

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**TEXAS DENTAL ASSOCIATION**

**and**

**Cases 16-CA-25349  
and 16-CA-25455**

**NATHAN CLARK, an Individual**

**and**

**Case 16-CA-25383**

**BARBARA JEAN LOCKERMAN, an Individual**

**COUNSEL FOR GENERAL COUNSEL'S  
RESPONSE AND OPPOSITION TO RESPONDENT'S  
REQUEST FOR RECONSIDERATION OF ITS  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

**TO THE HONORABLE MEMBERS OF THE NATIONAL LABOR RELATIONS  
BOARD:**

COMES NOW, General Counsel, by the undersigned Counsel for the General Counsel, and in response and opposition to the entirety of Respondent's Request for Reconsideration of its underlying Motion for Partial Summary Judgment and moves as follows:

1.

On September 18, 2007, the undersigned and Region received a copy of Respondent's Motion for Partial Summary Judgment. Such Motion contained a certificate of service and postmark dated September 17, 2007.

2.

On September 24, 2007, Counsel for the General Counsel filed a Response and Opposition to Respondent's Motion for Partial Summary Judgment.

3.

On September 26, 2007, the Associate Executive Secretary of the National Labor Relations Board acknowledged receipt of Respondent's Motion for Partial Summary Judgment which contained a postmark and certificate of service dated September 19, 2007. The Associate Executive Secretary advised Respondent that its motion could not be forwarded to the Board for consideration because it was untimely.

4.

On September 27, 2007, Respondent filed a request for reconsideration of the Associate Executive Secretary's "suggestion that its motion for summary judgment was untimely." In its request, Respondent acknowledges that the hearing in this matter is set for October 15, 2007 and under normal circumstances, the last day for a timely filing of a motion for summary judgment would have been September 17, 2007. However, Respondent argues that under the circumstances of this case, its motion for summary judgment is timely because it was only required to file such promptly. Respondent argues that it filed its motion for summary judgment on September 19, 2007 or the same

day that the General Counsel filed a Second Amended Consolidated Complaint which set an answer due date of October 3, 2007 and hearing date of October 15, 2007. Citing Section 102.24(b) of the Boards Rules and Regulations, Respondent argues that the hearing in this case is scheduled less than 28 days after the date for filing an answer to the complaint and therefore it was only required to file its motion for summary judgment promptly. Respondent argues that the filing of its motion on the same day that the General Counsel filed its Second Amended Consolidated Complaint, which allegedly stated new allegations regarding TDA's summary judgment grounds, was prompt.

5.

In response to Respondent's request for reconsideration, Counsel for the General Counsel submits that the General Counsel and Region are unaware of and have not been served with a motion for partial summary judgment or motion for summary judgment dated September 19, 2007.

The only motion for summary judgment the General Counsel and the Region are aware of is Respondent's Motion for Partial Summary Judgment dated September 17, 2007 and received September 18, 2007. A true copy of such motion was attached to Counsel for the General Counsel's Response and Opposition to Respondent's Motion for Partial Summary Judgment filed on September 24, 2007. Counsel for the General Counsel urges that Respondent's underlying motion in this request for reconsideration be denied for the same reasons as set forth in the General Counsel's September 24, 2007 Response and Opposition.

6.

Although Respondent asserts that the General Counsel's Second Amended Consolidated Complaint stated new allegations, such assertion is not technically correct. The Second Amended Consolidated Complaint was issued in accordance with the Administrative Law Judge's Order Granting, in part, Respondent's Motion for Bill of Particulars. The Second Amended Consolidated Complaint merely provided additional information and cleaned up another pleading. Counsel for the General Counsel disputes Respondent's factual assertions to the contrary.

7.

Finally, Counsel for the General Counsel asserts that the Second Amended Consolidated Complaint was served upon Respondent via certified mail on September 19, 2007. The confirmation/delivery receipt reveals that such complaint was delivered to and received by Respondent and Respondent's counsel on September 24, 2007. As such, Counsel for the General Counsel questions the validity of any assertion that Respondent's September 19, 2007 motion for summary judgment was filed in response to the General Counsel's Second Amended Consolidated Complaint dated September 19, 2007.

**WHEREFORE, PREMISES CONSIDERED,** Counsel for the General Counsel respectfully urges that Respondent's Motion for Partial Summary Judgment, be denied for the foregoing reasons.

**DATED** at San Antonio, Texas, this 3<sup>rd</sup> day of October 2007.



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**Roberto Perez**  
**Counsel for the General Counsel**  
**National Labor Relations Board**  
**Region 16**  
**Travis Park Plaza Building**  
**711 Navarro, Suite 705**  
**San Antonio, TX 78205**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing Counsel for General Counsel's Response and Opposition to Respondent's Motion for Partial Summary Judgment has been served upon each of the following by telecopy or first class U.S. mail this 3<sup>rd</sup> day of October 2007.

National Labor Relations Board  
Attn: Lester A. Heltzer, Executive Secretary  
1099 14<sup>th</sup> Street, N.W., Room 11602  
Washington, DC 20570

Honorable William N. Cates, Associate Chief  
Administrative Law Judge  
401 West Peachtree Street, N.W., Suite 1708  
Atlanta, Georgia 30308-3510  
VIA FACSIMILE to 404-331-2061

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