

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**L.F.N. RESTAURANT, INC. d/b/a
NANNI RESTAURANT**

and

Case No. 02-CA-152777

LOCAL 100, UNITE HERE

and

Case No. 02-CA-156322

MARK FARERI, an Individual

**MOTION TO TRANSFER CASE TO THE BOARD
AND
MOTION FOR DEFAULT JUDGMENT**

Pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board Rules and Regulations and Statements of Procedures, Series 8, as amended (the “Rules and Regulations”), Counsel for the General Counsel (the “General Counsel”) respectfully moves the National Labor Relations Board (the “Board”) to: (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing (the “Complaint”), issued in this matter on November 30, 2015, and the Amendment to Consolidated Complaint (“Amendment to Complaint”), issued in this matter on January 12, 2016, as admitted to be true without taking evidence supporting the allegations in the Complaint and Amendment to Complaint; and (3) grant Default Judgment for the General Counsel and issue a Decision and Order herein on the basis of the following:

1. On May 21, 2015, Local 100, UNITE HERE (“Charging Party Local 100”) filed a charge in Case No. 02-CA-152777 alleging that L.F.N. Restaurant, Inc. d/b/a Nanni Restaurant (the “Respondent”) engaged in certain unfair labor practices violating Section 8(a)(5) and (1) of the National Labor Relations Act (the “Act”). A copy was served by regular mail on Respondent on around May 22, 2015. A copy of this charge, together with the Affidavit of Service, is attached hereto as Exhibit A.
2. On July 20, 2015, Marc Fareri, an Individual (“Charging Party Fareri”), filed a charge in Case No. 02-CA-156322 alleging that the Respondent engaged in certain unfair labor practices violating Section 8(a)(1) of the Act. A copy was served by regular mail on Respondent on around July 21, 2015. A copy of this charge, together with the Affidavit of Service, is attached hereto as Exhibit B.
3. On November 30, 2015, upon the charges described above in paragraphs 2 and 3, the Regional Director for Region 2 of the Board (the “Regional Director”), issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing (the “Complaint”) in this matter pursuant to Section 10(b) of the Act and Sections 102.15 and 102.33 of the Board’s Rules and Regulations. The Complaint alleged, among other things, that Respondent violated Section 8(a)(5) and (1) of the Act on various dates by failing to continue in effect the terms and conditions of an expired collective-bargaining agreement between Charging Party Local 100 and Respondent when it failed to provide notice to Charging Party Local 100 prior to discharging employees Jose Felix Vasquez, Rafaele Federico, and Charging Party Fareri. The Complaint also alleged that Respondent discharged Charging Party Fareri because he claimed the right to wages owed to him under the terms of the collective-bargaining agreement, in violation of Section 8(a)(1) of the Act. The Complaint

was served on Respondent on November 30, 2015 via regular and certified mail, in accordance with Rule 102.113(a) of the Board's Rules and Regulations. The Complaint states, in pertinent part, that, pursuant to Sections 102.20 and 102.21 of the Board's Rules, Respondent shall file an Answer to said Complaint to be received in the New York Regional Office by close of business on December 14, 2015, or postmarked on or before December 11, 2015, and that, absent such action, or if an answer was filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true. A copy of the Complaint, together with the Affidavit of Service and the United States Postal Service website delivery confirmation, is attached hereto as Exhibit C.

4. Pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, an answer was due within fourteen days of service of the Complaint. Respondent did not file an answer to the Complaint within that time period.
5. On December 22, 2015, the General Counsel, by Counsel for the General Counsel Nicole Oliver, sent a letter by U.S. mail to the Respondent at the same address used to serve the Charges and the Complaint, together with a second copy of the Complaint. The letter stated that the time limits for filing an answer to the Complaint had expired, no answer had been filed by Respondent, and that General Counsel would file a Motion for Default Judgment with the Board if Respondent failed to file an answer by the close of business on December 30, 2015. A copy of the letter together with an Affidavit of Service is attached hereto as Exhibit D.
6. On January 6, 2016, the Regional Director issued an Order Rescheduling Hearing, which rescheduled the hearing for this matter from January 26, 2016 to February 9, 2016. A copy of this Order, together with the Affidavit of Service, is attached hereto as Exhibit E.

