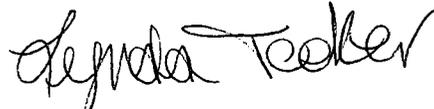
A copy of the Notice of Hearing was sent to James Greenan, Esq., counsel to the Debtors-in-Possession, and Glenn M. Anderson, Esq., counsel for Respondents Sherwood

Brands, Inc. and Sherwood Brands, LLC. Both counsel have acknowledged receipt of the Notice of Hearing, yet no answer has been received by this office.

Each Respondent's answer to the Notice of Hearing must be received by this office on or before Thursday, September 15, 2011, or postmarked on or before September 14, 2011; otherwise, a Motion for Default Judgment will be filed with the Board against those Respondents who fail to file an answer.

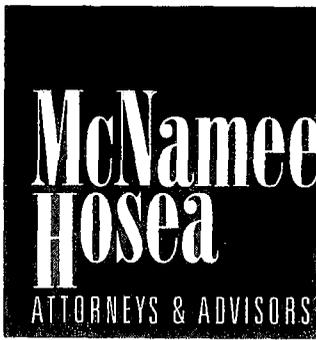
Should you have any questions, you may call me at (718) 330-7695.

Very truly yours,

A handwritten signature in black ink that reads "Lynda Tooker". The signature is written in a cursive, flowing style.

Lynda Tooker
Board Attorney

EXHIBIT J



James M. Greenan, Principal
Admitted in Maryland, District of Columbia

Email: JGreenan@MHLawyers.com
Washington Line: 301.441.2420
Web: www.mhlawyers.com

McNamee, Hosea, Jernigan, Kim,
Greenan & Lynch, P.A.

September 16, 2011

By First Class Mail

Linda Tooker
United States Government
National Labor Relations Board
Region 29
Two MetroTech Center – Suite 5100
Brooklyn, NY 11201-3838

Re: September 8, 2011 Correspondence
Matter: Chapter 11 Bankruptcy
MH File No.: 15450-0002

Dear Ms. Tooker:

I am in receipt of and thank you for your letter dated September 8, 2011. This response will be in confirmation of our telephone conversations regarding the Notice of Hearing and the Relief sought by the National Labor Relations Board. Mr. Anderson filed a Suggestion of Bankruptcy on behalf of the debtor entities. No Answers are required by the debtor entities. All proceedings before the National Labor Relations Board against the Answer dated entities are Stayed as a matter of law. Any action taken by the National Labor Relations Board and you to advance the position of the Board against debtor entities is a clear violation of Section 362 and subjects you and the Board to an award of damages, cost and attorney fees if a Complaint is filed with United States Bankruptcy Court seeking that the Board being enjoined from its conduct.

Very truly yours,

A handwritten signature in black ink, appearing to read "James M. Greenan". The signature is stylized with a long horizontal stroke extending to the right.

James M. Greenan

JMG:dt

cc: Uziel Frydman