Hearing Date and Time: September 17, 2020 at 10:00 a.m. (Eastern Time)
Objection Date and Time: September 10, 2020 at 4:00 p.m. (Eastern Time)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
RM Bakery LLC, *et al.*[1]	Case No. 20-11422-mg
	JOINTLY ADMINISTERED
Debtor	

NOTICE OF HEARING ON MOTION OF NATIONAL LABOR RELATIONS BOARD FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. § 503(b)(1)(A)(ii)

PLEASE TAKE NOTICE that a hearing on the annexed motion (the Motion) of the National Labor Relations Board (the Board) for entry of an Order pursuant to 11 U.S.C. § 503(b)(1)(A)(ii) and Rule 9014 of the Federal Rules of Bankruptcy Procedure for the allowance and payment of administrative expense will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, telephonically unless the judge orders otherwise, on **September 17, 2020 at 10:00 a.m. (Eastern Time) (the Hearing)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections (the Objections) to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules, shall be filed with the Bankruptcy Court (a) by attorneys

[1] The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0624).

practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with the *Order Implementing Certain Notice and Case Management Procedures*, entered on February 26, 2018 (ECF No. 35), so as to be filed and received no later than **September 10, 2020 at 4:00 p.m. (Eastern Time) (the Objection Deadline).**

PLEASE TAKE FURTHER NOTICE that any objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted to the Board.

Dated: August 24, 2020 at Albany, New York

/s/

Caroline V. Wolkoff (admitted *pro hac vice*)
National Labor Relations Board, Region 3
Leo W. O'Brien Federal Building
11A Clinton Avenue, Room 342
Albany, NY 12207-2350
Phone: (518) 431-4156
E-mail: caroline.wolkoff@nlrb.gov

Hearing Date and Time: September 17, 2020 at 10:00 a.m. (Eastern Time)
Objection Date and Time: September 10, 2020 at 4:00 p.m. (Eastern Time)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
RM Bakery LLC, *et al.*[1]	)	Case No. 20-11422-mg
	)	JOINTLY ADMINISTERED
Debtor	)	

MOTION OF NATIONAL LABOR RELATIONS BOARD FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. § 503(b)(1)(A)(ii)

The National Labor Relations Board (the Board), through its counsel, submits this Motion for Allowance and Payment of Administrative Expense (the Motion) pursuant to Section 503(b)(1)(A)(ii) of the Bankruptcy Code, 11 U.S.C. § 503(b)(1)(A)(ii), for the payment of post-petition wages and other benefits awarded as backpay pursuant to an Order of the Board. In support of this motion, the Board respectfully states as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper pursuant to federal law as set forth in 28 U.S.C. §§ 1408 and 1409.

3. The Board is the exclusive public agent chosen by Congress to enforce the National Labor Relations Act (the NLRA), 29 U.S.C. §§ 151-169, and is "a [bankruptcy] creditor as respects the back pay awards" it issues. *Nathanson v. NLRB*, 344 U.S. 25, 27 (1952). To wit,

[1] The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0624).

the Board is the forum with exclusive authority to evaluate the Debtor's potential unfair labor practice liability and to determine the appropriate amount of backpay. *Id.*

4. The undersigned, Paul J. Murphy, is the Regional Director of Region 3 of the Board and the statutory agent of the claimant authorized under the NLRA to make this motion. Section 8 of the NLRA, 29 U.S.C. § 158, makes certain employer and union conduct illegal as unfair labor practices. Pursuant to Section 10(a) of the NLRA, 29 U.S.C. § 160(a), the Board is empowered to prevent and remedy unfair labor practices, which are prosecuted by the Board's General Counsel and those under their supervision. The undersigned is thereby authorized by the Board to submit this request for allowance and payment of administrative expenses on its behalf for backpay and wages the Debtor owes to its employees under the NLRA based upon the facts described below.

5. The debt in unfair labor practice Case 02-CA-235116 is evidenced by the Second Circuit Court of Appeals Judgment and Mandate, dated December 27, 2019, enforcing the Board's Decision and Order, dated October 8, 2019, finding that the Debtor had committed unfair labor practices within the meaning of Section 8(a)(1) of the NLRA, 29 U.S.C. §§ 158(a)(1) and (5), by, *inter alia*¸ terminating or otherwise discriminating against its employees because they engaged in protected concerted activities. The Second Circuit Court of Appeals Judgment and Mandate and the Board's Decision and Order discussing these findings are attached as Exhibits 1 and 2, respectively. Among other things, they require the Debtor to make the affected employees whole by way of reimbursements for any losses they incurred as a result of the discrimination against them.