7. On January 12, 2016, the Regional Director issued an Amendment to Consolidated Complaint and Order Rescheduling Hearing (Amendment to Complaint) to Respondent. The Amendment to Complaint, in pertinent part, added a remedial paragraph and informed Respondent that if it did not file an answer by January 26, 2015, or if an answer was filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true. The Amendment to Complaint further rescheduled the hearing for this matter from February 9, 2016 to March 1, 2016. A copy of the Amendment to Complaint, together with the Affidavit of Service and the United States Postal Service website delivery confirmation, is attached hereto as Exhibit F.
8. On January 26, 2016, Respondent, by Victor Miriel, requested by email an extension of time to respond to the Complaint. A copy of the email is attached hereto as Exhibit G.
9. On January 27, 2016, the Regional Director issued an Order Extending Time to File Answer to Respondent. The Order extended the time within which Respondent might file an answer to February 2, 2016. A copy of this Order, together with the Affidavit of Service and United States Postal Service Certified Mail Receipts, is attached hereto as Exhibit H.
10. Respondent did not file an answer on or before February 2, 2016.
11. To date, Respondent has not filed an answer to the Complaint or Amendment to Complaint.
12. Respondent, having been duly served, has failed to file an answer to the Complaint and/or Amendment to Complaint in accordance with Section 102.56 of the Board's Rules and Regulations. The required time for such adequate filings has now expired. Therefore, all allegations in the Complaint and Amendment to Complaint must be deemed admitted as true and no issue of fact exists warranting or requiring a hearing.

WHEREFORE, counsel for the General Counsel respectfully requests, in accordance with Sections 102.24 and 102.50 of the Board's Rules, that the Board deem all matters alleged in the

Complaint to be true, and that they be so found, and that a Decision and Order be issued containing findings of fact and conclusions of law with respect to the allegations in the Complaint and together with an appropriate remedy for the unfair labor practice violations stated therein, including an order requiring that Respondent reimburse Jose Felix Vasquez, Raffaele Federico and Marc Fareri for all search-for-work and work-related expenses regardless of whether they received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period, and all other relief as may be just and proper to remedy the unfair labor practices alleged herein.

Dated: February 3, 2016
New York, New York

Simon-Jon H. Koike
Counsel for the General Counsel
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, NY 10278

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 02-CA-152777	Date Filed 5/21/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Nanni Restaurant	b. Tel. No. 212-697-4161
d. Address (Street, city, state, and ZIP code) 146 East 46th Street New York, NY 10017-2601	c. Cell No. n/a
e. Employer Representative Silvo Sclano Vittorio Miriel Michael Zala	f. Fax No. n/a
i. Type of Establishment (factory, mine, wholesaler, etc.) restaurant	g. e-Mail n/a
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1st subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	h. Number of workers employed approx. 12
j. Identify principal product or service food and beverage	

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last six months, the above named employer engaged in unfair labor practices when it:

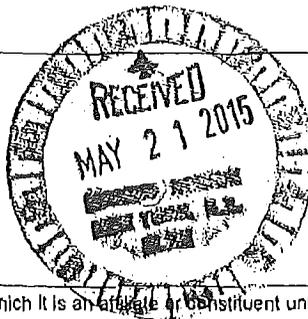
1. Discharged Jose Felix Vasquez on or about January 19, 2015 without bargaining with the union, implementing a unilateral change in basic terms and conditions of employment during contract hiatus;
2. Laid off Marc Fareri on or about March 26, 2015 without bargaining with the union, implementing a unilateral change in basic terms and conditions of employment during contract hiatus;
3. Discharged Raffaele Federico on or about May 11, 2015 without bargaining with the union, implementing a unilateral change in basic terms and conditions of employment during contract hiatus.

3. Full name of party filing charge (If labor organization, give full name, including local name and number)

Local 100 UNITE HERE

4a. Address (Street and number, city, state, and ZIP code)

275 Seventh Avenue, 16th Floor
New York, NY 10001



4b. Tel. No. 212-541-4226

4c. Cell No.

