

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

SANDERS-CLARK & CO., INC., A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT
EMPLOYERS

Case: 31-CA-144301

And

LOS ANGELES ORGANIZING COMMITTEE

**GENERAL COUNSEL'S OPPOSITION TO RESPONDENT McDONALD'S USA, LLC'S
MOTION FOR A BILL OF PARTICULARS OR, IN THE ALTERNATIVE, TO STRIKE
THE JOINT EMPLOYER ALLEGATION AND DISMISS THE COMPLAINT**

On May 11, 2015, the Regional Director of Region 31 issued a Complaint and Notice of Hearing setting forth allegations that the above-captioned Respondents violated Section 8(a)(1) of the Act. A copy of the Complaint and Notice of Hearing ("Complaint") is attached as Exhibit A. On May 27, 2015, Respondent McDonald's USA, LLC ("McDonald's") filed a Motion Seeking a Bill of Particulars or, alternatively, for dismissal of the joint employer allegation in the Complaint ("Motion"). A copy of McDonald's motion is attached as Exhibit B. The General Counsel responds to the motion filed by McDonald's by filing this Opposition to McDonald's motion filed in Region 31.

A bill of particulars is justified only when the complaint is so vague that the party charged is unable to respond to the General Counsel's case. *North American Rockwell Corp. v. NLRB*, 389 F.2d 866, 871 (10th Cir. 1968); *American Newspaper Pub. Ass'n v. NLRB*, 193 F.2d 782 (7th Cir. 1952), *affd.* 345 U.S. 100 (1953).¹ In the instant case, the Complaint is not so vague that McDonald's is unable to respond to the General Counsel's case. Rather, the Complaint

¹ McDonald's attempts to impose a more stringent standard by selectively quoting *Soule Glass and Glazing Co. v.*

contains sufficient specificity to allow McDonald's to respond. Specifically, the Complaint alleges the existence of a franchising relationship between McDonald's and Respondent Sanders-Clark & Co., Inc. ("Sanders-Clark") and asserts that McDonald's "possesse[s] and/or exercise[s] control over the labor relations policies of Respondent Sanders-Clark." (Complaint at 2). This is sufficient notice to satisfy due process concerns. See e.g., *Pergament United States v. NLRB*, 920 F.2d 130, 135 (2nd Cir. 1990) (In evaluating whether the Respondent was afforded sufficient notice to satisfy due process, the court observed that "[n]otice does not mean a complaint necessarily must state the legal theory upon which the General Counsel intends to proceed."); *Swift & Co. v. NLRB*, 106 F. 2d 87, 91 (10th Cir. 1939); *Bakery Wagon Drivers v. NLRB*, 321 F.2d 353, 356 (D.C. Cir. 1963) (Board complaints need not conform to the technicalities of common law pleading: "[i]t is sufficient if respondent 'understood the issue and was afforded full opportunity to justify its actions.'" (citing *NLRB v. Mackay Radio & Tel. Co.*, 304 U.S. 333, 350 (1938)). Moreover, the Complaint clearly complies with the suggestion of Section 300.3(b) of the National Labor Relations Board Pleadings Manual (cited by Motion at 3), to include a description of the business.² Therefore, the Complaint is clearly not so vague that McDonald's is unable to respond to the General Counsel's case.

Moreover, the Complaint has the required specificity called for by Section 102.15 of the Board's Rules and Regulations, which provides in relevant part: "The complaint shall contain a clear and concise description of the acts which are claimed to constitute unfair labor practices,

NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981), which in turn quotes *J.C. Penney Co. v. NLRB*, 384 F.2d 479 (10th Cir. 1967), a case in which the court refused to enforce "a finding which was neither charged in the complaint nor litigated at the hearing," *id.* at 482. The full quote is "Failure to clearly define the issues and advise an employer charged with a violation of the law of the specific complaint he must meet *and provide a full hearing upon the issue presented* is, of course, to deny procedural due process of law." *Id.* at 483. The inapplicability of both the holding and the quotation to the current situation should be plain.

