UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

HAH 5 LLC, HAVE A HEART COMPASSION CARE, AND INTERURBAN CAPITAL GROUP, INC., OPERATING AS A SINGLE EMPLOYER; HAVE A HEART SANTA CRUZ LLC, HAVE A HEART COMPASSION CARE, AND INTERURBAN CAPITAL GROUP, INC., OPERATING AS A SINGLE EMPLOYER; AND HARVEST HEALTH AND RECREATION INC., OPERATING AS A GOLDEN STATE SUCCESSOR

and **Case 32-CA-259754**

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 5, AFL-CIO

THE GENERAL COUNSEL'S RESPONSE TO RESPONDENT HARVEST'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT

Pursuant to Section 102.24 of the National Labor Relations Board Rules and Regulations, the undersigned Counsel for the General Counsel files this Response to an Opposition to the General Counsel's Motion for Default Judgment filed by Respondent Harvest Health and Recreation, Inc. (Respondent Harvest) on September 1, 2020. As will be explained below, contrary to Respondent Harvest assertions, it filed an answer to the complaint only on its own behalf as the alleged *Golden State* successor, had denied a single employer relationship with the other respondents, and therefore lacks standing to answer for them. Further, contrary to its assertion, there will be no contradictory outcome if the Motion is granted because if liability is found against the remaining respondents, Respondent Harvest is not precluded from litigating this case in the event ongoing settlement negotiations for its portion of the liability is not completed.

On August 26, 2020, the General Counsel filed a Motion for Default Judgment against the following parties in this matter due to their unexcused failure to timely file an answer to the General Counsel's Complaint, even after notice of intent to file for default was given: HAH 5 LLC (Respondent HAH5), Have a Have A Heart Compassion Care (Respondent HAHCC), and Interurban Capital Group, Inc. (Respondent ICG), as a single employer; and Have a Heart Santa Cruz LLC (Respondent HAHSC), Respondent HAHCC, and Respondent ICG, as a single employer; (each of the above are collectively referred to herein as Single-Employer Respondents).

In its Motion, the General Counsel did not request default against Respondent Harvest, an alleged Golden State Successor to the alleged unfair labor practices of the Single-Employer Respondents. As noted in the General Counsel's Motion, Respondent Harvest filed a timely Answer to the Complaint and Counsel for the General Counsel and Counsel for Respondent Harvest are engaged in ongoing settlement negotiations in an effort to resolve those allegations short of litigation.

In its Opposition to the General Counsel's Motion for Default, Respondent Harvest urges that default judgment is not appropriate against the Single-Employer Respondents because Respondent Harvest filed an Answer and denied allegations related to the unfair labor practices alleged to have been committed by the Single-Employer Respondents. However, Respondent Harvest is not alleged to be a member of the Single-Employer Respondents and thus, Harvest lacks standing to file an answer on behalf of the Single-Employer Respondents. Indeed, in its Answer, Respondent Harvest denies any single-employer relationship exists among the named Single-Employer Respondents. As such, there can be no argument that the filing of a timely Answer by Respondent Harvest constitutes an answer by any of the Single-Employer Respondents.

Contrary to the claims in Respondent Harvest's Opposition, finding default against the Single-Employer Respondents in no way prejudices Respondent Harvest from litigating the issues in the Complaint denied in its timely-filed Answer, if the ongoing settlement negotiations fail to achieve settlement. There can be no claim here that a default judgment taken against the Single-Employer Respondents in this matter would be factually binding on an administrative law judge hearing the case against Respondent Harvest, or that Respondent Harvest would otherwise be precluded from contesting those matters at trial. The doctrines of res judicata and collateral estoppel are applied only to the same parties or their privies that were the subject of a prior judgment or finding. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 326 (1955). Indeed, as the Board noted in *Eastern Missouri Contractors Associations*, 180 NLRB No. 83 (1969), where there is a default by one respondent but controversion thereof by another, the general rule of law is that only the former, and not the latter, is bound by any admission of fact based on such default, and nothing in the Board's rules would hold that default by one respondent is treated as an admission by another respondent. See also: *Brisben Development, et. al.*, 344 NLRB 400, fn.1. (2005); B/E Aerospace, 323 NLRB 604 fn. 3 (1997). Here, Respondent Harvest is a separate and distinct party from the alleged Single-Employer Respondents against whom default judgment is sought. Thus, entry of default as to the Single-Employer Respondents would not be binding on Respondent Harvest and, if settlement negotiations fail, Respondent Harvest would be free to litigate all matters that it properly denied in its Answer. As such, Respondent Harvest is not prejudiced by the entry of default judgment against the Single-Employer Respondents.

Moreover, any settlement that is reached with Respondent will be conditional. It would only take effect if liability is found against the remaining Respondents in this case. Therefore, any arguments about contradictory outcomes is unfounded and should be rejected.

In support of its opposition, Respondent Harvest cites *Plaza Properties of Michigan, Inc.*, 340 NLRB 983 (2003). However, that case is inapposite to the facts of this case. There, the Board refused to grant the General Counsel's motion for default summary judgment not because another party had filed an answer, but because of deficiencies in the allegations plead by the General Counsel in the complaint, with the Board noting that: "a significant number of the foregoing complaint allegations are insufficient to determine whether it is appropriate to find the alleged violations and what the appropriate remedy should be." *Id.* at 986. In its Opposition, Respondent Harvest cites no such deficiencies in the Complaint's allegations, it relies solely on the fact that it filed a timely answer to Complaint's allegations. Nowhere in *Plaza Properties* does the Board suggest that default judgment against certain respondents was inappropriate because another respondent filed a timely answer in the case.

In sum, the Single-Employer Respondents have failed to show good cause for their failure to file a timely answer and Counsel for the General Counsel respectfully requests an entry of default against them, as set forth in the original Motion for Default Judgment.

DATED AT Oakland, California this 8th day of September 2020.

Respectfully submitted,

/s/ Amy Berbower

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AFFIDAVIT OF SERVICE OF THE GENERAL COUNSEL'S RESPONSE TO RESPONDENT HARVEST'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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September 8, 2020	Ida Lam, Designated Agent of NLRB
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	/s/ Ida Lam