4d. Fax No. 212-399-3005

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) UNITE HERE International Union

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Lia Flol-Matta
(signature of representative or person making charge)

Lia Flol-Matta, General Counsel
(Print type name and title or office, if any)

Tel. No. 212-541-4226

Office, if any, Cell No. 973-725-9185

Fax No. 212-399-3005

e-Mail

lflolmatta@unitehere100.org

Address 275 Seventh Avenue, 16th Floor, New York, NY 10001

5/21/15
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NANNI RESTAURANT

Charged Party

and

LOCAL 100 UNITE HERE

Charging Party

Case No. 02-CA-152777

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 22, 2015, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Nanni Restaurant
Attn: Silvo Sciano
146 East 46th Street
New York, NY 10017-2601

Nanni Restaurant
Attn: Vittorio Miriel
146 East 46th Street
New York, NY 10017-2601

Nanni Restaurant
Attn: Michael Zala
146 East 46th Street
New York, NY 10017-2601

May 22, 2015

Date

Robin Grant, Designated Agent of NLRB

Name



Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 02-CA-156322	Date Filed 7/20/15

INSTRUCTIONS:

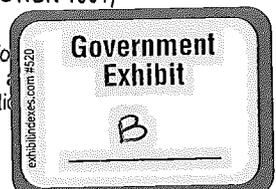
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Nanni Restaurant	b. Tel. No. 212 697 4161
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 146 East 46th Street New York, NY 10017	e. Employer Representative Michael Zala, Owner Silvio Scalana, Owner
	g. e-Mail
	h. Number of workers employed Approx. 11
i. Type of Establishment (factory, mine, wholesaler, etc.) Restaurant	j. Identify principal product or service Food Service
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or around March 26, 2015, the above named employer terminated Marc Fareri in retaliation for engaging in protected, concerted activity.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Marc Fareri	
4a. Address (Street and number, city, state, and ZIP code) 447 E.78th Street Apt. 4A New York, NY 10021	4b. Tel. No. 212 861 2253
	4c. Cell No. 917 412 6122
	4d. Fax No.
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Marc Fareri</u> (signature of representative or person making charge)	Marc Fareri, An Individual (Print/type name and title or office, if any)
Address Same	Tel. No. Same
	Office, if any, Cell No.
	Fax No.
	e-Mail
	7/20/15 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the info the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information a the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NANNI RESTAURANT
Charged Party
and
MARC FARERI
Charging Party

Case No. 02-CA-156322

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on July 21, 2015, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Nanni Restaurant
Attn: Michael Zala
146 East 46th Street
New York, NY 10017

Nanni Restaurant
Attn: Silvio Scalana
146 East 46th Street
New York, NY 10017

July 21, 2015

Date

Robin Grant, Designated Agent of NLRB

Name



Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. RESTAURANT, INC. D/B/A NANNI
RESTAURANT

Case Nos. 02-CA-152777
02-CA-156322

and

LOCAL 100, UNITE HERE

MARC FARERI

ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING

Local 100, UNITE HERE, herein called the Union, in Case No. 02-CA-152777 and Marc Fareri, in Case No. 02-CA-156322, have charged that L.F.N. Restaurant, Inc. d/b/a Nanni Restaurant, herein called Respondent has been engaging in unfair labor practices as set forth and defined in the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board ORDERS that these cases are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the Act and § 102.15 of the Board's Rules and Regulations and alleges that Respondent has violated the Act as described below:

1. (a) The charge in Case No. 02-CA-152777 was filed by the Union on May 21, 2015, and a copy was served by regular mail on Respondent on May 22, 2015.

(b) The charge in Case No. 02-CA-156322 was filed by Marc Fareri on July 20,



2015, and a copy was served by regular mail on Respondent on July 21, 2015.

2. (a) At all material times, Respondent has been a New York corporation with an office and principal place of business located at 146 East 46th, (“Respondent’s Facility”), the sole facility involved herein, and has been engaged in the operation of a restaurant in New York, New York.

(b) Annually, Respondent, in the course and conduct of its operations as described above in subparagraph (a), derives gross revenue in excess of \$500,000.

(c) Annually, Respondent, in the course and conduct of its operations as described above in subparagraph (a), purchases and receives at its facility goods and materials valued in excess of \$5,000 directly from suppliers located outside New York State.

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

5. At all material times, the following individuals held the positions set forth opposite their respective names and have supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents within the meaning of Section 2(13) of the Act:

Vittorio Miriel	Owner
-----------------	-------

Silvio Scalano	Owner
----------------	-------

Michael Zara	Owner
--------------	-------

6(a) The following employees of Respondent, herein called the Unit, constitute a unit

appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All dining room and kitchen employees employed by the Employer.

