UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

EMERALD CORRECTIONAL MANAGEMENT, L.L.C.

and **Case 28-CA-188682**

INTERNATIONAL GUARDS UNION OF AMERICA

and **Case 28-CA-192201**

ANA B. PEÑA, an Individual

Sandra Lyons, Esq.
for the General Counsel.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. This case was tried before me on May 16, 2017, in San Luis, Arizona, based upon a consolidated complaint and notice of hearing issued by the Regional Director for Region 28 (Regional Director) of the National Labor Relations Board (Board) alleging that Emerald Correctional Management LLC (Respondent) violated Sections 8(a)(1) and (3) of the National Labor Relations Act (the Act). Considering the entire record, my observation of witness demeanor, and after reviewing the brief filed by the General Counsel, I make the following findings of fact and conclusions of law.

I. JURISDICTION AND LABOR ORGANIZATION

Respondent, a limited liability company domiciled in the State of Louisiana, is engaged in the business of providing security services to the United States Marshals Service and the Department of Homeland Security, Immigration and Customs Enforcement.[1] Respondent operated out of the San Luis Regional Detention and Support Center, in San Luis, Arizona (San Luis prison), where it purchased and received goods valued in excess of $5,000 directly from

[1] I take judicial notice of public filings with the Arizona Corporations Commission showing Respondent is domiciled in Louisiana. See http://ecorp.azcc.gov/Details/Corp?corpId=R15452980 (last accessed on October 4, 2017). *Phillips v. Salt River Police Dept.*, 2013 WL 1797340, at *6 (D. Ariz. 2013) (court takes judicial notice of information on the Arizona Corporation Commission's public website).

points located outside the State of Arizona. The services Respondent provided to the United States are valued in excess of $50,000 annually. Respondent admits, and I find, that it is an employer engaged in commerce as defined in Sections 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the International Guards Union of America (Union) is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, this dispute affects commerce and the Board has jurisdiction pursuant to Section 10(a) of the Act. (GC. 1(g), 1(k))

II. FACTS

A. Procedural History

On November 23, 2016, the Union filed a charge in Case 28–CA–188682 alleging that Respondent violated Section 8(a)(1) and (3) of the Act by firing Clemente Macias (Macias) because of his union activities.[2] On November 29, 2016, Fred B. Grubb (Grubb) sent the Board Agent investigating the charge an email serving as his notice of appearance as Respondent's representative of record in the proceeding. (GC. 1(a), 2)

On February 1, 2017, Ana B. Peña (Peña) filed a charge in Case 28–CA–192201 alleging that Respondent's social media policy was overly-broad, and that Respondent violated the Act by suspending and issuing her a final written warning.[3] The charge was served upon Respondent by mailing a copy to its Arizona mailing address—PO Box 7710, San Luis, Arizona. (GC. 1(f)) The Board's records show that this same PO Box was used as Respondent's mailing address in the related representation decision, Case 28–RC–161589, which certified the Union as the collective-bargaining representative of Respondent's guards at the San Luis prison. See https://www.nlrb.gov/case/28-RC-161589 (last accessed on October 4, 2017). *Lord Jim's*, 264 NLRB 1098, 1098 fn.1 (1982) (The Board may take judicial notice of its own files.); *Baldwin Locomotive Works*, 89 NLRB 403, 403 fn. 2 (1950) ("The Board takes judicial notice of its prior proceedings."). On February 3, 2017, Grubb filed a formal notice of appearance as Respondent's representative in Case 28–CA–192201. At no time has Grubb withdrawn as Respondent's representative of record in either case, nor has a substitution of representative been filed. (GC. 1(e), 2; Tr. 7–11)

While the allegations in Case 28–CA–192201 were being investigated, on February 8, 2017, the Regional Director issued a complaint and notice of hearing in Case 28–CA–188682 (February 2017 complaint) alleging that Respondent violated the Act by: maintaining four specific overly-broad and discriminatory rules in its Employee Standards of Conduct; threatening employees with discipline, including termination, if they violated those rules; promulgating a rule prohibiting employees from discussing with their coworkers any meetings with management; and discharging Macias because of his union activities and because he violated one of the unlawful rules. (GC. 1(g))

[2] On January 13, 2017, an amended charge was filed further alleging that Respondent maintained unlawful rules and threatened employees with discharge if they violated those rules. (GC. 1 (c))

[3] On March 27, 2017, this charge was amended to allege Respondent further violated the Act by maintaining a mandatory arbitration agreement and a rule prohibiting the discussion of ongoing investigations. (GC. 1(l))

The February 2017 complaint was served upon Grubb, as Respondent's representative of record. It was also sent, via certified mail, to Respondent at a physical address in San Luis, Arizona: 406 North Avenue D, San Luis, AZ 85349. However, a review of the postal service tracking number assigned to the document, 7015 1520 0001 5189 3480, shows it was never delivered to Respondent.[4] Notwithstanding, on February 18, 2017, Grubb filed an answer to the February 2017 complaint on behalf of Respondent. In the answer, Respondent admitted the various commerce, jurisdictional, and supervisory allegations. It also admitted the maintenance of the various alleged rules in its Employee Standards of Conduct, and that Macias was fired. However, Respondent denied committing any of the alleged unfair labor practices. (GC. 1(h), 1(k))

On April 7, 2017, the Regional Director issued a consolidated complaint and notice of hearing (consolidated complaint) alleging that Respondent committed additional violations in relation to the charge filed in Case 28–CA–192201. Specifically, the consolidated complaint alleges that Respondent further violated Section 8(a)(1) of the Act by: maintaining an overly-broad and discriminatory social media policy and threatening employees with discharge if they violated the policy; maintaining, as a condition of employment, a mandatory arbitration agreement with overly-broad provisions; maintaining an overly-broad rule requiring employees to keep all investigations confidential and threatening employees with discipline if they violated the rule; and suspending Ana B. Peña, and issuing her a final warning, because she violated Respondent's social media policy. The consolidated complaint was sent via certified mail to Respondent's Arizona mailing address—PO Box 7710; it was also sent via regular mail to Grubb. The assigned postal service tracking number, 7010 2780 0001 0447 2559, shows that the consolidated complaint was delivered to Respondent on April 12, 2017. (GC. 1(n), 1(o))

