

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner	)	
	)	No. 16-73514
v.	)	
	)	Board Case No.
AWG AMBASSADOR, LLC,	)	28-CA-118801
	)	
Respondent	)	
	)	

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**MOTION OF THE NATIONAL LABOR RELATIONS BOARD  
FOR ENTRY OF DEFAULT JUDGMENT**

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

The National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, respectfully moves for this Court to enter a default judgment against AWG Ambassador, LLC (“the Company”). The Court should enter a default judgment because the Company has failed to secure legal representation and failed to file an answer to the Board’s application for enforcement. In support of its motion, the Board shows:

1. On February 25, 2016, the Board issued a Decision and Order against the Company, which is reported at 363 NLRB No. 137. On November 3, 2016, the Board filed an application for enforcement of its Decision and Order. The deadline

for the Company to answer the Board's application was November 25. Fed. R. App. P. 15(b).

2. The Board served a copy of its application for enforcement on Littler Mendelson, P.C. ("Littler"), the firm that represented the Company before the Board. The Board also served a copy of the application on the Company at the following address, which was used in the underlying Board proceeding: 4676 Wynn Road, Las Vegas, NV 89103. In addition, the Board requested that the Clerk of the Court serve a copy of the application on the Company at the same address. To the Board's knowledge, the applications mailed to the Wynn Road address by the Board and by the Court have not been returned.

3. On November 10, Littler notified the Court that it no longer represents the Company in this matter and that proper service should be made on the Company directly. (ECF No. 4.) Littler identified the Company's "last-known resident agent" as Brent Carson, Esq., and his address as 510 S. 8th Street, Las Vegas, NV 89101. On November 16, Littler filed a motion to withdraw as counsel. (ECF No. 8.)

4. On November 21, the Court granted Littler's motion to withdraw and informed the Company that, unless it retains counsel, the Board may move for a default judgment. (ECF No. 9.) The Court served a copy of its order on the Company at the S. 8th Street address. (ECF No. 10.)

5. On December 9, 2016, the Board served a copy of its application for enforcement on the Company at the S. 8th Street address by certified U.S. Mail, return receipt requested. The Board did so out of an abundance of caution because that address, provided by Littler, is different than the Wynn Road address in Board records, which was used to serve the Company with the Board's application for enforcement (*see* ¶ 2 above). In the cover letter (attached as Exhibit A) sent to the new address with the application for enforcement, the Board informed the Company that it will seek a default judgment unless the Company promptly files an appearance through its attorney and an answer to the Board's application for enforcement.

6. On December 12, the Board retrieved information from the U.S. Postal Service website (attached as Exhibit B) indicating that its letter was being returned as undeliverable. The Board has no knowledge whether the Court's order granting Little's motion to withdraw (*see* ¶ 4 above) was returned as well.

7. On December 13, the Board filed a motion to abey the filing of the Certified List of Agency Record. (ECF No. 11.) In that motion, the Board notified the Court of its intention to file a motion for default judgment against the Company. The Board served a copy of its motion on the Company at the Wynn Road address.

8. As of the date of this motion, no attorney has filed a notice of appearance on behalf of the Company. It is settled law that “[c]orporations and other unincorporated associations must appear in court through an attorney.” *D-Beam Ltd. P’ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004) (citation omitted). Given the Company’s failure to appear through counsel, the Board is entitled to a default judgment enforcing its Order in full against the Company. *See Emp. Painters’ Tr. v. Ethan Enters., Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) (failure by corporation to retain counsel suffices to support default judgment); *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (affirming default judgment against corporation that failed to retain counsel).

9. Furthermore, pursuant to Fed. R. App. P. 15(b)(2), the Company was required to file an answer within 21 days of the Board’s application for enforcement. Rule 15(b)(2) further provides that, “[i]f the respondent fails to answer in time, the court will enter judgment for the relief requested.” The Board filed its application on November 3; however, no answer has been filed as of the date of this motion. Accordingly, this Court should enter a judgment enforcing the Board’s Order. *See NLRB v. Johnson Elec. Co.*, 472 F.2d 161, 161 (6th Cir. 1973) (failing to file answer warrants entry of default judgment); *cf. Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 690 (9th Cir.

