

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	No. 20-1949
Petitioner)	
)	
v.)	Board Case No.
)	06-CA-063690
MCPc, INC.)	
Respondent)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD
FOR ENTRY OF A DEFAULT JUDGMENT**

The National Labor Relations Board, by its Assistant General Counsel, respectfully moves this Court for entry of a judgment by default enforcing the Board's Order in the above-captioned case. In support of this motion, the Board shows as follows:

1. On May 4, 2020, the Board filed an application for enforcement of its Decision and Order dated May 23, 2019 (367 NLRB No. 137).
2. Pursuant to Rule 15(b)(2) of the Federal Rules of Appellate Procedure, as reiterated in the Court's May 5 case-opening order, Respondent was required to serve on the Board, and file with this Court, an answer to the Board's application within 21 days. Respondent failed to serve and file an answer within the 21-day timeframe—that is, by May 26. That day, the Board filed a motion to extend the time to file the certified list, from May 26 to June 2, in order to give Respondent additional time to file its answer.

Despite the additional notice provided by the May 26 motion, Respondent still did not file an answer or seek an extension of time in which to do so.

Accordingly, on June 2, the Board filed a motion to further extend the time for filing the cert list to June 12.¹ Yet, as of the filing of the instant motion, Respondent has still not served and filed an answer (or sought an extension of time), more than two weeks after the deadline for doing so has passed.

3. Under Rule 15(b)(2), and as explained in the Court's May 5 order, the consequence of non-compliance with the answer requirement is clear: "If the respondent fails to answer in time, the court will enter judgment for the relief requested." Accordingly, the Board is entitled to a judgment by default enforcing its Order in full.

4. For the Court's convenience, a proposed judgment enforcing the Board's Order is attached to this motion.

¹ The Board is today, June 11, filing a motion to suspend the filing of the certified list pending the Court's resolution of the motion for default judgment.

WHEREFORE, the Board respectfully requests that this Court grant its Motion for Entry of a Default Judgment and enter a judgment enforcing the Board's Order against Respondent in full.

/s/David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 11th day of June 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that this document contains 447 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 365.

/s/David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 11th day of June 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2020, I filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for Third Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 11th day of June 2020

NATIONAL LABOR REALATIONS BOARD

v.

MCPc, INC.

ORDER

MCPc, Inc., Strongsville, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against employees for engaging 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 Jason Galanter full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (b) Make Jason Galanter whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the Board's May 23, 2019 decision reported at 367 NLRB No. 137.
 - (c) Compensate Jason Galanter for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 6, 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 year(s).
 - (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 Jason Galanter in writing that this has been done and that the discharge will not be used against him 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 Pittsburgh, Pennsylvania facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, 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 March 4, 2011.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 6 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 Jason Galanter full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

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

WE WILL compensate Jason Galanter for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 6, 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 year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Jason Galanter, and WE WILL, within 3

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

MCPC, INC.

The Board's decision can be found at www.nlr.gov/case/06-CA-063690 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., Room 5011, Washington, DC 20570, or by calling (202) 273-1940.

