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**NEVADA OCCUPATIONAL SAFETY AND HEALTH
REVIEW BOARD**

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**CHIEF ADMINISTRATIVE OFFICER
OF THE OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION OF
THE DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY, STATE
OF NEVADA,**

**Docket No. LV 19-1986
Inspection No. 1350498**

Complainant,

vs.

CLUB K9, LLC,

Respondent.

**DECISION AND ORDER OF THE BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER**

This case arose out of an investigation of an anonymous Notice of Alleged Safety or Health Hazard. The State's investigation of that complaint resulted in the issuance of one citation which detailed eight serious violations of health and safety regulations.

The matter came for hearing before the Nevada Occupational Safety and Health Review Board (the Board) on Thursday, July 11, 2020, at 3:36 p.m. *See*, 1Tr., p. 5¹. At 4:36 p.m. of that day, the hearing was continued to its conclusion. *See*, 2Tr., p. 3. The hearing was conducted in furtherance of a duly provided notice. *See*, Notice of Hearing dated April 22, 2019.

¹"1Tr." stands for the transcript of the hearing conducted on July 11, 2020, at 3:36 p.m., followed by the page and line number where the matter cited can be found. "2Tr." stands for the transcript of the deliberations conducted on July 11, 2020, at 4:36 p.m.

1 The Board members in attendance to hear the matter were Secretary/Acting Chairman
2 Rodd Weber, and members Jim Halsey and Frank Milligan. *See*, 1Tr., p. 2. The same Board
3 members deliberated the case during its continuation. *See*, 2Tr., p. 2.

4 Salli Ortiz, Esq., counsel for the Chief Administrative Officer of the Occupational Safety
5 and Health Administration of the Division of Industrial Relations of the Department of Business
6 and Industry (the State), appeared at the first hearing on behalf of the Complainant (the State).
7 *See*, 1Tr., p. 2. No one, legal counsel or other representative, appeared on behalf of Respondent,
8 Club K9, LLC, (hereinafter Respondent or Club K9). *See*, 1Tr., p. 9;7-22.

9 Jurisdiction in this matter is conferred by Chapter 618 of the Nevada Revised Statutes,
10 NRS 618.315. Jurisdiction was not disputed. As there were three members of the Board present
11 to decide the case, with at least one member representing management and one member
12 representing labor in attendance, a quorum was present to conduct the business of the Board.

13 A complaint may be prosecuted for circumstances which arise before or during an
14 inspection of the employer's workplace. *See*, NRS 618.435(1). Nevada has adopted all Federal
15 Occupational Safety and Health Standards which the Secretary of Labor has promulgated,
16 modified or revoked and any amendments thereto. They are then deemed the Nevada
17 Occupational Safety and Health Standards. *See*, NRS 618.295(8).

18 The Notice of Alleged Safety or Health Violations generally alleged that hazardous
19 chemicals are used by the business and that proper safety procedures for the possession and use
20 of those chemicals are not followed. *See*, State's Exhibit 1, p. 4. The State inspected the facility
21 on October 2, 2018. *See*, State's Exhibit 1, pp. 10-16. As the result of this inspection the State
22 issued a Citation and Notice of Penalty which recommended a \$9,450 fine. *See*, State's Exhibit 1,
23 pp. 47-63.

24 The Citation and Notice of Penalty were issued on January 14, 2019. *See*, State's Exhibit
25 1, p. 61. Respondent, through its agent, Susan Davis (Davis), initially notified the State of its
26 intent to contest the matter on February 1, 2019. *See*, State's Exhibit 1, p. 64. Davis is the owner
27 of the business. *See*, 1Tr., pp. 9;24, 14;2, 21;19. Davis elected to eschew the employment of an
28 attorney and represented the business as a lay person throughout the proceedings. On February 5,

1 2019, Davis withdrew her intent to contest to participate in an informal conference. *See*, State's
2 Exhibit 1, pp. 65, 66. The informal conference occurred on February 11, 2019. *Id.* However, the
3 parties were unable to reach a resolution. *Id.*

4 Thereafter, Davis resigned her original contest letter, dating it February 11, 2019. *See*,
5 State's Exhibit 1, p. 64. On March 1, 2020, the State filed its formal Complaint for resolution by
6 the Review Board. *See*, State's Exhibit 1, pp. 69 through 76. Davis answered the complaint on
7 March 21, 2019. *See*, State's Exhibit 1, pp. 85-86. Davis was given notice of the proceedings by
8 first class, certified mail, return receipt requested. *See*, Notice of Hearing dated April 22, 2019.
9 Club K9 was accordingly properly noticed of the date, time and place of the hearing on the merits
10 of the State's complaint. *See*, NAC 618.707(3).

