

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15

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LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC.,  
GURO ENTERPRISES, LLC, AND  
BOLLINGER SHIPYARDS, INC., Joint Employers

and

CHARLES LEBLANC, An Individual

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Cases 15-CA-137333  
15-CA-137337

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**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT BOLLINGER  
SHIPYARDS, INC.’S MOTION TO DISMISS COMPLAINT**

The undersigned Counsel for the General Counsel (General Counsel), pursuant to Section 102.24 of the Board's Rules and Regulations, submits the General Counsel’s Opposition to Respondent Bollinger Shipyards, Inc.'s Motion to Dismiss Complaint (Opposition).

**I. Introduction and Background**

On November 15, 2018, the Regional Director for Region 15 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Consolidated Complaint) in the above-noted cases setting forth allegations that La Jomac Group, Inc. (Respondent Jomac), JAG Premier, Inc. (Respondent Jag), Data Processing Specialists, Inc. (Respondent DPS), Guro Enterprises, LLC (Respondent Guro), and Bollinger Shipyards, Inc. (Respondent Bollinger), herein referred to collectively as Respondents, violated Section 8(a)(1) and (3) of the Act as alleged in the Consolidated Complaint. A copy of the Consolidated Complaint is attached as **Exhibit A**.

On February 5, 2019, Respondent Bollinger filed its first Motion to Dismiss Complaint (Motion I) with the National Labor Relations Board (Board). In Motion I, Respondent Bollinger asserted the Consolidated Complaint allegations related to it are untimely under Section 10(b) of the Act and also fail

to state a claim against it upon which relief can be granted. A copy of Motion I is attached as **Exhibit B**. On February 11, 2019, the General Counsel filed an Opposition to Respondent Bollinger Shipyards, Inc.'s Motion to Dismiss Complaint (Opposition I). A copy of Opposition I is attached as **Exhibit C**. On March 20, 2019, the Board issued an Order denying Respondent Bollinger's Motion I. A copy of the Order is attached as **Exhibit D**.

On April 15, 2019, Respondent Bollinger filed a second Motion to Dismiss Complaint (Motion II) with the Division of Judges asking the Administrative Law Judge (ALJ) to dismiss the Complaint. In Motion II, Respondent Bollinger again asserts the Consolidated Complaint allegations related to it are untimely under Section 10(b) of the Act and also fail to state a claim against it upon which relief can be granted. A copy of the Motion II is attached as **Exhibit E**.

Respondent Bollinger's Motion II is substantially the same as Motion I. In particular, Respondent Bollinger in Motion II does not raise any new legal arguments that were not previously considered and denied by the Board in Motion I. The General Counsel incorporates the averments contained in Opposition I as if fully set forth herein.

The General Counsel files this opposition and urges the ALJ to deny Motion II.

## **II. Conclusion**

In view of the foregoing, and for the reasons stated herein, it is urged that Respondent Bollinger's Motion II be denied in its entirety.

Dated: April 29, 2019

/s/Beauford D. Pines

BEAUFORD D. PINES  
Counsel for the General Counsel  
National Labor Relations Board  
600 S. Maestri Place, 7<sup>th</sup> Flr  
New Orleans, LA 70130  
Telephone: (504) 321-9579  
Facsimile: (504) 589-4069

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 29<sup>th</sup> day of April, 2019, filed a copy of General Counsel's Opposition to Respondent Bollinger Shipyards, Inc.'s Motion to Dismiss Complaint with the Division of Judges and by email and USPS mail on the parties as noted below:

**Charging Party**

Charles Leblanc ([tristate2@uanet.org](mailto:tristate2@uanet.org))

**Counsels for Respondent Bollinger Shipyard, Inc.**

Andrew P. Burnside, *Esq.* ([drew.burnside@ogletreedeakins.com](mailto:drew.burnside@ogletreedeakins.com))

Sarah M. Rain, *Esq.* ([sarah.rain@ogletreedeakins.com](mailto:sarah.rain@ogletreedeakins.com))

**Counsels for Respondent Guro Enterprises, Inc.**

Edward R. Young, *Esq.* ([eyoung@bakerdonelson.com](mailto:eyoung@bakerdonelson.com))

Russell Gray, *Esq.* ([rgray@bakerdonelson.com](mailto:rgray@bakerdonelson.com))

Timothy McConnell, *Esq.* ([tmccConnell@bakerdonelson.com](mailto:tmccConnell@bakerdonelson.com))

Trey Range, *Esq.* ([trange@bakerdonelson.com](mailto:trange@bakerdonelson.com))

**Respondent La Jomac Group Inc. and Respondent Jag Premier, Inc.** (Jorge A. Guerrero)

Jorge Guerrero ([jorgefuerrero1977@hotmail.com](mailto:jorgefuerrero1977@hotmail.com))

**Respondent Data Processing Specialists, Inc.** (Norma Linda Vega Perez)

[norma@myprocess.org](mailto:norma@myprocess.org)

and

Norma Linda Vega Perez  
Data Processing Specialists, Inc.  
137 Highland Drive  
Brownsville, TX 78520

/s/ Beauford D. Pines

BEAUFORD D. PINES  
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New Orleans, LA 70130  
Telephone: (504) 321-9579  
Facsimile: (504) 589-4069

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

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LA JOMAC GROUP, INC., JAG PREMIER, INC., \*  
DATA PROCESSING SPECIALISTS, INC., \*  
GURO ENTERPRISES, LLC, AND \*  
BOLLINGER SHIPYARDS, INC., Joint Employers \*  
\*  
and \* Cases 15-CA-137333  
\* 15-CA-137337  
CHARLES LEBLANC, an Individual \*  
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**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 15-CA-137333 and Case 15-CA-137337, which are based on charges filed by Charles LeBlanc, an Individual (LeBlanc), against La Jomac Group, Inc. (Respondent Jomac), Jag Premier, Inc. (Respondent Jag), Data Processing Specialists, Inc. (Respondent DPS), Guro Enterprises, LLC (Respondent Guro), and Bollinger Shipyards, Inc. (Respondent Bollinger) (collectively Respondents) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board’s Rules and Regulations, and alleges Respondents have violated the Act, as Joint Employers as described below.

1. The charges in the above cases were filed by LeBlanc as set forth in the following table upon the respective Respondents on the dates indicated by U.S. mail:

**EXHIBIT A**

<i>Case No.</i>	<i>Amendment</i>	<i>Respondent</i>	<i>Date Filed</i>	<i>Date Served</i>
15-CA-137333	Original	Respondent Jomac	9/23/14	9/24/14
15-CA-137333	First Amended	Respondent Jomac and Respondent DPS	10/31/14	10/31/14
15-CA-137333	Second Amended	Respondent Jomac, Respondent Jag, Pangea Industries LLC, Barrios Street Realty, and Respondent DPS	12/22/14	12/22/14
15-CA-137333	Third Amended	Respondent Jomac, Respondent Jag, Respondent DPS, Pangea Industries, LLC, Barrios Street Realty, LLC, and Pangea Enterprises, Inc.	3/19/15	3/20/15
15-CA-137333	Fourth Amended	Respondent Jomac, Respondent Jag, Respondent DPS, Pangea Industries, LLC, Barrios Street Realty, Pangea Enterprises, Inc., and Respondent Guro	12/27/16	12/27/16
15-CA-137333	Fifth Amended	Respondent Jomac, Respondent DPS, Jag, Respondent Guro, and Bollinger Shipyards, Inc.	7/31/17	7/31/17
15-CA-137337	Original	Respondent Jag	9/23/14	9/24/14
15-CA-137337	First Amended	Respondent Jag and Respondent DPS	10/31/14	10/31/14
15-CA-137337	Second Amended	Respondent Jag, Respondent Jomac, Pangea Industries, LLC; Barrios Street Realty, and Respondent DPS.	1/30/15	1/30/15
15-CA-137337	Third Amended	Respondent Jag, Respondent DPS, Respondent Jomac, Pangea Industries, LLC, Barrios Street Realty, LLC, and Pangea Enterprises, Inc.,	3/19/15	3/20/15
15-CA-137337	Fourth Amended	Respondent Jag, Respondent DPS, Respondent Jomac, Pangea Industries, LLC,	12/27/16	12/27/16

		Barrios Street Realty, Pangea Enterprises, Inc., and Respondent Guro		
15-CA-137337	Fifth Amended	Respondent Jag, Respondent DPS, Respondent Jomac, Respondent Guro, and Bollinger Shipyards, Inc.	7/31/17	7/31/17

2(a) At all material times, Respondent Jomac has been a corporation with an office and place of business in Houma, Louisiana, (Respondent Jomac’s facility), and has been engaged in the business of providing temporary employees to employers.

(b) At all material times, Respondent Jag has been a corporation with an office and place of business in New Orleans, Louisiana, (Respondent Jag’s facility), and has been engaged in the business of providing temporary employees to employers.

(c) At all material times, Respondent DPS has been a corporation with an office and place of business in Brownsville, Texas, (Respondent DPS’ facility), and has been engaged in the business of providing consulting and administrative services to employers regarding hiring temporary workers through the H2B visa program.

(d) At all material times, Respondent Guro has been a limited liability company with an office and place of business in Brownsville, Texas, (Respondent Guro’s facility), and has been engaged in the business of providing temporary employees to employers.

(e) At all material times, Respondent Bollinger has been a corporation with offices and places of business in Lockport, Louisiana (Bollinger’s facility), and has been engaged in the business of the manufacturing of ships.

3(a) At all material times, Respondent Jomac and Respondent DPS were parties to a contract which provided that Respondent DPS was the agent for Respondent Jomac in connection with hiring employees to work in the shipping industry.

