



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

September 2, 2016

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

*Re: NLRB v. KB In & Out, Inc. d/b/a
Century Car Wash; Steven Rushtabadi d/b/a
LAX Century Car Wash; K&G Franchise
Corp. d/b/a National Car Wash; Kenny
Gharib and Steven Rushtabadi aka Steven
Rush, individuals, Board Case Nos. 31-CA-
076280, 31-CA-078621, 31-CA-078622, 31-
CA-082049, and 31-CA-091603*

Dear Ms. Dwyer:

On July 7, 2014, this Court entered judgment in No. 14–71501 enforcing the Board’s initial order. A controversy having arisen over the amount due under the Board’s order, the Regional Director issued a compliance specification and notice of hearing on October 30, 2015. The Board issued its Supplemental Decision and Order determining the amount due on March 30, 2016.

The Board now wishes to obtain enforcement of its Supplemental Decision and Order and is enclosing an application of the National Labor Relations Board for the summary entry of a judgment enforcing the Board’s supplemental order, as well as a proposed judgment.

Please serve a copy of the application on Respondents, whose addresses appear on the service list. I have served a copy of the Board’s application and

proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: SERVICE LIST

SERVICE LIST

RESPONDENTS –

The Board is not aware of counsel for the Respondents

K&G Franchise Corporation
d/b/a National Car Wash
Attn: Kenny Gharib and Steven Rushtabadi
9001 National Boulevard
Los Angeles, CA 90034

K&G Franchise Corporation
P.O. Box 2611
Orange, CA 92859

Agent:

Steven Rush
4700 West Century Blvd
Inglewood, CA 90304

KB In & Out, Inc. d/b/a Century Car Wash
Attn: Kenny Gharib and Steven Rushtabadi
4700 West Century Blvd
Inglewood, CA 90304-1442
Tel: : (310) 674-2266

KB In & Out, Inc.
d/b/a Century Car Wash
P.O. Box 2611
Orange, CA 90304

Agent:

Steven Rush
1600 Rosecrans, 4th Fl.
Manhattan Beach, CA 90266

Steven Rushtabadi aka Steven Rush
904 Summerlin Lane
Las Vegas, NV 89125

Steven Rushtabadi aka Steven Rush
12081 Business Center Drive, Suite 230
Irvine, CA 92162

Steven Rushtabadi aka Steven Rush
145 East Harman Avenue, #81
Las Vegas, NV 89109

Steven Rushtabadi aka Steven Rush
PO Box 6553
Orange, CA 92863

Kenneth Gharib
Register Number: 69026-112
MDC Los Angeles
Metropolitan Detention Center
P.O. Box 1500
Los Angeles, CA 90053

SERVICE LIST

<p><u>CHARGING PARTY:</u> Carwash Workers Organizing Committee of the USW 516 W. Vernon Ave Los Angeles, CA 90037</p> <p>Tel: (213) 388-1163 Fax: (213) 388-2562</p>	<p><u>CHARGING PARTY's COUNSEL:</u> Ryan Spillers, Esq. Gilbert & Sackman 3699 Wilshire Blvd, Ste 1200 Los Angeles, CA 90010-2732</p> <p>Tel: (323) 938-3000, ext. 345 Fax: (323) 937-9139 Email: rspillers@gsllaw.org</p>
<p><u>REGIONAL DIRECTOR:</u> Mori Rubin, Regional Director National Labor Relations Board 11500 W. Olympic Blvd., Ste 600 Los Angeles, CA 90064</p>	

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Nos.
KB IN & OUT, INC. D/B/A CENTURY CAR WASH;	:	31-CA-076280,
STEVEN RUSHTABADI D/B/A LAX CENTURY CAR	:	31-CA-078621,
WASH; K&G FRANCHISE CORP. D/B/A NATIONAL	:	31-CA-078622,
CAR WASH; KENNY GHARIB AND STEVEN	:	31-CA-082049,
RUSHTABADI AKA STEVEN RUSH, INDIVIDUALS	:	31-CA-091603
	:	
Respondents	:	

APPLICATION FOR SUMMARY ENTRY OF A
JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (the “Board”), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its Supplemental Order against KB In & Out, Inc. d/b/a Century Car Wash; Steven Rushtabadi d/b/a LAX Century Car Wash; K&G Franchise Corp. d/b/a National Car Wash; Kenny Gharib and Steven Rushtabadi aka Steven Rush, individuals (Respondents). The Board is entitled to summary enforcement of its Supplemental Order because Respondents failed to file an answer to the Board’s compliance specification and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in California. The Board's final order issued on March 30, 2016, and is reported at 363 NLRB No. 156.