11 Davis did not attempt to obtain a continuation of the hearing in order to secure legal
12 representation or for any other purpose. *See*, 1Tr., pp. 9;23-25, 10;1-21. Instead she failed to
13 appear or to have anyone else appear on behalf of Club K9 for the hearing on the merits on July
14 11, 2020. The hearing commenced, so noticed, without the appearance or defense afforded Club
15 K9.

16 The Complaint sets forth the allegations of the violation of eight Federal Regulations.
17 *See*, State's Exhibit 1, pages 69 through 77. Citation 1, Item 1(a), charged a serious violation of
18 29 CFR § 1910.132(d)(1)(i), as stated below:

19 The employer shall assess the workplace to determine if hazards are present, or
20 are likely to be present, which necessitate the use of Personal Protective
21 Equipment (PPE). If such hazards are present, or likely to be present, the
22 employer shall: Select, and have each affected employee use, the types of PPE that
23 will protect the affected employee from the hazards identified in the hazard
24 assessment;

25 Citation 1, Item 1(b), alleged a serious violation of 29 CFR § 1910.132(d)(1)(ii), which states:

26 The employer shall assess the workplace to determine if hazards are present, or
27 are likely to be present, which necessitate the use of Personal Protective
28 Equipment (PPE). If such hazards are present, or likely to be present, the
29 employer shall: Communicate selection decisions to each affected employee;

1 Citation 1, Item 1(c), alleged a serious violation of 29 CFR § 1910.132(d)(2), which states:

2 The employer shall verify that the required workplace hazard assessment has been
3 performed through a written certification that identifies the workplace evaluated;
4 the person certifying that the evaluation has been performed; the date(s) of the
5 hazard assessment; and, which identifies the document as a certification of hazard
6 assessment.

7 Citation 1, Item 2, alleged a serious violation of 29 CFR § 1910.133(a)(1), which states:

8 The employer shall ensure that each affected employee uses appropriate eye or
9 face protection when exposed to eye or face hazards from flying particles, molten
10 metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or
11 potentially injurious light radiation.

12 Citation 1, Item 3(a), alleged a serious violation of 29 CFR § 1910.1200(e)(1), which states:

13 Employers shall develop, implement, and maintain at each workplace, a written
14 hazard communication program which at least describes how the criteria specified
15 in paragraphs (f), (g), and (h) of this section for labels and other forms of warning,
16 safety data sheets, and employee information and training will be met.

17 Citation 1, Item 3(b), alleged a serious violation of 29 CFR § 1910.1200(e)(1)(i), which states:

18 A list of the hazardous chemicals known to be present using a product identifier
19 that is referenced on the appropriate safety data sheet (the list may be compiled for
20 the workplace as a whole or for individual work areas).

21 Citation 1, Item 4, alleges a serious violation of 29 CFR § 1910.1200(g)(8), which states:

22 The employer shall maintain in the workplace copies of the required safety data
23 sheets for each hazardous chemical, and shall ensure that they are readily
24 accessible during each work shift to employees when they are in their work
25 area(s). (Electronic access and other alternatives to maintaining paper copies of
26 the safety data sheets are permitted as long as no barriers to immediate employee
27 access in each workplace are created by such options.)

28 Citation 1, Item 5, alleged a serious violation of 29 CFR § 1910.1200(h)(1), which states:

Employers shall provide employees with effective information and training on
hazardous chemicals in their work area at the time of their initial assignment, and
whenever a new physical or health hazard the employees have not previously been
trained about is introduced into their work area. Information and training may be
designed to cover categories of hazards (e.g, flammability, carcinogenicity) or
specific chemicals. Chemical specific information must always be available
through labels and material safety data sheets.