Respondent did not file an answer to the consolidated complaint. Therefore, on April 27, 2017, a Board agent sent both Respondent and Grubb a letter informing them that, unless an answer was submitted, a motion for default judgment would be filed with the Administrative Law Judge assigned to the trial; the letter also included a copy of the consolidated complaint as an attachment. Still not having received an answer, on May 5, 2017, the General Counsel filed a motion for default judgment asking that I issue an order finding all of the allegations in the consolidated complaint be deemed true. The certificate of service accompanying the motion shows that it was sent, via regular mail, to Respondent at the following address: 315 South College, Suite 205; Lafayette, Louisiana 70503. A review of the records on file with the Louisiana Secretary of State shows that this address is Respondent's mailing and domicile address in Louisiana.[5] See https://coraweb.sos.la.gov/commercialsearch/CommercialSearchDetails.aspx?CharterID=489582_2E4634EFEA (last accessed October 4, 2017). The motion was also emailed to Grubb. (GC. 1(p))

[4] I take judicial notice of the certified mail delivery information for both the February 2017 complaint and the consolidated complaint. See *Ananias v. Stratton*, 2012 WL 1434880 *2 (C.D. Ill 2012) (court takes judicial notice of certified mail delivery date on the United States Postal Service's website).

[5] I take judicial notice of Respondent's Louisiana address, as shown on the official website of the Louisiana Secretary of State. *Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC*, 127 F. Supp. 3d 156, 166 (S.D.N.Y. 2015) (pursuant to Fed. R. Evid. 201, a court may take judicial notice, at any stage of the proceeding, of documents filed with government entities, including a Secretary of State, and available on their official websites).

On May 5, 2017, I issued an order advising Respondent to show cause as to why the General Counsel's motion for default judgment, with respect to certain paragraphs of the consolidated complaint, should not be granted; the order was served upon Grubb as Respondent's legal representative.[6] Respondent never replied to the order to show cause, nor did it file an answer to the consolidated complaint. However, on May 8, 2017, Grubb—as a representative of a third-party employer—filed a petition to revoke multiple subpoenas that were served upon certain of Respondent's admitted supervisors, who were allegedly then working for the third-party employer. In the petition to revoke Grubb specifically noted that Cases 28–CA–188682 and 192201 were consolidated for hearing, and that the hearing was scheduled to commence on May 16. I denied Grubb's petition to revoke on May 12, 2017. (GC. 3, 5)

The hearing opened in San Luis, Arizona, on May 16, 2017; Respondent did not appear at the hearing. Therefore, I granted the General Counsel's motion for default judgment as it related to the allegations in Case 28–CA–192201, but denied it with respect to the allegations contained in the February 2017 complaint, and explained that I would more fully discuss the ruling in my written decision. (Tr. 1–6, 12–14) Thereafter, the General Counsel presented testimony and documentary evidence relating to the allegations in the February 2017 complaint.

B. Evidence Relating to the February 2017 Complaint

1. Handbook rules

Respondent's answer admits, and the evidence introduced by the General Counsel shows, that the company has maintained the following rules in its Employee Standards of Conduct, Policy Number 100.4:

> Rule 13 [Cooperating with investigations]
> Employees will cooperate with investigations conducted by Emerald Companies, the contracting agency and/or public law enforcement officials.
>
> Rule 15 [Behavior reflecting negatively on Respondent]
> Employees will refrain from engaging in behavior which could reflect negatively on Emerald Companies.
>
> Rule 17 [Media contact]
> Employees shall not contact the news media. All interviews must receive prior approval from the corporate office.
>
> Rule 18 [Inappropriate language]
> Employees will refrain from the use of inappropriate, abusive and/or obscene language, and will neither threaten nor coerce any person for any reason.

[6] The copy of the order to show cause introduced into evidence does not contain the service information. However, the records on file with the Board's Division of Judges show that the order was served upon Grubb via facsimile and email on May 11, 2017. The facsimile transmittal report specifically shows that the order was received by Grubb. I take judicial notice of this information. *Lord Jim's*, 264 NLRB at 1098, fn. 1.

The policy also contains a statement saying that "[e]mployees who violate the Employee Standards of Conduct will be subject to corrective actions which may range from a warning to termination and may extend to referral to appropriate authorities for prosecution." (GC. 11) (GC. 11) (GC. 1(k))

2. Discharge of Clemente Macias

From October 2011, until he was fired in September 2016, Clemente Macias worked for Respondent at the San Luis prison as a prison guard. The San Luis prison houses various federal inmates, including prisoners of the US Marshal's Service, Homeland Security Immigration and Customs Enforcement, and the Bureau of Indian Affairs. Between 100–120 employees work at the prison, which has beds for about 1,000 inmates. At the time, David Rivas served as the prison warden, overseeing all operations. Macias's immediate supervisor was Estelle Martinez, who held the title of "sergeant."[7] Martinez reported to Endy Zavala, who was a "lieutenant." Zavala reported to Timothy Carroll (Carroll), who held the title of "major," and was the chief of security.[8] Carroll reported to Rivas, and also to the assistant warden Maria Carlos (Carlos). (Tr. 23–24, 28, 34, 38–40)

Macias was the individual who first contacted the Union in late February 2015. Macias and his coworkers were interested in unionizing; their concerns included better pay and benefits, favoritism in the workplace, lack of seniority rights, and the need for better communication from management. In April 2015, Macias and seven or eight of his coworkers met with union officials at a hotel to discuss their problems with the Union. Union officials gave them authorization cards to distribute to their colleagues. (Tr. 24–28; GC. 9)