² The General Counsel maintains he has satisfied his pleading obligations; however, to the extent McDonald's argues the Complaint does not comply with the Board's Casehandling or Pleading Manuals, the General Counsel notes the Manuals contain guidelines, not requirements. *Benjamin H. Realty Corp.*, 361 NLRB No: 103, n.l. (2014).

including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." Every act alleged by the Complaint to constitute an unfair labor practice, viz., paragraphs 6 and 7, identifies the approximate dates and places of those acts along with the identities of the actors. Therefore, the Complaint has adequate specificity.

McDonald's fails to cite any authority in support of its claim that the Complaint violates McDonald's Fifth Amendment rights. (Motion at 2). In addition, McDonald's reliance upon the Administrative Procedures Act, 5 U.S.C. § 554(b)(3), is incorrect. As numerous courts have held, the requirements of that statute are met when the party is apprised of the issues in controversy and not misled. See e.g., *Intercontinental Industries, Inc. v. American Stock Exchange*, 452 F.2d 935, 941 (5th Cir. 1971), cert. denied 409 U.S. 842 (1972); *Long v. Board of Governors of the Federal Reserve System*, 117 F.3d 1145, 1158 (10th Cir. 1997); *L.G. Balfour Co. v. FT*, 442 F.2d 1, 19 (7th Cir. 1971); *Boston Carrier, Inc. v. ICC*, 746 F.2d 1555, 1560 (D.C. Cir. 1984); *Golden Grain Macaroni Co. v. FTC*, 472 F.2d 882, 885 (9th Cir. 1972) ("[T]he purpose of the [Administrative Procedure] Act is satisfied, and there is no due-process violation, if the party proceeded against understood the issue and was afforded full opportunity to justify its conduct"; internal quotation marks omitted), cert. denied 412 U.S. 918 (1973). Because McDonald's has been informed that the General Counsel seeks to impose liability upon it for conduct committed by certain of its franchises by virtue of its status as a joint employer of employees of that franchise, McDonald's has been given plain notice of the issue in controversy. Additionally, McDonald's has adduced no evidence that General Counsel has misled McDonald's.

As set forth above, the General Counsel has pled this case with adequate specificity such that a bill of particulars is not warranted. Therefore, McDonald's argument that the General Counsel's joint employer allegations are possibly based on conclusory or novel legal theories is irrelevant to the issue of whether a bill of particulars is warranted in this case. The fact that General Counsel has not set forth the entirety of his legal theories in the pleadings does not in any way render the Complaint in this case deficient. McDonald's has failed to adduce any legal authority in support of its position that General Counsel be required to disclose the nuances of his legal theories prior to hearing. Indeed, both Respondent and General Counsel will be able to argue the merits of their theories of joint employer liability at a hearing. However, McDonald's has not shown that the Complaint in this case is so vague that McDonald's is unable to respond to it. Therefore, McDonald's motion should be denied in its entirety.

Dated: June 4, 2015

Los Angeles, California

/s/ Lynn Ta

Lynn Ta, Counsel for the General Counsel

Exhibit A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**SANDERS-CLARK & CO., INC., A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT
EMPLOYERS**

Case 31-CA-144301

and

**LOS ANGELES ORGANIZING
COMMITTEE**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Los Angeles Organizing Committee ("Charging Party" or "Union"). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Sanders-Clark & Co. ("Sanders"), and McDonald's USA, LLC ("McDonald's USA"), (collectively, Respondents) have violated the Act as described below.

1. The charge in this proceeding was filed by the Charging Party on January 12, 2015, and a copy was served upon McDonald's USA and Sanders by U.S. mail on January 13, 2015.

Charging Party

2. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

Respondent McDonald's USA

3. (a) At all material times, Respondent McDonald's USA has been a Delaware limited liability company with an office and place of business in Oak Brook,

Illinois, and various restaurant and franchise locations throughout the United States, and has been engaged in the operation and franchising of quick-service restaurants.

(b) Annually, in conducting its business operations described above in subparagraph 3(a), Respondent McDonald's USA:

(i) derives gross revenues valued in excess of \$500,000; and
(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of Illinois.