Each of the State's Exhibits, Numbers 1 and 2, consisting of pages 1 through 111, were
admitted into evidence without out objection. 1Tr., p. 11;10-15. This is because Club K9 failed
to appear and mount any defense to the State's complaint. *See, Id.* The findings also are not in

1 dispute because Club K9 failed to respond to the State's request for the production of documents
2 and records and because Club K9 did not appear to defend against the charges in the Complaint.

3 FINDINGS OF FACTS

4 Club K9 is the employer. Club K9 is a limited liability company organized under the laws
5 of the State of Nevada. *See*, State's Exhibit 1, pp., 1-3. Club K9 operates at a single location,
6 224 N. Jones Blvd., Las Vegas, Nevada, 89107. Club K9 is in the pet care services business.

7 On September 26, 2018, the State received a Notice of Alleged Safety or Health Hazards.
8 *See*, State's Exhibit 1, p. 4. Therein, the complainant alleged:

9 1. That there are many hazardous chemicals that employees use that are unlabeled or
10 improperly labeled.

11 2. Employees that are required to use chemicals on a daily basis are not provided
12 with any training.

13 3. The Employer does not maintain any Safety Data Sheets.

14 4. There is no eye wash provided for employees that are required to work with
15 caustic chemicals.

16 5. There is no Personal Protective Equipment (PPE) provided to employees that
17 work with hazardous chemicals. *Ibid.*

18 On October 2, 2018, the State conducted an inspection of the facility. *See*, State's Exhibit
19 1, p. 5. The State's inspectors were Crystal Burgess, John Hutchinson and Ralph Poznecki. *See*,
20 1Tr., p. 3. At approximately 10:25 a.m., the State conducted its opening conference with Davis.
21 *See*, State's Exhibit 1, p. 5. Davis consented to OSHA's inspection of the premises. *See, Id.*
22 During the inspection, the State substantiated the allegations that: 1) the employees were required
23 to use, on a daily basis, hazardous chemicals for which they had never received any safety
24 training (*See*, State's Exhibit 1, p. 14); 2) that safety data sheets were not maintained for each
25 hazardous chemical used by the facility (*See, Id.*); and, 3) no personal protective equipment was
26 provided to employees who work with hazardous chemicals (*See, Id.*). The specific hazardous
27 chemicals were Health Technology's Triple Two Disinfectant Cleaner and ZEP Fast 505 Cleaner
28 Degreaser. *See*, 1Tr., 44;22-25, 45;1, *see also*, State's Exhibit 2, pp. 93-111. Those products are

1 identified on manufacturers' safety data sheets as being corrosive. *See*, State's Exhibit 2, pp. 99,
2 110. The products can cause irreversible eye damage, skin burns and organ damage. *See, Id.*

3 During the inspection, it was determined that Respondent failed to select which Personal
4 Protective Equipment (PPE) would be appropriate for the employees as protection from injury by
5 the aforementioned products. *See*, State's Exhibit 1, pp. 14, 23, *see also*, 1Tr., p. 32;8-14. The
6 State proposed a fine of \$1,890 for the alleged violation of 29 CFR § 1910.132(d)(1)(i). *See, Id.*

7 During the inspection it was determined that the Respondent failed to communicate to its
8 employees which PPE would be appropriate for each affected employee for the hazardous
9 chemical products being used. *See*, 1Tr., p. 36;8-4. It is important that the employer communicate
10 its specific choice of PPE because the effectiveness of the choice is a function of the hazards at
11 issue. *See*, 1 Tr., pp. 35;22-25, 36;1-3. The State did not propose a fine for the alleged violation
12 of 29 CFR § 1910.132(d)(1)(ii) because it was a grouped citation. *See*, State's Exhibit 1, p. 27,
13 *see also*, 1Tr., p. 35;3-12. A grouped citation is two or more violations which can be corrected
14 with a single action. *See*, 1Tr., p. 35;3-12.