6. On August 24, 2020, the Board filed a proof of claim with this Court seeking funds to satisfy the Debtor's pre-petition liability, the amount of which was set forth in the proof of claim.

7. Potential backpay liability arising after the filing of the Debtor's bankruptcy petition is an administrative expense. Under § 503(b)(1)(A)(ii) of the Bankruptcy Code, "wages and benefits awarded pursuant to … a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title" is an administrative expense, regardless of "the time of the occurrence of unlawful conduct on which such award is based" or "whether any services were rendered." This Code section encompasses the remedy sought by the Board because the administrative post-petition wages requested herein are attributable to the period beginning on June 15, 2020, the filing date of the Debtor's petition. The Board is not seeking payment of the entire backpay remedy as an administrative expense because portions of the backpay are sought in its proof of claim.

8. Consistent with the Supreme Court's holding in *Nathanson* that "it is the Board ... that has been entrusted by Congress with authority to determine what measures will remedy ... unfair labor practices," computation of the backpay remedy rests properly with the Board. 344 U.S. at 30. Indeed, the *Nathanson* Court held that "wise administration therefore demands that the bankruptcy court accommodate itself to the administrative process and refer to the Board the liquidation of the [backpay] claim." *Id.*

9. The Board's request for payment of administrative expenses herein is based on the Board's Order, dated May 9, 2018, which requires the Debtor to make the affected employees whole by way of reimbursements for any losses they incurred because the Debtor terminated or otherwise discriminated against them because they engaged in protected concerted

activities. This motion for administrative expenses covers the period of time from June 15, 2020 through August 12, 2020. The Debtor's post-petition liability is currently estimated at $29,682.40. This is a combined figure that includes wages, interest, excess tax liability, and the carryover amount of backpay and interest from the period preceding Debtor's petition over the maximum amount that can receive wage claim priority. Exhibit 3 attached herein sets forth calculations of Debtor's administrative expenses.

10. The Board estimates that a total of five employees suffered post-petition lost wages as a result of the Debtor's unfair labor practices. The amounts set forth in Exhibit 3 were calculated by the Board based on records provided by the Debtor.

WHEREFORE, the Board respectfully submits this Motion for Allowance and Payment of Administrative Expense and requests that, after notice and hearing, the Court issue an order granting the Motion allowing the National Labor Relations Board an administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A)(ii) in the amount of $29,682.40.

Dated: August 24, 2020.

Respectfully submitted,

/s/

PAUL J. MURPHY
Regional Director
National Labor Relations Board, Region 3
Niagara Center Building
130 South Elmwood Avenue, Suite 630
Buffalo, NY 14202

EXHIBIT 1

MANDATE
Case: 19-3716, Document: 72-2, 12/27/2019, 2739221, Page1 of

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of December, two thousand nineteen.

Present:

Peter W. Hall,
Debra Ann Livingston,
Richard J. Sullivan,
Circuit Judges.

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 19-3716
v.	:	
	:	Board Case No.:
RM BAKERY, LLC D/B/A LEAVEN & CO., A WHOLLY-OWNED SUBSIDIARY OF BKD GROUP, LLC	:	02-CA-235116
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, RM Bakery, LLC d/b/a Leaven & Co., a wholly-owned subsidiary of BKD Group, LLC, its officers, agents, successors, and assigns, enforcing its order dated October 8, 2019, in Case No. 02-CA-235116, reported at 368 NLRB No. 90, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, RM Bakery, LLC d/b/a Leaven & Co., a wholly-owned subsidiary of BKD Group, LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

MANDATE ISSUED ON 12/27/2019

Case: 19-3716, Document: 42, 12/17/2019, 2734021, Page2 of 2

Mandate shall issue forthwith.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



Case 19-7216, Document 42, 12/17/2019, 2734021, Page3 of 5

NATIONAL LABOR RELATIONS BOARD

v.