(b) At all material times, Respondent Jag and Respondent DPS were parties to a contract which provided that Respondent DPS was the agent for Respondent Jag in connection with hiring employees to work in the shipping industry.

(c) At all material times, Respondent Jomac and Respondent Guro were parties to a contract in which they agreed to provide temporary employees to Respondent Bollinger.

(d) At all material times, Respondent Jag and Respondent Guro were parties to a contract in which they agreed to provide temporary employees to Respondent Bollinger.

(e) At all material times, Respondent Jomac, Respondent Jag, and Respondent Guro have been parties to a contract which provides that Respondent Jomac, Respondent Jag, and Respondent Guro are agents for Respondent Bollinger in connection with providing employees for Respondent Bollinger's facility.

4(a) At all material times, Respondent Jomac administered a common labor policy with Respondent DPS for the employees of Respondent Jomac.

(b) At all material times, Respondent Jag administered a common labor policy with Respondent DPS for the employees of Respondent Jag.

(c) At all material times, Respondent Jomac, Respondent Jag, and Respondent Guro administered a common labor policy for their employees working at Respondent Bollinger's facility.

(d) At all material times, Respondent Bollinger has exercised control over the labor relations policy of Respondent Jomac, Respondent Jag, and Respondent Guro for the employees of Respondent Jomac, Respondent Jag, and Respondent Guro working at Respondent Bollinger's facility.

5. At all material times, Respondents have been joint employers of the employees of Respondent Jomac, Respondent Jag, Respondent DPS, and Respondent Guro working at Respondent Bollinger's facility.

6(a) Annually, in conducting its operations described above in paragraph 2(e), Respondent Bollinger purchased and received at its Lockport, Louisiana facility products, goods, and materials valued in excess of \$50,000 directly from points outside of the State of Louisiana.

(b) In conducting its operations described above in paragraph 2(a), during the calendar year ending December 31, 2014, Respondent Jomac performed services valued in excess of \$50,000 in States other than the State of Louisiana.

(c) In conducting its operations described above in paragraph 2(b), during the calendar year ending December 31, 2014, Respondent Jag performed services valued in excess of \$50,000 in States other than the State of Louisiana.

(d) In conducting its operations described above in paragraph 2(c), during the calendar year ending December 31, 2014, Respondent DPS performed services valued in excess of \$50,000 in States other than the State of Louisiana.

(e) In conducting its operations described above in paragraph 2(d), during the calendar year ending December 31, 2014, Respondent Guro performed services valued in excess of \$50,000 in States other than the State of Louisiana.

7(a) At all material times, Respondent Jomac has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) At all material times, Respondent Jag has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(c) At all material times, Respondent DPS has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.



(d) At all material times, Respondent Guro has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(e) At all materials times, Respondent Bollinger has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

8. At all material times, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States, Canada (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

9(a) At all material times, Jorge Guerrero held the position of Respondent Jomac's President, and has been a supervisor of Respondent Jomac within the meaning of Section 2(11) of the Act and an agent of Respondent Jomac within the meaning of Section 2(13) of the Act.

(b) At all material times, Jorge Guerrero held the position of Respondent Jag's President, and has been a supervisor of Respondent Jag within the meaning of Section 2(11) of the Act and an agent of Respondent Jag within the meaning of Section 2(13) of the Act.

(c) At all material times, Norma Perez held the position of Respondent DPS's President, and has been a supervisor of Respondent DPS within the meaning of Section 2(11) of the Act and an agent of Respondent DPS within the meaning of Section 2(13) of the Act.

(d) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Guro within the meaning of Section 2(11) of the Act and agents of Respondent Guro within the meaning of Section 2(13) of the Act:

Cesar Guerrero	-	Owner
Jorge Guerrero	-	President

(e) At all material times, Craig Roussel held the position of Respondent Bollinger's Executive Vice President, and has been a supervisor of Respondent Bollinger within the meaning

of Section 2(11) of the Act and an agent of Respondent Bollinger within the meaning of Section 2(13) of the Act.

10(a) About January 1, 2014, Respondents were hiring, or had concrete plans to hire 35 employees.

(b) About the dates set forth opposite their names, Respondents refused to consider for hire or hire the following applicant(s) for employment:

<u>Name of Applicants</u>	<u>Date</u>
Leonard Aguilar	From January 17, 2014 to December 31, 2014
Samuel D. Bankester	From January 13, 2014 to December 31, 2014
Steve Lee Fayard	From January 15, 2014 to December 31, 2014
Chris Inghram	From January 14, 2014 to December 31, 2014
Charles LeBlanc	From January 12, 2014 to December 31, 2014
Scott T. LeFevre	From January 13, 2014 to December 31, 2014
Christopher Glen Newell	From January 14, 2014 to December 31, 2014
James Joseph Templet	From January 13, 2014 to December 31, 2014
Landon D. Varnell	From January 14, 2014 to December 31, 2014

(c) The conduct described above in paragraph 10(b) is inherently destructive of the rights guaranteed employees by Section 7 of the Act.

(d) Respondents engaged in the conduct described above in paragraph 10(b) because the named employees formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

11. By the conduct described above in paragraph 10, Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of its

employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

12. The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before November 29, 2018, or postmarked on or before November 28, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer

containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **March 11, 2019 at 10:00 a.m. in the Courtroom, National Labor Relations Board, Region 15, 600 S. Maestri Place, 7<sup>th</sup> Floor, New Orleans, Louisiana**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 15, 2018

/s/

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**M. KATHLEEN MCKINNEY  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 15  
600 S. MAESTRI PL., 7<sup>TH</sup> FLOOR  
NEW ORLEANS, LA 70130-3413**

Attachments

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC., AND  
GURO ENTERPRISES, LLC, Joint Employer

and

Cases 15-CA-137333  
15-CA-137337

CHARLES LEBLANC, an Individual

**AFFIDAVIT OF SERVICE OF:** Copy of Order Consolidating Cases, Consolidated Complaint and Notice of Hearing with forms NLRB-4338, Important Notice and NLRB-4668 attached, dated November 15, 2018.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 15, 2018, I served the above-entitled document(s) by **certified or first class mail**, as noted below, upon the following persons, addressed to them at the following addresses:

La Jomac Group Inc  
115 Everett St  
Morgan City, LA 70380-3617

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Jorge Guerrero  
La Jomac Group Inc  
917 Dunn St  
Houma, LA 70360-6467

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Jorge Guerrero  
Jag Premier Inc  
1201 Canal Street Suite 264  
New Orleans, LA 70112

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Jag Premier, Inc.  
800 Common St., Ste. 1104  
New Orleans, LA 70112

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Samy Khalil, Esquire  
Hughes, Arrell, Kinchen LLP  
1221 McKinney St Ste 3150  
Houston, TX 77010-2034

**FIRST CLASS MAIL**

Norma Perez  
Data Processing Specialists  
2390 Central Blvd., Ste. W  
Brownsville, TX 78520

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Charles LeBlanc  
16411 Hooper Rd  
Greenwell Springs, LA 70739

**CERTIFIED MAIL/RETURN RECEIPT**

Richard T. Ledet  
Barrios Street Realty, LLC  
230 N Barrios St  
Lockport, LA 70374-2204

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Richard T. Ledet  
Barrios Street Realty, LLC  
538 Madison St.  
New Orleans, LA 70116

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Etienne Balart  
Jones Walker  
201 St. Charles Ave.  
New Orleans, LA 70170

**FIRST CLASS MAIL**

Sidney F. Lewis Esq.  
Jones, Walker, Waechter, Poitevent,  
Carrere & Denegre, LLP  
201 St. Charles Ave.  
New Orleans, LA 70170-5100

**FIRST CLASS MAIL**

Cesar Guerrero  
Guro Enterprises, LLC  
1313 East Alton Gloor Suite I  
Brownsville, TX 78526

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Matthew S. Chester, Esquire  
Baker Donelson Bearman Caldwell & Berkowitz, PC  
Place Saint Charles 201 Saint Charles Ave Ste 3600  
New Orleans, LA 70170-3600

**FIRST CLASS MAIL**

Benjamin G Bordelon  
Bollinger Shipyard, Inc.  
8365 Highway 308  
Lockport, LA 70374-3954

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Andrew P. Burnside Esq., Attorney  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
701 Poydras St Ste 3500  
New Orleans, LA 70139-7705

**FIRST CLASS MAIL**

November 15, 2018

DONNA M. SIMMONS, Designated  
Agent of NLRB

\_\_\_\_\_  
Name

/s/

\_\_\_\_\_  
Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Cases 15-CA-137333  
15-CA-137337

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

La Jomac Group Inc 115 Everett St Morgan City, LA 70380-3617	Andrew P. Burnside Esq., Attorney Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 701 Poydras St Ste 3500 New Orleans, LA 70139-7705
Jorge Guerrero La Jomac Group Inc. 917 Dunn St Houma, LA 70360-6467	Richard T. Ledet Barrios Street Realty, LLC 230 N Barrios St Lockport, LA 70374-2204
Jorge Guerrero Jag Premier Inc 1201 Canal Street Suite 264 New Orleans, LA 70112	Richard T. Ledet Barrios Street Realty, LLC 538 Madison St. New Orleans, LA 70116
Jag Premier, Inc. 800 Common St., Ste. 1104 New Orleans, LA 70112	Etienne Balart Jones Walker 201 St. Charles Ave. New Orleans, LA 70170
Samy Khalil, Esquire Hughes, Arrell, Kinchen LLP 1221 McKinney St Ste 3150 Houston, TX 77010-2034	Sidney F. Lewis Esq. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP 201 St. Charles Ave. New Orleans, LA 70170-5100
Norma Perez Data Processing Specialists 2390 Central Blvd., Ste. W Brownsville, TX 78520	Cesar Guerrero Guro Enterprises, LLC 1313 East Alton Gloor Blvd., Suite I Brownsville, TX 78526
Charles LeBlanc 16411 Hooper Rd Greenwell Springs, LA 70739	Andrew P. Burnside Esq., Attorney Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 701 Poydras St Ste 3500 New Orleans, LA 70139-7705
Benjamin G Bordelon Bollinger Shipyard, Inc. 8365 Highway 308 Lockport, LA 70374-3954	