Macias and his coworkers distributed the authorization cards, and returned the signed cards to the Union. An election petition was filed with the Board on October 8, 2015, and the election was held on October 29. The Union won, and on November 10, 2015, was certified as the collective-bargaining representative of Respondent's prison guards at the San Luis prison. (Tr. 28–29, 32; GC. 10)

Sometime before the election occurred, Thomas Rouse, who was the human resources manager at the time, had a conversation with Macias in the officers' dining room inside the prison.[9] Rouse looked at Macias, smiled, and said "[w]hat have you done . . . I just got notice that you are the point of contact between the Union." Macias asked how Rouse received the notice, and Rouse replied that it was by email; nothing else was said. (Tr. 30–31)

After the Union's certification, on December 10, 2015, elections were held for union officers and Macias was elected president. Macias emailed Grubb, Rivas, and Carlos, informing them accordingly. (Tr. 33–34)

[7] Although Respondent is a private company, it assigned militaristic titles to its various supervisors. (Tr. 39)
[8] Carroll is also referred to in the record as Thomas Carroll, or simply Major Carroll. (Tr. 37–42, 75–76)
[9] At the hearing, the General Counsel made a motion to amend the complaint to allege Rouse as an additional supervisor and agent of Respondent. Absent any objections, the amendment was granted. (Tr. 32)

As union president, Macias became the primary union representative at the facility, and generally dealt directly with Grubb on union related matters. As part of his union duties Macias bargained with Respondent over discharges and served as the lead negotiator during contract negotiations. Regarding negotiations for an initial contract, Macias and Grubb exchanged emails and agreed to August 2 and 3, 2016, as dates for initial contract negotiations. (Tr. 34–36)

About a week before contract negotiations were scheduled to begin, Carroll had a series of conversations with Macias at the prison. In the first conversation Carroll asked Macias why employees organized to bring in a union. Macias replied saying there was a lot of favoritism at the prison; the pair also discussed wages. Carroll then asked what the Union was asking for in a contract. Macias did not answer the question directly, trying to give Carroll as little information as possible. Instead, Macias emphasized the general issues of favoritism, wages, and benefits. Carroll then told Macias that he wanted to change workers from 8 to 12 hour shifts but that he could not do so because of the Union. Macias told Carroll that if there was anything he could do to make the process faster to let him know, that maybe they could gather signatures from union members, or discuss the issue first during the upcoming negotiations. (Tr. 38–42)

a. Sexual harassment complaint against Macias

On July 31, 2016, Sonia Gutierrez (Gutierrez), who held the title of "lieutenant," filed a written sexual harassment complaint against Macias; Macias had known Gutierrez since he first started working at the prison. Gutierrez alleged that, on nearly a daily basis, Macias made unwanted comments to her such as asking why she was "so beautiful," and telling Gutierrez that he was in love with her. In the complaint, Gutierrez also referenced an incident that occurred about 2 years earlier, claiming Macias forcibly kissed her on the lips while they were in the officer's dining area. (Tr. 43; GC. 14, p. 6–12)

On August 1, which was the day before contract negotiations were going to start, just after their morning briefing, Carroll called Macias into his office and told him that Gutierrez was accusing him of sexual harassment. Carroll said Gutierrez claimed Macias was telling her that she was beautiful and saying "I love you." Macias replied saying he was surprised, and that Gutierrez had never told him she felt uncomfortable about anything he said to her. Carroll told Macias to stop saying whatever it was that he was saying to Gutierrez. Carroll also told Macias not to mention to anyone that he was being accused, and that he needed to keep this information confidential.[10] Macias then went back to his office and started his daily duties. (Tr. 42–44; GC. 15, p. 5)

A few hours later, Carroll called Macias back into his office and told him that Gutierrez was also accusing him of forcibly kissing her a couple years earlier. Carroll told Macias not to talk "about that" with anybody, and further asked Macias to provide him with a written statement. Macias went back to his office and typed up a written statement, which he signed and submitted to Carroll that day. (Tr. 44–45, 60–61; GC. 14, p. 13)

[10] According to a written memorandum regarding his investigation into Gutierrez' sexual harassment allegations, Carroll interviewed Gutierrez, Macias, and medical assistant Maribel Roane. At the end of each interview, Carroll told all three that they needed "to keep this information confidential." (GC. 14, p. 5)

Macias was the assistant coach on a youth soccer team; his daughter and Gutierrez' son were both on the team. Therefore, when Macias returned to Carroll's office, he asked Carroll to tell Gutierrez that he would not be at the scheduled soccer practice that day because he felt uncomfortable being at the practice with Gutierrez. Carroll told Macias that he could attend the practice, but Macias said that he was not going to do so. (Tr. 45–46, 49)

According to Macias, at the soccer practice a week earlier, Gutierrez was present with her parents and husband. Macias and Gutierrez greeted each other with a handshake and kiss on the cheek, which Macias claims is a common greeting in the Mexican culture, and Gutierrez introduced Macias to her parents and husband. (Tr. 46–47)

During his trial testimony, Macias admitted telling Gutierrez that she was beautiful, and estimated that he had done so approximately four or five times over the 5 years they had known each other. According to Macias, he would say things like "good morning beautiful," "hi beautiful," or "bye beautiful," and Gutierrez never told him to stop, or that she was uncomfortable with what Macias was saying. Macias also testified that, other than greeting Gutierrez with a kiss on the cheek, he has never tried to kiss her. During his testimony Macias also denied ever telling Gutierrez that he loved her. However, this part of Macias's testimony was impeached by his written statement, which was introduced into evidence by the General Counsel.[11] In his written statement, Macias admitted telling Gutierrez that he loved her—but claimed it was "a joke and a foolish game" that they both participated in, and that he "never meant anything serious about it." Regarding the allegation that he forcibly kissed Gutierrez, Macias's written statement says that the incident happened "too long ago" for him to remember any details, thus he did not "recall much of the incident." (GC. 14, p. 13, 48–49)

b. Collective-bargaining negotiations

The first negotiating session occurred on August 2, at the San Luis City Hall. Present for Respondent were Grubb, Rivas, and Martha Combs (Combs); Combs had replaced Rouse as the human resources manager. Present for the Union was Macias, Gene Lente, Teddy Stahl, Francisco Bustamente, Jesus Ornelas, and Emerterio Leon. Lente and Stahl were officials with the national Union, while the others individuals were unit members. Macias served as the lead negotiator. (Tr. 29–30, 49–50)