B. Proceedings Before the Board

1. The underlying controversy was brought before the Court by the Board's application for enforcement of its Order issued April 23, 2014. That order directed Respondents to offer reinstatement to discriminatees Julio Ponce and Isaac Alvarez and make them whole for any loss of earnings and other benefits resulting from their unlawful discharges in violation of Section 8(a)(3) and (1) of the Act.. The Court entered its judgment enforcing the Board's Order in full in No. 14-71501, on July 7, 2014.

2. A controversy having arisen over the amount of backpay due to the discriminatees under the terms of the Board's order, the Regional Director issued and served on Respondents a compliance specification and notice of hearing on October 30, 2015, alleging the amount of backpay due under the Board's Order.

Although not parties to the original unfair labor practice litigation, Respondents Steven Rushtabadi d/b/a LAX Century Car Wash (LAX Century) and K&G Franchise Corp. d/b/a National Car Wash (K&G), were added to the

compliance specification and are alleged to be jointly and severally liable for KB In & Out's unfair labor practices because Respondents KB In & Out, LAX Century, and K&G constitute a single-integrated business enterprise and alter egos within the meaning of the Act; because Respondents KB In & Out and LAX Century constitute a single employer; and because Respondent LAX Century is a successor to Respondent KB In & Out. Additionally individuals Kenny Gharib and Steven Rushtabadi (aka Steven Rush) are alleged to be personally liable, jointly and severally, to fulfill the remedial obligations of the Board's Order as alter egos of Respondents KB In & Out and K&G.

The specification advised Respondents that, under the Board's Rules (29 C.F.R. 102.56), they were required to file an answer by November 20, 2015, and that if they failed to file an answer, the allegations of the specification would be deemed to be true and Respondents would be precluded from introducing any evidence controverting them.

3. Respondents did not file an answer.

4. Having not received an answer, counsel for the General Counsel, on November 23, 2015, sent Respondents a letter advising that if no answer was filed by December 7, 2015, the Regional Office would file a motion for default judgment with the Board. Additionally, upon learning that Respondent Kenny Gharib was incarcerated in the Los Angeles Metropolitan Detention Center

(LAMDC), counsel for the General Counsel sent Gharib a second letter on December 14, 2015 informing him that he had until December 28, 2015, to file an answer to the compliance specification.

5. Respondents did not file an answer.

6. On January 25, 2016, the General Counsel filed with the Board a motion for default judgment based on Respondents' failure to file an answer to the compliance specification.

7. On January 28, 2016, the Board issued an order, transferring the proceeding to itself and a Notice to Show Cause, giving Respondents until February 11, 2015, (sic) to file with the Board in Washington, D.C., a response to the motion for default judgment. On February 24, 2016, the Board issued an Order Correcting and Supplemental Notice to Show Cause why the motion should not be granted and provided Respondents until March 9, 2016, to file a response to the motion for default judgment.

8. Respondents did not file a response.

9. On March 30, 2016, the Board granted the Motion for Default Judgment and issued its Supplemental Decision and Order. The order directed Respondents to make whole discriminatees Julio Ponce and Isaac Alvarez, by paying them the amounts following their names, plus additional net backpay which accrues to the date the Respondent makes them valid offers of reinstatement, plus interest

accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws:

C. The Board Is Entitled to Summary Enforcement of Its Supplemental Order

On these facts, the Board is entitled to summary enforcement of its supplemental order against Respondents. Where a respondent in a Board proceeding fails to file an appropriate answer to the compliance specification in a timely manner, the Board may, pursuant to Board Rule 102.56(c), find the specification to be true and enter an order, essentially by default, against the respondent. The Board, further, is entitled to have that default judgment summarily enforced. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals “unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.” Interpreting that requirement, courts have consistently held that a respondent’s failure to assert any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir.