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the



responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC.,  
GURO ENTERPRISES, LLC, AND  
BOLLINGER SHIPYARDS, INC., Joint Employers

and

Cases 15-CA-137333  
15-CA-137337

CHARLES LEBLANC, An Individual

**BOLLINGER SHIPYARDS, INC.'S  
MOTION TO DISMISS COMPLAINT**

COMES NOW, Respondent Bollinger Shipyards, Inc. (“Bollinger”) and pursuant to 29 C.F.R. § 102.24 submits the following Motion to Dismiss the above-captioned unfair labor proceedings in their entirety on the grounds that the allegations as related to Bollinger are untimely under Section 10(b) of the National Labor Relations Act (“the Act”) and fail to state a claim against Bollinger upon which relief can be granted. As further grounds for and support of this Motion, Bollinger states:

**I. INTRODUCTION**

This is a run of the mill salting case, claiming that an unspecified employer failed to hire Charging Party and other union members because of their union membership or support. The initial unfair labor practice charges (“the Charges”) in Case Nos. 15-CA-137333 and 15-CA-137337 were filed solely against La Jomac Group, Inc. (“La Jomac”) and Jag Premier, Inc. (“Jag”), respectively on September 23, 2014. The Charges were then modified numerous times, adding and deleting respondents at Charging Party’s whim and apparently with Region 15’s consent. It was not until July 31, 2017, nearly three years later, that the *Fifth* Amended Charges were filed,

**EXHIBIT B**

adding Bollinger as a named respondent in this matter. Bollinger denied any wrongdoing in this matter but nonetheless, on November 15, 2018, the Regional Director for Region 15 issued a Consolidated Complaint in this matter.

Ignoring the fact that the first time Bollinger was alerted to the allegations in the Consolidated Complaint was more than two years after the alleged misconduct occurred, the Consolidated Complaint alleges that Bollinger is a joint employer with the other named respondents and therefore, liable for the failure to hire as alleged. The action in this matter against Bollinger cannot stand where the Fifth Amended Charge was untimely with respect to Bollinger and until that time, Bollinger had no notice that it might be added as a party to this action. Permitting this case to proceed against Bollinger would deny Bollinger its right to due process.

Moreover, even assuming the allegations in the Consolidated Complaint were true, they fail to state a claim *against Bollinger* upon which relief can be granted. Namely, the Consolidated Complaint alleges that La Jomac, Jag, and Guro Enterprises, LLC, temporary staffing agencies, provided employees to Bollinger's facility.<sup>1</sup> The Consolidated Complaint then alleges that Bollinger has exercised control over labor relations policy of La Jomac, Jag, and Guro "*for employees working at Respondent Bollinger's facility.*" (Compl. ¶ 4(d)). The Consolidated Complaint further alleges all the respondents, including Bollinger, have been joint employers for employees of La Jomac, Jag, and Guro "*working at Respondent Bollinger's facility.*" (Compl. ¶ 5).

Despite the explicit acknowledgement in the Consolidated Complaint that Bollinger is only a joint employer with the other alleged respondents for employees actually working at ~~Bollinger's facility, the Consolidated Complaint~~ then makes a conclusory statement that all of

<sup>1</sup> Because the Region has never explicitly alleged how Bollinger has any liability for the alleged wrongdoing the respondents, Bollinger is not aware which facility is allegedly at issue.

including Bollinger, unlawfully refused to consider for hire various applicants. (Compl. ¶ 10(b)). On its face, the Consolidated Complaint acknowledges that Bollinger is, at best, only a joint employer with the other alleged respondents with respect to employees already assigned to Bollinger. There is no allegation that Bollinger was involved in either the hiring process generally or the failure to hire Charging Party specifically. There is similarly no allegation that Charging Party worked at Bollinger's facility, thus triggering the joint employer allegation as stated in the Consolidated Complaint. As written, the Consolidated Complaint fails to state any cause of action against Bollinger except for a conclusory statement that Bollinger, along with the other respondents, failed to hire Charging Party.

Requiring Bollinger to continue to defend itself in this matter is an abuse of the Region's authority. Bollinger should not be required to expend its resources to defend against an untimely Charge and the Consolidated Complaint with its tenuous allegations against Bollinger. Accordingly, Respondent Bollinger respectfully asks that the National Labor Relations Board ("the Board") dismiss the Complaint.

## **II. MOTION TO DISMISS STANDARD**

Pursuant to the 29 C.F.R. § 102.24, Bollinger asks the Board to dismiss the allegations in the Consolidated Complaint related to Bollinger. In ruling on motions to dismiss under 29 C.F.R. § 102.24, the Board follows the standard used for motions to dismiss filed under Federal Rule of Civil Procedure 12(b)(6). *See Yale University*, 330 NLRB 246, 247 n. 8 (1999) (the Federal Rules of Civil Procedure guide the Board in reviewing a motion to dismiss). Under that standard, the Board "construes the complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers Agency*, 330 NLRB

524, 525 n. 7 (2000); *see also Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Even assuming all of the allegations in the Consolidated Complaint are true, the General Counsel cannot establish any basis for liability against Bollinger and the Consolidated Complaint must be dismissed with respect to Bollinger.

### III. LEGAL ARGUMENT

#### A. Bollinger Must be Dismissed From the Consolidated Complaint Where Allegations Were Untimely and Bollinger Was Not Added as a Respondent Until Nearly Three Years After the Unlawful Acts

Section 10(b) of the Act specifically provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . .” The Consolidated Complaint specifically alleges that the alleged unlawful failure to hire occurred from January 2014 to December 31, 2014. (Compl. ¶ 10(b)). Despite the alleged misconduct occurring in 2014, the Fifth Amended Charges, adding Bollinger as a respondent for the first time, were not filed until July 31, 2017, more than two years after the statute of limitations expired and nearly three years after the initial Charges were filed. (Compl. ¶ 1). With respect to Bollinger, the allegations are untimely on their face. If Charging Party sought to add Bollinger as a respondent to this action, he must have filed a charge no later than June 30, 2015. He did not. Charging Party cannot be rewarded for his failure to act with any sense of due diligence at the expense of Bollinger’s due process rights.

Traditionally, unfair labor practice allegations that are otherwise time-barred may be litigated only if they are “legally and factually ‘closely related’ to allegations of a prior timely filed charge.” *Carney Hospital*, 350 NLRB 627 (2007). While the Board permits untimely amendments

where the allegations “relate back” to the timely allegations, this is where the initial charge “generally informs the *party charged of the nature of the alleged violations.*” *Wells Fargo Armored Service Corp.*, 290 NLRB 936, 939 (1988) (emphasis added). Here, Bollinger had no knowledge of the nature of the violations until nearly three years after the initial Charges were filed. If Charging Party sought to add allegations against La Jomac and Jag which “related back” to the initial charge, he could do so under well-established Board law. However, this is no basis by which Charging Party could add respondents years after the Charges were filed and where Bollinger had no knowledge of the alleged violations prior to the untimely amendments.<sup>2</sup>

Further, there is no allegation that Bollinger is a single employer or alter ego of La Jomac or Jag (or any other respondent) which may allow the General Counsel to impute knowledge of the earlier filing upon Bollinger. Similarly, there is no allegation that Bollinger is a “closely related” party to this action. Bollinger was a customer of La Jomac and Jag but nothing more. Bollinger should not be denied its due process right to learn of the existence of allegations against it because Charging Party failed to add it as a party to this action years later. Moreover, the nature

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<sup>2</sup> While it appears the Board has not used the “relate back” theory to add unrelated respondents, the Fifth Circuit (the circuit in which this Region sits), has limited the use of the “relation back” doctrine provided in Federal Rules of Civil Procedure 15(c) to add a party after the limitations period has expired only if the party added had notice that the action would be brought against it within the limitations period. While not binding on the Board, the application of this Rule is instructive in the instant case. There is absolutely no evidence that Bollinger had notice that the action would have been brought against it. While the Fifth Circuit “will infer notice if there is an identity of interest between the original defendant and the defendant sought to be added or substituted,” there is no identity of interest in the instant case. *Jacobsen v. Osborne*, 133 F.3d 315, 320 (5th Cir.1998), citing *Moore v. Long*, 924 F.2d 586, 588 (5th Cir.1991), and *Kirk v. Cronvich*, 629 F.2d 404, 407–08 (5th Cir.1980). “‘Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other.’ ” *Id.*, quoting *Kirk*, 629 F.2d at 408 n. 4.

Here, there is absolutely no claim that the original respondents (La Jomac and Jag) share any identity of interest with Bollinger. Instead, at most, the Consolidated Complaint alleges that at some times, Bollinger is a customer of La Jomac and Jag. All of La Jomac and Jag’s customers could not reasonably believe that they may be added to the pending action. Bollinger had no reason to believe it may be added to the instant proceeding where it had no involvement in the challenged hiring decisions and otherwise is not related to La Jomac or Jag.

of the allegations are not such that Bollinger would have or should have been aware that allegations were being levied against it as well as the other respondents. It was not until the Fifth Amended Charge that Bollinger learned for the first time that it was a target of Charging Party's claims.

