



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE GENERAL COUNSEL**  
Washington, D.C. 20570

July 28, 2020

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. CW Building Maintenance*,  
Board Case No. 20-CA-253040

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.

Very truly yours,

/s/ David Habenstreit

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

cc: service list

## SERVICE LIST

### RESPONDENT:

Michelle Redding, Operations Mgr.  
CW Building Maintenance  
2715 Sargent Ave  
San Pablo, CA 94806-1533

Tel: (415) 272 1009

E-mail: cwbm@comcast.net

### CHARGING PARTY:

Sonya Z. Mehta, Attorney  
Siegel Yee Brunner & Mehta  
475 14th St., Ste. 500  
Oakland, CA 94612-1925

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### REGIONAL DIRECTOR:

Jill H. Coffman, Rgnl. Dir.  
National Labor Relations Board  
901 Market St., Suite 400  
San Francisco, CA 94103-1735

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
CW BUILDING MAINTENANCE	:	20-CA-253040
	:	
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 CW Building Maintenance (“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 California. The Board’s final order issued on May 20, 2020, and is reported at 369 NLRB No. 83.

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

1. On February 18, 2020, the Regional Director issued a complaint and notice of hearing in Case No. 20-CA-253040 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 March 3, 2020, 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, counsel for the General Counsel, on March 12, 2020, sent the Respondent a letter advising that if no answer was received by March 19, 2020, the Board's Regional Office will file a Motion for Default Judgment with the Board.

3. The Respondent did not file an answer.

4. On April 6, 2020, 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.

5. By order dated April 8, 2020, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until April 22, 2020, to file a response to the Motion for Default Judgment with the Board in Washington, D.C.

6. Respondent did not file a response.

7. On May 20, 2020, 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  
Assistant General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 28th day of July 2020

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
CW BUILDING MAINTENANCE	:	20-CA-253040
	:	
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, CW Building Maintenance, its officers, agents, successors, and assigns, enforcing its order dated May 20, 2020, in Case No. 20-CA-253040, reported at 369 NLRB No. 83, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, CW Building Maintenance, 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.

CW BUILDING MAINTENANCE

**ORDER**

CW Building Maintenance, San Francisco, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with Service Employees International Union, Local 87 (the Union) as the exclusive collective-bargaining representative of employees in the following unit, by failing and refusing to furnish it with the requested information that is necessary and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees. The unit is:

All employees working under the provisions of the Collective Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

- (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) Furnish the Union, in a timely manner, with the information requested since July 17, 2019, to the extent that it has not already done so.
- (b) Post at its San Francisco, California facility copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the

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<sup>1</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the

Regional Director for Region 20, 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 August 15, 2019.

- (c) Within 21 days after service by the Region, file with the Regional Director for Region 20 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.

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Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means.

## 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 fail and refuse to bargain collectively and in good faith with Service Employees International Union, Local 87 (the Union) as the exclusive collective-bargaining representative of employees in the following unit, by failing and refusing to furnish it with requested information that is necessary and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of our unit employees. The unit is:

All employees working under the provisions of the Collective Bargaining Agreement between the Union and the San Francisco Maintenance Contractors Association in effect from August 1, 2016 through July 31, 2020.

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 furnish the Union, in a timely manner, with the information requested since July 17, 2019, to the extent that we have not already done so.

#### CW BUILDING MAINTENANCE

The Board's decision can be found at [www.nlrb.gov/case/20-CA-253040](http://www.nlrb.gov/case/20-CA-253040) 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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CW BUILDING MAINTENANCE	:	Board Case No.
	:	20-CA-253040
Respondent	:	

CERTIFICATE OF SERVICE

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

Michelle Redding, Oper. Mgr.  
CW Building Maintenance  
2715 Sargent Ave.  
San Pablo, CA 94806-153

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

Dated at Washington, D.C.  
this 28th day of July 2020