(c) At all material times, Respondent McDonald's USA has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, Respondent McDonald's USA has:

- (a) had a franchise agreement with Respondent Sanders;
- (b) possessed and/or exercised control over the labor relations policies of Respondent Sanders; and
- (c) been a joint employer of the employees of Respondent Sanders.

Respondent Sanders

5. (a) At all material times, Respondent Sanders has been a corporation with an office and place of business located at 2838 Crenshaw Blvd., Los Angeles, California 90016 ("Sanders' facility"), and has been engaged in the operation of a quick-service McDonald's restaurant.

(b) Annually, in conducting its operations described above in paragraph 5(a), Respondent Sanders:

(i) derives gross revenues in excess of \$500,000; and
(ii) purchases and receives at its Los Angeles, California facility goods valued in excess of \$5,000 directly from points outside the State of California.

(c) At all material times, Respondent Sanders has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. From about July 16, 2014 through September 15, 2014, Respondents maintained the following policy in their Employee Punch Summary Reports and other documents generated by their in-store-processor (ISP) software at the Sanders' facility:

“The material contained herein is **business confidential information of your employer** and may not be used or copied without the prior written permission of your employer, unless it is being used in Employee Protected Communications. Employee Protected Communications are communications **between** non-supervisory employees regarding terms and conditions of employment, such as wages and benefits, hours, working conditions and personnel actions.” (*Emphasis added*)

7. By the conduct described above in paragraph 6, Respondents Sanders and McDonald’s USA, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. The unfair labor practices of Respondents McDonald’s USA and Sanders described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board’s Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before May 27, 2015, or postmarked on or before May 26, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

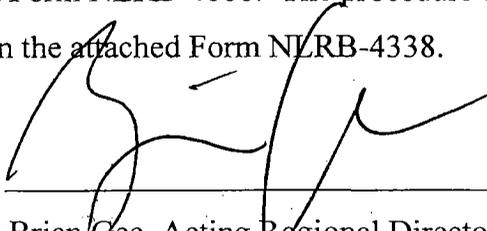
An answer may also be filed electronically through the Agency’s website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency’s website informs users that the Agency’s E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished

because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on a date and time to be determined, at National Labor Relations Board, Region 31, 11500 West Olympic Boulevard, Suite 600, Los Angeles, CA, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: May 11, 2015



Brian Gee, Acting Regional Director
National Labor Relations Board, Region 31
11500 W. Olympic Boulevard, Suite 600
Los Angeles, CA 90064

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 31-CA-144301

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Brian Clark
Sanders-Clark & Co. d/b/a McDonalds & McDonalds
USA LLC as Joint Employer
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Oak Brook, IL 60523

Los Angeles Organizing Committee
Po Box 555065
Los Angeles, CA 90055

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**SANDERS-CLARK & CO., INC., A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

and

Case 31-CA-144301

LOS ANGELES ORGANIZING COMMITTEE

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **May 11, 2015**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Alfred De La Cruz, Attorney at Law
Manning & Kass, Elrod, Ramirez, Trester LLP
550 West C Street Suite 1900
San Diego, CA 92101

**CERTIFIED MAIL, RETURN
RECEIPT REQUESTED**

Vi Applen, Attorney at Law
Manning & Kass, Elrod, Ramirez, Trester LLP
801 S Figueroa St Fl 15
Los Angeles, CA 90017-5504

**CERTIFIED MAIL, RETURN
RECEIPT REQUESTED**

Brian Clark
Sanders-Clark & Co. d/b/a McDonalds &
McDonalds USA LLC as Joint Employer
2838 Crenshaw Blvd.
Los Angeles, CA 90016

REGULAR MAIL

Ariane Panter, Counsel, Global Labor &
Employment Law
McDonald's USA, LLC
2915 Jorie Blvd.
Oak Brook, IL 60523

REGULAR MAIL

Mhairi L. Whitton, Attorney at Law
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San Diego, CA 92130

**CERTIFIED MAIL, RETURN
RECEIPT REQUESTED**

George S. Howard Jr., Attorney at Law
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**CERTIFIED MAIL, RETURN
RECEIPT REQUESTED**

Eli Naduris-Weissman, Attorney at Law
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Pasadena, CA 91101