(b) Since on or about 1987 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and since then the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective bargaining agreements, the most recent of which was effective from November 1, 2011 to October 31, 2014.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

7. (a) Article 18 of the collective-bargaining agreement described above in paragraph 6(b), among other things, provides in pertinent part that:

- i. Seniority shall govern with respect to lay-off and recall.
- ii. If as a result of the diminution of business, the Employer wishes to reduce the number of employees by laying off one or more employees, such lay off shall be effectuated only upon two weeks prior written notice to the Union.

(b) Article 19 of the collective-bargaining agreement described above in paragraph 6(b), among other things provides in pertinent part that:

- i. The Employer may summarily discharge, suspend or discipline an employee for physical fighting on the Employer's premises, being under the influence of liquor or drugs who on duty, dishonesty in connection with his employment or engaging in an unauthorized work stoppage.

- ii. If the Employer desires to discharge, suspend or discipline an employee for causes other than specified above, the Employer shall notify the Union in writing at least six business days in advance of the intended discharge, suspension or discipline during which time the Union may investigate the grounds therefore. The Employer and the Union shall have a conference within a reasonable time after the Union's receipt of

said notice to discuss and attempt to resolve the matter. If the matter is not resolved, it shall be processed in accordance with the grievance procedure set forth in this Agreement. Pending resolution or final determination by arbitrator's award, the employee in question shall not be removed from the job. Notwithstanding the immediately preceding sentence, if the Employer discharges or suspends the employee from his employment prior to resolution of the matter or the rendering of an arbitrator's award, the Employer shall continue to pay wages and all other benefits to the employee, including an amount equal to the tips that the employee had been reporting prior to removal from employment, beginning the day of the employees' discharge or suspension from employment and continuing until the date of resolution or the arbitrator's award.

8. (a) On or about January 5, 2015, Respondent failed to continue in effect the terms and conditions of the collective-bargaining agreement described about in paragraph 7(a) and/ or paragraph 7(b) by failing to provide notice to the Union of the January 19, 2015 lay off or discharge of Jose Felix Vasquez, in accordance with the terms of the collective-bargaining agreement.

(b) On or about May 1, 2015, Respondent failed to continue in effect the terms and conditions of the collective-bargaining agreement described about in paragraph 7 (b) by failing to provide notice to the Union of the May 11, 2015 discharge of Raffaele Federico, in accordance with the terms of the collective-bargaining agreement.

(c) On or about March 17, 2015, Respondent failed to continue in effect the terms and conditions of the collective-bargaining agreement described above in paragraph 7(b) by failing to provide notice to the Union of the March 25, 2015 discharge of Marc Fareri, in accordance with the terms of the collective-bargaining agreement.

(d) The terms and conditions of employment described above in subparagraphs (a), (b) and (c) are mandatory subjects of bargaining for the purpose of collective-bargaining.

(e) Respondent engaged in the conduct described above in subparagraphs (a),

(b) and (c) without giving the Union notice and an opportunity to bargain about that conduct.

9. (a) In or around mid-March, Respondent's employee, Marc Fareri claimed the right to be paid wages owed to him by Respondent in accordance with Article 6 of the collective-bargaining agreement, described above in paragraph 6(b).

(b) On or about March 24, 2015, Respondent discharged its employee Marc Fareri as described above in paragraph 8(c).

(c) Respondent engaged in the conduct described above in subparagraph (b) because Marc Fareri engaged in the activity described above in subparagraph (a), and to discourage employees from engaging in these or other concerted activities.

10. By the conduct described above in paragraphs 8, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, in violation of § 8(a)(1) and (5) of the Act.

11. By the conduct set forth above in paragraph 9 Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of § 8(a)(1) of the Act.