To permit the untimely allegations against Bollinger to stand would deny Bollinger due process and is not "just" as required by 29 C.F.R. § 102.17 (permitting amendments "upon such terms as may be deemed just"). It is hardly just to Bollinger (whose interests must be considered in addition to Charging Party's) to permit an amendment to add Bollinger years after the Charges were initially filed and where Bollinger was wholly unaware of the allegations and its need to defend itself prior to that time. *See e.g. Green Construction*, 271 NLRB 1503 (1984) (it would be "unjust" to permit the General Counsel to amend a complaint to add a charged party seven months later where it would cause undue prejudice to the unnamed party).<sup>3</sup> Moreover, neither Charging Party nor the General Counsel provided any rationale for the delay in failing to name Bollinger as a Respondent until years later. Instead, it appears Charging party added and removed respondents until he landed on parties with what he believed were sufficiently deep pockets or where he has some interest in future employment.

Because Congress included section 10(b) as part of the statutory scheme embodied by the Act, the limitations period should be enforced. As the Court stated in *Mohasco Corp. v. Silver*,

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<sup>3</sup> While the hearing has not yet occurred in the instant case, Bollinger has nonetheless been sufficiently prejudiced by the General Counsel's actions in this matter. The General Counsel did not seek an amendment a few months after the statute of limitations expired; instead, it allowed Bollinger to be added as a party to this action *years* after the Charges were filed. The very basis of the Charges is a failure to hire claim. If in fact Bollinger failed or refused to hire Charging Party, he would have been aware of that fact at some point prior to three years later. Yet, no explanation has been given for Bollinger's addition to this matter or the delay in amending the Charges. Instead, as discussed in more detail in Section B, *infra*, there is no basis in fact or law for adding Bollinger, especially where such amendment did not occur until years later. While Bollinger has no knowledge of the alleged wrongdoing in this matter, if the allegations were of a different nature about which Bollinger had direct knowledge, such an untimely amendment deprives a respondent of the ability to respond while memories are fresh and documents are retained.

447 U.S. 807, 826 (1980): “[i]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.”

Undue prejudice is inherent in the undue delay in adding Bollinger to this proceeding years after the operative events. Bollinger should not be unduly prejudiced by Charging Party’s delay where it had no knowledge of its potential addition as a party in this matter until well outside the statute of limitations period.

**B. The Consolidated Complaint Fails to State a Cause of Action Upon Which Relief May be Granted Against Bollinger and Bollinger Must be Dismissed From the Consolidated Complaint**

In addition to being untimely, the Consolidated Complaint fails to state any factual basis for liability against Bollinger. As set forth above, even if the allegations in the Consolidated Complaint were true, which they are not, they do not establish Bollinger had any involvement in the alleged unfair labor practices alleged therein. Instead, the Consolidated Complaint alleges that by virtue of an alleged joint employment relationship between Bollinger and the temporary agencies with respect to employees hired by the temporary agencies and assigned to Bollinger, Bollinger is liable for all actions by the temporary agencies, even those in which it had no role. The Consolidated Complaint fails to state any factual or legal basis on which the Region relies for its allegation that Bollinger is responsible for the alleged failure to hire. The Consolidated Complaint only describes conduct by Bollinger after employees are hired by the other respondents *and assigned to Bollinger for work* yet, the Consolidated Complaint makes a conclusory statement that Bollinger is somehow liable for the failure to hire employees who were never assigned to work



at any Bollinger facility. The Consolidated Complaint similarly does not allege that Bollinger was involved in the hiring process or instructed the other respondents regarding hiring practices.<sup>4</sup> The Consolidated Complaint does not even allege that Bollinger would have been the end user of the applicants allegedly not hired.<sup>5</sup>

Under the Region's apparent theory, any customer of the temporary agencies could have been added as a respondent in this matter. The Consolidated Complaint does not provide any allegation specific to Bollinger in this matter. It is apparent from the repeated amendments to the Charges that Bollinger was an afterthought in this matter – likely because Bollinger was not actually involved in any of the allegations in this case. Charging Party obviously knew which employers did not hire him – La Jomac and Jag<sup>6</sup> – as based on the initial Charges. Despite this knowledge, the Region has proceeded to permit Bollinger to be added as a respondent, even where there are no allegations in the Consolidated Complaint that would establish any liability for Bollinger.

Reading the Consolidated Complaint, it appears the Region is asserting that a joint employer for one purpose is a joint employer for all purposes. However, the Consolidated

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<sup>4</sup> The Answer filed by respondent Guro in this matter denies the existence of any joint employer relationship with Bollinger and similarly fails to establish any liability against Bollinger based on the alleged failure to hire Charging Party.

<sup>5</sup> In response to repeated requests from Bollinger's counsel, to date, the Region has provided only one basis for its belief that Bollinger was in any way involved in the decisions at issue – job orders from the Louisiana Workforce Commission whereby some of the contractors posted available positions in landside construction trades. These job orders do not name Bollinger as the assigned location for the available work, nor do they indicate to the public where any hired individuals may be assigned. In fact, it is apparent from the multiple pleadings in this matter, adding and removing multiple respondents, that the Charging Party and the Region were on a fishing expedition in an attempt to add additional respondents to this matter, only adding Bollinger after three years had passed. Moreover, Bollinger is not a necessary party to this action where the other named parties, the contractors themselves, are fully capable of remedying any unlawful conduct which occurred as a result of their alleged unlawful failure to hire applicants.

<sup>6</sup> Notably, the Region did not even serve La Jomac and Jag with the Consolidated Complaint until on or about January 23, 2019 (but nonetheless denied Bollinger's motion to postpone the hearing which Bollinger filed more than three months prior to the hearing due to a prescheduled conflict by counsel).

Complaint belies the integrity of this theory in the instant case. The Consolidated Complaint specifically alleges a joint employer relationship *for employees working at Bollinger's facility*. Where Charging Party was never hired and never worked at Bollinger's facility, there is no question Bollinger was not a joint employer with respect to Charging Party and cannot be liable for the alleged violations at issue in the instant case. Moreover, the Board has explained that joint employer status, by its mere existence, does not render both parties liable for all actions of the other. "Liability of joint employers for the commission of unfair labor practices by one of them is confined to the scope of the joint employer relationship." *S. California Gas Co.*, 302 NLRB 456 (1991), *citing Food & Commercial Workers (R & F Grocers)*, 267 NLRB 891, 893 fn. 7 (1983); *see also Aim Royal Insulation*, 358 NLRB 787 (2012)(joint employer not liable for ULP of fellow joint employer unless the first knew of and failed to protest the unlawful acts of the second).

The Consolidated Complaint specifically limits the scope of the joint employer relationship to those employees hired and working at Bollinger's facility. It nonetheless then attempts to add liability to Bollinger for actions beyond the established scope of the alleged joint employment. Even if Bollinger is a joint employer for employees of La Jomac, Jag, and Guro "*working at Respondent Bollinger's facility*," Bollinger has no liability for the alleged failure to hire. (Compl. ¶ 5). To require Bollinger to expend its resources to defend against the Consolidated Complaint which fails to state any liability against Bollinger is unjust.<sup>7</sup> The allegations against Bollinger set forth in the Consolidated Complaint must be dismissed.

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<sup>7</sup> This is especially true where the Region has indicated that it anticipates the hearing to last five days, five days for which Bollinger must pay for counsel, have its representatives away from work, and defend itself against a conclusory complaint without any basis in fact or law.

#### IV. CONCLUSION

For all these reasons, Bollinger respectfully requests that the allegations in the Complaint against it be dismissed with prejudice in its entirety.

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

*s/Andrew P. Burnside*

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Attorneys for Bollinger Shipyards, Inc.

#### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 5<sup>th</sup> day of February, 2019, the foregoing was filed electronically and is available for viewing and downloading from the National Labor Relation Board's e-filing system, and has been served on all parties as follows:

**By Email:**

jorgeguerrero1977@hotmail.com  
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**By United States Mail:**

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2390 Central Blvd., Ste. W  
Brownsville, TX 78520

*s/Andrew P. Burnside*

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ANDREW P. BURNSIDE

36796389.1

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15

\*\*\*\*\*

LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC.,  
GURO ENTERPRISES, LLC, AND  
BOLLINGER SHIPYARDS, INC., Joint Employers

and

CHARLES LEBLANC, An Individual

Cases 15-CA-137333  
15-CA-137337

\*\*\*\*\*

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT BOLLINGER  
SHIPYARDS, INC.’S MOTION TO DISMISS COMPLAINT**

The undersigned Counsel for the General Counsel (General Counsel), pursuant to Section 102.24 of the Board's Rules and Regulations, submits the General Counsel’s Opposition to Respondent Bollinger Shipyards, Inc.'s Motion to Dismiss Complaint (Opposition).

**I. Introduction and Background**

On November 15, 2018, the Regional Director for Region 15 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Consolidated Complaint) in the above-noted cases setting forth allegations that La Jomac Group, Inc. (Respondent Jomac), JAG Premier, Inc. (Respondent Jag), Data Processing Specialists, Inc. (Respondent DPS), Guro Enterprises, LLC (Respondent Guro), and Bollinger Shipyards, Inc. (Respondent Bollinger), herein referred to collectively as Respondents, violated Section 8(a)(1) and (3) of the Act as alleged in the Consolidated Complaint. A copy of the Consolidated Complaint is attached as Exhibit A.

**EXHIBIT C**

On February 5, 2018, Respondent Bollinger filed its Motion to Dismiss Complaint (Motion) with the National Labor Relations Board (Board). In its Motion, Respondent Bollinger asserts the Consolidated Complaint allegations related to it are untimely under Section 10(b) of the Act and also fail to state a claim against it upon which relief can be granted. As set forth below, Respondent Bollinger's Motion should be denied in its entirety.

