



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

August 30, 2019

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *NLRB v. Prohibition Brands Inc.*,
Board Case No. 19-CA-221090

Dear Ms. Dwyer:

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

Please serve a copy of the application on Respondent, whose addresses appear on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses appear on the service list.

I am counsel of record for the Board and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case and a copy of the judgment issued.

Very truly yours,

/s/ David Habenstreit

David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc: service list

SERVICE LIST

RESPONDENT:

Brian Laoruangroch
Prohibition Brands
19805 74th Ave NE
Arlington, WA 98223-5021

Mobile: (206) 601-0095
Email: info@prohibitionbrands.com

CHARGING PARTY:

Monica Karen Lowe
1622 Oakes Ave
Everett, WA 98201-2052

Phone: (510) 331-0677
Email: craftwich@frontier.com

REGISTERED AGENT FOR RESPONDENT:

Prohibition Brands
2720 4th Ave., Apt. 1101
Seattle, WA 98121-1889

Email: BRJANLEE@GMAIL.COM

REGIONAL DIRECTOR:

Ronald K. Hooks
National Labor Relations Board
915 2nd Ave., Rm. 2948
Seattle, WA 98174-1078

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
PROHIBITION BRANDS INC.	:	19-CA-221090
	:	
Respondent	:	

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

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (the “Board”), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its order against Prohibition Brands Inc. (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent failed to file an answer to the Board’s complaint and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor

practices occurred in the State of Washington. The Board's final order issued on June 26, 2019, and is reported at 368 NLRB No. 13.

B. Proceedings Before the Board

1. On November 15, 2018, the Regional Director issued a complaint and notice of hearing in Case No. 19-CA-221090 charging Respondent with certain violations of the Act. The complaint, in part, advised the Respondent that under the Board's Rules (29 C.F.R. 102.20 and 102.21), the Respondent was required to file an answer by November 29, 2018, and that if the Respondent failed to file an answer, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

2. Having received no answer, on December 4, 2018, counsel for the General Counsel sent a letter to Respondent's business address advising Respondent that if no answer was received by December 11, 2018, the Board's Regional Office would file a Motion for Default Judgment with the Board. The letter was returned.

3. On December 13, 2018, another letter was sent Respondent's registered agent as listed with the Secretary of State for the State of Washington. The letter stated that if no answer was received by December 27, 2018, the Board's Regional Office would file a Motion for Default Judgment with the Board.

4. The Respondent did not file an answer.

5. On January 8, 2019, counsel for the General Counsel filed a Motion for Default Judgment with the Board based upon the Respondent's failure to file an answer to the complaint.

6. By order dated January 17, 2019, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until January 31, 2019, to file a response to the Motion for Default Judgment with the Board in Washington, D.C. In order to ensure service at the address of Respondent's registered agent, on May 3, 2019, the Board reissued the order transferring the proceeding to the Board and Notice to Show Cause and extended the time for a response until May 17, 2019.

7. Respondent did not file a response.

8. On June 26, 2019, the Board issued its Decision and Order. In the absence of good cause being shown for Respondent's failure to file a timely answer, the Board granted the Motion for Default Judgment and entered an appropriate order against the Respondent.

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

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Where a respondent in a Board proceeding fails to file an appropriate answer to the unfair labor practice complaint in a timely manner, the

Board may, pursuant to Board Rule 102.20, absent a showing of “good cause,” deem the complaint’s allegations admitted, and then may enter an order, essentially by default, against the respondent. No cause for Respondent’s failure to file an answer was alleged or shown here.

It is settled that the Board is entitled to have that default judgment summarily enforced. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals “unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.” Interpreting that requirement, courts have consistently held that a respondent’s failure to assert any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973). No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, enter judgment summarily

enforcing the Board's order in full. A proposed judgment is attached.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 30th day of August 2019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
PROHIBITION BRANDS INC.	:	19-CA-221090
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Prohibition Brands Inc., its officers, agents, successors, and assigns, enforcing its order dated June 26, 2019, in Case No. 19-CA-221090, reported at 368 NLRB No. 13, and the Court having considered the same, it is hereby

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

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

PROHIBITION BRANDS INC.

ORDER

Prohibition Brands Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against its employees because they engage in protected concerted activities.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of this Order, offer Monica Karen Lowe and Aubrey Van Assche full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
 - (b) Make Monica Karen Lowe and Aubrey Van Assche whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this Decision and Order.
 - (c) Compensate Monica Karen Lowe and Aubrey Van Assche for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.
 - (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify Monica Karen Lowe and Aubrey Van Assche in writing that this has been done and that their discharges will not be used against them in any way.

- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its facility in Arlington, Washington, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 29, 2018.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Monica Karen Lowe and Aubrey Van Assche full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Monica Karen Lowe and Aubrey Van Assche whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, and WE WILL also make those employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Monica Karen Lowe and Aubrey Van Assche for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Monica Karen Lowe and Aubrey Van Assche, and WE WILL, within 3 days thereafter, notify each of them in writing

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

PROHIBITION BRANDS INC.

The Board's decision can be found at www.nlr.gov/case/19-CA-221090 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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Petitioner	:	No.
v.	:	
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PROHIBITION BRANDS INC.	:	Board Case No.
	:	19-CA-221090
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, proposed judgment and mediation questionnaire in the above-captioned case, has this day been served by first class mail upon the following party at the addresses listed below:

Brian Laoruangroch
Prohibition Brands
19805 74th Ave NE
Arlington, WA 98223-5021

Prohibition Brands
2720 4th Ave., Apt. 1101
Seattle, WA 98121-1889

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 30th day of August 2019