

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

NATIONAL LABOR RELATIONS BOARD

Plaintiff

v.

Case No. \_\_\_\_\_

GURO ENTERPRISES, LLC.

Defendant

APPLICATION FOR ORDER ENFORCING  
SUBPOENA DUCES TECUM

The National Labor Relations Board (Board), an administrative agency of the United States Government, applies to this Court for an order compelling compliance with a subpoena duces tecum that the Board, by its Counsel for General Counsel, issued and served on Guro Enterprise, LLC. (Defendant). This application is made under Section 11(2) of the National Labor Relations Act, as amended (29 U.S.C. 151 et seq.), (the Act). In support of this application the Board states as follows:

1. This Court has jurisdiction of the subject matter of the proceeding and of Defendant by virtue of Section 11(2) of the Act (29 U.S.C. 161(2)). Defendant is a Texas limited liability company with a principal place of business located at 800 Common Street, Suite 1104, New Orleans, Louisiana. Defendant is engaged in business in this district.

2. This application arises as a result of events in unfair labor practice (ULP) proceedings currently pending before the Board pursuant to Section 10(b) of the Act. The Board process, undertaken by Counsel for the Board's General Counsel, on behalf of the Board's

Region 15 and its Regional Director (Region), began with a charge filed by Charles LeBlanc in Cases 15-CA-137333 and 15-CA-137227, which alleged that Defendant, along with other alleged joint employers, violated the Act. Collectively, the charges allege Defendant violated Sections 8(a)(1) and (3) (29 U.S.C. § 158(a)(1) and (3))<sup>1</sup> of the Act by (1) refusing to consider for hire and refusing to hire Leonard Aguliar, Samuel D. Bankester, Steve Lee Fayard, Chris Inghram, Charles LeBlanc, Scott T. LeFevre, Christopher Glen Newell, James Joseph Templet, and Landon D. Varnell for Louisiana Job Order Numbers 474094, 474150, and 474357 all to discourage their union activities and membership.

3. The original charge in Case 15-CA-37333 was filed on September 23, 2014, amended on October 31, 2014, amended on December 22, 2014, amended on March 19, 2015, and amended again on December 27, 2016. The original charge in Case 15-CA-137337 was filed on September 23, 2014, amended on October 31, 2014, amended on January 30, 2015, amended on March 19, 2015, and amended again on December 27, 2016. Copies of the charge, first amended charge, second amended charge, third amended charge, and fourth amended charge in Case 15-CA-137333 are attached as Exhibits A1, A2, A3, A4 and A5; copies of the charge, first amended charge, second amended charge, third amended charge and fourth amended charge in Case 15-CA-137337 are attached as Exhibits B1, B2, B3, B4 and B5.

Each charge and amended charge was prepared, filed and served consistent with the requirements of Section 10(b) of the Act and of 29 C.F.R. Sections 102.9 and 102.10 of the Board's Rules and Regulations. These Rules and Regulations have been issued pursuant to

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<sup>1</sup> Sec.8 [§ 158.] (a) [Unfair labor practices by employer] It shall be an unfair labor practice for an employer--(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]; (2) . . . ; (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . .

Section 6 of the Act (29 U.S.C. 156) and have been published in the Federal Register (24 F.R. 9095), pursuant to the Administrative Procedure Act (5 U.S.C. 552). *See* 29 C.F.R. 102. This Court may take judicial notice of the Board's Rules and Regulations under 44 U.S.C. 1507.

During the initial investigation of cases 15-CA-137333 and 15-CA-137337, the Region determined there was arguable merit to several allegations of the third amended charge and that Defendant was a joint employer with Charged Parties La Jomac Group and Jag Premier, Inc. Thereafter, 15-CA-137333 and 15-CA-137337 were amended a fourth time to allege Defendant as a joint employer.

4. By letter dated January 10, 2017, the Region invited the Defendant to submit a position statement, witnesses for Board-prepared affidavits, and documentary evidence regarding Cases 15-CA-137333 and 15-CA-137337.<sup>2</sup> However, Defendant failed and refused to present a position statement, witnesses for Board-prepared affidavits, or submit the requested documentation.

5. In order to procure evidence during the investigation of the unfair labor practice charges, a representative of the General Counsel made a written request for and received a subpoena duces tecum from the Board. On January 26, 2017, the Region issued subpoena duces tecum B-1-V5ZBIV directing Defendant to appear before a Board Agent on February 9, 2017, at 1:00 p.m. to produce certain records and papers more fully described in subpoena duces tecum B-1-V5ZBIV.<sup>3</sup>

The issuance of the subpoenas is consistent with the requirements of Section 11(1) of the Act and Section 102.31(a) of the Board's Rules and Regulations.