1984); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973).

No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondents, enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1099 14th Street, N.W.

Washington, D.C. 20570

Dated in Washington, D.C.
this 2nd day of September, 2016

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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Petitioner	:	No.
v.	:	
	:	Board Nos.
KB IN & OUT, INC. D/B/A CENTURY CAR WASH;	:	31-CA-076280,
STEVEN RUSHTABADI D/B/A LAX CENTURY CAR	:	31-CA-078621,
WASH; K&G FRANCHISE CORP. D/B/A NATIONAL	:	31-CA-078622,
CAR WASH; KENNY GHARIB AND STEVEN	:	31-CA-082049,
RUSHTABADI AKA STEVEN RUSH, INDIVIDUALS	:	31-CA-091603
	:	
Respondents	:	

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on November 6, 2012, in No. 12-73360, entered its judgment enforcing in full the Order of the National Relations Board in Board Case Nos. 31-CA-076280, 31-CA-078621, 31-CA-078622, 31-CA-082049, and 31-CA-091603, the Board on March 30, 2016, issued its Supplemental Decision and Order fixing the amount due and having thereafter applied to this Court for summary entry of a judgment specifying the amount due:

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the Respondents, KB In & Out, Inc. d/b/a Century Car Wash; Steven Rushtabadi d/b/a LAX Century Car Wash; K&G Franchise Corp. d/b/a National Car Wash; Kenny Gharib and Steven Rushtabadi aka Steven Rush, individuals, Inglewood and Los

Angeles, California, their officers, agents, successors, and assigns, shall make whole discriminatees Julio Ponce and Isaac Alvarez, by paying them the amounts following their names, plus additional net backpay which accrues to the date the Respondent makes them valid offers of reinstatement, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws:¹

<u>Employee</u>	<u>Backpay owed</u>	<u>Excess Tax Amount</u>
Julio Ponce	\$40,246	\$1504
Isaac Alvarez	<u>\$22,103</u>	<u>\$720</u>
Totals	\$62,349	\$2224

Total amount due: \$64,573

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

¹ As set forth in the Board's compliance specification, the Respondents are also liable for the adverse tax consequences for any discriminatee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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CAR WASH; KENNY GHARIB AND STEVEN	:	31-CA-082049,
RUSHTABADI AKA STEVEN RUSH, INDIVIDUALS	:	31-CA-091603
	:	
Respondents	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, proposed judgment and mediation questionnaire in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

K&G Franchise Corporation
d/b/a National Car Wash
Attn: Kenny Gharib and
Steven Rushtabadi
9001 National Boulevard
Los Angeles, CA 90034

KB In & Out, Inc. d/b/a Century Car Wash
Attn: Kenny Gharib and Steven Rushtabadi
4700 West Century Blvd
Inglewood, CA 90304-1442

K&G Franchise Corporation
P.O. Box 2611
Orange, CA 92859

KB In & Out, Inc.
d/b/a Century Car Wash
P.O. Box 2611
Orange, CA 90304

Agent:
Steven Rush
4700 West Century Blvd
Inglewood, CA 90304

Agent:
Steven Rush
1600 Rosecrans, 4th Fl.
Manhattan Beach, CA 90266

Steven Rushtabadi aka Steven Rush
904 Summerlin Lane
Las Vegas, NV 89125

Steven Rushtabadi aka Steven Rush
145 East Harman Avenue, #81
Las Vegas, NV 89109

Steven Rushtabadi aka Steven Rush
12081 Business Center Drive, Suite
230
Irvine, CA 92162

Steven Rushtabadi aka Steven Rush
PO Box 6553
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Kenneth Gharib
Register Number: 69026-112
MDC Los Angeles
Metropolitan Detention Center
P.O. Box 1500
Los Angeles, CA 90053

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated at Washington, D.C.
this 2nd day of September, 2016