**CERTIFIED MAIL, RETURN
RECEIPT REQUESTED**

Los Angeles Organizing Committee
Po Box 555065
Los Angeles, CA 90055

REGULAR MAIL

May 11, 2015

Date

Aide Carretero, Designated Agent of NLRB

Name



Signature

Exhibit B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**SANDERS-CLARK & CO., INC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC AS JOINT
EMPLOYERS**

Case 31-CA-144301

and

LOS ANGELES ORGANIZING COMMITTEE

**MCDONALD'S USA, LLC'S MOTION FOR A BILL OF PARTICULARS OR, IN THE
ALTERNATIVE, MOTION TO STRIKE JOINT EMPLOYER ALLEGATIONS AND
DISMISS THE COMPLAINT**

Pursuant to Section 102.24 of the National Labor Relations Board's ("Board") Rules and Regulations, Respondent McDonald's USA, LLC ("McDonald's"), by and through its undersigned counsel, hereby moves for an order requiring the Acting Regional Director of Region 31 to specify with particularity in the Complaint and Notice of Hearing ("Complaint") the factual basis upon which he relies in alleging that McDonald's is a joint employer with its independent franchisee. In a case with far-reaching consequences for McDonald's and franchisors throughout the country, and in which the General Counsel seeks to change the legal standard for determining joint employer status and has consolidated claims against two independent corporate entities based solely on allegations that McDonald's is a joint employer, the Complaint contains only three vague, conclusory allegations regarding McDonald's joint employer status. Namely, the Complaint alleges (1) the existence of a franchise agreement between McDonald's and its independent franchisee, (2) a conclusory assertion that McDonald's "possessed and/or exercised control over the labor relations policies" of its franchisee, and (3) a legal conclusion that McDonald's is a joint employer. The Acting Regional Director's bare-

bones allegations provide insufficient notice to McDonald's of the basis for the alleged joint employer status, depriving McDonald's of its fundamental right to due process pursuant to the Fifth Amendment to the U.S. Constitution. In order for McDonald's to have a full and fair opportunity to defend itself against these unprecedented allegations, the Acting Regional Director must first specify with particularity the underlying factual basis as the franchisee.

If the Acting Regional Director does not describe with particularity the basis for the allegations in the below-identified paragraphs, as mandated by the Administrative Procedure Act, Section 102.15 of the Board's Rules and Regulations, Paragraph 10266 of the Board's Casehandling Manual, and Section 300.3 of the NLRB Pleadings Manual-Complaint Forms, then McDonald's moves that such paragraphs of the Complaint be stricken and the Complaint against McDonald's be dismissed for failure to state a claim.

THE JOINT EMPLOYER ALLEGATIONS

To satisfy due process, the General Counsel is obligated "to clearly define the issues and advise an employer charged with a violation .of the specific complaint he must meet [and the failure to do so] is to deny procedural due process of law." Soule Glass Co. v. NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981). *See also* SFTC, LLC d/b/a Santa Fe Tortilla Company, 360 NLRB. No. 130 at 2 n. 9 & 10 n. 6 (June 13, 2014) (affirming ALJ decision to dismiss allegations on due process grounds, in which ALJ explained, "[Respondent] is entitled to due process. That is, it is entitled to know ahead of time what alleged violations it must defend. It is, after all, a simple matter to prepare or amend a complaint that does so."). The Administrative Procedure Act, the Board's Rules and Regulations, and the Board's Casehandling Manual demand that the Complaint notify the Respondent of the facts and law at issue so the Respondent has a full and fair opportunity to prepare a defense. *See* Administrative Procedure Act, 5 U.S.C.

§ 554(b)(3) (“Persons entitled to notice of an agency hearing shall be timely informed of the matters of *fact and law* asserted”); NLRB Rules and Regulations, Rule 102.15 (“The complaint shall contain a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent’s agents or other representatives by whom committed”); NLRB Casehandling Manual § 10268.1 (The Complaint “sets forth the facts relating to the alleged violations by the respondent(s)”). And the NLRB Pleadings Manual-Complaint Forms also encourages descriptive pleading for joint employer allegations. *See* NLRB Pleadings Manual § 300.3(b) (suggesting drafter of a complaint containing a joint employer allegation should “[i]nset [a] description of [the] business venture. For example, Employer A utilizes the referral services of Employer B when hiring employees for its facility located at _____.”).

