

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**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**

JOINT MOTION TO REMAND CASE TO THE REGIONAL DIRECTOR

Pursuant to Section 102.24 of the National Labor Relations Board Rules and Regulations, Respondents HAH 5 LLC (HAH5), Have A Heart Compassion Care (HAHCC), Have A Heart Santa Cruz, LLC (HAHSC), Interurban Capital Group LLC f/k/a Interurban Capital Group, Inc. (ICG), and Harvest Health and Recreation Inc. (Harvest), collectively referred to herein as Respondents, Charging Party United Food and Commercial Workers Union, Local 5 (Union), and Counsel for the General Counsel hereby move that the Board remand the above-captioned case to the Regional Director for Region 32 of the Board (Regional Director) to effectuate non-Board settlements of the dispute, which were reached through the Board's Alternative Dispute Resolution Program.

I. Statement of the Case

On July 7, 2020, the Regional Director issued a Complaint and Notice of Hearing (the Complaint) in this case, alleging that Respondents HAH5, HAHCC, HAHSC and ICG have engaged in and are engaging in, conduct violative of Sections 8(a)(1) and 8(a)(5) of the Act. Specifically, the Complaint alleges that that Respondents HAH5, HAHSC, HAHCC, and ICG failed to recognize the Union, failed to implement an agreed upon collective bargaining agreement, and failed to provide the Union with requested information. The Complaint also alleges that Respondent Harvest, operating as a Golden State Successor, violated Sections 8(a)(1) and (5) of the Act.

Respondents HAH5 and HAHSC have been involved in the operation of cannabis dispensaries located in Oakland and Santa Cruz, California, respectively. Respondent ICG has also been involved in the operation and management of the dispensaries at material times at issue in this dispute. Respondent HAHCC was a predecessor entity to Respondent ICG and its assets. Respondent HAHSC is also an asset of Respondent ICG. Respondent Harvest owned Respondent ICG from approximately March 13, 2020 to June 22, 2020, at which time Respondent Harvest sold its interest in Respondent ICG to a new owner, Hightimes Holding Corp. (Hightimes).

On July 21, 2020, Respondent Harvest filed an Answer to the Complaint. However, no other Respondent filed a timely answer to the Complaint.

On August 26, 2020, the General Counsel filed with the Board a Motion for Default Judgment against Respondents HAH5, HAHSC, HAHCC, and ICG due to their failure to file a timely answer to the Complaint.

On September 2, 2020, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause. There was some initial briefing on the Motion for Default, however, the motion remains pending.

On September 14, 2020, the case entered the Board's Alternative Dispute Resolution program and the case was placed into abeyance with the Motion for Default Judgment pending. All Respondents, the Union, and Counsel for the General Counsel participated in mediation sessions on October 2, November 5, and November 6, 2020 led by Associate Executive Secretary, Mark Eskenazi, and Counsel Diane Bridge.

On November 6, 2020, the Union and Respondent HAH5 entered into a non-Board settlement agreement, under which Respondent HAH5 agreed to recognize the Union and implement an agreed-upon collective bargaining agreement it negotiated with the Union for employees working in the Oakland dispensary. The Union is also satisfied with information provided by HAH5.

On November 6, 2020, the Union and Hightimes, the current owner and/or representative of Respondents HAHSC and ICG, entered into a non-Board settlement agreement under which those Respondents also agreed to recognize the Union and negotiate a collective bargaining agreement with the Union immediately upon assuming control of the Santa Cruz facility.

On November 6, 2020, the Union reached a non-Board agreement with all Respondents, including Respondent Harvest, under which each Respondent agreed to contribute funds to make bargaining unit employees whole for the unpaid contractual wage increases that were due to go into

effect on January 1, 2020. A copy of this all-party Agreement, which was executed on or about November 6, 2020, is attached hereto as Exhibit 1.

The Charging Party Union is fully satisfied with the settlement agreements reached with Respondents and has agreed to request withdrawal of the charge in this matter in light of the fact that all issues that were the subject of the Complaint have been resolved to the Union's satisfaction.

II. Request to Withdraw Motion for Default and Procedure Upon Remand

In furtherance of the non-Board settlements reached by the parties, the Region hereby requests to withdraw its pending Motion for Default Judgment against Respondents HAH5, HAHSC, HAHCC, and ICG, and requests that the Board remand the case to the Regional Director for further processing in light of the parties' agreement to settle this matter.