15 During the inspection it was determined that the Respondent failed to conduct a hazard
16 assessment for PPE. This includes a written certification that identifies the workplace, the person
17 certifying, the date(s) of assessment, and the documents of the certification of the hazard
18 assessment. *See*, State's Exhibit 1, p. 29, *see also*, 1Tr., p. 37;19-25, 38;1. The State did not
19 propose a fine for the alleged violation of 29 CFR § 1910.132(d)(2) because it was a grouped
20 citation. *See*, State's Exhibit 1, p. 30, *see also*, 1Tr., p. 35;3-12.

21 During the inspection it was determined that the Respondent failed to have appropriate
22 eye and face protection for employees exposed to chemicals, acids or caustic liquids. Eye
23 protection, such as safety glasses or protective goggles, protective gloves and suitable protective
24 clothing are required by the products' Safety Data Sheets. *See*, State's Exhibit 1, p. 32, *see also*,
25 1Tr., p. 39;3-9. The State found this to be a serious violation and proposed a fine of \$1,890 for
26 the alleged violation of 29 CFR § 1910.133(a)(1). *See*, State's Exhibit 1, p. 33

27 During the inspection it was determined that the Respondent failed to develop a written
28 Hazard Communication Program which, at least, describes the minimum requirements set forth

1 in the standard. Eye protection, such as safety glasses or protective goggles, protective gloves and
2 suitable protective clothing are required by the products' Safety Data Sheets. *See*, State's Exhibit
3 1, p. 35, *see also*, 1Tr., p. 41;20-23. The State found this to be a serious violation and proposed a
4 fine of \$1,890 for the alleged violation of 29 CFR § 1910.1200(e)(1). *See*, State's Exhibit 1, p.
5 36.

6 During the inspection it was determined that the Respondent failed to have a list of
7 hazardous chemicals known to be present using a product identifier that is referenced on the
8 appropriate safety data sheet. *See*, State's Exhibit 1, p. 38, *see also*, 1Tr., pp. 42;1-25, 43;1-5.
9 The State classified Citation 1, Item 3(b) as a serious violation. However, because this was a
10 grouped citation, no additional penalty was proposed. *See*, State's Exhibit 1, p. 39.

11 During the inspection it was determined that the Respondent failed to maintain copies of
12 the required Safety Data Sheets for each hazardous chemical. *See*, State's Exhibit 1, p. 41, *see*
13 *also*, 1Tr., pp. 42;1-25, 43;17-24. The State found this to be a serious violation and proposed a
14 fine of \$1,890 for the alleged violation of 29 CFR § 1910.1200(g)(8). *See*, State's Exhibit 1, p.
15 42.

16 During the inspection it was determined that the Respondent failed to train its employees
17 on the hazardous chemicals used on a daily basis. Training is to be given to employees when they
18 use hazardous chemicals. *See*, State's Exhibit 1, p. 44, *see also*, 1Tr., pp. 44;15-25, 45;1-17. The
19 State found this to be a serious violation and proposed a fine of \$1,890 for the alleged violation
20 of 29 CFR § 1910.1200(h)(1). *See*, State's Exhibit 1, p. 45.

21 During the inspection, Davis was presented with a Request for Document & Records.
22 *See*, State's Exhibit 2, p. 92. This requested documents regarding her business and her OSHA
23 compliance. *See, Id.* The deadline for the receipt of these documents was 5:00 p.m. on October 9,
24 2019. Davis did not provide any of the requested documentation. *See*, 1Tr., pp. 24;21-25, 25;1-3.

25 Each of the violations were viewed as serious because there was a substantial probability
26 of serious injury or death should an accident occur involving the hazardous chemicals. *See*, 1Tr.,
27 46;9-14. Injuries from these conditions were also viewed as being probable, likely that injury will
28 occur from the use of the hazardous chemicals. *See*, 1Tr., 47;13-15. This likelihood is determined

1 by looking at the danger posed by the chemicals, the number of workers exposed, the frequency
2 of the employees' exposure and experience level of the employees. *See*, 1Tr., 47;16-23.

