UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH DIRECT, LLC

and **Case 29-CA-088077**

LUIS CRUZ

and **Case 29-CA-093054**
Case 29-CA-094538

JOSE CABRERA

ORDER

The Employer's petition to revoke subpoena duces tecum B-712703 is denied. The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.[1] See

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[1] We reject the Employer's argument that the Board lacked a quorum to issue the instant subpoena. Section 102.31(a) of the Board's Rules and Regulations states that "[t]he Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof." Here, Chairman Pearce issued the subpoena, in accordance with this Rule.

To the extent that the Employer is arguing that the Board lacks a quorum to rule on the Petition to Revoke, we also reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has found that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, ___ F.3d ___ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. *See Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *United States v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., February 26, 2013

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER