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Campaign for the Restoration and Regulation of Hemp, THCF, and Presto Quality Care Corporation, as Single and/or Joint Employers and Matthew Marino. Case 19–CA–143377

February 5, 2018

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Campaign for the Restoration and Regulation of Hemp, THCF, and Presto Quality Care Corporation, as Single Employer and/or Joint Employers (collectively, the Respondent) has failed to file an answer to the compliance specification.

On January 28, 2016, the National Labor Relations Board issued an Order¹ that, among other things, ordered the Respondent to offer discriminatee Matthew Marino reinstatement to the canvassing job for which he applied with the Respondent, and to make him whole for any loss of earnings and other benefits resulting from the Respondent's unlawful refusal to hire him in violation of Section 8(a)(4), (3), and (1) of the Act. On February 27, 2017, the United States Court of Appeals for the Ninth Circuit issued a Judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due Marino, on July 18, 2017, the Regional Director for Region 19 issued a compliance specification and notice of hearing setting forth backpay for a closed period from August 25, 2014 (the date the Respondent refused to hire Marino), to October 16, 2015 (the date the Respondent was administratively dissolved and ceased operations), and notifying the Respondent that an answer must be filed by August 8, 2017, in conformity with the Board's Rules and Regulations. The Respondent failed to file an answer. By Order extending time for filing answer to compliance specification, dated August 23, 2017, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was received by September 6, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the compliance specification are true. Nevertheless, the Respondent has failed to file an answer.

¹ Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Joel P. Biblowitz, issued on December 17, 2015 (JD(NY)–45-15).

² No. 16-71753.

On September 7, 2017, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On September 11, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and the compliance specification are therefore undisputed.

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

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an 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.

According to the uncontroverted allegations in the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due to Marino is as stated in the compliance specification, and we will order the Respondent to pay that amount, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Campaign for the Restoration and Regulation of Hemp, THCF, and Presto Quality Care Corporation, as Single and/or Joint Employers, Portland, Oregon, its officers, agents, successors, and assigns, shall make whole discriminatee Matthew Marino by paying him \$18,000, 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), minus tax withholdings required by Federal and State laws.³

³ This amount does not yet include any excess tax. As set forth in the compliance specification, the Respondent is also liable for any adverse tax consequences for Marino receiving a lump-sum backpay award. Although the Compliance Specification calculated the adverse tax consequences, that amount may be updated to reflect the actual date of payment. Any adverse tax consequences shall be reported in accord-

Dated, Washington, D.C. February 5, 2018

Mark Gaston Pearce, Member

Marvin E. Kaplan, Chairman

William J. Emanuel, Member

ance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016);
Don Chavas, LLC d/b/a Tortillas Don Chavas, 361 NLRB 101 (2014).

(SEAL)

NATIONAL LABOR RELATIONS BOARD