3 The gravity of the violations is the starting point for the calculation of the penalty. *See*,
4 1Tr., 48;3-6. Gravity is a function of the probability of an injury and the severity of the injury,
5 should one occur. In this case, the gravity was considered high resulting in base penalties of
6 \$7,000. *See*, 1Tr., 48;7-9. The base penalties were then reduced by 70% because Club K9 is a
7 small business. *See*, 1Tr., 48;11-16. The remaining \$2,100 penalty was then subject to a further
8 reduction because there have been no serious violations for the last five years. *See*, 1Tr., 48;11-16.
9 Based upon the above, the amount of \$1,890 was proposed for each of the five violations for
10 which a fine was assessed. *See*, 1Tr., p. 48;10-20. This brought the total assessment against Club
11 K9 to \$9,450. *See*, State's Exhibit 1, p. 61.

12 As a final matter, Davis never responded to the Request for Document & Records. *See*,
13 1Tr., pp. 24;21-25, 25;1-3. The failure to respond to an official request was viewed as a lack
14 concern for the health and safety of Club K9's employees. *See*, 2Tr., pp. 4;21-25, 5;1-16.

15 CONCLUSIONS OF LAW

16 To the extent that any of the above findings of fact constitute conclusions of law or mixed
17 findings of fact and conclusions of law, they are incorporated herein.

18 The burden is on the State to prove by a preponderance of the evidence, a *prima facie* case
19 against the respondent. *See*, NAC 618.788(1), *see also*, *Original Roofing Company LLC v. Chief*
20 *Administrative Officer of the Nevada OSHA*, 442 P.3d 146, 149 (Nev. 2019). Thus, in matters
21 before the Board of Review, the State must establish: (1) the applicability of a standard being
22 charged; (2) the presence of a non-complying condition; (3) employee exposure or access to the
23 non-complying condition; and, (4) the actual or constructive knowledge of the employer's
24 violative conduct. *Id.* at 149, *see also*, *American Wrecking Corp. v. Secretary of Labor*, 351 F.3d
25 1254, 1261 (D.C. Cir., 2003).

26 Club K9, after reversing its position and deciding to contest the complaint levied by the
27 State against it, inexplicably failed and/or refused to appear to contest the case against Club K9,
28 though properly noticed of the time, date and place of the hearing. *See*, Notice of Hearing dated

1 April 22, 2019. Thus, the body of evidence and testimony amassed by the State was admitted into
2 evidence without objection. And, since Club K9 had failed to respond with documents and
3 records of its own in response to the State's request for production, the State's gathering in
4 evidence in support of the charges it has levied against Club K9, was admitted into evidence
5 without subtraction by Club K9, as the Respondent failed to challenge any of the State's evidence.
6 *See*, 1Tr., p. 11;10-12. And, the State's witnesses, Crystal Burgess, John Hutchinson and Ralph
7 Poznecki, were never challenged by Club K9 either.

8 As explained below, *prima facie* cases were made by the State, unchallenged by Club K9
9 for each citation brought by the State. And the State is entitled in each instance to the relief being
10 sought.

11 In Citation 1, Items 1(a), (b) and (c), there is no dispute that 29 CFR §§ 1910.132(d)(1)(i),
12 132(d)(1)(ii) and 1910.132(d)(2) are regulatory in nature and that they apply to Club K9. As an
13 employer, Club K9 must select and provide PPE appropriate for the applicable hazards,
14 communicate to the employees the PPE selected and perform a workplace hazard assessment. It
15 is beyond dispute that Club K9 did not perform any of the functions required of it pursuant to 29
16 CFR §§ 1910.132(d)(1)(i), 132(d)(1)(ii) and 1910.132(d)(2).

17 In Citation 1, Item 2, there is no dispute that 29 CFR § 1910.133(a)(1) is regulatory in
18 nature and that it applies to Club K9. As an employer, Club K9 must provide appropriate eye and
19 face protection for employees exposed to chemicals, acids and caustic liquids. It is beyond dispute
20 that Club K9 did not supply the materials required of it pursuant to 1910.133(a)(1).