1988) (“If the defendant fails to respond within th[e] time [allotted for answering complaints under the Federal Rules of Civil Procedure], a default judgment may be entered.” (citations omitted)).

WHEREFORE, the Board respectfully requests that the Court grant the Board’s motion for entry of default judgment, and enforce the Board’s Order in full. A proposed judgment is attached for the Court’s convenience.

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Dated at Washington, DC  
this 20th day of December 2016

# **EXHIBIT A**



United States Government

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, DC 20570-0001

SENT BY U.S. CERTIFIED MAIL WITH RETURN RECEIPT

December 9, 2016

Brent Carson, Esq.,  
AWG Ambassador, LLC  
510 S. 8th Street  
Las Vegas, NV 89101-7003

Re: *NRLB v. AWG Ambassador, LLC*, 9th Cir. No. 16-73514  
Board Case No. 28-CA-118801

Dear Mr. Carson:

This letter is to inform you that on November 3, 2016, the National Labor Relations Board (“the Board”) filed an application to enforce, in the United States Court of Appeals for the Ninth Circuit, a Decision and Order issued on February 25, 2016, against AWG Ambassador, LLC (“the Company”). Copies of the Board’s Decision and Order and the application for enforcement are attached to this letter.

The Board served a copy of that application on Ethan D. Thomas and Roger L. Grandgenett, II, of Littler Mendelson, P.C. (“Littler”), the attorneys who represented the Company before the Board. However, on November 10, 2016, Littler notified the Court that it no longer represents the Company in this matter and provided your name, at the address listed above, as the Company’s last-known resident agent. Copy of Littler’s Notice of Non-Representation is also attached to this letter.

The Board strongly recommends that the Company seek an attorney's counsel in this matter or, if the Company already has an attorney, that you forward this letter to that person as soon as possible. Pursuant to Federal Rules of Appellate Procedure 15(b)(2) and 55, the Board will seek a default judgment against the Company in this case unless the Company promptly files an appearance through its attorney and an answer to the Board's application for enforcement.

Very truly yours,

Linda Dreeben  
Deputy Associate General Counsel

By: \_\_\_\_\_  
Gregoire Sauter, Attorney  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001  
(202) 273-1714

Encl.: Application for enforcement (Nov. 3, 2016)  
*AWG Ambassador, LLC*, 363 NLRB No. 137 (Feb. 25, 2016)  
Notice of Non-Representation (Nov. 10, 2016)

# **EXHIBIT B**



# USPS Tracking®

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Tracking Number: 70150640000256418171

Expected Delivery Day: Monday, December 12, 2016

Your item was undeliverable as addressed at 1:17 pm on December 12, 2016 in LAS VEGAS, NV 89101. It is being returned if appropriate information is available.

## Product & Tracking Information

Postal Product:  
First-Class Mail®

Features:  
Certified Mail™

Return Receipt

See tracking for related item: 9590940304115163986245

## Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
December 12, 2016 , 1:17 pm	Undeliverable as Addressed	LAS VEGAS, NV 89101

Your item was undeliverable as addressed at 1:17 pm on December 12, 2016 in LAS VEGAS, NV 89101. It is being returned if appropriate information is available.

December 12, 2016 , 1:13 pm	Delivered, Front Desk/Reception	LAS VEGAS, NV 89101
December 12, 2016 , 4:50 am	Departed USPS Destination Facility	LAS VEGAS, NV 89199
December 11, 2016 , 5:27 pm	Arrived at USPS Destination Facility	LAS VEGAS, NV 89199
December 11, 2016 , 1:10 am	In Transit to Destination	
December 10, 2016 , 9:17 pm	Departed USPS Facility	GAITHERSBURG, MD 20898
December 10, 2016 , 1:10 am	Arrived at USPS Origin Facility	GAITHERSBURG, MD 20898
December 9, 2016 , 6:22 pm	Departed Post Office	WASHINGTON, DC 20024
December 9, 2016 , 9:48 am	Acceptance	WASHINGTON, DC 20024

