UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FOOD SERVICES OF AMERICA, INC.,
a subsidiary of SERVICES GROUP OF
AMERICA, INC.

and **Case 28-CA-063052**

PAUL LOUIS CARRINGTON, an Individual

ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Chris J. Doyle
Counsel for the Acting General Counsel
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2198
Facsimile (602)-640-2178
Email: christopher.doyle@nlrb.gov

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Counsel for the Acting General Counsel (the General Counsel) excepts to the Decision of Administrative Law Judge Joel P. Biblowitz (the ALJ) [JD(NY) 07-12], issued on March 27, 2012 (the ALJD), as follows:

1. The ALJ's failure to find and conclude that Food Services of America, Inc., a subsidiary of Services Group of America, Inc. (Respondent) violated Section 8(a)(1) of the Act by maintaining overly-broad and discriminatory no-solicitation rule. (ALJD 5:19-25) In support of this exception, General Counsel relies upon the documentary evidence introduced at trial (GCX 2), other relevant parts of the record, and Board law.

2. The ALJ's failure to find and conclude that Respondent, by its overly-broad and discriminatory confidentiality rules in its Confidentiality and Non-Disclosure Agreement and Employee Handbook, threatened its employees with unspecified reprisals if they engage in concerted activities. In support of this exception, General Counsel relies upon the documentary evidence introduced at trial (GCX 2 and 14), other relevant parts of the record, and the ALJ's findings that the confidentiality rules violated Section 8(a)(1) of the Act because they were overly-broad and discriminatory. (ALJD 4:26-32; 4:34-51).

3. The ALJ's failure to find and conclude that Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad and discriminatory rule prohibiting its employees from disclosing employee cell phone numbers. (ALJD 13:30-31). In support of this exception, General Counsel relies upon the sworn affidavit of Senior Vice-President and Chief Merchandising Officer Scott Bixby, admitting that Respondent's policy is that employee cell phone numbers are confidential. (SX 3, Exhibit A, page 4), the documentary evidence introduced at trial (GCX 2 and 14), other relevant parts of the record, and Board law.

4. The ALJ's failure to find and conclude that Respondent violated Section 8(a)(1) of the Act on about March 4, 2012 by: (1) interrogating its employees about their concerted activities, (2) orally promulgating an overly-broad and discriminatory rule prohibiting its employees from talking to other employees, (3) threatening its employees with unspecified reprisals if they engaged in concerted activities, and (4) creating an impression among its employees that their concerted activities were under surveillance by the Respondent. (ALJD 12:48-13:23). In support of this exception, General Counsel relies upon the ALJ's credibility findings regarding discriminatee Paul Carrington's version of events regarding the March 4 meeting (ALJD 12:43-46), the direct testimony of Carrington and the cross-examination testimony of Bixby, and other relevant parts of the record. (Tr. 275:17-276:25; 277:1-19; 441:12-442:15; 447:17-448:4; 449:1-9)

5. The ALJ's failure to find and conclude that Respondent violated Section 8(a)(1) of the Act by promulgating an overly-broad and discriminatory rule prohibiting employees from providing personal references to other employees. (ALJD 13:49-14:3). In support of this exception, General Counsel relies upon the testimony of Senior Vice-President of Associate Services Steve Manuszak that Respondent's policy prohibited forbade its employees -- outside

of Human Resources Department -- from giving personal references, and other relevant parts of the record. (Tr. 56:3-58:11)

6. The ALJ's failure to find that the General Counsel established a *prima facie* case, or to find an conclude that, Respondent terminated Elba Rubio because she engaged in protected concerted activities. (ALJD 14:23-24) In support of this exception, General Counsel relies upon the documentary evidence introduced at trial, the testimony of employees Rubio, Carrington, Michelle Aparicio and Jeffrey Armbruster, and other relevant record evidence. (GCX 4; GCX 16; GCX 17; GCX 21; Tr. 116:10-120:11; 117; 124:8-126:12; 136:13-25; 146:24-148:1; 151:19-152:2; 159:12-160:5; 248:5-251:3; 253:6-254:13; 273:11-274:23; 279:23-280:10).

7. The ALJ's failure to find that the Respondent violated Section 8(a)(1) of the Act by terminating Rubio because she engaged in protected concerted activities. (ALJD 14:34-35) In support of this exception, General Counsel relies upon the documentary record evidence; the testimony of Rubio, Carrington, Aparicio, Armbruster, and Manuszak; other relevant record evidence; and Board law. (GCX 4; GCX 16; GCX 17; GCX 21; Tr. 116:10-120:11; 117; 124:8-126:12; 136:13-25; 146:24-148:1; 151:19-152:2; 159:12-160:5; 248:5-251:3; 253:6-254:13; 273:11-274:23; 279:23-280:10; 498:12-499:3).

8. The ALJ's failure to find and conclude that Carrington engaged in protected concerted activities, and that the General Counsel to established a *prima facie* case that Respondent terminated Carrington because he engaged in protected concerted activities. (ALJD 15:16-19) In support of this exception, General Counsel relies upon the documentary evidence introduced at trial, the testimony of employees Rubio and Carrington, and other relevant record evidence. (GCX 7; RX1; Tr. 163:20-164:25; 165:10-166:17; 278:13-279:281:7; 281:25-283:6)

9. The ALJ's failure to find that the Respondent violated Section 8(a)(1) of the Act by terminating Carrington because he engaged in protected concerted activities. (ALJD 15:16-19) In support of this exception, General Counsel relies upon the documentary evidence introduced at trial, the testimony of employees Rubio and Carrington, other relevant record evidence, and Board law. (GCX 7; GCX 19- 20; GCX 22; Tr. 163:20-164:25; 165:10-166:17; 216:23-217:21; 219:24-220:2; 278:13-279:281:7; 281:25-283:6; 283:19-284:4; 301:17-303:2; 304:15-18; 308:6-11)

10. The ALJ's failure to find that the Respondent violated Section 8(a)(1) of the Act by terminating Carrington because he violated Respondent's overly-broad and discriminatory confidentiality rules in Respondent's Confidentiality and Non-Disclosure Agreement and Employee Handbook, and Respondent's overly-broad and discriminatory rule regarding employee cell phone numbers. (ALJD 14:37-39; 15:16-19) In support of this exception, General Counsel relies upon the documentary evidence introduced at trial, the testimony of Carrington and Manuszak, other relevant record evidence, and Board law.
(GCX 2, GCX 14; SX3; Tr. 511:5-512:9)

Dated at Phoenix, Arizona, this 22nd day of May 2012.

Respectfully submitted,

/s/ Chris J. Doyle

Chris J. Doyle
Counsel for the Acting General Counsel
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2198
Facsimile (602)-640-2178
Email: christopher.doyle@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE in FOOD SERVICES OF AMERICA, INC., a subsidiary of SERVICES GROUP OF AMERICA, INC. Case 28-CA-063052, was served by E-Gov, E-Filing, and E-Mail, on this 22nd day of May 2012, on the following:

Via E-Gov, E-Filing:
Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Via E-Mail:
Richard K. Walker, Attorney at Law
Walker & Peskind, PLLC
SGA Corporate Center
16100 North 71st Street, Suite 140
Scottsdale, AZ 85254
E-Mail: rkw@azlawpartner.com

Mr. Paul Louis Carrington
1351 North Pleasant Drive, Unit 1095
Chandler, AZ 85225
E-Mail: perplexy@gmail.com

/s/ Chris J. Doyle
Chris J. Doyle
Counsel for the Acting General Counsel
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2198
Facsimile (602)-640-2178
Email: christopher.doyle@nlrb.gov