



UNITED STATES GOVERNMENT

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

December 18, 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. Blue Earth Digital Printing, Inc., a/k/a Bonada Enterprises, Inc.*, Board Case No. 31-CA-133542

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 address appears 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 St., S.E.  
Washington, D.C. 20570  
(202) 273-2960

cc & documents to: Service List

SERVICE SHEET

RESPONDENT: *(The Board is not aware of a counsel for Respondent)*  
Fernando Bonada  
Blue Earth Digital Printing  
3652 Eastham Drive  
Culver City, CA 90232

Telephone: (323) 272-6430  
E-mail: fernando@blueearthdp.com

REGIONAL DIRECTOR:  
Mori Rubin, Regional Dir,  
National Labor Relations Board  
11500 West Olympic Blvd. Ste 600  
Los Angeles, CA 90064

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CHARGING PARTY:  
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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 :  
 :  
 Petitioner : No.  
 v. :  
 :  
 :  
 BLUE EARTH DIGITAL PRINTING, INC., : Board Case No.:  
 A/K/A BONADA ENTERPRISES, INC. : 31-CA-133542  
 :  
 :  
 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 Blue Earth Digital Printing, Inc., a/k/a Bonada Enterprises, Inc. (“Respondent”). The Board is entitled to summary enforcement of its order in full because Respondent failed to file with the Board proper exceptions to the administrative law judge’s decision. 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 found by the Board occurred in California. The Board's final order issued on October 18, 2019 and is reported at 368 NLRB No. 99.

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

1. On July 9, 2018, a Complaint and Notice of Hearing was issued in Case No. 31-CA-133542, charging Respondent with certain violations of the Act.

2. Following a hearing before Administrative Law Judge Ariel Sotolongo, the judge issued a decision on April 9, 2019, finding that Respondent had violated the Act and recommending that an order be issued requiring that the Respondent cease and desist from the unfair labor practices found and take certain affirmative action to remedy those unfair labor practices, including posting an appropriate notice.

3. On April 9, 2019, the Board issued an order transferring the proceeding to the Board and notifying the Respondent that the Board must receive exceptions to the administrative law judge's decision by May 7, 2019.

4. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no exceptions are filed [with the Board] within twenty days after service [of the administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed." Section 102.46 and 102.48 of the Board's Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement

this provision, setting forth the requirements for exceptions and providing that, in the event no exceptions are filed within 28 days, the decision of the administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

5. On May 6, 2019, the Respondent submitted a document to the Region that appeared to set forth exceptions to the administrative law judge's decision. The document was not filed with the Board and there was no indication that it was served on the General Counsel and Charging Party.

6. Although taking Respondent's pro se status into account, the Board found the contents of Respondent's document failed to substantially comply with the requirements of Sec. 102.46(a)(1) of the Board's Rules.

7. Accordingly, on May 7, 2019, the counsel for the General Counsel notified Respondent that his submission had not been properly filed in accordance with Section 102.46 of the Board's Rules and Regulations and that the Board did not accept the filing. The counsel for the General Counsel reminded the Respondent to comply with the filing requirements, deadlines, and procedures as outlined in the Order Transferring Proceedings to the Board.

8. The counsel for the General Counsel filed limited exceptions to correct inadvertent errors in the administrative law judge's Decision and recommended Order.

9. In the absence of proper exceptions from Respondent to the administrative law judge's decision, on October 18, 2019, the Board issued an order affirming the judge's rulings, findings, and conclusions with modifications to correct for errors and omissions therein. The Board's order directed the Respondent to take the action set forth in the Judge's recommended order as modified by the Board.

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

The Board is entitled to summary entry of a judgment enforcing its order because, by failing to properly file exceptions with the Board challenging the administrative law judge's decision, the Respondent failed to raise any issues before the Board.

Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting this requirement, this Court and other circuits have consistently held that a respondent's failure to file exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *See, e.g., NLRB v. Nevis Indus.*, 647 F.2d 905, 908 (9th Cir. 1981). *Accord*,

*e.g., NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982);  
*NLRB v. Int'l Union of Operating Eng'rs, Local 86*, 357 F.2d 841, 846-47 (3d Cir.  
1966); *NLRB v. Pugh & Barr, Inc.*, 194 F.2d 217, 218-21 (4th Cir. 1952). No  
extraordinary circumstances are present here.

WHEREFORE, the Board respectfully requests that the Court take  
jurisdiction of the proceedings, serve notice of the filing of this application upon  
Respondent, and 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 St., S.E.  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 18th day of December 2019

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
BLUE EARTH DIGITAL PRINTING, INC.,	:	Board Case No.:
A/K/A BONADA ENTERPRISES, INC.	:	31-CA-133542
	:	
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, Blue Earth Digital Printing, Inc., a/k/a Bonada Enterprises, Inc., its officers, agents, successors, and assigns, enforcing its order dated October 18, 2019, in Case No. 31-CA-133542, reported at 368 NLRB No. 99, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Blue Earth Digital Printing, Inc., a/k/a Bonada Enterprises, 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.

BLUE EARTH DIGITAL PRINTING, INC.,  
A/K/A BONADA ENTERPRISES, INC.

**ORDER**

Blue Earth Digital Printing, Inc., also known as Bonada Enterprises, Inc., Culver City, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Discharging 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 Vivian Escalante full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.
  - (b) Make Vivian Escalante whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the judge's decision.
  - (c) Compensate Vivian Escalante for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 31, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
  - (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter, notify the employee in writing that this has been done and that the discharge will not be used against her 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 Culver City, California facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 31, 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 June 26, 2014.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 31 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 of you for engaging in protected concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Vivian Escalante full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Vivian Escalante whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, and WE WILL also make Escalante whole for her reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Vivian Escalante for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 31, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award 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 discharge of Vivian Escalante, and WE WILL, within 3

days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

BLUE EARTH DIGITAL PRINTING, INC.,  
ALSO KNOWN AS BONADA ENTERPRISES, INC.

The Board's decision can be found at <http://www.nlr.gov/case/31-CA-133542> 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	:	
	:	
Petitioner	:	No.
v.	:	
	:	
BLUE EARTH DIGITAL PRINTING, INC.,	:	Board Case No.:
A/K/A BONADA ENTERPRISES, INC.	:	31-CA-133542
	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Board's application for summary entry of judgment and proposed judgment in the above-captioned case has been electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. The undersigned further certifies that a copy of the above described documents has this day been served by first class mail upon the following party at the address listed below:

Fernando Bonada  
Blue Earth Digital Printing  
3652 Eastham Drive  
Culver City, CA 90232

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

Dated at Washington, D.C.  
this 18th day of December 2019