According to Macias, the first day of negotiations did not go well, and the environment was very tense. The Union had a proposal ready, and wanted to review it with Respondent article by article. However, Grubb wanted to review the entire proposal first, and then decide whether they were going to agree to certain clauses or try to make any changes to the various articles. After a few hours Respondent's representatives left, saying they needed to work on Respondent's contract proposals. No more bargaining occurred that day. (Tr. 50–52)

[11] The written statement was included in a multi-page exhibit consisting Respondent's investigation into the sexual harassment allegation which the company had submitted to the NLRB during the underlying investigation. (GC. 14; Tr. 72–73)

The parties met again the next morning. However, Macias testified that not much occurred that day, as Grubb said that Respondent needed to take the proposals to "corporate" before giving the Union an answer. (Tr. 52)

c. Macias's suspension and termination

Macias went to work on August 4, and spent the first half of the day on an assignment transporting prisoners. When he finished the assignment, Carroll called Macias into the human resources office. Present were Macias, Carroll, and Combs. Combs gave Macias a letter, signed by warden Rivas, stating that Macias was being placed on administrative leave, without pay, pending a formal investigation into Gutierrez' harassment allegations. Macias asked Carroll how long the investigation was going to last, and why he was being suspended. Carroll told him it was "policy" and that he had to be suspended until the investigation was completed. Macias then left the facility and went home. (Tr. 52–54; GC. 14, p. 20)

On August 9, Macias received a call from Combs asking if he could come to the San Luis prison and speak with Ariel Campos (Campos), who was the human resources director. Macias complied. The meeting occurred at the business office in the prison complex; Macias, Campos, and Combs were present. Campos told Macias that he was being accused of sexual harassment by making unwanted comments to Gutierrez such as "you're beautiful" and "I love you." Campos asked whether he made these statements to Gutierrez; Macias denied ever telling Gutierrez that he loved her. Macias admitted telling Gutierrez that she was beautiful, but explained the context in which those comments were made. Macias further told Campos that Gutierrez was very flirtatious and that he was not the only person calling her beautiful, as other guards said the same thing to her. Furthermore, Macias said that Gutierrez never told him—or anybody else—to stop, or that she was uncomfortable with those comments. Macias and Campos went back and forth over the issue until Campos said that they could talk all day, but that Macias was going to be terminated. According to Macias, Combs then interrupted, saying that Macias was not going to be fired, but would only receive a "feedback," which is similar to a written warning. During the meeting Macias was given a written "feedback," signed by Combs, and told that he had 72 hours to respond to the document. However, Campos told Combs she could do whatever she wanted, but that Macias was going to be terminated. (Tr. 54–59; GC. 14, p. 21)

Macias testified that he then asked why Campos believed Gutierrez, and why he was going to be fired. At Macias's request, he and Combs went to her office to speak in private. Macias asked Combs why Campos did not believe what Macias was saying. Combs told him that she was going to speak with warden Rivas and give Macias an answer. Macias also asked Combs how Campos conducted his investigation. Combs said that Campos had only spoken with Gutierrez. (Tr. 58)

After speaking with a union representative and an attorney, Macias decided to not respond to the feedback. Having not heard anything from the company, in September Macias called Combs on multiple occasions to ask whether there was any resolution to his case; Combs would not give Macias an answer. Finally, Macias received a letter signed by Rivas, dated September 12, 2016, saying that he was terminated for two reasons: "[c]onduct in any form,

including physical, verbal, or visual, that results in unlawful harassment of others, whether intentional or unintentional;" and for failing to cooperate with an investigation for charges of sexual harassment/unlawful harassment. (Tr. 61; GC. 12)

According to Macias, he knew of other employees working for Respondent that had been accused of sexual harassment, but were not fired—including his own brother. Macias testified that his brother was accused of sexual harassment by a female employee and was not fired; instead he received a written warning and was required to take a sexual harassment course. However, Macias did not provide a time frame as to when this incident occurred. (Tr. 62–63)

Macias also testified that, sometime "maybe" in 2014, an employee named Omar Cabrera sat in on the sexual harassment portion of an annual week-long employee training course. Macias asked Cabrera why he was only attending the sexual harassment portion of the training, and Cabrera said that "he got in trouble." According to Macias, neither his brother nor Cabrera were involved in any union activity. (Tr. 66–67)

III. ANALYSIS

A. The General Counsel's Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint. Motions for default or summary judgment can be filed with the Board, or directly with the Administrative Law Judge. RULES AND REGULATIONS OF THE NATIONAL LABOR RELATIONS BOARD §§ 102.20, 102.35(a)(8).

Here, based upon Respondent's failure to file an answer to the consolidated complaint, the General Counsel sought default judgment on all of the allegations contained in the consolidated complaint. However, in doing so, the General Counsel disregarded Respondent's answer to the February 2017 complaint. Because Respondent filed an answer denying the unfair labor practice allegations in the February 2017 complaint, default judgment regarding those same allegations in the consolidated complaint is improper. See *Media One Inc. & Bauer-Kinnear*, 313 NLRB 876, 876 (1994) (The Board will not grant summary judgment based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which respondent filed a proper denial); *Kolin Plumbing Corp.*, 337 NLRB 234, 235 (2001) (Board denies default judgment on allegation denied in timely-filed answer to compliance specification, even though respondent later fails to answer an amended specification repeating the allegation). Accordingly, the General Counsel's motion for default judgment with respect to the allegations contained in the February 2017 complaint involving Case 28–CA–188682 is denied.