Upon remand of the case to the Regional Director, the Regional Director intends to promptly withdraw the Complaint issued in this matter and approve the Union's request to withdraw the Charge based on the non-Board agreements reached by the parties in this matter.

III. Motion to Remand

In light of the above, the Respondents, the Charging Party Union, and Counsel for the General Counsel respectfully move that, under these circumstances, it will effectuate the purposes of the Act to approve the General Counsel's request to withdraw its Motion for Default Judgment and remand this case to the Regional Director for further action consistent with the above Procedure Upon Remand. Remanding the matter to the Regional Director is reasonable as the settlement agreements reached by the parties constitute a complete resolution of this matter. Specifically, Respondent HAH5 has agreed to recognize the Union and implement the terms of the collective-bargaining agreement negotiated with the Union, which includes beneficial terms and conditions of employment and retroactive raises for bargaining unit employees. Notably, the collective bargaining

agreement would be effective immediately and includes the following provisions that are favorable to the employees and/or the Union: substantial immediate wage increases and a defined schedule for future wage increases; paid holiday and time off benefits; hours of work, breaks, and schedule provisions; seniority rights; just cause discharge and suspension protections; a grievance/arbitration provision; a Union access provision; a Union bulletin board; a shop steward provision and time off for Union business; establishment of a Joint Labor/Management Committee; a Union security clause; and, a dues checkoff provision. Respondents ICG and HAHSC have also agreed to recognize the Union and negotiate a collective bargaining agreement covering the bargaining unit employees in the event that they are involved in operations of the dispensaries in the future. All Respondents, including Respondent Harvest, have agreed to contribute settlement funds totaling \$75,000, which will be used to make employees whole for wage increases retroactive to January 1, 2020. Finally, Respondent HAH5 has provided information to the Union to the Union's satisfaction.

The Regional Director has concluded that the non-Board settlement agreements reached by the parties would fully and finally resolve all open issues between the parties and establishes a solid foundation for the parties' collective bargaining relationships moving forward. Implementation of these agreements will provide substantial benefits to the represented employees, as well as the Union. The Regional Director has also concluded that there are significant risks involved in litigating this complex matter among multiple Respondents, which is further complicated by the multiple sales of certain Respondents involved in this matter, and complex joint and several liability issues.

Additionally, even if the General Counsel's Motion for Default Judgment were granted, there may be substantially complicated and lengthy litigation to determine and effectuate compliance with the default judgment, and the Region would still be left to litigate the merits of the Complaint as to Respondent Harvest.

In light of the above, the Regional Director has determined that nothing in the settlements arrived at by the parties would violate the standards set forth by the Board in *Independent Stave Co.*, 287 NLRB 740 (1987). The settlement is reasonable in light of the alleged violations, the risks of litigating the issues, and the preliminary stage of the litigation; all parties have agreed to be bound by the settlements and the General Counsel supports those settlements; there has been no fraud, coercion or duress present in the negotiations of the settlements, and all parties were ably represented by legal counsel during the negotiation of these agreements; and, finally, the Respondents in this matter have not engaged in a history of violations of the Act nor breached previous settlement agreements resolving unfair labor practice disputes.

For all of the above reasons, the Respondents, the Charging Party Union, and Counsel for the General Counsel respectfully request that the Board approve the General Counsel's request to withdraw its Motion for Default Judgment and remand the above-captioned cases to the Regional Director for the purpose of approving the Charging Party's request to withdraw the charge in light of the parties' non-Board settlement agreements.

For Respondent HAH 5 LLC

Signed:  _____ Date: 11/9/2020

Name and title: Joshua Chase, Owner

For Respondent Interurban Capital Group LLC f/k/a Interurban Capital Group, Inc.

Signed: _____ Date: _____

Name and title: _____

In light of the above, the Regional Director has determined that nothing in the settlements arrived at by the parties would violate the standards set forth by the Board in *Independent Stave Co.*, 287 NLRB 740 (1987). The settlement is reasonable in light of the alleged violations, the risks of litigating the issues, and the preliminary stage of the litigation; all parties have agreed to be bound by the settlements and the General Counsel supports those settlements; there has been no fraud, coercion or duress present in the negotiations of the settlements, and all parties were ably represented by legal counsel during the negotiation of these agreements; and, finally, the Respondents in this matter have not engaged in a history of violations of the Act nor breached previous settlement agreements resolving unfair labor practice disputes.