**II. The Consolidated Complaint Allegations Against Respondent Bollinger are Timely**

The original charge in Case 15-CA-137333 against Respondent La Jomac was filed on September 23, 2014 and served on September 24, 2014. Likewise, the original charge in Case 15-CA-137337 against Respondent Jag was filed on September 23, 2014 and served on September 24, 2014. The investigation of both charges revealed additional relevant details and the charges were amended accordingly to include additional employers. The Fifth Amended charges in Cases 15-CA-137333 and 15-CA-137337 were filed and served on July 31, 2017, and included Respondent Bollinger as a joint employer with the other Respondents.

The Board has determined the timely filing and service of a charge on a joint employer is tantamount to the timely filing and service of the charge on all joint employers. *Mar Del Plata Condominium Assn.*, 282 NLRB 1012, n. 3 1987, supplemented by *PMS Corp.*, 290 NLRB 870 (1988), citing *Ref-Chem Co.*, 169 NLRB 376, 380 (1968), *enfd. Denied on other grounds*, 418 F.2d 125 (5<sup>th</sup> Cir. 1969). In *Mar Del Plata* and *PMS*, the Board found that PMS, like Mar Del Plata, violated the Act by discharging an employee even though the violation occurred more than six months before PMS was named as a charged party. As in *Mar Del Plata* and *PMS*, although the alleged violation in this matter occurred more than six months before Respondent Bollinger was named as a charged party, the original and subsequent charges in Cases 15-CA-137333 and 15-CA-137337 were timely filed and served on Respondents as joint employers.

Similarly, in *Ref-Chem* the original charge was filed against employer Ref-Chem and more than six months later employer El Paso was named as a joint employer. The Board noted: “As joint employers, each is responsible for the conduct of the other and whatever unlawful practices are engaged in by the one must be deemed to have been committed by both. Therefore, although the original charge mentions only Ref-Chem as Respondent, the nature of the joint-employer relationship is such that the charge against Respondent Ref-Chem also constituted a charge against El Paso for any unfair labor practices found against its co-employer Ref-Chem. *Ref-Chem, supra* at 380. Therefore, inasmuch as the charges against Respondent La Jomac and Respondent Jag were timely filed and served, the Fifth Amended charges including Respondent Bollinger as a joint employer were timely.

### **III. The Consolidated Complaint States a Claim for Which Relief Can be Granted**

The Fifth Amended charge in which it is alleged Respondents refused to consider for hire or hire nine applicants was filed and served on Respondents on July 31, 2017. Respondent Bollinger was given an opportunity to address the allegations contained in the charges and to present its evidence in response to the charges, and it did so on August 29, 2017. After duly considering the evidence disclosed during the investigation of the charges, the Regional Director issued the Consolidated Complaint wherein it is alleged in Paragraph 10(b) that Respondents refused to consider for hire or hire the named applicants. Although Respondent Bollinger asks the Board to believe it has been unduly prejudiced, the reality is Respondent Bollinger has been afforded due process as demonstrated by its participation in the investigation that preceded the issuance of the Consolidated Complaint. Further, Respondent Bollinger was served a copy of the Consolidated Complaint, has submitted its answer to said Consolidated Complaint, and has the opportunity to participate in an unfair labor practice hearing before an administrative law judge.

All these factors demonstrate Respondent Bollinger has been afforded due process in this matter and has not been unduly prejudiced. Inasmuch as Respondents have been given an opportunity to fully participate in the investigation of the charges and the Regional Director has determined the evidence is sufficient to establish Respondents have violated the Act, the Consolidated Complaint sufficiently states a claim against Respondents for which relief can be granted.

**IV. Conclusion**

In view of the foregoing, and for the reasons stated herein, Respondent Bollinger's Motion to Dismiss Complaint should be denied in its entirety.

Dated: February 11, 2019

/s/Beauford D. Pines

BEAUFORD D. PINES  
Counsel for the General Counsel  
National Labor Relations Board  
600 S. Maestri Place, 7<sup>th</sup> Flr  
New Orleans, LA 70130  
Telephone: (504) 321-9579  
Facsimile: (504) 589-4069

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 11<sup>th</sup> day of February, 2019, filed a copy of General Counsel's Opposition to Respondent Bollinger Shipyards, Inc.'s Motion to Dismiss Complaint with the National Labor Relations Board and by email on the parties as noted below:

**Charging Party**

Charles Leblanc ([tristate2@uanet.org](mailto:tristate2@uanet.org))

**Counsels for Respondent Bollinger Shipyard, Inc.**

Andrew P. Burnside, *Esq.* ([drew.burnside@ogletreedeakins.com](mailto:drew.burnside@ogletreedeakins.com))

Sarah M. Rain, *Esq.* ([sarah.rain@ogletreedeakins.com](mailto:sarah.rain@ogletreedeakins.com))

**Counsels for Respondent Guro Enterprises, Inc.**

Edward R. Young, *Esq.* ([eyoung@bakerdonelson.com](mailto:eyoung@bakerdonelson.com))

Timothy McConnell, *Esq.* ([tmccConnell@bakerdonelson.com](mailto:tmccConnell@bakerdonelson.com))

Trey Range, *Esq.* ([trange@bakerdonelson.com](mailto:trange@bakerdonelson.com))

**Respondent La Jomac Group Inc. and Respondent Jag Premier, Inc.**

Jorge Guerrero ([jorgefuerrero1977@hotmail.com](mailto:jorgefuerrero1977@hotmail.com))

**Counsel for Data Processing Specialists, Inc.** (Norma Vega)

Oliver J. Brown ([oliver@theoliverjlawfirm.com](mailto:oliver@theoliverjlawfirm.com))

/s/ Beauford D. Pines

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Facsimile: (504) 589-4069

Dated this 11<sup>th</sup> day of February 2019



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

\*\*\*\*\*  
\*  
LA JOMAC GROUP, INC., JAG PREMIER, INC., \*  
DATA PROCESSING SPECIALISTS, INC., \*  
GURO ENTERPRISES, LLC, AND \*  
BOLLINGER SHIPYARDS, INC., Joint Employers \*  
\*  
and \* Cases 15-CA-137333  
\* 15-CA-137337  
CHARLES LEBLANC, an Individual \*  
\*  
\*\*\*\*\*

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 15-CA-137333 and Case 15-CA-137337, which are based on charges filed by Charles LeBlanc, an Individual (LeBlanc), against La Jomac Group, Inc. (Respondent Jomac), Jag Premier, Inc. (Respondent Jag), Data Processing Specialists, Inc. (Respondent DPS), Guro Enterprises, LLC (Respondent Guro), and Bollinger Shipyards, Inc. (Respondent Bollinger) (collectively Respondents) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board’s Rules and Regulations, and alleges Respondents have violated the Act, as Joint Employers as described below.

1. The charges in the above cases were filed by LeBlanc as set forth in the following table upon the respective Respondents on the dates indicated by U.S. mail:

EXHIBIT A

<i>Case No.</i>	<i>Amendment</i>	<i>Respondent</i>	<i>Date Filed</i>	<i>Date Served</i>
15-CA-137333	Original	Respondent Jomac	9/23/14	9/24/14
15-CA-137333	First Amended	Respondent Jomac and Respondent DPS	10/31/14	10/31/14
15-CA-137333	Second Amended	Respondent Jomac, Respondent Jag, Pangea Industries LLC, Barrios Street Realty, and Respondent DPS	12/22/14	12/22/14
15-CA-137333	Third Amended	Respondent Jomac, Respondent Jag, Respondent DPS, Pangea Industries, LLC, Barrios Street Realty, LLC, and Pangea Enterprises, Inc.	3/19/15	3/20/15
15-CA-137333	Fourth Amended	Respondent Jomac, Respondent Jag, Respondent DPS, Pangea Industries, LLC, Barrios Street Realty, Pangea Enterprises, Inc., and Respondent Guro	12/27/16	12/27/16
15-CA-137333	Fifth Amended	Respondent Jomac, Respondent DPS, Jag, Respondent Guro, and Bollinger Shipyards, Inc.	7/31/17	7/31/17
15-CA-137337	Original	Respondent Jag	9/23/14	9/24/14
15-CA-137337	First Amended	Respondent Jag and Respondent DPS	10/31/14	10/31/14
15-CA-137337	Second Amended	Respondent Jag, Respondent Jomac, Pangea Industries, LLC; Barrios Street Realty, and Respondent DPS.	1/30/15	1/30/15
15-CA-137337	Third Amended	Respondent Jag, Respondent DPS, Respondent Jomac, Pangea Industries, LLC, Barrios Street Realty, LLC, and Pangea Enterprises, Inc.,	3/19/15	3/20/15
15-CA-137337	Fourth Amended	Respondent Jag, Respondent DPS, Respondent Jomac, Pangea Industries, LLC,	12/27/16	12/27/16

		Barrios Street Realty, Pangea Enterprises, Inc., and Respondent Guro		
15-CA-137337	Fifth Amended	Respondent Jag, Respondent DPS, Respondent Jomac, Respondent Guro, and Bollinger Shipyards, Inc.	7/31/17	7/31/17

2(a) At all material times, Respondent Jomac has been a corporation with an office and place of business in Houma, Louisiana, (Respondent Jomac’s facility), and has been engaged in the business of providing temporary employees to employers.

(b) At all material times, Respondent Jag has been a corporation with an office and place of business in New Orleans, Louisiana, (Respondent Jag’s facility), and has been engaged in the business of providing temporary employees to employers.

(c) At all material times, Respondent DPS has been a corporation with an office and place of business in Brownsville, Texas, (Respondent DPS’ facility), and has been engaged in the business of providing consulting and administrative services to employers regarding hiring temporary workers through the H2B visa program.