As for the remaining unfair labor practice allegations in the consolidated complaint, involving Case 28–CA–192201, because Respondent failed to file an answer within 14 days as required by the Board's Rules and Regulations, the General Counsel's motion for default judgment is granted. See *Electro-Flyte, Inc.*, 331 NLRB 633, 634 (2000) (Granting summary judgment to new allegations in amended consolidated complaint based upon failure to file an

answer, but denying summary judgment to allegations which were also contained in the original complaint, which were denied by respondent). Here, the evidence shows that the consolidated complaint and the General Counsel's motion were properly served upon Respondent and Grubb. *Cf. Topor Contracting, Inc.*, 345 NLRB No. 60 (2005) (not reported in Board volume) (Board denies motion for default judgment as the government did not establish that the complaint and other correspondence were sent to Respondent's correct address). Grubb, as Respondent's representative, was also served with the order to show cause. Notwithstanding, Respondent never filed an answer to the consolidated complaint, nor did it show good cause for its failure to do so.[12] As such, Respondent has not placed in dispute any of the alleged violations in the consolidated complaint that were not previously alleged in the February 2017 complaint. Accordingly, in the absence of good cause being shown for Respondent's failure to file a timely answer to the consolidated complaint, default judgment is granted to all of the alleged violations contained therein, that were not contained in the February 2017 complaint. Specifically, default judgment is granted to the allegations that Respondent violated Section 8(a)(1) of the Act by: (1) maintaining overly-broad and discriminatory rules in its Policy and Procedure 1.1.14 Social Media Policy, and threatening employees with discipline if they violated these rules; (2) maintaining, as a condition of employment, a mandatory arbitration agreement with an overly-broad provision; (3) maintaining an overly-broad and discriminatory rule requiring employees to keep all investigations confidential and threatening employees with discipline if they violate the rule; and (4) suspending and issuing a final written warning to Ana Peña.

B. Respondent's Employee Standards of Conduct Policy

1. Legal framework

An 8(a)(1) violation occurs when an employer maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights.[13] *T-Mobile USA, Inc.,* 363 NLRB No. 171, slip. op. at 1, (2016) (citing *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999)). If the allegedly unlawful rule explicitly restricts Section 7 activity, then its maintenance is unlawful; if not, then the rule will still be deemed a violation if: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." Id. (quoting *Lutheran Heritage Village-Livonia*, 343 NLRB 646–647 (2004)).

The rules at issue here do not explicitly restrict protected activities and have not been promulgated in response to, or applied to restrict, protected activities. Therefore, the relevant inquiry is whether employees would reasonably construe the challenged rules to prohibit Section 7 activity. A "reasonable reading," must be given to the rules; they must not be considered in isolation, and not be presumed to improperly interfere with employee rights. *Lutheran Heritage Village*, 346 NLRB at 346. That being said, any ambiguities in the rules are to be construed against the drafter. *Lafayette Park*, 326 NLRB at 825.

[12] That Grubb knew about the consolidated complaint and the May 16, 2017 hearing date is further shown by the fact he filed a petition to revoke subpoenas, just weeks before the scheduled hearing, on behalf of a third-party.
[13] This is true even if the rule was promulgated outside the 10(b) period and has not been enforced. *Ivy Steel & Wire, Inc.,* 346 NLRB 404, 422 (2006).

2. Analysis of Respondent's standards of conduct

a. Rule requiring employees to cooperate with investigations

Rule 13 in Respondent's employee standards of conduct requires employees to "cooperate with investigations conducted by [Respondent], the contracting agency and/or public law enforcement officials." The General Counsel alleges the rule violates Section 8(a)(1) of the Act because it does not include any of the safeguards required under *Johnnie's Poultry*, 146 NLRB 770 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965), which compels an employer investigating alleged unfair labor practices to give assurances to workers that their participation in the investigation is purely voluntary. Here, rule 13 requires employees to cooperate in investigations conducted by the company, without limitation. Thus, a reasonable reading of the rule would encompass Respondent's investigations into alleged unfair labor practices. Accordingly, the rule violates the Act as it does not ensure that such cooperation is purely voluntary. *Grill Concepts Services Inc.*, 364 NLRB No. 36, slip op. at 25 (2016) (rule stating that employees could be terminated for failing to participate in a formal company investigation a violation). See also *Beverly Health & Rehabilitation Services Inc. v. NLRB*, 297 F.3d 468, 478–79 (6th Cir. 2002) (affirming the Board's finding that the maintenance of a rule compelling employee cooperation in the investigation of alleged violations of "laws, or government regulations" is a violation as it would encompass unfair labor practice charges).

b. Rule requiring employees to refrain from behavior which could reflect negatively on Respondent

Standards of conduct rule 15 states, in part, that "[e]mployees will refrain from engaging in behavior which could result negatively on Respondent." Citing *Boch Honda*, 362 NLRB No. 83 (2015), enfd. 826 F.3d 558 (1st Cir. 2016), the General Counsel asserts this rule violates Section 8(a)(1) of the Act. I agree.

