

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH & EASY NEIGHBORHOOD  
MARKET

and

Cases: 31-CA-077074  
31-CA-080734

UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION

**DECLARATION OF NICOLE A. BUFFALANO IN SUPPORT OF COUNSEL  
FOR THE ACTING GENERAL COUNSEL'S  
OPPOSITION TO RESPONDENT'S MOTION TO DISMISS  
REVISED CONSOLIDATED COMPLAINT**

I, Nicole A. Buffalano, hereby declare as follows:

1. I am a Field Attorney employed by the National Labor Relations Board ("Board") at Region 31 in Los Angeles, California ("the Region").
2. This declaration is in support of the Counsel for the Acting General Counsel's Opposition to Respondent's Motion to Dismiss Revised Consolidated Complaint ("Opposition") which is being filed concurrently with this declaration. I have reviewed the case files in Case Nos. 31-CA- 077074 and 31-CA-080734, the Opposition, and the supporting exhibits attached to the Opposition as Exhibits 1 through 13 and described below.
3. On March 15, 2012, United Food and Commercial Workers International Union ("Union") filed an unfair labor practice charge, Case No. 31-CA-077074, against TESCO, plc, New Tesco House ("Tesco") and Fresh & Easy Neighborhood

Market, Inc. (“Respondent”) alleging a violation of Section 8(a)(1) of the National Labor Relations Act (Act).

4. On April 19, 2012, the Region sent a letter, by e-mail, to the Respondent seeking information in Case No. 31-CA-077074. Copies of the e-mail and attached letter are attached to the Opposition as Exhibit 1.
5. On April 26, the Respondent sent an e-mail to the Region in response to the Region’s April 19 letter. A copy of this e-mail is attached to the Opposition as Exhibit 2, at pages 2-3.
6. On May 1, the Region sent an e-mail to the Respondent in response to the Respondent’s April 26 e-mail. A copy of this e-mail is attached to the Opposition as Exhibit 2, at pages 1-2.
7. On May 3, at 4:50 pm, the Respondent sent an e-mail to the Region in response to the Region’s May 1 e-mail. A copy of this e-mail is attached to the Opposition as Exhibit 2, at page 1.
8. On May 3, at 4:58 pm, the Region sent an e-mail to the Respondent in reply to the Respondent’s May 3, 4:50 pm e-mail. A copy of this e-mail is attached to the Opposition as Exhibit 3.
9. On May 9, 2012, the Union filed with Region 31 an unfair labor practice charge, Case No. 31-CA-080734, against the Respondent alleging a violation of Section 8(a)(1) of the Act.
10. On July 25, 2012, the Acting Regional Director of Region 31 issued a dismissal letter partially dismissing the charge in Case No. 31-CA-077074 with respect to Tesco because of the Board’s lack of jurisdiction over Tesco (“Partial Dismissal.”). A copy of the Partial Dismissal letter is attached to the Opposition as Exhibit 4.
11. On August 1, the Region received via electronic filing a copy of a letter sent to the Office of Appeals from the Union appealing the Partial Dismissal (“the Appeal”). A copy of the Appeal is attached to the Opposition as Exhibit 5.

12. On August 28, the Region received a copy of a letter sent to the Union by the Office of Appeals on behalf of the Acting General Counsel denying the Appeal (“the Appeal Denial”). A copy of the Appeal Denial is attached to the Opposition as Exhibit 6.
13. On September 4, the Region received via electronic filing a copy of a letter sent to the Office of Appeals from the Union moving it to reconsider the denial of its appeal (“the Motion for Reconsideration”). A copy of the Motion for Reconsideration is attached to the Opposition as Exhibit 7.
14. On September 21, the Region received a copy of a letter sent to the Union by the Office of Appeals on behalf of the Acting General Counsel denying the Motion for Reconsideration (“the Reconsideration Denial”). A copy of the Reconsideration Denial is attached to the Opposition as Exhibit 8.
15. On October 1, the Region sent a pre-complaint informal settlement agreement (“the Settlement Agreement”) to the Respondent.
16. On October 5, by e-mail, the Region sent copies of the Partial Dismissal and Appeal Denial to Respondent counsel. Copies of this e-mail with attachments are attached to the Opposition as Exhibit 9.
17. On October 9, the Region contacted the Respondent to inquire as to its position on the Settlement Agreement.
18. On October 15, the Respondent sent an e-mail to the Region in response to the Settlement Agreement. A copy of this e-mail is attached to the Opposition as Exhibit 10.
19. Later that same day, October 15, the Region responded by e-mail to the Respondent. A copy of this e-mail is attached to the Opposition as Exhibit 11.
20. On October 22, 2012, the Acting Regional Director of Region 31 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (October 22 Complaint) based upon unfair labor practice charges 31-CA-077074 and 31-CA-080734. Region 31 served the October 22 Complaint upon Respondent and Respondent’s counsel via certified mail on October 22, 2012, as evidenced by the

affidavit of service. Copies of the October 22 cover letter, Complaint, and corresponding affidavit of service, are attached to the Opposition as Exhibit 12.

21. On October 23, 2012, the Acting Regional Director of Region 31 sent a letter via regular mail to Respondent's counsel requesting that he disregard the October 22 Complaint due to various formatting errors. Concurrently, the Acting Regional Director of Region 31 issued a revised Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Revised Complaint) based upon unfair labor practice charges 31-CA-077074 and 31-CA-080734. Region 31 served the Revised Complaint upon Respondent and Respondent counsel via regular mail on October 23, 2012, as evidenced by the affidavit of service. Copies of the cover letter, Revised Complaint, and corresponding affidavit of service, are attached to the Opposition as Exhibit 13.

I declare that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Los Angeles, California, this 14<sup>th</sup> day of December, 2012.

A handwritten signature in cursive script, appearing to read "Nicole A. Buffalano", written over a horizontal line.

Nicole A. Buffalano  
Counsel for the Acting General Counsel  
National Labor Relations Board

**Re: FRESH & EASY NEIGHBORHOOD MARKET**  
Cases: 31-CA-077074 and 31-CA-080734

**CERTIFICATE OF SERVICE**

I hereby certify that I served the attached **DECLARATION OF NICOLE A. BUFFALANO IN SUPPORT OF COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS REVISED CONSOLIDATED COMPLAINT** on the parties listed below on the 14<sup>TH</sup> day of December, 2012:

**SERVED VIA E-FILING**

Lester A. Heltzer, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
[www.nlr.gov](http://www.nlr.gov)

**SERVED VIA E-MAIL**

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