RM BAKERY, LLC D/B/A LEAVEN & CO.,
A WHOLLY-OWNED SUBSIDIARY OF BKD GROUP, LLC

ORDER

RM Bakery, LLC d/b/a Leaven & Co., a wholly-owned subsidiary of BKD Group, LLC, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   (a) Terminating or otherwise discriminating against its employees because they engaged in protected concerted activities.

   (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

   (a) Within 14 days from the date of this Order, offer Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

   (b) Make Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful terminations, in the manner set forth in the remedy section of this decision.

   (c) Compensate Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 2, 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 year for each employee.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful terminations of Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown, and within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful terminations will not be used against them in any way.

(e) 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 this Order.

(f) Within 14 days of service by the Region, post at its Bronx, New York facility copies of the attached notice marked "Appendix" in both English and Spanish. Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 2, 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 the facility 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 any time since October 10, 2018.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 2 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.

Case: 19-3716, Document: 42, 12/17/2019, 2734202, Page5 of

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN 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 representatives 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 terminate you because you engaged in protected concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful terminations, less any net interim earnings, plus interest, and WE WILL also make those employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 2, 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 year for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful terminations of Juan Carlos Abarca, Nestor

Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown, and WE WILL within 3 days thereafter, notify them in writing that this has been done and that the unlawful terminations will not be used against them in any way.

RM BAKERY, LLC D/B/A LEAVEN & CO., A WHOLLY-OWNED SUBSIDIARY OF BKD GROUP, LLC

The Board's decision can be found at http://www.nlrb.gov/case/02-CA-235116 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.

EXHIBIT 2

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

RM Bakery, LLC d/b/a Leaven & Co., a wholly-owned subsidiary of BKD Group, LLC *and* Make the Road New York. Case 02–CA–235116

October 8, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent, RM Bakery, LLC d/b/a Leaven & Co., a wholly-owned subsidiary of BKD Group, LLC, has failed to file an answer to the complaint. Upon a charge and amended charge filed by Make the Road New York on January 30 and April 1, 2019,[1] respectively, the General Counsel issued a complaint on June 10 against the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On July 8, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On July 10, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.[2]

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on 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, unless good cause is shown. In addition, the complaint affirmatively stated that, unless an answer was received by June 24, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and electronic mail dated June 24, notified the Respondent that unless an answer was filed by July 1, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer or request an extension of time to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability corporation of Delaware with an office and place of business located at 220 Coster Street, Bronx, New York 10474 (the facility), and has been engaged in the production and the non-retail sale of baked goods.

During the 12-month period ending April 25, the Respondent sold and shipped, from the facility, goods valued in excess of $50,000 directly to points outside the State of New York.

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

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Dan Wilczynski	-	Executive Vice President
Norman Rich	-	Chief Financial Officer
Daniel Kain	-	Route Manager
Victor Colado	-	Route Manager

2. On or about September 28, 2018, the Respondent failed to pay its employees Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for hours worked.

3. On or about October 5, 2018, the Respondent failed to pay its employees Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for hours worked.

4. On or about October 9, 2018, the Respondent employees Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown ceased work concertedly and engaged in a one-day strike in protest of the Respondent's failure to pay employees.

5. On or about October 10, 2018, the Respondent terminated employees Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown.

[1] All dates are in 2019 unless otherwise indicated.

[2] On August 5, the General Counsel filed a Motion to Expedite Default Judgment and Board Order asserting the urgency of a final Board Order to remedy the Respondent's unlawful conduct and to mitigate the resulting chilling effect on the remaining employees' exercise of their Sec. 7 rights. The Respondent also filed no response to this motion. We deny this motion as moot in light of our disposition of the case.

6. The Respondent engaged in the conduct described above in paragraph 5 because Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown engaged in the conduct described above in paragraph 4 and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by terminating employees Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for engaging in protected concerted activity, we shall order the Respondent to offer these employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay 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).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate the employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, we shall order the Respondent to compensate the named employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 2 allocating the backpay award to the appropriate calendar year for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful terminations of Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown and to notify them in writing that this has been done and that the unlawful terminations will not be used against them in any way.[3]

ORDER

The National Labor Relations Board orders that the Respondent, RM Bakery, LLC d/b/a Leaven & Co., a wholly-owned subsidiary of BKD Group, LLC, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or otherwise discriminating against its employees because they engaged in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days from the date of this Order, offer Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful terminations, in the manner set forth in the remedy section of this decision.