12. The unfair labor practices of Respondent 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 December 14, 2015 or postmarked on or before December 11, 2015.**

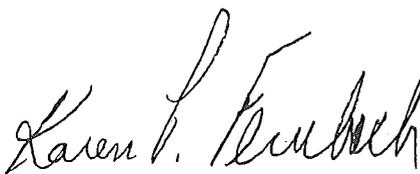
Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

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 January 26, 2016, at **9:30 a.m. at the Mary Walker Taylor Hearing Room, at 26 Federal Plaza, Room 3614, New York, New York** 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, Respondent 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: November 30, 2015



Karen P. Fernbach
Regional Director
National Labor Relations Board
Region 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. RESTAURANT, INC. D/B/A NANNI
RESTAURANT

Case Nos. 02-CA-152777
02-CA-156322

and

LOCAL 100 UNITE HERE

**AFFIDAVIT OF SERVICE OF: ORDER CONSOLIDATING CASES, CONSOLIDATED
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 November 30, 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:

Silvo Sciano
Nanni Restaurant
146 East 46th Street
New York, NY 10017

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Vittorio Miriel
Nanni Restaurant
146 East 46th Street
New York, NY 10017

REGULAR MAIL

Michael Zala
Nanni Restaurant
146 East 46th Street
New York, NY 10017

REGULAR MAIL

Lia Fiol-Matta , General Counsel
UNITE HERE Local 100
275 Seventh Avenue
Floor16
New York, NY 10001-6756

REGULAR MAIL

Local 100 UNITE HERE
275 Seventh Avenue, 16th Floor
New York, NY 10001-6756

CERTIFIED MAIL

November 30, 2015

Date

Lisa Coleman, Designated Agent of NLRB

Name



7006 2760 0002 1737 0875

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	\$ CPT	Postmark Here Coleman CA 95277
Certified Fee	11130	
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

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Updated Delivery Day: Thursday, December 3, 2015

Product & Tracking Information

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Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
December 3, 2015 , 12:47 pm	Delivered	NEW YORK, NY 10017

Your item was delivered at 12:47 pm on December 3, 2015 in NEW YORK, NY 10017.

December 3, 2015 , 10:10 am	Out for Delivery	NEW YORK, NY 10017
December 3, 2015 , 10:00 am	Sorting Complete	NEW YORK, NY 10017
December 3, 2015 , 4:55 am	Arrived at Unit	NEW YORK, NY 10017
December 2, 2015 , 3:05 am	Departed USPS Facility	NEW YORK, NY 10199
November 30, 2015 , 7:31 pm	Arrived at USPS Facility	NEW YORK, NY 10199

Available Actions

Track Another Package

Tracking (or receipt) number

70062760000217370875

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlr.gov
Telephone: (212)264-0300
Fax: (212)264-2450

Agent's Direct Dial: (212)264-0323

December 22, 2015

Nanni Restaurant
Vittorio Miriel & Silvo Sclano, Owners
146 East 46th Street
New York, NY 10017

Re: L.F.N. Restaurant, Inc. D/B/A Nanni
Restaurant
Case 02-CA-152777

Dear Messrs. Miriel and Sclano,

I have attempted to reach you by telephone without success. I have received the draft of a Settlement Agreement sent to you by my colleague, Paula Gomez, with Mr. Sclano's signature. However, you never called to discuss the document as Ms. Gomez requested. The Agreement was only a draft as it did not contain the exact monetary payments you would be required to make. Therefore, the Agreement is not binding. If you are interested in a Settlement Agreement, please contact me immediately at (212) 264-0323.

Additionally, enclosed please find a copy of Complaint and Notice of Hearing that issued on November 30, 2015 in the above-entitled matter.

The National Labor Relations Board's Rules and Regulations provides, in pertinent part:

Section 120.20 *Answer to complaint; time for filing; contents; allegations not denied deemed admitted.*—The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown

Sec. 102.21 *Where to file; service upon the parties; form.*— An original and four copies of the answer shall be filed with the Regional Director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a

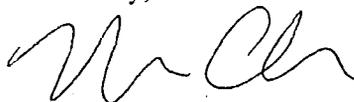


copy thereof on the other parties. An answer of a party represented by counsel or non-attorney representative shall be signed by at least one such attorney or non-attorney representative of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his/her answer and state his/her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the attorney or non-attorney party representative constitutes a certificate by him/her that he/she has read the answer; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

To date, you have not filed an answer to the Complaint, which issued in the above-captioned matter. At this time, I am writing to advise you that unless we receive an answer to the Complaint which complies with the Board's Rules and Regulations enclosed herewith by the close of business on **Wednesday, December 30, 2015**, we will file a Motion for Default Judgment with the Board urging that the Board deem all allegations of the complaint not specifically denied or explained, to be true.