In *Bosch Honda*, 362 NLRB No. 83, slip op. at 1, 10–11, the Board found that a rule prohibiting conduct that has "the potential to have a negative effect on the Company" a violation of Section 8(a)(1) of the Act, as did a rule instructing employees to not refer to the employer in any online posting that "would negatively impact the Company's reputation or brand." These rules were overly-broad, as employees would reasonably construe them as preventing discussions with fellow employees, or others, regarding their working conditions. Id. slip op. at 11. The same is true here. Therefore, by precluding "behavior which could result negatively on Respondent," rule 15 is overly-broad and violates of Section 8(a)(1) of the Act. See also *The Roomstore*, 357 NLRB 1690, 1690 fn. 3 (2011) (rule prohibiting "[a]ny type of negative energy or attitudes" violates Section 8(a)(1)).

c. Respondent's media contact rule

Respondent's rule 17 states that "[e]mployees shall not contact the news media. All interviews must receive prior approval from the corporate office." The Act gives employees the right to communicate directly with the news media about their working conditions. *Gunderson*

Rail Services, LLC, 364 NLRB No. 30, slip op. at 46–47 (2016). And, a rule requiring that workers receive prior approval before providing information to the news media about their employer is a violation. *Trump Marina Associates, LLC, v. NLRB*, 435 Fed.Appx. 1, 1 (DC Cir. 2011). Accordingly, Respondent's rule 17 violates Section 8(a)(1) of the Act.

d. Rule requiring employees to refrain from inappropriate language

The General Counsel cites *First Transit, Inc.*, 360 NLRB 619 (2014), to argue that the portion of Respondent's rule 18 requiring employees refrain from the using inappropriate language is a violation. In *First Transit*, 360 NLRB at 620, the employer had a rule prohibiting "[d]iscourteous or inappropriate attitude or behavior to passengers, other employees, or members of the public. Disorderly conduct during working hours." The Board found that the portion of the rule prohibiting "[d]iscourteous or inappropriate attitude or behavior" toward "other employees" constituted a violation, as it was patently ambiguous, and employees would reasonably construe the rule so as to limit their discussions concerning employment. Id. at 621.

I believe the same is true here with respect to the portion of the rule requiring employees to "refrain from the use of inappropriate . . . language." This portion of the rule is imprecise and employees would reasonably construe it to limit communications protected under Section 7 of the Act. Id. As such, by maintaining a rule requiring employees to refrain from using inappropriate language, Respondent violated Section 8(a)(1) of the Act.

e. Threat of discipline for violating rules

Respondent's standards of conduct states that employees who violate any of the various rules contained therein "will be subject to corrective actions which may range from a warning to termination and may extend to referral to appropriate authorities for prosecution." Citing *Grill Concepts Services Inc.*, 364 NLRB No. 36, slip op. at 25 (2016), the General Counsel argues that this clause constitutes a separate unlawful threat of discipline, once it is determined that any of the individual rules are unlawful. (GC Br., at 21.) However, *Grill Concepts* does not stand for this proposition.

In *Grill Concepts*, 364 NLRB No. 36, slip op. at 20–26, the employer maintained various work rules that violated Section 8(a)(1) of the Act. Many of the rules that the Board found unlawful also contained clauses threatening employees with discipline, or other adverse action, if they violated the specific work rule. Id. Notwithstanding, the Board did not find that these clauses constituted an independent "threat." And, the Board's order and notice do not make any reference to an independent "threat" of discipline for violating the unlawful rules. Id., slip op. at 4–6.

Here, I agree with the analysis of the judge in *The Kroger Co. of Michigan*, JD-21-14 (2014), slip op. at 17–18, 2014 WL 1620730, who was faced with a similar allegation. Citing *Target Corp.*, 359 NLRB 953 (2013), the judge found that there was no independent "threat" of discipline; instead the provision was simply derivative and part of the context in which the rule is analyzed. In *Target Corp.* 359 NLRB at 965, 971, the trial judge found an independent "threat" violation when the employer maintained an unlawful rule in its handbook, which also included a

provision stating that employees would be subject to corrective action, including termination or criminal prosecution, for violating the rule. Id. at 965, 971. Even though the Board upheld the judge's finding that the rule was unlawful, neither the Board's order nor its notice contains any reference to an unlawful "threat" for violating the rule. Id. at 955–957. In this matter, because the General Counsel has not cited any precedent where the Board, in similar circumstances, has found an independent violation, I find the sentence stating that employees will be subject to various corrective actions for violating Respondent's rules, four of which were found to be unlawful, does not, in itself, constitute an independent violation of the Act.

C. Alleged Rule Prohibiting Discussions Involving Management Meetings

Consolidated complaint paragraph 5(e) alleges that, on or about August 1, 2016, Carroll orally promulgated an overly-broad and discriminatory rule prohibiting employees from discussing meetings with management with their coworkers. In support of this allegation, the General Counsel points to statements Carroll made to Macias, and the other individuals he interviewed as part of his sexual harassment investigation, to keep the information confidential. (GC Br., at 21) Macias specifically testified that, regarding his conversations with Carroll during the sexual harassment investigation, Carroll told him to "not talk about that" with anybody, and "to not mention this to anyone." (Tr. 44–45)

The Act gives employees the right to discuss issues involving sexual harassment complaints amongst themselves. *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. 63 Fed.Appx. 524 (D.C. Cir. 2003) (Board finds "Respondent violated Section 8(a)(1) of the Act by maintaining a confidentiality rule prohibiting employees from discussing their sexual harassment complaints among themselves."). Also, employees have the right to discuss with their coworkers matters under investigation by the company, as this encompasses employee Section 7 rights to discuss their employment. *Hyundai American Shipping Agency, Inc. v. NLRB*, 805 F.3d 309, 314 (D.C. Cir. 2015). These rights may be legitimately restricted only if employee interests are outweighed by an employer's valid confidentiality interest, or the employer otherwise presents a legitimate and substantial business justification for the rule outweighing the adverse effect on employee interests. Id.; *Phoenix Transit System v. NLRB*, 63 Fed.App'x 524, 525 (D.C. Cir. 2003) (citing *Caesar's Palace*, 336 NLRB 271, 272 (2001)). Here, Respondent has presented no legitimate and substantial business justification for Carroll's directive to Macias to not discuss the matter with anyone. As such, I find that Respondent's directive violated Section 8(a)(1) of the Act.