(d) At all material times, Respondent Guro has been a limited liability company with an office and place of business in Brownsville, Texas, (Respondent Guro’s facility), and has been engaged in the business of providing temporary employees to employers.

(e) At all material times, Respondent Bollinger has been a corporation with offices and places of business in Lockport, Louisiana (Bollinger’s facility), and has been engaged in the business of the manufacturing of ships.

3(a) At all material times, Respondent Jomac and Respondent DPS were parties to a contract which provided that Respondent DPS was the agent for Respondent Jomac in connection with hiring employees to work in the shipping industry.

(b) At all material times, Respondent Jag and Respondent DPS were parties to a contract which provided that Respondent DPS was the agent for Respondent Jag in connection with hiring employees to work in the shipping industry.

(c) At all material times, Respondent Jomac and Respondent Guro were parties to a contract in which they agreed to provide temporary employees to Respondent Bollinger.

(d) At all material times, Respondent Jag and Respondent Guro were parties to a contract in which they agreed to provide temporary employees to Respondent Bollinger.

(e) At all material times, Respondent Jomac, Respondent Jag, and Respondent Guro have been parties to a contract which provides that Respondent Jomac, Respondent Jag, and Respondent Guro are agents for Respondent Bollinger in connection with providing employees for Respondent Bollinger's facility.

4(a) At all material times, Respondent Jomac administered a common labor policy with Respondent DPS for the employees of Respondent Jomac.

(b) At all material times, Respondent Jag administered a common labor policy with Respondent DPS for the employees of Respondent Jag.

(c) At all material times, Respondent Jomac, Respondent Jag, and Respondent Guro administered a common labor policy for their employees working at Respondent Bollinger's facility.

(d) At all material times, Respondent Bollinger has exercised control over the labor relations policy of Respondent Jomac, Respondent Jag, and Respondent Guro for the employees of Respondent Jomac, Respondent Jag, and Respondent Guro working at Respondent Bollinger's facility.

5. At all material times, Respondents have been joint employers of the employees of Respondent Jomac, Respondent Jag, Respondent DPS, and Respondent Guro working at Respondent Bollinger's facility.

6(a) Annually, in conducting its operations described above in paragraph 2(e), Respondent Bollinger purchased and received at its Lockport, Louisiana facility products, goods, and materials valued in excess of \$50,000 directly from points outside of the State of Louisiana.

(b) In conducting its operations described above in paragraph 2(a), during the calendar year ending December 31, 2014, Respondent Jomac performed services valued in excess of \$50,000 in States other than the State of Louisiana.

(c) In conducting its operations described above in paragraph 2(b), during the calendar year ending December 31, 2014, Respondent Jag performed services valued in excess of \$50,000 in States other than the State of Louisiana.

(d) In conducting its operations described above in paragraph 2(c), during the calendar year ending December 31, 2014, Respondent DPS performed services valued in excess of \$50,000 in States other than the State of Louisiana.

(e) In conducting its operations described above in paragraph 2(d), during the calendar year ending December 31, 2014, Respondent Guro performed services valued in excess of \$50,000 in States other than the State of Louisiana.

7(a) At all material times, Respondent Jomac has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) At all material times, Respondent Jag has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(c) At all material times, Respondent DPS has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(d) At all material times, Respondent Guro has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(e) At all materials times, Respondent Bollinger has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

8. At all material times, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States, Canada (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

9(a) At all material times, Jorge Guerrero held the position of Respondent Jomac's President, and has been a supervisor of Respondent Jomac within the meaning of Section 2(11) of the Act and an agent of Respondent Jomac within the meaning of Section 2(13) of the Act.

(b) At all material times, Jorge Guerrero held the position of Respondent Jag's President, and has been a supervisor of Respondent Jag within the meaning of Section 2(11) of the Act and an agent of Respondent Jag within the meaning of Section 2(13) of the Act.

(c) At all material times, Norma Perez held the position of Respondent DPS's President, and has been a supervisor of Respondent DPS within the meaning of Section 2(11) of the Act and an agent of Respondent DPS within the meaning of Section 2(13) of the Act.

(d) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Guro within the meaning of Section 2(11) of the Act and agents of Respondent Guro within the meaning of Section 2(13) of the Act:

Cesar Guerrero	-	Owner
Jorge Guerrero	-	President

(e) At all material times, Craig Roussel held the position of Respondent Bollinger's Executive Vice President, and has been a supervisor of Respondent Bollinger within the meaning

of Section 2(11) of the Act and an agent of Respondent Bollinger within the meaning of Section 2(13) of the Act.

10(a) About January 1, 2014, Respondents were hiring, or had concrete plans to hire 35 employees.

(b) About the dates set forth opposite their names, Respondents refused to consider for hire or hire the following applicant(s) for employment:

<u>Name of Applicants</u>	<u>Date</u>
Leonard Aguilar	From January 17, 2014 to December 31, 2014
Samuel D. Bankester	From January 13, 2014 to December 31, 2014
Steve Lee Fayard	From January 15, 2014 to December 31, 2014
Chris Inghram	From January 14, 2014 to December 31, 2014
Charles LeBlanc	From January 12, 2014 to December 31, 2014
Scott T. LeFevre	From January 13, 2014 to December 31, 2014
Christopher Glen Newell	From January 14, 2014 to December 31, 2014
James Joseph Templet	From January 13, 2014 to December 31, 2014
Landon D. Varnell	From January 14, 2014 to December 31, 2014

(c) The conduct described above in paragraph 10(b) is inherently destructive of the rights guaranteed employees by Section 7 of the Act.

(d) Respondents engaged in the conduct described above in paragraph 10(b) because the named employees formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

11. By the conduct described above in paragraph 10, Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of its

employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

12. The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before November 29, 2018, or postmarked on or before November 28, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer



containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **March 11, 2019 at 10:00 a.m. in the Courtroom, National Labor Relations Board, Region 15, 600 S. Maestri Place, 7<sup>th</sup> Floor, New Orleans, Louisiana**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 15, 2018

/s/

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**M. KATHLEEN MCKINNEY  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 15  
600 S. MAESTRI PL., 7<sup>TH</sup> FLOOR  
NEW ORLEANS, LA 70130-3413**

Attachments

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC., AND  
GURO ENTERPRISES, LLC, Joint Employer

and

Cases 15-CA-137333  
15-CA-137337

CHARLES LEBLANC, an Individual

**AFFIDAVIT OF SERVICE OF:** Copy of Order Consolidating Cases, Consolidated Complaint and Notice of Hearing with forms NLRB-4338, Important Notice and NLRB-4668 attached, dated November 15, 2018.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 15, 2018, I served the above-entitled document(s) by **certified or first class mail**, as noted below, upon the following persons, addressed to them at the following addresses:

La Jomac Group Inc  
115 Everett St  
Morgan City, LA 70380-3617

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Jorge Guerrero  
La Jomac Group Inc  
917 Dunn St  
Houma, LA 70360-6467

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Jorge Guerrero  
Jag Premier Inc  
1201 Canal Street Suite 264  
New Orleans, LA 70112

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Jag Premier, Inc.  
800 Common St., Ste. 1104  
New Orleans, LA 70112

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Samy Khalil, Esquire  
Hughes, Arrell, Kinchen LLP  
1221 McKinney St Ste 3150  
Houston, TX 77010-2034

**FIRST CLASS MAIL**

Norma Perez  
Data Processing Specialists  
2390 Central Blvd., Ste. W  
Brownsville, TX 78520

**CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Charles LeBlanc  
16411 Hooper Rd  
Greenwell Springs, LA 70739

**CERTIFIED MAIL/RETURN RECEIPT**

Richard T. Ledet  
Barrios Street Realty, LLC  
230 N Barrios St  
Lockport, LA 70374-2204

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Richard T. Ledet  
Barrios Street Realty, LLC  
538 Madison St.  
New Orleans, LA 70116

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Etienne Balart  
Jones Walker  
201 St. Charles Ave.  
New Orleans, LA 70170

**FIRST CLASS MAIL**

Sidney F. Lewis Esq.  
Jones, Walker, Waechter, Poitevent,  
Carrere & Denegre, LLP  
201 St. Charles Ave.  
New Orleans, LA 70170-5100

**FIRST CLASS MAIL**

Cesar Guerrero  
Guro Enterprises, LLC  
1313 East Alton Gloor Suite I  
Brownsville, TX 78526

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Matthew S. Chester, Esquire  
Baker Donelson Bearman Caldwell & Berkowitz, PC  
Place Saint Charles 201 Saint Charles Ave Ste 3600  
New Orleans, LA 70170-3600

**FIRST CLASS MAIL**

Benjamin G Bordelon  
Bollinger Shipyard, Inc.  
8365 Highway 308  
Lockport, LA 70374-3954

**CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED**

Andrew P. Burnside Esq., Attorney  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
701 Poydras St Ste 3500  
New Orleans, LA 70139-7705

**FIRST CLASS MAIL**

November 15, 2018

DONNA M. SIMMONS, Designated  
Agent of NLRB

\_\_\_\_\_  
Name

/s/

\_\_\_\_\_  
Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Cases 15-CA-137333  
15-CA-137337

