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Executive Secretary
National Labor Relations Board
By electronic mail only

Re: Stamford Hospitality 34-CA-098145

May it Please the Board:

Please be advised that the undersigned represents the Respondent in the above referenced matter. This letter is filed in response to the extant Notice to Show Cause issued by the Board.[1]

The Respondent reasserts all of the issues raised in the representation case here so that they are all reviewable in the Circuit Courts of Appeals.[2] Moreover, the Respondent notes that the D.C. Circuit, in *Noel Canning*, has recently held unconstitutional the recess appointments of at least three Board members and therefore finding that there was no quorum for the decisions under review. Although in these decisions the Board repeatedly cited *Center for Social Change* 358 NLRB No. 24 for not making a ruling on the recess appointment issue, Chairman Pearce has been quoted as stating that he believes that the President's position will be vindicated and that the recess appointments will be approved. Thus, the Board went from a

[1] In filing this response, the Respondent does not waive, and specifically asserts, that President Obama unconstitutionally appointed 3 board members by recess appointment on January 4th for all the reasons stated by the DC Circuit in its *Noel Canning* decision.

[2] The Board is advised that Respondent will seek review in the United States Court of Appeals for the District of Colombia Circuit of any adverse Board ruling. The Board is also asked, therefore, not to "issue" or advise of its decision in this matter to the General Counsel before it is issued to Respondent.

disinterested observer on the issue to an advocate for one side.

Moreover, Board members will be paid if they are held validly appointed. "That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule."*Tumey v. Ohio*, 273 U.S. 510 (U.S. 1927). ("We do not let judges make decisions which fix the extent of their fees, see Tumey v. Ohio, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927)") *Ottley v. Sheepshead Nursing Home*, 688 F.2d 883 (2d Cir. N.Y. 1982).

In order to avoid claims that the Board was not presented with any arguments that are later raised in any court review of this case, Respondent argues that there is an invalid appointment of three Board members for all of the reasons articulated by the D.C. Circuit in Noel Canning, as well as the arguments made by the Respondent against those appointments heretofore. Moreover, after the Noel Canning decision, there is no longer a "presumption of regularity" that can be attached to these appointments as asserted by the Board in Center for Social Change 358 NLRB No. 24.

In addition, since the Board's decision in *Specialty Healthcare* is no longer valid, as there was no valid quorum in that case for several reasons under Noel Canning, the Board's unit certification is undermined in this case since there was no election in an appropriate "wall to wall" unit. To the extent that Respondent did not argue this in the representation case, and signed a stipulation for an election in the unit, Respondent asserts that there was a change in the law after the stipulation was signed in that *Specialty Healthcare* is no longer good law. The Board must, by statute, hold elections, and issue certifications, only in appropriate units.

Wherefore, it is respectfully submitted that the Board deny the motion.

Very Truly Yours

Morris Tuchman

cc: Regional Director, Region 34 (by electronic mail)
Thomas Miekeljohn, Esq. (by electronic mail)