21 In Citation 1, Items 3(a) and (b), there is no dispute that 29 CFR §§ 1910.1200(e)(1) and
22 1910.1200(e)(1)(i) are regulatory in nature and that they apply to Club K9. It is beyond dispute
23 that Club K9 neither developed a written hazard communications program nor provided a list of
24 hazardous chemicals known to be present using product identifiers pursuant to 29 CFR §§
25 1910.1200(e)(1) and 1910.1200(e)(1)(i).

26 In Citation 1, Item 4, there is no dispute that 29 CFR § 1910.1200(g)(8) is regulatory in
27 nature and that it applies to Club K9. As an employer, Club K9 must maintain copies of the
28 applicable safety data sheets for each hazardous chemical to be used by the employees. It is

1 beyond dispute that Club K9 did not maintain copies of the applicable safety data sheets for each
2 hazardous chemical pursuant to 29 CFR § 1910.1200(g)(8).

3 In Citation 1, Item 5, there is no dispute that 29 CFR § 1910.1200(h)(1) is regulatory in
4 nature and that it applies to Club K9. As an employer, Club K9 must train its employees regarding
5 the hazardous chemicals used on a daily basis. It is beyond dispute that Club K9 did not train its
6 employees on the use of each hazardous chemical pursuant to 29 CFR § 1910.1200(h)(1).

7 **FINAL ORDER**

8 Accordingly, the State OSH Board of Review sustains Citation 1, Items 1(a), (b) and (c),
9 2, 3(a) and (b), 4 and 5 and the total penalty of \$9,450. It was moved by Frank Milligan, seconded
10 by Jim Halsey to sustain Citation 1, Items 1(a), (b) and (c), 2, 3(a) and (b), 4 and 5 and to assess
11 each fine as levied, totaling \$9,450. The motion was adopted on a vote of three in favor of the
12 motion, no votes against the motion.

13 This is the Final Order of the Board.

14 IT IS SO ORDERED.

15 On October 12, 2022 the Board convened to consider adoption of this decision, as written
16 or as modified by the Board, as the decision of the Board.

17 Those present and eligible to vote on this question consisted of the four current members
18 of the Board, to-wit, William Steinberg, Frank Mulligan, Jorge Macias and Scott Fullerton. The
19 Board had changed over in personnel at the time of this hearing. Acting Chairman William
20 Spielberg and members Jorge Macias and Scott Fullerton were eligible to vote because they had
21 read the transcripts, the pleadings and the exhibits offered and admitted into evidence (*e.g.*, the
22 record). *See*, NRS 233B.124. Upon a motion by Frank Milligan, seconded by Scott Fullerton,
23 the Board voted 4-0 to approve this Decision of the Board as the action of the Board and to
24 authorize William Spielberg, the Acting Chairman, after any grammatical or typographical errors
25 are corrected, to execute, without further Board review this Decision on behalf of the Nevada
26 Occupational Safety and Health Review Board. Those voting in favor of the motion either
27 attended the hearing on the merits or had in their possession the entire record before the Board
28 upon which the decision was based.

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On October 12, 2022 this Decision is, therefore, hereby adopted and approved as the Final Decision of the Board of Review.

Dated this 18 day of October, 2022.

NEVADA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

By: William Spielberg
William Spielberg, Acting Chairman

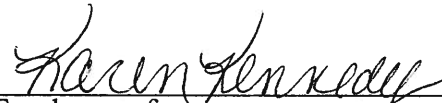
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Charles R.
3 Zeh, Esq., and that on this date I served the attached document, *Decision and Order of the Board,*
4 *Findings of Fact and Conclusions of Law, and Final Order,* on those parties identified below by
5 placing an original or true copy thereof in a sealed envelope, certified mail/return receipt
6 requested, postage prepaid, placed for collection and mailing in the United States Mail, at Reno,
7 Nevada:

8 Salli Ortiz, Esq.
9 DIR Legal
400 West King Street, Suite 201
Carson City, NV 89703

10 Susan Davis
11 Club K9, LLC
224 N. Jones Blvd.
12 Las Vegas, NV 89107

13 Dated this 20th day of October, 2022.

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16 _____
Employee of
The Law Offices of Charles R. Zeh, Esq.

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19 S:\Clients\OSHA\LV 19-1986, Club K9, LLC\Decision R10.wpd

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