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

La Jomac Group Inc 115 Everett St Morgan City, LA 70380-3617	Andrew P. Burnside Esq., Attorney Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 701 Poydras St Ste 3500 New Orleans, LA 70139-7705
Jorge Guerrero La Jomac Group Inc. 917 Dunn St Houma, LA 70360-6467	Richard T. Ledet Barrios Street Realty, LLC 230 N Barrios St Lockport, LA 70374-2204
Jorge Guerrero Jag Premier Inc 1201 Canal Street Suite 264 New Orleans, LA 70112	Richard T. Ledet Barrios Street Realty, LLC 538 Madison St. New Orleans, LA 70116
Jag Premier, Inc. 800 Common St., Ste. 1104 New Orleans, LA 70112	Etienne Balart Jones Walker 201 St. Charles Ave. New Orleans, LA 70170
Samy Khalil, Esquire Hughes, Arrell, Kinchen LLP 1221 McKinney St Ste 3150 Houston, TX 77010-2034	Sidney F. Lewis Esq. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP 201 St. Charles Ave. New Orleans, LA 70170-5100
Norma Perez Data Processing Specialists 2390 Central Blvd., Ste. W Brownsville, TX 78520	Cesar Guerrero Guro Enterprises, LLC 1313 East Alton Gloor Blvd., Suite I Brownsville, TX 78526
Charles LeBlanc 16411 Hooper Rd Greenwell Springs, LA 70739	Andrew P. Burnside Esq., Attorney Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 701 Poydras St Ste 3500 New Orleans, LA 70139-7705
Benjamin G Bordelon Bollinger Shipyard, Inc. 8365 Highway 308 Lockport, LA 70374-3954	

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the

responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

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

**LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC.,  
GURO ENTERPRISES, LLC, AND BOLLINGER  
SHIPYARDS, INC., Joint Employers**

**and**

**Cases 15-CA-137333  
15-CA-137337**

**CHARLES LEBLANC**

**ORDER**

Respondent Bollinger Shipyards, Inc.'s Motion to Dismiss Complaint is denied.

The Respondent has failed to establish that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law.

Dated, Washington, D.C., March 20, 2019.

JOHN F. RING,	CHAIRMAN
LAUREN McFERRAN,	MEMBER
MARVIN E. KAPLAN,	MEMBER

**EXHIBIT D**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

LA JOMAC GROUP, INC., JAG PREMIER, INC.,  
DATA PROCESSING SPECIALISTS, INC.,  
GURO ENTERPRISES, LLC, AND  
BOLLINGER SHIPYARDS, INC., Joint Employers

and

Cases 15-CA-137333  
15-CA-137337

CHARLES LEBLANC, An Individual

**BOLLINGER SHIPYARDS, INC.'S  
MOTION TO DISMISS COMPLAINT**

COMES NOW, Respondent Bollinger Shipyards, Inc. (“Bollinger”) and pursuant to 29 C.F.R. § 102.24 submits the following Motion to Dismiss the above-captioned unfair labor proceedings in their entirety on the grounds that the allegations as related to Bollinger are untimely under Section 10(b) of the National Labor Relations Act (“the Act”) and fail to state a claim against Bollinger upon which relief can be granted. As further grounds for and support of this Motion, Bollinger states:

**I. INTRODUCTION**

This is a run of the mill salting case, claiming that an unspecified employer failed to hire Charging Party and other union members because of their union membership or support. The initial unfair labor practice charges (“the Charges”) in Case Nos. 15-CA-137333 and 15-CA-137337 were filed solely against La Jomac Group, Inc. (“La Jomac”) and Jag Premier, Inc. (“Jag”), respectively on September 23, 2014. The Charges were then modified numerous times, adding and deleting respondents at Charging Party’s whim and apparently with Region 15’s consent. It was not until July 31, 2017, nearly three years later, that the *Fifth* Amended Charges were filed,

**EXHIBIT E**



adding Bollinger as a named respondent in this matter. Bollinger denied any wrongdoing in this matter but nonetheless, on November 15, 2018, the Regional Director for Region 15 issued a Consolidated Complaint in this matter.

Ignoring the fact that the first time Bollinger was alerted to the allegations in the Consolidated Complaint was more than two years after the alleged misconduct occurred, the Consolidated Complaint alleges that Bollinger is a joint employer with the other named respondents and therefore, liable for the failure to hire as alleged. The action in this matter against Bollinger cannot stand where the Fifth Amended Charge was untimely with respect to Bollinger and until that time, Bollinger had no notice that it might be added as a party to this action. Permitting this case to proceed against Bollinger would deny Bollinger its right to due process.

Moreover, even assuming the allegations in the Consolidated Complaint were true, they fail to state a claim *against Bollinger* upon which relief can be granted. Namely, the Consolidated Complaint alleges that La Jomac, Jag, and Guro Enterprises, LLC, temporary staffing agencies, provided employees to Bollinger's facility.<sup>1</sup> The Consolidated Complaint then alleges that Bollinger has exercised control over labor relations policy of La Jomac, Jag, and Guro "***for employees working at Respondent Bollinger's facility.***" (Compl. ¶ 4(d)). The Consolidated Complaint further alleges all the respondents, including Bollinger, have been joint employers for employees of La Jomac, Jag, and Guro "***working at Respondent Bollinger's facility.***" (Compl. ¶ 5).

Despite the explicit acknowledgement in the Consolidated Complaint that Bollinger is only a joint employer with the other alleged respondents for employees actually working at Bollinger's

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<sup>1</sup> Because the Region has never explicitly alleged how Bollinger has any liability for the alleged wrongdoing in this matter, Bollinger is not aware which facility is allegedly at issue.

facility, the Consolidated Complaint then makes a conclusory statement that all of the respondents, including Bollinger, unlawfully refused to consider for hire various applicants. (Compl. ¶ 10(b)). On its face, the Consolidated Complaint acknowledges that Bollinger is, at best, only a joint employer with the other alleged respondents with respect to employees already assigned to Bollinger. There is no allegation that Bollinger was involved in either the hiring process generally or the failure to hire Charging Party specifically. There is similarly no allegation that Charging Party worked at Bollinger's facility, thus triggering the joint employer allegation as stated in the Consolidated Complaint. As written, the Consolidated Complaint fails to state any cause of action against Bollinger except for a conclusory statement that Bollinger, along with the other respondents, failed to hire Charging Party.

Requiring Bollinger to continue to defend itself in this matter is an abuse of the Region's authority. Bollinger should not be required to expend its resources to defend against an untimely Charge and the Consolidated Complaint with its tenuous allegations against Bollinger. Accordingly, Respondent Bollinger respectfully asks that the Administrative Law Judge ("ALJ") dismiss the Complaint.

## **II. MOTION TO DISMISS STANDARD**

Pursuant to the 29 C.F.R. § 102.24, Bollinger asks the ALJ to dismiss the allegations in the Consolidated Complaint related to Bollinger. In ruling on motions to dismiss under 29 C.F.R. § 102.24, the Board follows the standard used for motions to dismiss filed under Federal Rule of Civil Procedure 12(b)(6). *See Yale University*, 330 NLRB 246, 247 n. 8 (1999) (the Federal Rules of Civil Procedure guide the Board in reviewing a motion to dismiss). Under that standard, the Board "construes the complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts

in support of his claims that would entitle him to relief.” *Detroit Newspapers Agency*, 330 NLRB 524, 525 n. 7 (2000); *see also Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Even assuming all of the allegations in the Consolidated Complaint are true, the General Counsel cannot establish any basis for liability against Bollinger and the Consolidated Complaint must be dismissed with respect to Bollinger.

### III. LEGAL ARGUMENT

#### A. Bollinger Must be Dismissed From the Consolidated Complaint Where Allegations Were Untimely and Bollinger Was Not Added as a Respondent Until Nearly Three Years After the Unlawful Acts

Section 10(b) of the Act specifically provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . .” The Consolidated Complaint specifically alleges that the alleged unlawful failure to hire occurred from January 2014 to December 31, 2014. (Compl. ¶ 10(b)). Despite the alleged misconduct occurring in 2014, the Fifth Amended Charges, adding Bollinger as a respondent for the first time, were not filed until July 31, 2017, more than two years after the statute of limitations expired and nearly three years after the initial Charges were filed. (Compl. ¶ 1). With respect to Bollinger, the allegations are untimely on their face. If Charging Party sought to add Bollinger as a respondent to this action, he must have filed a charge no later than June 30, 2015. He did not. Charging Party cannot be rewarded for his failure to act with any sense of due diligence at the expense of Bollinger’s due process rights.

Traditionally, unfair labor practice allegations that are otherwise time-barred may be litigated only if they are “legally and factually ‘closely related’ to allegations of a prior timely filed

charge.” *Carney Hospital*, 350 NLRB 627 (2007). While the Board permits untimely amendments where the allegations “relate back” to the timely allegations, this is where the initial charge “generally informs the *party charged of the nature of the alleged violations.*” *Wells Fargo Armored Service Corp.*, 290 NLRB 936, 939 (1988) (emphasis added). Here, Bollinger had no knowledge of the nature of the violations until nearly three years after the initial Charges were filed. If Charging Party sought to add allegations against La Jomac and Jag which “related back” to the initial charge, he could do so under well-established Board law. However, this is no basis by which Charging Party could add respondents years after the Charges were filed and where Bollinger had no knowledge of the alleged violations prior to the untimely amendments.<sup>2</sup>

Further, there is no allegation that Bollinger is a single employer or alter ego of La Jomac or Jag (or any other respondent) which may allow the General Counsel to impute knowledge of

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<sup>2</sup> While it appears the Board has not used the “relate back” theory to add unrelated respondents, the Fifth Circuit (the circuit in which this Region sits), has limited the use of the “relation back” doctrine provided in Federal Rules of Civil Procedure 15(c) to add a party after the limitations period has expired only if the party added had notice that the action would be brought against it within the limitations period. While not binding on the Board, the application of this Rule is instructive in the instant case. There is absolutely no evidence that Bollinger had notice that the action would have been brought against it. While the Fifth Circuit “will infer notice if there is an identity of interest between the original defendant and the defendant sought to be added or substituted,” there is no identity of interest in the instant case. *Jacobsen v. Osborne*, 133 F.3d 315, 320 (5th Cir.1998), *citing Moore v. Long*, 924 F.2d 586, 588 (5th Cir.1991), and *Kirk v. Cronvich*, 629 F.2d 404, 407–08 (5th Cir.1980). “‘Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other.’ ” *Id.*, *quoting Kirk*, 629 F.2d at 408 n. 4.