7015 0640 0002 5641 8171

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
*Domestic Mail Only*

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**LAS VEGAS, NV 89101**

Certified Mail Fee \$3.30

Extra Services & Fees (check box; add fee \$ per (quantity))

Return Receipt (hardcopy) \$2.80

Return Receipt (electronic) \$0.00

Certified Mail Restricted Delivery \$0.00

Adult Signature Required \$0.00

Adult Signature Restricted Delivery \$0.00

Postage \$0.68

Total Postage and Fees \$6.68

Postmark: LAS VEGAS, NV 89101-7003

12/09/2016

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

## Track Another Package

Tracking (or receipt) number

Track It

## Manage Incoming Packages

Track all your packages from a dashboard. No tracking numbers necessary.

Sign up for My USPS >



# **ATTACHMENT**

**Proposed Judgment**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

Before:

THIS CAUSE came to be heard upon a petition by the National Labor Relations Board for enforcement of its Order against Respondent, AWG Ambassador, LLC, its officers, agents, successors, and assigns, in Board Case No. 28-CA-118801, issued on February 25, 2016, and reported at 363 NLRB No. 137. The National Labor Relations Board having moved for entry of a default judgment, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, AWG Ambassador, LLC, its officers, agents, successors, and assigns, shall abide by said Order (*see* attached Order and Appendix).

Mandate shall issue forthwith.

FOR THE COURT:

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# NATIONAL LABOR RELATIONS BOARD

v.

AWG AMBASSADOR, LLC

## ORDER

The National Labor Relations Board orders that the Respondent, AWG Ambassador, LLC, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and/or enforcing a mandatory arbitration agreement that requires employees, as a condition of employment, to waive the right to maintain class or collective actions for employment-related claims in all forums, whether arbitral or judicial.

(b) 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 designed to effectuate the policies of the Act.

(a) Rescind the arbitration agreement in all of its forms, or revise it in all of its forms to make clear to employees that the agreement does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees who were required to sign or otherwise become bound to the arbitration agreement in any form that the agreement has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) In the manner set forth in the Board's decision, reported at 363 NLRB No. 137, reimburse the plaintiffs for any reasonable attorneys' fees and litigation expenses they may have incurred in opposing the Respondent's motion to dismiss the collective lawsuit and compel individual arbitration.

(d) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 12, 2013, and any current or former employees against whom the Respondent has enforced its mandatory arbitration agreement since September 18, 2013.

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

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS  
ENFORCING AN 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 maintain and/or enforce a mandatory arbitration agreement that requires our employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our arbitration agreement in all of its forms, or revise it in all of its forms to make it clear that the agreement does not constitute a waiver of your right to maintain employment-related class or collective actions in all forums.

WE WILL notify all current and former employees who were required to sign or otherwise become bound to the mandatory arbitration agreement that the agreement has been rescinded or revised and, if revised, WE WILL provide them with a copy of the revised agreement.

WE WILL reimburse the plaintiffs for any litigation expenses they incurred in opposing the Respondent's motion to dismiss and compel individual arbitration in Case No. 2:11-CV-1832, United States District Court for the District of Nevada.

AWG AMBASSADOR, LLC

UNITED STATES COURT OF APPEALS  
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NATIONAL LABOR RELATIONS BOARD,	)	
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	)	
Respondent	)	
	)	

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1), the Board certifies that this motion contains 983 words of proportionally spaced, 14-point type, and the word-processing software used was Microsoft Word 2010. The Board further certifies that the electronic version of the Board’s brief filed with the Court in PDF form is identical to the hard copy of the brief that has been filed with the Court and served on opposing counsel, and that the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001  
(202) 273-1714

Dated at Washington, DC  
this 20th day of December 2016

UNITED STATES COURT OF APPEALS  
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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I further certify that the foregoing document was served on AWG Ambassador, LLC, by first-class mail at the address listed below:

AWG Ambassador, LLC  
4676 Wynn Road  
Las Vegas, NV 89103

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Dated at Washington, DC  
this 20th day of December 2016