Here, paragraph 4 of the Complaint contains joint employer allegations that fail to satisfy these requirements. Paragraph 4 refers to the existence of a franchise agreement, states that McDonald’s “possessed and/or exercised control over the labor relations policies of” its independent franchisee, and asserts that McDonald’s is a joint employer with its independent franchisee. These allegations are plainly insufficient to establish a joint employer relationship under the legal standard for determining joint employer status. “The test for joint-employer status is whether two entities ‘share or codetermine those matters governing the essential terms and conditions of employment.’” *See Flagstaff Med. Ctr., Inc.*, 357 NLRB No. 65, 2011 WL 4498271, at *11 (Aug. 26, 2011) (quoting *Laerco Transportation*, 269 NLRB 324, 325 (1984)). The mere existence of a franchise agreement does not weigh in favor of a finding of joint employer status. Nor does the Complaint point to any provision of the franchise agreement that does so. Finally, the Complaint does not identify with any particularity how McDonald’s

allegedly possesses and/or exercises control over the labor relations policies of its independent franchisee, much less identify the labor relations policies at issue.

These paltry allegations do not provide McDonald's with notice of the charges against it or identify a particular standard of conduct that McDonald's engaged in to make it a joint employer. Accordingly, McDonald's cannot defend itself against these claims. Thus, the Acting Regional Director should be ordered to provide the particulars of the seminal joint employer allegation, or those paragraphs should be stricken and the Complaint should be dismissed as to McDonald's.

WHEREFORE, having demonstrated that paragraph 4 in the above-captioned Complaint is insufficient pursuant to the Fifth Amendment to the U.S. Constitution, the Administrative Procedure Act, the Board's Rules and Regulations, the Board's Case Handling Manual, and the Board's Pleading Manual-Complaint Forms by virtue of failing to specify the factual basis for the joint employer allegations against McDonald's, McDonald's respectfully requests that:

(1) The Acting Regional Director be ordered to promptly provide the specifics and particulars of those joint employer allegations contained in, and as to each the franchisee named in paragraph 4 of the Complaint; and

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(2) Upon the Acting Regional Director's failure or inability to provide such specific and particular information to support the allegations in paragraph 4 of the Complaint, those allegations be stricken and the Complaint be dismissed as to McDonald's.

Dated: May 27, 2015

Respectfully submitted,

/s/ Willis J. Goldsmith

Willis J. Goldsmith

Doreen S. Davis

Matthew W. Lampe

Sharon S. Cohen

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Attorneys for McDonald's USA, LLC

CERTIFICATE OF SERVICE

The undersigned, an attorney admitted to practice before the Courts of the State of California, affirms under penalty of perjury, that, on May 27, 2015, she caused a true and correct copy of McDonald's USA, LLC's Motion for A Bill of Particulars or, In the Alternative, Motion to Strike Joint Employer Allegations and Dismiss the Complaint, to be served upon counsel for the parties by e-mail (where indicated) and/or first-class mail in a postage-prepaid, properly addressed envelope at the following address designated for this purpose:

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s/ Mhairi L. Whitton

An Attorney for McDonald's USA, LLC

**Re: SANDERS-CLARK & CO., INC. A McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC JOINT EMPLOYERS
Case No. 31-CA-144301**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the GENERAL COUNSEL'S OPPOSITION TO RESPONDENT McDONALD'S USA, LLC'S MOTION FOR A BILL OF PARTICULARS OR, IN THE ALTERNATIVE TO STRIKE THE JOINT EMPLOYER ALLEGATION AND DISMISS THE COMPLAINT was served on the 4th day of June, 2015:

SERVED VIA E-FILING

Associate Chief Administrative Law Judge
National Labor Relations Board
Division of Judges

www.nlr.gov

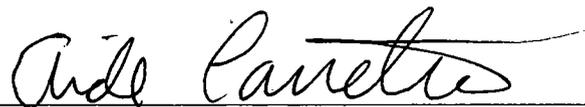
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