Se non capisci questo documento in Ingeese, per favore, telefonarmi e chiedi di parlare con un traduttore.

Sincerely,



Nicole Oliver
Field Attorney

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

L.F.N. RESTAURANT, INC. d/b/a
NANNI RESTAURANT

and

LOCAL 100, UNITE HERE

Case No. 02-CA-152777

and

MARK FARERI, an Individual

Case No. 02-CA-156322

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing with second chance to file an Answer by December 30, 2015

I, the undersigned employee of the National Labor Relations Board, being duly sworn and deposed, say that on the date indicated below, I served the above-entitled document by regular mail upon the following persons, addressed to them at the following addresses:

Nanni Restaurant
Attn: Owner Vittorio Miriel
146 East 46th Street
New York, NY 10017-2601

Nanni Restaurant
Attn: Owner Silvo Sclano
146 East 46th Street
New York, NY 10017-2601

Subscribed and Sworn to this:
22nd Day of December, 2015

Designated Agent:

Nicole Oliver /s/
National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. Restaurant, Inc. D/B/A
Nanni Restaurant

and

Case Nos. 02-CA-152777
02-CA-156322

Local 100, UNITE HERE

Marc Fareri

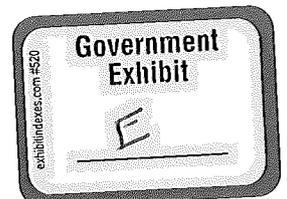
ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be, and the same hereby is, rescheduled from January 26, 2016, to February 9, 2016, at 9:30 A.M., and any adjourned date until completed, at 26 Federal Plaza, Room 3614, New York, New York.

Signed at New York, New York
January 6, 2016



Karen P. Fernbach
Regional Director
National Labor Relations Board
Region 2



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. RESTAURANT, INC. D/B/A NANNI RESTAURANT

Case Nos. 02-CA-152777
02-CA-156322

and

LOCAL 100 UNITE HERE

and

MARK FARERI, an Individual

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 6, 2016**, 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:

Silvo Sciano
Nanni Restaurant
146 East 46th Street
New York, NY 10017

CERTIFIED MAIL, RETURN RECEIPT
REQUESTED

Vittorio Miriel
Nanni Restaurant
146 East 46th Street
New York, NY 10017

CERTIFIED MAIL

Michael Zala
Nanni Restaurant
146 East 46th Street
New York, NY 10017

REGULAR MAIL

Lia Fiol-Matta , General Counsel
UNITE HERE Local 100
275 Seventh Avenue
Floor16
New York, NY 10001-6756

CERTIFIED MAIL

Marc Fareri
447 East 78th Street, Apt 4A
New York, NY 10021

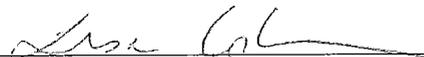
CERTIFIED MAIL

January 6, 2016

Date

Lisa Coleman, Designated Agent of NLRB

Name


Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. RESTAURANT, INC. d/b/a
NANNI RESTAURANT

and

LOCAL 100, UNITE HERE

Case No. 02-CA-152777

and

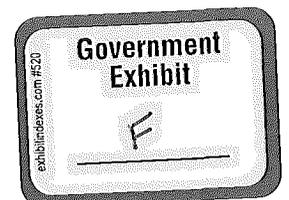
MARK FARERI, an Individual

Case No. 02-CA-156322

**AMENDMENT TO CONSOLIDATED COMPLAINT
AND
ORDER RESCHEDULING HEARING**

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, **IT IS ORDERED** that the Consolidated Complaint and Notice of Hearing issued on November 30, 2015, is amended to add the following remedial paragraph prior to the Answer requirement:

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 8 and 9, the General Counsel seeks an order requiring that Respondent reimburse Jose Felix Vasquez, Raffaele Federico and Marc Fareri for all search-for-work and work-related expenses regardless of whether they received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period; and the General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged herein.



