

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

TROPICAL WELLNESS CENTER, LLC

and

**Cases 12-CA-167884
12-CA-171371**

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

**MOTION TO ADMIT INTO EVIDENCE
SELF-AUTHENTICATING BUSINESS RECORDS**

Pursuant to Rule 803(6) and Rule 902(11) of the Federal Rules of Evidence, Counsel for the General Counsel moves to introduce General Counsel’s Exhibits 19 and 20, records of payments made by Blue Cross Blue Shield (BCBS) to Respondent and records of payments made by Cigna to Respondent, into evidence.¹ These records are relevant to establishing the Board’s jurisdiction over Respondent. The complaint in this case alleges that Tropical Wellness Center, LLC (“Respondent”) violated Section 8(a)(1), (3), (4), and (5) of the Act. Paragraph 2 of the complaint alleges that Respondent is engaged in interstate commerce within the meaning of Section 2(2) and 2(3) of the Act. In its Answer, Respondent admits that it purchased and received at its Palm Bay, Florida facility services valued in excess of \$5,000.00 directly from points outside the State of Florida, each of which other enterprises had received the goods directly from points outside the State of Florida. Respondent also admits that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. However, Respondent denies that it derived gross revenues in excess of \$250,000. The hearing in this matter opened on July 10, 2017, in Rockledge, Florida. The hearing is currently adjourned until August 27, 2018.

¹ The documents marked as General Counsel’s Exhibits 19 and 20 are attached hereto.

Respondent failed to appear at the hearing and has not produced documents as required by subpoenas duces tecum nos. B-1737417, B-1737418, and B-WXVNAH. (General Counsel Exhibits 16, 17, and 18, respectively). The documents sought in the subpoenas are, in part, necessary to establish the Board's jurisdiction over Respondent. The hearing was adjourned to allow Counsel for the General Counsel to file for subpoena enforcement in District Court. (Tr. 79:3-6). On December 19, 2017, United States District Court Judge Robin L. Rosenberg issued an Order on Subpoenas Duces Tecum directing Respondent to appear before an Administrative Law Judge (ALJ) of the Board, on a date and time directed by the Administrative Law Judge, and furnish all documents responsive to subpoenas duces tecum nos. B-1737417, B-1737418, and B-WXVNAH. On January 8, 2018, ALJ Elizabeth M. Tafe issued an Order directing Respondent to furnish all documents responsive to the above-described subpoenas by no later than 3:00 p.m. on February 15, 2018. Respondent did not comply with the ALJ's or the Court's orders.

Rule 803 of the Federal Rules of Evidence sets forth exceptions to the rule against hearsay, regardless of whether the declarant is available. Rule 803(6) provides for the admission of records of a regularly conducted activity if the record was made at or near the time—or from information transmitted by—someone with knowledge; the record was kept in the course of a regularly conducted activity or a business, organization, occupation, or calling, whether or not for profit; making the record was a regular practice of that activity; all these conditions are shown by testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and the opponent to their admission does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Rule 902 sets forth items of evidence that are self-authenticating and do not require extrinsic evidence of authenticity in order to be admitted, such as certified domestic records of a regularly conducted activity (Rule 902(11)).

In *K-D Lamp Div.*, 228 NLRB 1484 (1977), the ALJ, in accordance with Rule 803(6) of the Federal Rules of Evidence, admitted an application for payment of medical benefits. In *Trumbull Memorial Hosp.*, 288 NLRB 1429 (1988), the Administrative Law Judge admitted certain investigative reports because such documents were maintained in the regular course of business. The payment records that comprise General Counsel's Exhibits 19 and 20 are certified domestic records of a regularly conducted activity and are necessary to establish the Board's jurisdiction over Respondent. The records that Counsel for the General Counsel is seeking to introduce include a certification by the custodian of records that the documents are authentic and represent payments made to Respondent by BCBS and Cigna, in their regular course of business.

Counsel for the General Counsel seeks to introduce these documents by motion in order to avoid the expense and cost associated with having the Custodians of Records travel to Miami, Florida for the hearing on this matter on August 27, 2018. The Custodian of Records for BCBS is located in Jacksonville, Florida. The Custodian of Records for Cigna is also located in Jacksonville, Florida. A copy of the documents is being served on the parties for review prior to the hearing. Counsel for the General Counsel respectfully requests that her Motion to Introduce Documentary Evidence be GRANTED.

DATED at Miami, Florida, this 6th day of August 2018.

Respectfully submitted,

/s/ Marinelly Maldonado

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CERTIFICATE OF SERVICE

I hereby certify that the Motion to Introduce Self-Authenticating Business Records in Cases 12-CA-167884 and 12-CA-171371 was served as follows on August 6, 2018.

By electronic filing:

Hon. Elizabeth Tafe
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National Labor Relations Board
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By electronic mail and regular mail:

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