

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**PERSONNEL STAFFING GROUP, LLC d/b/a** )  
**MOST VALUABLE PERSONNEL,** )  
 )  
**and** )  
 )  
 )  
**ROSA CEJA, an Individual** )

**Case No.: 13-CA-155513**

**MEMORANDUM OF PERSONNEL STAFFING GROUP, LLC  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

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## Table of Contents

Table of Authorities.....	iii
Introduction.....	1
Statement of Facts.....	2
I. Ceja’s Employment With MVP.....	2
A. Ceja’s Supervisory Responsibilities, Duties, and Authority As An Onsite Supervisor For MVP.....	2
B. Ceja Quits Or Abandons Her Position With MVP.....	4
II. The State Court Litigation & Proceedings Before the Board.....	5
Legal Standard.....	7
Argument.....	7
I. Ceja Was A Supervisor Under Section 2(11) Of The NLRA And Is Not Entitled To Protection As An “Employee” Under The NLRA.....	7
A. Ceja Exercised The Supervisory Functions Outlined In Section 2(11).....	9
1. Ceja Adjusted Grievances.....	9
2. Ceja Assigned And Terminated Temporary Workers.....	11
3. Ceja Hired And Recommended Employees For Hire.....	12
B. Ceja Consistently Used Her Independent Judgment In Performing The Supervisory Functions During Her Time As An Onsite Supervisor For MVP.....	14
C. Secondary Indicia Indicate That Ceja Was A Section 2(11) Supervisor.....	16
D. Ceja Acted In The Interest Of MVP When She Exercised Supervisory Functions...	17
II. Ceja Abandoned Her Job With MVP, And Therefore Is Not Afforded Protection Under Section 7 Of the NLRA.....	18
A. Ceja did not quit or abandon her position as the result of a labor dispute or unfair labor practice.....	20

B. Ceja Did Not Have A Reasonable Expectation Of Future Employment With MVP ..... 21

C. Ceja’s Course Of Conduct Indicates That She Quit Her Employment With MVP ..... 23

Conclusion ..... 24

## Table of Authorities

### Cases

<i>ADF International, Inc.</i> , Case 19-UC-168515 (2016) . . . . .	10, 13, 16
<i>American Diversified Foods, Inc. v. NLRB</i> , 640 F. 2d 893 (7th Cir. 1981) . . . . .	9, 15, 17
<i>Atlantic Coast Fisheries</i> , 183 NLRB 921 (1970) . . . . .	19
<i>Billows Elec. Supply of Northfield, Inc.</i> , 311 NLRB 878 (1993) . . . . .	16
<i>Choc-Ola Bottlers, Inc. v. NLRB</i> , 478 F.2d 461 (7th Cir. 1973) . . . . .	19
<i>Colorflow Decorator Prods., Inc.</i> , 228 NLRB 408 (1977) . . . . .	17
<i>E &amp; L Transport Co. v. NLRB</i> , 85 F. 3d 1258 (7th Cir. 1996) . . . . .	8, 17
<i>Halstead Metal Prods., a Div. of Halstead Industries, Inc. v. NLRB</i> , 940 F.2d 66 (4th Cir. 1991) . . . . .	19, 20, 22
<i>In re Oakwood Healthcare, Inc.</i> , 348 NLRB 686 (2000) . . . . .	11, 14
<i>John A. Thomas Crane &amp; Trucking Co.</i> , 224 NLRB 214 (1976) . . . . .	19
<i>L’Hoist North America of Tennessee, Inc. and United Mine Workers of America, District 17</i> , 362 NLRB No. 110 (NLRB 2015) . . . . .	7
<i>Merk v. Jewel Companies, Inc.</i> , 848 F.2d 761 (7th Cir. 1988) . . . . .	19, 21
<i>Mid-Continent Refrigerated Service Co.</i> , 228 NLRB 917 (1977) . . . . .	17
<i>Montgomery Ward &amp; Co., Inc. v. NLRB</i> , 668 F.2d 291 (7th Cir. 1981) . . . . .	19
<i>NLRB v. Ajax Tool Works, Inc.</i> , 713 F. 2d 1307 (7th Cir. 1983) . . . . .	14
<del><i>NLRB v. Dole Fresh Vegetables, Inc.</i>, 334 F. 3d 478 (6th Cir. 2003) . . . . .</del>	<del>8</del>
<i>NLRB v. Health Care &amp; Retirement Corp. of America</i> , 511 U.S. 571 (1994) . . . . .	8
<i>NLRB v. Joe B. Foods</i> , 953 F. 2d 287 (7th Cir. 1992) . . . . .	13
<i>NLRB v. Kentucky River Comm. Care, Inc.</i> , 532 U.S. 706 (2001) . . . . .	8
<i>NLRB v. Mt. Desert Island Hosp.</i> , 695 F. 2d 634 (1st Cir. 1982) . . . . .	22