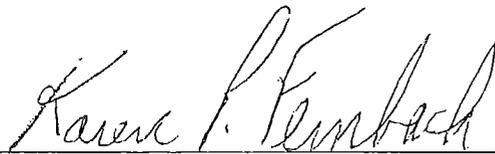
IT IS FURTHER ORDERED that the hearing in the above-entitled matter be, and the same hereby is, rescheduled from February 9, 2016, to March 1, 2016, at 9:30 A.M., and any adjourned date until completed, at 26 Federal Plaza, Room 3614, New York, New York.

RESPONDENT IS FURTHER NOTIFIED that it must file an answer to this Amendment to Complaint. **The answer must be received by this office on or before January 26, 2016, or postmarked on or before January 25, 2016.** Unless filed electronically in a pdf format, 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 consolidated complaint are true.

Dated: January 12, 2016
New York, New York



Karen P. Fernbach
Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, NY 10278

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

L.F.N. RESTAURANT, INC. d/b/a
NANNI RESTAURANT

and

LOCAL 100, UNITE HERE

Case No. 02-CA-152777

and

MARK FARERI, an Individual

Case No. 02-CA-156322

**AFFIDAVIT OF SERVICE OF: Amendment to Consolidated Complaint and Order
Rescheduling Hearing**

I, the undersigned employee of the National Labor Relations Board, being duly sworn and deposed, say that on the date indicated below, I served the above-entitled document by regular mail upon the following persons, addressed to them at the following addresses:

Nanni Restaurant
Attn: Owner: Silvo Sciano & Vittorio Miriel
146 East 46th Street
New York, NY 10017-2601

CERTIFIED MAIL

Lia Fiol-Matta, General Counsel
UNITE HERE Local 100
275 Seventh Avenue, Floor16
New York, NY 10001-6756

CERTIFIED MAIL

Marc Fareri
447 East 78th Street, Apt 4A
New York, NY 10021

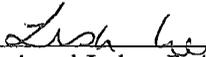
CERTIFIED MAIL

Nanni Restaurant
Attn: Owner: Vittorio Miriel
146 East 46th Street
New York, NY 10017-2601

CERTIFIED MAIL

Subscribed and Sworn to this:
12th Day of January, 2016

Designated Agent:



National Labor Relations Board

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Certified Fee		4.00	
Return Receipt Fee (Endorsement Required)		1.75	
Restricted Delivery Fee (Endorsement Required)		1.12	
Total Postage & Fees	\$		

Sent to

Street, Apt. No.,
or PO Box No. 5140 S. 11th St.

City, State, ZIP+4 146 2A NY 14517

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Product & Tracking Information

Postal Product:

Features:
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DATE & TIME	STATUS OF ITEM	LOCATION
January 15, 2016 , 1:23 pm	Delivered	NEW YORK, NY 10017

Your item was delivered at 1:23 pm on January 15, 2016 in NEW YORK, NY 10017.

January 15, 2016 , 10:17 am	Out for Delivery	NEW YORK, NY 10017
January 15, 2016 , 10:07 am	Sorting Complete	NEW YORK, NY 10017
January 15, 2016 , 4:51 am	Arrived at Unit	NEW YORK, NY 10017
January 13, 2016 , 9:20 pm	Arrived at USPS Facility	NEW YORK, NY 10199

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 1.12	

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 or PO Box No. 146 E. 46th St.
 City, State, ZIP+4 NY NY 10017

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Updated Delivery Day: Friday, January 15, 2016

Product & Tracking Information

Postal Product:

Features:
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DATE & TIME	STATUS OF ITEM	LOCATION
January 15, 2016 , 1:23 pm	Delivered	NEW YORK, NY 10017

Your item was delivered at 1:23 pm on January 15, 2016 in NEW YORK, NY 10017.

January 15, 2016 , 10:17 am	Out for Delivery	NEW YORK, NY 10017
January 15, 2016 , 10:07 am	Sorting Complete	NEW YORK, NY 10017
January 15, 2016 , 6:57 am	Arrived at Unit	NEW YORK, NY 10017
January 14, 2016 , 1:31 pm	Departed USPS Facility	NEW YORK, NY 10199
January 13, 2016 , 10:09 pm	Arrived at USPS Facility	NEW YORK, NY 10199

Available Actions

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Koike, Simon-Jon H.

From: Victor Miriel <vamiriel@gmail.com>
Sent: Tuesday, January 26, 2016 4:35 PM
To: Oliver, Nicole
Subject: Re: Extension on response for Vittorio Miriel and Silvo Sclano

Yes, that would be a good time.