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<sup>2</sup> Exhibit D

<sup>3</sup> Exhibit C

6. A copy of subpoena duces tecum was served on Defendant by addressing it by certified mail to Defendant's Custodian of the Records, at Defendant's address of domicile located at 1313 East Alton Gloor, Suite 1, Brownsville, TX 78526. Defendant acknowledged receipt of the subpoena on January 30, 2017.<sup>4</sup>

Service and receipt of the subpoena complied with Section 11(4) of the Act and Section 102.113 of the Board's Rules and Regulations. 29 C.F.R. 102.113.

7. Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations provide for a period of five (5) work days after service of a subpoena within which any person served may petition the Board to revoke the subpoena.

8. Defendant did not file a petition with the Board to revoke the subpoena.

9. Defendant has failed to fully comply with subpoena duces tecum B-1-V5ZBIV by refusing to produce the following documents:

- i. Organizational charts and all other documents that show the Defendant's managerial structure, hierarchy or chain of command for the Defendant's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.
- ii. Documents showing the Employer Identification Number (EIN) of Defendant and of all related enterprises.
- iii. Documents that show all addresses from which the Defendant conducted business during any portion of the period covered by this subpoena.

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<sup>4</sup> Exhibit E.

iv. Articles of Incorporation, Articles of Organization, Partnership Agreements, and other documents reflecting Defendant's creation as a legal entity, including any modifications or amendments to these documents occurring during the period of time from January 1, 2013 to the present.

v. Inventories and other documents showing all vehicles and equipment owned, rented or used by Defendant during the period of time from January 1, 2013 to the present, together with documents containing numbers such as VINs that identify the specific vehicle or piece of equipment described on the inventory.

vi. Financial statements prepared for, or submitted to, any third parties, including, but not limited to, financial institutions, bonding companies, and insurance providers at any time during the period of time from January 1, 2013 to the present.

vii. Documents that show the purchase, rental, or acquisition of all supplies, furniture, equipment, facility, vehicle, or other asset used by the Defendant in the operation of its business at any time during the period of time from January 1, 2013 to the present.

viii. Documents which show the sale, lease, or disposition of any asset, equipment or vehicle used by the Defendant in the operation of its business at any time during the period of time from January 1, 2013 to the present.

ix. All federal income tax returns and state income tax returns filed by Defendant including calendar year and/or fiscal year returns, as well as any quarterly reports of returns, addressing, in whole or in part, any portion of the period of time from January 1, 2013 to the present.

x. Documents that show all revenue derived by Defendant during the period of time covered by this subpoena and, for each transaction by which Defendant derived revenue during that period, documents that show the following:

- a) the identity of the other person or entity involved in the transaction;
- b) the dollar amount of the transaction;
- c) the locations and addresses of each other person or entity involved in the transaction;
- d) the location at which goods or services involved in the transaction were provided or performed;
- e) the addresses and locations to and from which any goods were shipped or received; and
- f) the name and title of the person(s) who handled the transaction for Respondent;
- g) the date(s) the revenue for providing services was received;
- h) a description of the good or services supplied in exchange for revenue.

xi. Documents that show all expenses incurred by Defendant during the period of time covered by this subpoena and, for each transaction by which Defendant incurred expense during that period, documents that show the following:

- a) the locations and addresses of each other entity involved in the transaction;

- b) the location at which goods or services involved in the transaction were provided or performed;
  - c) the locations to and from which any goods were shipped or received; and
  - d) the identity of the person who handled the transaction for Defendant;
  - e) the dollar amount of the transaction;
  - f) the date(s) of delivery of any goods or services purchased;
  - g) the date(s) of payment to suppliers or vendors;
  - h) a description of the goods or services supplied by vendors or suppliers;
  - i) the location of the point of origin of the goods or services supplied by vendors or suppliers.
- xii. Documents that show all the respective obligations, rights, relationships and responsibilities and operating arrangements between and among Defendant and/or Jomac, Jag, DPS, Barrios, Pangea Industries, Pangea Enterprises, and Bollinger regarding the management of a workforce at the Bollinger's facilities, or any other facilities, for the period covered by this subpoena.
- xiii. Operating agreements, employee lease agreements, joint venture charter documents, and other documents effective at any time during the period covered by this subpoena that show all the obligations, rights, relationships and responsibilities between and among Jomac, Jag, DPS, Barrios, Pangea Industries, Pangea Enterprises, and Bollinger regarding their management, individually or collectively, of a workforce at

Bollinger's facilities and/or any other facilities, or providing goods and services to customers from Bollinger's facilities or any other facilities.