D. The Suspension and Discharge of Clemente Macias

1. The Legal Framework

The consolidated complaint alleges that Macias was fired because of his union activities in violation of Section 8(a)(3) of the Act. To determine whether an employee's termination is unlawful, the Board applies the burden shifting analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under this framework, the General Counsel must prove by a preponderance of the evidence that an employee's union or protected activity was a motivating factor in the employer's actions. The elements required to

support such a showing are union or protected concerted activity, the employer's knowledge of that activity, and animus on the part of the employer. See, e.g., *Consolidated Bus Transit*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009).[14]

If the General Counsel makes this initial showing, the burden of persuasion shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even if the employee had not engaged in protected activity. Id. at 1066; see also *Ready Mixed Concrete Co. v. NLRB*, 81 F.3d 1546, 1550 (10th Cir. 1996) (by shifting the burden the employer's justification becomes an affirmative defense). Where an employer's explanation is "pretextual, that determination constitutes a finding that the reasons advanced by the employer either did not exist or were not in fact relied upon." *Limestone Apparel Corp.,* 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982).[15]

2. Analysis

Here, the General Counsel has met its burden of making a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in Macias's discharge. *Wright Line*, 251 NLRB at 1089. Macias was clearly engaged in union activities, having been the individual who originally contacted the Union. He also passed out and solicited signatures on authorization cards, was elected president, bargained discharges with Respondent, and was the chief spokesperson at bargaining.

The evidence also shows that Respondent clearly knew about Macias's union activities, as Rouse identified Macias as the Union's point of contact even before the election occurred. Also, after being elected president Macias emailed Grubb, Rivas, and Carlos informing them of his election, and Macias was the Union's lead negotiator at bargaining.

Finally, the General Counsel has also shown animus. Although not alleged in the complaint as an independent violation, Rouse's statement to Macias before the election saying he had received notice that Macias was the Union's point of contact asking "what have you done," implies that Macias did something wrong by contacting the Union, and shows animus. *Fordham Equipment Co., Inc.*, 221 NLRB 681, 685 (1975) (asking employees "What have you done? Did you sign cards for the Union?" implies that employees did something horrendous, is coercive, and a violation of Section 8(a)(1)). And, Carroll's questioning Macias about why employees unionized and what they were seeking in a contract is similarly evidence of animus. Both issues were of no concern to Carroll, who was chief of security, as Macias had been dealing directly with Grubb about Union matters. *Foamex*, 315 NLRB 858, 858 (1994) (supervisor's question to the initiator of the union's organizing drive asking what the problems were in the facility and why the employees wanted a union constituted a violation); *Beverly Enterprises*, 272 NLRB 83,

[14] "[W]here the Employer's proffered non-discriminatory motivational explanation is false even in the absence of direct motivation the trier of fact may infer unlawful motivation." *Roadway Express*, 327 NLRB 25, 26 (1998).

[15] The consolidated complaint also alleges that Macias was discharged for violating the overly-broad rule requiring employees to cooperate with investigations, and this is one of the reasons included in Macias's termination letter. However, here there is no evidence that Macias violated this rule. Instead, the evidence shows that Macias cooperated with the investigation into the allegations against him. Therefore, rather than constituting an independent violation, this purported additional reason for Macias's discharge is simply evidence of pretext. *Limestone Apparel Corp.*, 255 NLRB at 722.

89 (1984) (director of personnel's twice asking employee why she wanted a union violated Section 8(a)(1)).

Accordingly, the General Counsel having shown that Macias's union activities were a motivating factor in his suspension and discharge, the burden of persuasion shifts to the Respondent to show, as an affirmative defense, that it would have taken the same actions notwithstanding Macias's union activities. Respondent, who did not appear at the hearing, has not done so. Therefore, I find that Respondent violated Section 8(a)(3) of the Act by suspending and discharging Macias because of his activities in support of the Union.[16]

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Guards Union of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining rules: compelling employees to cooperate with company investigations; requiring employees refrain from behavior which could reflect negatively on Respondent; prohibiting employees from contacting the news media and requiring prior approval before all interviews; and requiring employees to refrain from using inappropriate language, Respondent has violated Section 8(a)(1) of the Act.

4. By maintaining overly-broad and discriminatory rules in Policy and Procedure 1.1.14, Social Media Policy (Social Media Policy), and threatening employees with discharge if they violated the rules, Respondent has violated Section 8(a)(1) of the Act.

5. By directing employees to keep sexual harassment allegations and investigations confidential, and to not discuss the matter with anyone, Respondent has violated Section 8(a)(1) of the Act.

6. By requiring, as a condition of employment, that employees sign an Application Statement and Agreement that contains a mandatory arbitration agreement with overly-broad provisions, Respondent has violated Section 8(a)(1) of the Act.

7. By issuing a memorandum on September 27, 2016 directing employees to keep all investigations confidential and thereafter threatening employees with discipline if they did not do so, Respondent has violated Section 8(a)(1) of the Act.

[16] In so finding, I make no determination about the merits of the sexual harassment complaints lodged against Macias, nor am I crediting Macias's denial of the various accusations made against him by Gutierrez. Indeed, his trial testimony about the alleged sexual harassment incidents was generally not credible, as it was impeached by his written statement.

8. By suspending Ana Peña, and issuing her a final written warning, because she violated the overly-broad and discriminatory Social Media Policy, Respondent has violated Section 8(a)(1) of the Act.

9. By suspending and discharging Clemente Macias because he engaged in activities in support of the International Guards Union of America, Respondent has violated Section 8(a)(3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Specifically, having found that Respondent violated Section 8(a)(1) of the Act by suspending Ana Peña, and violated Section 8(a)(3) of the Act by suspending and discharging Macias, I shall order Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Respondent shall compensate Peña and Macias for any adverse tax consequences of receiving a lump-sum backpay award. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). Respondent shall also compensate Macias for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. *King Soopers, Inc.,* 364 NLRB No. 93 (2016).

Backpay, search-for-work, and interim employment expenses, shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), enf. denied on other grounds sub. nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Additionally, Respondent shall file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

The Respondent shall also be required to expunge from its files any and all references to the suspension and final warning issued to Peña, and the suspension and discharge issued to Macias, and notify them and the Regional Director of Region 28, in writing, that this has been done and that the wrongful discipline, suspensions, and discharge, will not be used against them in any way. The Respondent shall also post the attached notice in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010).

