



UNITED STATES GOVERNMENT

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

April 27, 2018

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. Pro Works Contracting, Inc.*,  
Board Case Nos. 21-CA-120477 and 21-  
CA-121946

Dear Ms. Dwyer:

On March 3, 2017, this Court entered judgment in No. 16-73079 enforcing the Board's initial order. A controversy having arisen regarding the parties responsible for the amounts due under the Board's order, the Regional Director issued a compliance specification and notice of hearing on July 31, 2017. The Board issued its Supplemental Decision and Order determining the amount due on January 4, 2018.

The Board now wishes to obtain enforcement of its Supplemental Decision and Order and is filing the attached application of the National Labor Relations Board for the summary entry of a judgment enforcing the Board's supplemental order.

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, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1099 14th Street, N.W.  
Washington, D.C. 20570  
(202) 273-2960

cc: service list

## SERVICE LIST

### RESPONDENT:

Earl Register, President  
Pro Works Contracting, Inc.  
10612 Prospect Avenue, Ste. 105  
Santee, CA 92071

Tel: (619) 596-3700

Email: [proworkscontracting.earl@gmail.com](mailto:proworkscontracting.earl@gmail.com)  
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Earl Register  
3442 Gird Rd.  
Fallbrook, CA 92028

Pro Works Contracting, Inc.  
303 Industrial Way # 4  
Fallbrook, CA 92028

### CHARGING COUNSEL:

David A. Rosenfeld, Attorney  
Weinberg, Roger & Rosenfeld  
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### REGIONAL DIRECTOR:

William B. Cowen, Regional Director  
National Labor Relations Board  
888 South Figueroa Street, 9th Fl.  
Los Angeles, CA 90017-5449

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Nos.
PRO WORKS CONTRACTING, INC.	:	21-CA-120477
	:	21-CA-121946
Respondent	:	

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 Decision and Order of January 4, 2018, issued in Board Case Nos. 21-CA-120477 and 21-CA-121946 against Pro Contracting Works, Inc. (Respondent). The Board is entitled to summary enforcement of its Supplemental Order because Respondent 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 Supplemental Order issued on January 4, 2018, and is reported at 366 NLRB No. 1.

### **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 January 27, 2015. That order directed Respondent, in part, to make whole certain discriminatees for any loss of earnings or benefits they may have suffered by reason of the discrimination against them. The Court entered its judgment enforcing the Board's Order in full in docket no. 16-73079, on March 3, 2017.

2. A controversy having arisen over the amount of backpay due the discriminatees, the Regional Director issued and served on July 31, 2017, a compliance specification and notice of hearing alleging the amount due under the Board's Order and notifying the Respondent that an answer must be filed by August 21, 2017. The specification notified Respondent that if it failed to file an answer, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Compliance Specification are true.

3. Respondent did not file an answer.

4. Having not received an answer, the Region, on August 22, 2017, sent Respondent a letter advising that if no answer was filed by August 29, 2017, the Regional Office would file a motion for default judgment with the Board.

5. Respondent did not file an answer.

6. On September 21, 2017, the General Counsel filed with the Board a Motion for Default Judgment based on Respondent's failure to file an answer to the compliance specification. On September 22, 2017, the Board issued an order, transferring the proceeding to itself and a Notice to Show Cause, giving Respondent until October 6, 2017, to file with the Board in Washington, D.C., a response to the motion for default judgment.

7. Respondent did not file an answer.

8. On January 4, 2018, the Board granted the Motion for Default Judgment and issued its Supplemental Decision and Order. The order directed Respondent, make whole discriminatees Michael Choma, Robert Whitman, and Ismael Covarrubias.

### **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 Respondent. 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 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 St., S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 27th day of April, 2018

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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Petitioner	:	No.
v.	:	
	:	Board Nos.
PRO WORKS CONTRACTING, INC.	:	21-CA-120477
	:	21-CA-121946
Respondent	:	

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on March 3, 2017, in No. 16-73079, entered its judgment enforcing in full the Order of the National Relations Board in Board Case Nos. 21-CA-120477 and 21-CA-121946, the Board on January 4, 2018, issued its Supplemental Decision and Order and having thereafter applied to this Court for summary entry of a judgment:

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the Respondent, Pro Contracting Works, Inc., its officers, agents, successors, and assigns, shall make whole discriminatees Michael Choma, Robert Whitman, and Ismael Covarrubias, by paying them the amounts following their names, 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.<sup>1</sup>

<u>Employee</u>	<u>Backpay owed</u>
Michael Choma	\$8,200
Robert Whitman	\$2,240
Ismael Covarrubias	<u>\$2,128</u>
<b>Total amount due:</b>	<b>\$12,568</b>

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer  
Molly Dwyer  
Clerk

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<sup>1</sup> This amount does not yet include any excess tax. As set forth in the Board's compliance specification, the Respondent is 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. Any adverse tax consequences shall be reported in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

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	:	21-CA-121946
Respondent	:	

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 party at the addresses listed below:

Earl Register  
3442 Gird Rd.  
Fallbrook, CA 92028

Earl Register, President  
Pro Works Contracting, Inc.  
10612 Prospect Ave., Ste. 105  
Santee, CA 92071

Pro Works Contracting, Inc.  
303 Industrial Way # 4  
Fallbrook, CA 92028

/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 27th day of April, 2018