xiv. Documents reflecting the ownership of the Defendant during the period covered by this subpoena, including documents reflecting the full legal name of each person or entity who held an ownership interest at any time during the period covered by this subpoena, documents reflecting the percentage ownership of each owner and any changes to such respective ownership shares, and documents reflecting the dollar value of such ownership and any changes thereto during the period covered by this subpoena.

xv. Documents which show the names and titles of all directors, officers, and managers of the Defendant during the period covered by this subpoena, including the dates of tenure in their positions.

xvi. Meeting minutes, voting records, resolutions and other documents describing all meetings of the Board of Directors, Managers, or partners of the Defendant during the period covered by this subpoena.

xvii. Documents that show the name of each individual authorized to make withdrawals from any account or any other instrument of deposit controlled by the Defendant at any time during the period covered by this subpoena.

xviii. Correspondence, contracts, agreements, bills of sale, bills of lading, invoices, purchase orders, receipts and all other documents showing the receipt of goods, materials or services by the Defendant during the period of time from January 1, 2013 to the present.



xix. Documents that show all quotes or bids submitted by the Defendant or any of its officers, directors or agents to any person or entity at any time during the period covered by this subpoena , including documents showing responses and any resulting contracts or agreements.

xx. All letters, e-mails, and all other correspondence between Defendant and its customers and/or suppliers during the period covered by this subpoena, including, but not limited to, correspondence between Defendant and/or Jomac, Jag, DPS, Barrios, Pangea Industries, Pangea Enterprises, and Bollinger.

xxi. Documents that show all individuals employed by the Defendant at any time during the period covered by this subpoena, including for each individual, documents that show the following:

- a) name;
- b) address;
- c) social security number;
- d) dates of hire and termination (if any);
- e) rates of pay; and
- f) job classification.

xxii. All help-wanted advertisements, purchases of newspaper or website advertisements, and all other documents that show efforts by Defendant to recruit employees or solicit applications for employment for shipyard workers in Louisiana during the period covered by this subpoena together with documents showing the dates

the advertisements appeared, the geographic area covered by the advertisement, and the edition in which the advertisement appeared.

xxiii. All job applications, resumes, job inquiries, recommendations, references, and expressions of availability for employment for work in Louisiana with Defendant during the period covered by this subpoena.

xxiv. All job applications, resumes, job inquiries, recommendations, references, and expressions of availability for employment regarding the following individuals during the period covered by this subpoena: Leonard Aguilar, Samuel D. Bankester, Steve Lee Fayard, Chris Inghram, Charles LeBlanc, Scott T. LeFevre, Christopher Glen Newell, James, Joseph Templet, and Landon Varnell.

xxv. All evaluations, reference checks, emails, referrals, interview notes, recommendations, and all other documents indicating the Defendant's consideration of job applicants or potential applicants at any time during the period covered by this subpoena, together with documents showing: (a) the date, identity, and qualifications of each individual considered for employment, (b) the dates and substance of all telephone, e-mail, or other communications with such individuals during the applicable period, (c) all offers of employment and all responses accepting or rejecting offers of employment, (d) the employment terms offered in each instance, and (e) the reasons for each decision to offer or not offer employment to the respective candidates for employment.

10. Defendant's refusal to appear and produce all of the subpoenaed documents, which are relevant to the issues in the proceeding before the Board, constitutes contumacious conduct within the meaning of section 11(2) of the Act. Furthermore, Defendant's conduct has

impeded and continues to impede the unfair labor practice investigations before the Board and is preventing the Board from carrying out its duties and functions under the Act.

11. In view of Defendant's contumacious conduct, the Board respectfully requests:

A. That an order to show cause issue directing Defendant to appear before this Court on a date specified in the order and to show cause why an order should not issue directing Defendant to appear before a representative of the Board in Cases 15-CA-137333 and 15-CA-137333.

B. After considering arguments in response to the order to show cause, that this Court issue an order:

- (1) Requiring Defendant to obey the Board's subpoena duces tecum B-716560 and within ten (10) calendar days of the Court's order appear at the Board's office at National Labor Relations Board, Region 15, 600 S. Maestri Place, 7<sup>th</sup> Floor, New Orleans, Louisiana and produce the subpoenaed documents;
- (2) Requiring Defendant to reimburse the Board for the costs and attorneys fees (calculated at the prevailing market rate) incurred in initiating and prosecuting this subpoena enforcement action;
- (3) Providing upon failure of Defendant to comply with the Court's Order, the Court reserves the right to impose contempt sanctions following a motion by the Board; and
- (4) Providing that the Plaintiff, National Labor Relations Board, shall have such other and further relief as may be necessary and appropriate.

Dated: February 27, 2017

Respectfully submitted,

National Labor Relations Board  
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By: Sandra L Hightower, Regional Attorney

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