(c) Compensate Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 2, 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 year for each employee.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful terminations of Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown, and within 3 days thereafter, notify the employees in writing that

[3] In the complaint, the General Counsel requests that the notice be posted in English and Spanish. We grant this request.

this has been done and that the unlawful terminations will not be used against them in any way.

(e) 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 this Order.

(f) Within 14 days of service by the Region, post at its Bronx, New York facility copies of the attached notice marked "Appendix" in both English and Spanish.[4] Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 2, 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 the facility 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 any time since October 10, 2018.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 2 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 8, 2019

_____

John F. Ring, Chairman

_____

Lauren McFerran, Member

_____

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] 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 representatives 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 terminate you because you engaged in protected concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful terminations, less any net interim earnings, plus interest, and WE WILL also make those employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 2, 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 year for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful terminations of Juan Carlos Abarca, Nestor Marquez, Rene Moran, Gilberto Paniura, and Clayton Brown, and WE WILL within 3 days thereafter, notify them in writing that this has been done and that the unlawful terminations will not be used against them in any way.

RM BAKERY, LLC D/B/A LEAVEN & CO., A WHOLLY-OWNED SUBSIDIARY OF BKD GROUP, LLC

The Board's decision can be found at http://www.nlrb.gov/case/02-CA-235116 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.

EXHIBIT 3

Administrative Priority: Backpay Accruing Post 6/15/20 Petition				
Employee	Net Backpay	Compound Interest	Excess Taxes	Total
Abarca, Juan Carlos	$9,270.00	n/a	$ -	$9,270.00
Brown, Clayton	$7,452.40	n/a	$ -	$7,452.40
Marquez, Nestor	$4,950.00	n/a	$ -	$4,950.00
Moran, Rene	$6,750.00	n/a	$ -	$6,750.00
Paniura, Gilbero	$1,260.00	n/a	$ -	$1,260.00
Total	$29,682.40	n/a	$ -	**$29,682.40**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
RM Bakery LLC, *et al.*[1]	)	Case No. 20-11422-mg
	)	JOINTLY ADMINISTERED
Debtor	)	

ORDER GRANTING MOTION OF NATIONAL LABOR RELATIONS BOARD FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. § 503(b)(1)(A)(ii)

This matter came before the court on <date> upon the Motion of the National Labor Relations Board (the Board) for Allowance and Payment of Administrative Expense pursuant to 11 U.S.C. § 503(b)(1)(A)(ii) (the Motion). Notice of the Motion having been appropriately given, the Court now finds that the Board is requesting a payment of post-petition wages and benefits from RM Bakery LLC, *et al* (Debtor) which were awarded pursuant to a proceeding of the National Labor Relations Board as back pay attributable to the period of time from June 15, 2020 through August 12, 2020 as a result of a violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the NLRA), 29 U.S.C. §§ 158(a)(1) and (5). The Debtor filed its bankruptcy petition on June 15, 2020 under Chapter 11 of Title 11 of the United States Bankruptcy Code. The violations committed by the Debtor include, *inter alia*, terminating or otherwise discriminating against its employees because they engaged in protected concerted activity. The Debtor's violation of the NLRA referenced above resulted in a benefit to the

[1] The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's taxpayer identification number are as follows: RM Bakery LLC (7954) and BKD Group LLC (0624).

Debtor for which the Debtor is indebted to the Board in the amount of Twenty-Nine Thousand Six Hundred Eighty-Two and 40/100 Dollars ($29,682.40). Accordingly,

IT IS HEREBY ORDERED that the Board shall have an allowed administrative expense claim in the amount of $29,682.40 against the Debtor pursuant to the United States Bankruptcy Code § 503(b)(1)(A)(ii), that it is entitled to an administrative expense priority in payment pursuant to United States Bankruptcy Code § 503(b)(1)(A)(ii), and that the Debtor is directed to make immediate payment of such amount to the Board not more than ten (10) days from the date of this Order.

IT IS SO ORDERED.

Dated: _____, 2020

_____
UNITED STATES BANKRUPTCY JUDGE