For all of the above reasons, the Respondents, the Charging Party Union, and Counsel for the General Counsel respectfully request that the Board approve the General Counsel's request to withdraw its Motion for Default Judgment and remand the above-captioned cases to the Regional Director for the purpose of approving the Charging Party's request to withdraw the charge in light of the parties' non-Board settlement agreements.

For Respondent HAH 5 LLC

Signed: _____ Date: _____

Name and title: _____

For Respondent Interurban Capital Group LLC f/k/a Interurban Capital Group, Inc.

Signed: Adam Levin Date: 11/09/2020

Name and title: Adam Levin, Authorized Signatory

For Hightimes Holding Corp.

Signed: Adam Levin Date: 11/09/2020

Name and title: Adam Levin, Executive Chairman

For Respondent Have A Heart Santa Cruz, LLC

Signed: Adam Levin Date: 11/09/2020

Name and title: Adam Levin, Authorized Signatory

For Respondent Harvest Health and Recreation Inc.

Signed: Frederick Miner Date: November 9, 2020

Name and title: Frederick Miner, Attorney

For United Food and Commercial Workers Union, Local 5

Signed: David A. Rosenfeld Date: November 9, 2020

Name and title: David A. Rosenfeld, Attorney

For the General Counsel

Signed: Amy Berbower Date: 11/9/2020

Name and title: Amy Berbower, Counsel for the General Counsel

Attachment

SETTLEMENT AGREEMENT

WHEREAS, Region 32 has issued Complaint against certain entities in Case 32-CA-259754; and

WHEREAS the Parties to this agreement are Hightimes Holding Corp (Hightimes); Interurban Capital Group LLC f/k/a Interurban Capital Group, Inc.; HAH 5 LLC; Harvest Health & Recreation Inc.; Have A Heart Santa Cruz LLC and United Food and Commercial Workers Union Local 5.

WHEREAS, the parties to that matter wish to settle that matter in its entirety and therefore agree as follows:

1. Hightimes/ Interurban Capital Group LLC f/k/a Interurban Capital Group, Inc. has agreed to recognize and bargain with Local 5 immediately upon assuming control of the Santa Cruz facility. The agreement is memorialized as Exhibit A to this Agreement.
2. HAH 5 LLC has agreed to a collective bargaining covering the Oakland store attached as Exhibit B.
3. Harvest Health & Recreation Inc is not a party to either Agreement A or B. Harvest Health & Recreation Inc, will pay \$10,000 to the Trust Account of Weinberg, Roger & Rosenfeld as full settlement of case 32-CA-259754.
4. Hightimes/ Interurban Capital Group LLC f/k/a Interurban Capital Group, Inc. in addition to signing Exhibit A will pay \$25,000 to the Trust Account of Weinberg, Roger & Rosenfeld as full settlement of case 32-CA-259754.
5. HAH 5 LLC, in addition to signing an agreement reflected in Exhibit B will pay \$40,000 to the Trust Account of Weinberg, Roger & Rosenfeld as full settlement of case 32-CA-259754.
6. The monies described above will be placed in the Trust Account of Weinberg, Roger & Rosenfeld and distributed to workers who worked in either the Oakland or Santa Cruz facilities during the period January 1, 2020 to the present. Those amounts will be distributed proportioned to the amount of time that they worked in those facilities during that period and to their schedules. In addition, one employee will receive an

additional amount reflecting a dispute over his termination. The total amount paid to that worker shall not exceed \$5,000.

7. Upon request, both HAH 5 LLC and Hightimes/Interurban Capital Group LLC. will provide to Local 5 payroll information or other information showing the dates employees worked in the Oakland and Santa Cruz facilities during the period January 1, 2020 to present to extent accessible and available. They will provide hire dates and termination dates and the number of days or hours each employee worked for purposes of determining the back pay allocation. The employers will also provide the last known addresses and telephone numbers for purposes of contacting them with respect to back pay. The employers will otherwise cooperate and provide information necessary to Local 5 in distributing the monies to the workers.
8. The monies referred to will be paid within fourteen (14) business days of receipt of the approval by the Region of the withdrawal of the Complaint in Case 32-CA-259754. The monies will be paid through an electronic transfer to the Trust account of Weinberg, Roger & Rosenfeld.
9. This constitutes a complete settlement of all issues raised in Case 32-CA-259754 and shall not become effective until Region 32 issues a notice the withdrawal of the Complaint in case 32-CA-259754.

DATED: November 6, 2020

HIGHTIMES HOLDING CORP.