The General Counsel also seeks a nationwide notice posting as a remedy for the overly-broad rules contained in the employee standards of conduct and arbitration agreement. A nationwide notice posting is appropriate where the employer's unlawful rule is maintained on a company wide basis. See *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB No. 12, slip op. at 10–11 (2014) "[O]nly a company-wide remedy extending as far as the company-wide violation can remedy the damage." *Guardsmark, LLC. v. NLRB*, 475 F.3d 369, 381 (D.C. Cir. 2007). Here, however, it is not alleged in the consolidated complaint that the unlawful rules are maintained on a company-wide basis, nor did the General Counsel present any such evidence at trial. Accordingly, I find that a nationwide remedy is not appropriate.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[17]

ORDER

Respondent Emerald Correctional Management, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining rules: compelling employees to cooperate with company investigations; requiring employees refrain from behavior which could reflect negatively on Respondent; prohibiting employees from contacting the news media and requiring prior approval before all interviews; and requiring employees to refrain from using inappropriate language

(b) Maintaining overly-broad and discriminatory rules in Policy and Procedure 1.1.14, Social Media Policy, and threatening employees with discharge if they violate those rules.

(c) Directing employees to keep sexual harassment allegations and investigations confidential, and to not discuss the matter with anyone.

(d) Requiring, as a condition of employment, that employees sign an Application Statement and Agreement containing a mandatory arbitration provision with overly-broad provisions.

(e) Directing employees to keep all investigations confidential and thereafter threatening employees with discipline if they did not do so.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Suspending and disciplining employees for violating an unlawful Social Media Policy

(g) Suspending and firing employees for engaging in union activities.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the rules compelling employees to cooperate with company investigations, requiring employees refrain from behavior which could reflect negatively on the company, prohibiting employees from contacting the news media and requiring prior approval before all interviews, and requiring employees to refrain from using inappropriate language, and inform employees that the rules have been rescinded.

(b) Rescind the overly-broad and discriminatory Social Media Policy, and inform employees that rule has been rescinded.

(c) Rescind the directive that employees keep sexual harassment allegations and investigations confidential, and inform employees this directive has been rescinded.

(d) Rescind the mandatory arbitration provision containing an overly-broad provision in the Application Statement and Agreement, and inform employees it has been rescinded.

(e) Rescind the memorandum on September 27, 2016, directing employees to keep all investigations confidential, and inform employees this requirement has been rescinded.

(f) Make Ana Peña and Clemente Macias whole for any loss of earnings or other benefits suffered as a result of the discrimination against them in the matter set forth in the remedy section of this decision.

(g) Compensate Ana Peña and Clemente Macias for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, 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 years.

(h) Within 14 days from the date of this Order, remove from its files any references to the unlawful discipline and suspension of Ana Peña and the unlawful suspension and discharge of Clemente Macias, and within 3 days

thereafter, notify them in writing that this has been done and that the unlawful employment actions will not be used against them in any way.

(i) 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 the Order.

(j) Within 14 days after service by the Region, post at its San Luis, Arizona facility copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 28, 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 any of the facilities 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 the closed facilities any time since July 13, 2016.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 28 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.

Dated, Washington, D.C. October 19 2017

John T. Giannopoulos
Administrative Law Judge

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY 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 a representative 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 maintaining rules: compelling employees to cooperate with company investigations; requiring employees refrain from behavior which could reflect negatively on the company; prohibiting employees from contacting the news media and requiring prior approval before all interviews; and requiring employees to refrain from using inappropriate language.

WE WILL NOT maintaining overly-broad and discriminatory rules in our Social Media Policy, or threaten employees with discharge if they violate those rules.

WE WILL NOT direct employees to keep sexual harassment allegations and investigations confidential, and to not discuss the matter with anyone.

WE WILL NOT require, as a condition of employment, that employees sign an Application Statement and Agreement containing a mandatory arbitration provision with overly-broad provisions.

WE WILL NOT issue memoranda to employees directing them to keep all investigations confidential or threaten employees with discipline if they did not comply.

WE WILL NOT suspend or discipline employees for violating our unlawful Social Media Policy.

WE WILL NOT suspend or fire employees for engaging in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL rescind: (a) our rules compelling employees to cooperate with company investigations; (b) our rules requiring employees refrain from behavior which could reflect negatively on the company; (c) our rules prohibiting employees from contacting the news media and requiring prior approval before all interviews; (d) our rules requiring employees to refrain from using inappropriate language; and (d) the unlawful language contained in our Social Media Policy, and **WE WILL** either (1) advise employees that these unlawful rules have been rescinded; (2) provide employees with the language of the lawful rules; or (3) publish and distribute to current employees a revised policy that does not contain the unlawful rules.

WE WILL rescind the directive that employees keep sexual harassment allegations and investigations confidential, and to not discuss the matter with anyone, and inform employees the directive has been rescinded.

WE WILL rescind the overly-broad provisions in the mandatory arbitration provision of our Application Statement and Agreement, and inform employees of the rescission.

WE WILL rescind the memorandum directing employees keep all investigations confidential and inform employees the requirement has been rescinded.

WE WILL, within 14 days from the date of the Board's Order, offer Clemente Macias 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 Clemente Macias and Ana Peña whole for any loss of earnings and other benefits resulting from the discrimination against them, less any net interim earnings, plus interest.

WE WILL compensate Clemente Macias and Ana Peña for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 28, 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 years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline and suspension of Ana Peña and the unlawful suspension and discharge of Clemente Macias, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful employment actions will not be used against them in any way.

EMERALD CORRECTIONAL MANAGEMENT LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1400; Phoenix, AZ 85004-3099
(602) 640-2160; Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-188682 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 416-4755.