



UNITED STATES GOVERNMENT

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

April 19, 2018

Clerk, United States Court of  
Appeals for the Eleventh Circuit  
56 Forsyth Street, NW  
Atlanta, GA 30303-3147

Re: *NLRB v. Boulder Contracting Inc.*, Board  
Nos. 10-CA-189876 and 10-CA-193007

Dear Clerk:

I am enclosing an original and three copies of the Board's application for summary entry of a judgment enforcing the Board's order in this case, and copies of a proposed judgment.

Please serve a copy of the application on Respondent, 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.

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

RESPONDENT:

Jack L. Treadwell, Owner  
Boulder Contracting, Inc.  
5665 Atlanta Hwy Suite 103-172  
Alpharetta, GA 30004-3932

Tel: (678) 319-1400

RESPONDENT'S COUNSEL:

Stephen C. Key, Atty  
Key Harrington Barnes, PC  
3710 Rawlins St, Ste 950  
Dallas, TX 75219-4237

Tel: (214) 615-7929

Fax: (214) 615-7926

Email: skey@keyharrington.com

REGIONAL DIRECTOR:

John D. Doyle, Jr., Rgnl. Dir.  
National Labor Relations Board  
Harris Tower, Suite 1000  
233 Peachtree Street N.E.  
Atlanta, GA 30303-1531

Tel: (404) 331-2896

CHARGING PARTY:

Santiago Zavala-Gonzalez  
36 Willow Ln  
Riverdale, GA 30296-1337

Tel: (720) 327-8379

Email: santiagozavala848@gmail.com

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	:
Petitioner	:
v.	:
	:
BOULDER CONTRACTING INC.	:
	:
Respondent	:

No.  
Board Case Nos.:  
10-CA-189876  
10-CA-193007

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

To the Honorable, the Judges of the United States  
Court of Appeals for the Eleventh 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 order against Boulder Contracting Inc. (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent withdrew its answer to the Board’s unfair labor practice complaint 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 Georgia. The Board’s final order issued on March 16, 2018,

and is reported at 366 NLRB No. 37.

### **B. Proceedings Before the Board**

1. On April 27, 2017, the General Counsel issued a complaint against the Respondent in Case Nos. 10-CA-189876 and 10-CA-193007 and on June 7, 2017, a consolidated complaint was issued charging Respondent with certain violations of the Act. The complaints, in part, advised the Respondent that under the Board's Rules (29 C.F.R. 102.20 and 102.21), the Respondent was required to file an answer by June 21, 2017, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

2. On May 11, 2017, Respondent filed an Answer to the Complaint and on June 20, 2017, Respondent filed an amended answer to the consolidated complaint.

3. On August 15, 2017, Respondent filed a Notice of Withdrawal withdrawing its Answer to the Complaint issued on April 27, 2017, and its Amended Answer to the Consolidated Complaint issued on June 7, 2017.

4. In light of Respondent's withdrawal of its answers, on September 13, 2017, General Counsel filed with the Board a Motion for Default Judgment.

5. By order dated September 15, 2017, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until September 29, 2017, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

6. Respondent did not file a response. The allegations in the motion were therefore undisputed.

7. The Board, on March 16, 2018, issued its Decision and Order, finding that withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true. The Board granted the Motion for Default Judgment and entered an appropriate order against the Respondent.

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

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Where a respondent in a Board proceeding does not provide an answer to the unfair labor practice complaint, the Board may, pursuant to Board Rule 102.20, absent a showing of “good cause,” deem the complaint’s allegations admitted, and then may enter an order, essentially by default, against the respondent.

It is settled that the Board 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 a defense before the

Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th 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 shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, 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  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 19th day of April, 2018

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.:
BOULDER CONTRACTING INC.	:	10-CA-189876
	:	10-CA-193007
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Boulder Contracting Inc., its officers, agents, successors, and assigns, enforcing its order dated March 16, 2018, in Case Nos. 10-CA-189876 and 10-CA-193007, reported at 366 NLRB No. 37, and the Court having considered the same, it is hereby:

ORDERED AND ADJUDGED by the Court that the Respondent, Boulder Contracting Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

ENTERED:

NATIONAL LABOR RELATIONS BOARD

v.

BOULDER CONTRACTING INC.

**ORDER**

Boulder Contracting Inc., Canton, Georgia, its officers, agents, successors, and assigns shall

1. Cease and desist from
  - (a) Discharging or otherwise discriminating against employees for engaging in protected concerted activities.
  - (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 necessary to effectuate the policies of the Act:
  - (a) Within 14 days from the date of this Order, offer Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
  - (b) Make Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful discharges, in the manner set forth in the remedy section of this decision.
  - (c) Compensate Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

- (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its Canton, Georgia facility, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, 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, 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. If 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 November 24, 2016.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 10 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 discharge you or otherwise discriminate against you for engaging in protected concerted activities.

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, within 14 days of the Board's Order, offer Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharges of Santiago Zavala-Gonzalez, Ruben de Hoyos de Leon, and Gabriel Gonzales and WE WILL, within 3 days thereafter,

notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

## BOULDER CONTRACTING INC.

The Board's decision can be found at [www.nlr.gov/case/10-CA-189876](http://www.nlr.gov/case/10-CA-189876) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
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 : Petitioner : No.  
 v. :  
 :  
 : Board Case Nos.:  
 BOULDER CONTRACTING INC. : 10-CA-189876  
 : 10-CA-193007  
 :  
 Respondent :

CERTIFICATE OF INTERESTED PERSONS

The Board certifies that the following persons have an interest in the outcome of this case, as defined by 11th Cir. R. 26.1-1.

Mark Gaston Pearce	Member, NLRB
William J. Emanuel	Member, NLRB
Lauren McFerran	Member, NLRB
Linda Dreeben	Deputy Associate General Counsel, NLRB
John Doyle	Region 10 Director
Scott C. Thompson	Officer-In-Charge, Region 11
Lisa Henderson	NLRB Regional Attorney
Kurt Brandner	NLRB Attorney
Jenny Dunn	Compliance Officer
Jack L. Treadwell	Owner , Boulder Contracting, Inc.
Stephen C. Key	Attorney, Key Harrington Barnes, PC
Santiago Zavala-Gonzalez	ULP Discriminatee

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 19th day of April, 2018

UNITED STATES COURT OF APPEALS  
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CERTIFICATE OF SERVICE

The undersigned certified that one copy each of the Board's application for summary entry of judgment, proposed judgment, appearance of counsel form, civil appeal docket statement, and certificate of interested parties, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

Jack L. Treadwell, Owner  
Boulder Contracting, Inc.  
5665 Atlanta Hwy Suite 103-172  
Alpharetta, GA 30004-3932

Stephen C. Key, Atty  
Key Harrington Barnes, PC  
3710 Rawlins St, Ste 950  
Dallas, TX 75219-4237

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 19th day of April, 2018