DATED: November 6, 2020

INTERURBAN CAPITAL LLC.



DATED: November __, 2020

HAH 5 LLC

additional amount reflecting a dispute over his termination. The total amount paid to that worker shall not exceed \$5,000.

7. Upon request, both HAH 5 LLC and Hightimes/Interurban Capital Group LLC. will provide to Local 5 payroll information or other information showing the dates employees worked in the Oakland and Santa Cruz facilities during the period January 1, 2020 to present to extent accessible and available. They will provide hire dates and termination dates and the number of days or hours each employee worked for purposes of determining the back pay allocation. The employers will also provide the last known addresses and telephone numbers for purposes of contacting them with respect to back pay. The employers will otherwise cooperate and provide information necessary to Local 5 in distributing the monies to the workers.
8. The monies referred to will be paid within fourteen (14) business days of receipt of the approval by the Region of the withdrawal of the Complaint in Case 32-CA-259754. The monies will be paid through an electronic transfer to the Trust account of Weinberg, Roger & Rosenfeld.
9. This constitutes a complete settlement of all issues raised in Case 32-CA-259754 and shall not become effective until Region 32 issues a notice the withdrawal of the Complaint in case 32-CA-259754.

DATED: November ____, 2020

HIGHTIMES HOLDING CORP.

DATED: November ____, 2020

INTERURBAN CAPITAL LLC.

DATED: November 8, 2020

HAH 5 LLC



DATED: November 6, 2020

HARVEST HEALTH & RECREATION
INC.



DATED: November __, 2020

HAVE A HEART SANTA CRUZ LLC

DATED: November _____, 2020

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 5

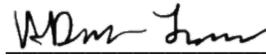
149396\1123057

DATED: November __, 2020

HARVEST HEALTH & RECREATION
INC.

DATED: November 6, 2020

HAVE A HEART SANTA CRUZ LLC



DATED: November _____, 2020

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 5

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DATED: November __, 2020

HARVEST HEALTH & RECREATION
INC.

DATED: November __, 2020

HAVE A HEART SANTA CRUZ LLC

DATED: November 6, 2020

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 5

David A. Ruffalo

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**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

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

Case: 32-CA-259754

Date: November 9, 2020

**AFFIDAVIT OF SERVICE OF THE JOINT MOTION TO REMAND CASE
TO THE REGIONAL DIRECTOR**

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.

Frederick C. Miner, Esq.
Littler Mendelson, PC
2425 East Camelback Rd., Suite. 900
Phoenix, AZ 85016
Via Email: fminer@littler.com

Na'il Benjamin, Esq.
Benjamin Law Group
1290 B Street 314
Hayward, CA 94541
Via Email: nbenjamin@benjaminlawgroup.com

Ryan Kunkel
Have a Heart Compassion Care
1104 Ocean Street
Santa Cruz, CA 95060
Via Email: ryankunkel425@live.com

Theodore G. Spanos, Esq.
Spanos & Gustafson LLP
21650 West Oxnard Street, Suite 500
Woodland Hills, CA 91367
Via Email: tspanos@spanoslaw.com

Joshua Chase
HAH 5 LLC
709 Broadway
Oakland, CA 94607
Via Email: joshua.eugene.chase@gmail.com

Interurban Capital Group, Inc.
c/o Michelle Grimberg, General Counsel
Hightimes Holding Corp.
2110 Narcissus Court
Venice, CA 90291
Via Email: michelle@hightimes.com

James Araby
United Food & Commercial Workers
Union, Local 5
28870 Mission Blvd.
Hayward, CA 94544-5510
Via Email: jaraby@ufcw5.org

Michelle Grimberg, General Counsel
Hightimes Holding Corp.
2110 Narcissus Court
Venice, CA 90291
Via Email: michelle@hightimes.com

Office of the Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
Via Efile

Cory Walker, Assistant General Counsel
Harvest Health and Recreation Inc.
aka Harvest Dispensaries, Cultivations
and Production Facilities, LLC
1155 West Rio Salado Parkway, Suite 201
Tempe, AZ 85281
Via Email: cwalker@harvestinc.com

Have a Heart Santa Cruz LLC
c/o C T Corporation System
1812 Arbutus Ave.
Chico, CA 95926
Via Email: adam@hightimes.com

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Via Email: drosenfeld@unioncounsel.net
Via Email: nlrbotices@unioncounsel.net

November 9, 2020

Date

Ida Lam, Designated Agent of NLRB

Name

/s/ Ida Lam