On Jan 26, 2016 4:26 PM, "Oliver, Nicole" <Nicole.Oliver@nlrb.gov> wrote:
Are you available at any time tomorrow morning- Around 11am?

On Jan 26, 2016, at 4:16 PM, Victor Miriel <vamiriel@gmail.com> wrote:

Miss Oliver,

Thank you for the extension. I am sorry I missed your call, but I would appreciate the chance to discuss the process. I tried to call you back, but your answer machine is no longer working. Please let me know a good time to talk.

On Tue, Jan 26, 2016 at 3:38 PM, Oliver, Nicole <Nicole.Oliver@nlrb.gov> wrote:

Mr. Miriel,

The Acting RD has agreed to a one week extension, so the Answer is due February 2, 2016. I will email you a copy of the official Order extending the time to file the Answer when it is complete.

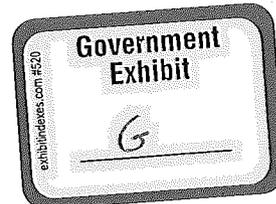
I tried to call you, but your mailbox is full. Before working on your Answer, please call my office when you have a chance. I would like to discuss the status of the restaurant and a little bit about our process (and where we are in that process). This may help you make some decisions.

Thanks,

Nikki

Nikki Oliver | Field Attorney

National Labor Relations Board, Region 2



26 Federal Plaza, Rm 3614

New York, NY 10278

Ph 212 264-0323 | F 212 264-2450

From: Victor Miriel [<mailto:vamiriel@gmail.com>]

Sent: Tuesday, January 26, 2016 12:49 PM

To: Oliver, Nicole <Nicole.Oliver@nlrb.gov>

Subject: Extension on response for Vittorio Miriel and Silvo Sclano

Miss Oliver,

We are asking for an extension to respond to the consolidated complaints (case #:02-CA-152777 and 02-CA-156322). My father was not provided the documents regarding the complaints going back to November of 2015. The delivery of these complaints coincided with my father's severe medical issues. In order for us to respond to the new allegations, we respectfully request a 2 week extension so that all of the parties named may participate in the response. My father's health issues are physically debilitating and I would be willing glad to provide you with documentation of his life threatening medical condition if that helps.

Additionally, I ask that you not discuss these issues Jay Oher, CPA. Thank you for your time.

Best Regards,

Victor Miriel

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. RESTAURANT, INC. D/B/A
NANNI RESTAURANT

and

Case Nos. 02-CA-152777
02-CA-156322

LOCAL 100, UNITE HERE

and

MARK FARERI, an Individual

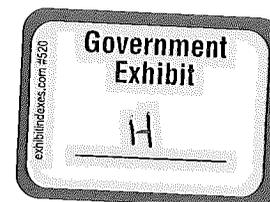
ORDER EXTENDING TIME TO FILE ANSWER

IT IS HEREBY ORDERED that the time within which Respondent may file an answer to the Complaint and Notice of Hearing in the above-entitled matter is hereby extended to **February 2, 2016**.

Dated at New York, New York
January 27, 2016



Karen P. Fernbach,
Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

L.F.N. RESTAURANT, INC. D/B/A NANNI RESTAURANT

Case Nos. 02-CA-152777
02-CA-156322

and

LOCAL 100 UNITE HERE

and

MARK FARERI, an Individual

AFFIDAVIT OF SERVICE OF: EXTENSION OF TIME

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 27, 2016**, 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:

Silvo Sciano
Nanni Restaurant
146 East 46th Street
New York, NY 10017

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Vittorio Miriel
Nanni Restaurant
146 East 46th Street
New York, NY 10017

CERTIFIED MAIL

Michael Zala
Nanni Restaurant
146 East 46th Street
New York, NY 10017

REGULAR MAIL

Lia Fiol-Matta , General Counsel
UNITE HERE Local 100
275 Seventh Avenue
Floor 16
New York, NY 10001-6756

CERTIFIED MAIL

Marc Fareri
447 East 78th Street, Apt 4A
New York, NY 10021

CERTIFIED MAIL

January 27, 2016

Date

Lisa Coleman, Designated Agent of NLRB

Name



Signature