Here, there is absolutely no claim that the original respondents (La Jomac and Jag) share any identity of interest with Bollinger. Instead, at most, the Consolidated Complaint alleges that at some times, Bollinger is a customer of La Jomac and Jag. All of La Jomac and Jag’s customers could not reasonably believe that they may be added to the pending action. Bollinger had no reason to believe it may be added to the instant proceeding where it had no involvement in the challenged hiring decisions and otherwise is not related to La Jomac or Jag.

the earlier filing upon Bollinger. Similarly, there is no allegation that Bollinger is a “closely related” party to this action. Bollinger was a customer of La Jomac and Jag but nothing more. Bollinger should not be denied its due process right to learn of the existence of allegations against it because Charging Party failed to add it as a party to this action years later. Moreover, the nature of the allegations are not such that Bollinger would have or should have been aware that allegations were being levied against it as well as the other respondents. It was not until the Fifth Amended Charge that Bollinger learned for the first time that it was a target of Charging Party’s claims.

To permit the untimely allegations against Bollinger to stand would deny Bollinger due process and is not “just” as required by 29 C.F.R. § 102.17 (permitting amendments “upon such terms as may be deemed just”). It is hardly just to Bollinger (whose interests must be considered in addition to Charging Party’s) to permit an amendment to add Bollinger years after the Charges were initially filed and where Bollinger was wholly unaware of the allegations and its need to defend itself prior to that time. *See e.g. Green Construction*, 271 NLRB 1503 (1984) (it would be “unjust” to permit the General Counsel to amend a complaint to add a charged party seven months later where it would cause undue prejudice to the unnamed party).<sup>3</sup> Moreover, neither Charging Party nor the General Counsel provided any rationale for the delay in failing to name

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<sup>3</sup> While the hearing has not yet occurred in the instant case, Bollinger has nonetheless been sufficiently prejudiced by the General Counsel’s actions in this matter. The General Counsel did not seek an amendment a few months after the statute of limitations expired; instead, it allowed Bollinger to be added as a party to this action *years* after the Charges were filed. The very basis of the Charges is a failure to hire claim. If in fact Bollinger failed or refused to hire Charging Party, he would have been aware of that fact at some point prior to three years later. Yet, no explanation has been given for Bollinger’s addition to this matter or the delay in amending the Charges. Instead, as discussed in more detail in Section B, *infra*, there is no basis in fact or law for adding Bollinger, especially where such amendment did not occur until years later. While Bollinger has no knowledge of the alleged wrongdoing in this matter, if the allegations were of a different nature about which Bollinger had direct knowledge, such an untimely amendment deprives a respondent of the ability to respond while memories are fresh and documents are retained.

Bollinger as a Respondent until years later. Instead, it appears Charging party added and removed respondents until he landed on parties with what he believed were sufficiently deep pockets or where he has some interest in future employment.

Because Congress included section 10(b) as part of the statutory scheme embodied by the Act, the limitations period should be enforced. As the Court stated in *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980): “[i]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.”

Undue prejudice is inherent in the undue delay in adding Bollinger to this proceeding years after the operative events. Bollinger should not be unduly prejudiced by Charging Party’s delay where it had no knowledge of its potential addition as a party in this matter until well outside the statute of limitations period.

**B. The Consolidated Complaint Fails to State a Cause of Action Upon Which Relief May be Granted Against Bollinger and Bollinger Must be Dismissed From the Consolidated Complaint**

In addition to being untimely, the Consolidated Complaint fails to state any factual basis for liability against Bollinger. As set forth above, even if the allegations in the Consolidated Complaint were true, which they are not, they do not establish Bollinger had any involvement in the alleged unfair labor practices alleged therein. Instead, the Consolidated Complaint alleges that by virtue of an alleged joint employment relationship between Bollinger and the temporary agencies with respect to employees hired by the temporary agencies and assigned to Bollinger, Bollinger is liable for all actions by the temporary agencies, even those in which it had no role. The Consolidated Complaint fails to state any factual or legal basis on which the Region relies for its allegation that Bollinger is responsible for the alleged failure to hire. The Consolidated

Complaint only describes conduct by Bollinger after employees are hired by the other respondents *and assigned to Bollinger for work* yet, the Consolidated Complaint makes a conclusory statement that Bollinger is somehow liable for the failure to hire employees who were never assigned to work at any Bollinger facility. The Consolidated Complaint similarly does not allege that Bollinger was involved in the hiring process or instructed the other respondents regarding hiring practices.<sup>4</sup> The Consolidated Complaint does not even allege that Bollinger would have been the end user of the applicants allegedly not hired.<sup>5</sup>

The Consolidated Complaint fails to state any basis for liability by Bollinger but instead, appears to assert that because Bollinger has some authority over some employees that are assigned to work at its facility, it has authority and liability for all of the actions of the temporary agencies. The Consolidated Complaint does not provide any specific actions by Bollinger to which it objects. The Region contends that Bollinger is not denied due process where Bollinger “has the opportunity to participate in an unfair labor practice hearing before an administrative law judge.” (General Counsel’s Opp. to Motion to Dismiss, p. 3). Bollinger should not be required to expend the resources to defend itself against an ambush at hearing where the Consolidated Complaint on its

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<sup>4</sup> The Answer filed by respondent Guro in this matter denies the existence of any joint employer relationship with Bollinger and similarly fails to establish any liability against Bollinger based on the alleged failure to hire Charging Party.

<sup>5</sup> In response to repeated requests from Bollinger’s counsel, to date, the Region has provided only one basis for its belief that Bollinger was in any way involved in the decisions at issue – job orders from the Louisiana Workforce Commission whereby some of the contractors posted available positions in landside construction trades. These job orders do not name Bollinger as the assigned location for the available work, nor do they indicate to the public where any hired individuals may be assigned. In fact, it apparent from the multiple pleadings in this matter, adding and removing multiple respondents, that the Charging Party and the Region were on a fishing expedition in an attempt to add additional respondents to this matter, only adding Bollinger after three years had passed. Moreover, Bollinger is not a necessary party to this action where the other named parties, the contractors themselves, are fully capable of remedying any unlawful conduct which occurred as a result of their alleged unlawful failure to hire applicants.

face fails to state an action against Bollinger and where the Region has repeatedly refused to provide the basis for its claims.

Under the Region's apparent theory, any customer of the temporary agencies could have been added as a respondent in this matter. The Consolidated Complaint does not provide any allegation specific to Bollinger in this matter. It is apparent from the repeated amendments to the Charges that Bollinger was an afterthought in this matter – likely because Bollinger was not actually involved in any of the allegations in this case. Charging Party obviously knew which employers did not hire him – La Jomac and Jag<sup>6</sup> – as based on the initial Charges. Despite this knowledge, the Region has proceeded to permit Bollinger to be added as a respondent, even where there are no allegations in the Consolidated Complaint that would establish any liability for Bollinger.

Reading the Consolidated Complaint, it appears the Region is asserting that a joint employer for one purpose is a joint employer for all purposes. However, the Consolidated Complaint belies the integrity of this theory in the instant case. The Consolidated Complaint specifically alleges a joint employer relationship *for employees working at Bollinger's facility*. Where Charging Party was never hired and never worked at Bollinger's facility, there is no question Bollinger was not a joint employer with respect to Charging Party and cannot be liable for the alleged violations at issue in the instant case. Moreover, the Board has explained that joint employer status, by its mere existence, does not render both parties liable for all actions of the other. "Liability of joint employers for the commission of unfair labor practices by one of them is confined to the scope of the joint employer relationship." *S. California Gas Co.*, 302 NLRB 456

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<sup>6</sup> Notably, the Region did not even serve La Jomac and Jag with the Consolidated Complaint until on or about January 23, 2019, if then, it is unclear if the General Counsel has served La Jomac or Jag.



(1991), citing *Food & Commercial Workers (R & F Grocers)*, 267 NLRB 891, 893 fn. 7 (1983); see also *Aim Royal Insulation*, 358 NLRB 787 (2012)(joint employer not liable for ULP of fellow joint employer unless the first knew of and failed to protest the unlawful acts of the second).

The Consolidated Complaint specifically limits the scope of the joint employer relationship to those employees hired and working at Bollinger’s facility. It nonetheless then attempts to hold Bollinger liable for actions beyond the established scope of the alleged joint employment. Even if Bollinger is a joint employer for employees of La Jomac, Jag, and Guro “*working at Respondent Bollinger’s facility*,” Bollinger has no liability for the alleged failures to hire. (Compl. ¶ 5). To require Bollinger to expend its resources to defend against the Consolidated Complaint which fails to state any liability against Bollinger is unjust.<sup>7</sup> The allegations against Bollinger set forth in the Consolidated Complaint must be dismissed.

#### IV. CONCLUSION

For all these reasons, Bollinger respectfully requests that the allegations in the Complaint against it be dismissed with prejudice in its entirety.

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<sup>7</sup> This is especially true where the Region has indicated that it anticipates the hearing to last five days, five days for which Bollinger must pay for counsel, have its representatives away from work, and defend itself against a conclusory complaint without any basis in fact or law.

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 15<sup>th</sup> day of April, 2019, the foregoing was filed electronically and is available for viewing and downloading from the National Labor Relation Board's e-filing system, and has been served on all parties as follows:

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