*NLRB v. Winnebago Television Corp.*, 75 F. 3d 1208 (7th Cir. 1996) ..... 12, 13

*Roy Lotspeich Publishing Co.*, 204 NLRB 517 (1973) .....19

*Southern Florida Hotel & Motel Association*, 245 NLRB 561 (1979) ..... 19, 23

*Southern Indiana Gas and Elec. Co. v. NLRB*, 657 F. 2d 878 (7th Cir. 1981) .....8

*Whiting Corp. v. NLRB*, 200 F.2d 43 (7th Cir. 1952) .....19

**Statutes**

29 U.S.C. § 152 ..... passim

29 U.S.C. § 157 ..... passim

**Regulations**

29 C.F.R. 102.24(b) .....7

## INTRODUCTION

This matter is not a case subject to the jurisdiction of the National Labor Relations Board, as the dispute between Personnel Staffing Group, LLC d/b/a Most Valuable Personnel (“MVP”) and Rosa Ceja (“Ceja”) does not fit within the confines of the National Labor Relations Act (the “NLRA”). This is not a case involving an employer and its employee. This is a case involving an individual, who worked as a supervisor for a company, and who voluntarily quit her job outside of the context of a labor dispute, making defamatory public statements about her former employer. Under the First Amendment, companies have a right to seek genuine redress for such defamatory statements, and MVP had every right to do so in its state court litigation.<sup>1</sup>

Ceja was employed by MVP as an onsite supervisor, where she represented MVP on the site at one of its third party client companies. As such, Ceja performed a number of the supervisory functions listed in Section 2(11) of the NLRA, including adjusting grievances, assigning and terminating workers, and hiring and recommending employees for hire. Ceja consistently used her independent judgment in performing these supervisory functions, and did so in the interest of MVP. Furthermore, Ceja was not an employee of MVP at the time she made her statements or when MVP filed suit – she had voluntarily ceased being an employee months prior to her statements. Ceja did not quit or abandon her job in the context of a labor dispute or unfair labor practice. Moreover, she had no reasonable expectation of future employment, as her entire course of conduct indicates that she quit. As a result, the Complaint filed against MVP before the NLRB does not have a legal basis, as the acts complained of are not protected by the NLRA, and MVP requests that summary judgment be entered in its favor.

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<sup>1</sup> While Respondent adamantly disputes the contention that Ceja’s statements were not defamatory, these issues have no bearing on the arguments contained within this Motion.

## STATEMENT OF FACTS

### **I. CEJA'S EMPLOYMENT WITH MVP**

MVP is a temporary labor service agency that provides temporary labor personnel services to third party clients. These services rely on the availability of laborers seeking job assignments from MVP. In March 2014, Ceja began working for MVP as a third-shift dispatcher in one of its offices. (See Affidavit of William Platt attached hereto as Exhibit A). In or about early September 2014, Ceja was provided with the opportunity to work as the onsite supervisor for one of MVP's third-party client companies. (A copy of the Job Description is attached hereto as Exhibit B). While employed as an onsite supervisor at one of MVP's third-party client companies, Ceja was a supervisor, was the sole onsite supervisor at that client company, and was the person in the position of the highest authority on behalf of MVP at that client company. (See Ex. A; See Affidavit of Darron Grottolo attached hereto as Exhibit C).

#### **A. Ceja's Supervisory Responsibilities, Duties, and Authority As An Onsite Supervisor For MVP**

As an onsite supervisor, Ceja was responsible for day-to-day services and management of temporary laborers at the client company. (Ex. B). Ceja was responsible for "training employees, planning, assigning and directing work; releasing employees from assignment; addressing complaints and resolving problems." (Ex. B). Ceja directed employees on the lines, assigned them to jobs, recruited and hired employees, terminated employees from assignments, adjusted employee grievances, and performed time-clocking services. (Ex. B). Ceja was implicitly and explicitly granted the authority, by both MVP and the third-party client company, to act within her independent judgment in addressing employee grievances, determining whether to terminate employees, and ensuring that MVP's employees were following the policies, procedures, and protocols. (Ex. B). Ceja also drafted policies for MVP employees placed on assignment at the

client company. Ceja had the responsibility and authority to perform these duties, and did in fact perform these duties. In particular, Ceja:

- Resolved employee grievances with any disputes, including pay and hour disputes. (*See* Email dated September 20, 2014, attached hereto as Exhibit D (resolving employee pay and hour issue); Email dated September 26, 2014, attached hereto in as Exhibit E (resolving pay issue for employee); Email dated September 26, 2014, attached hereto as Exhibit F (resolving hours issue for employee); Emails from September and October 2014 resolving pay and hour issues, attached hereto as Group Exhibit G))<sup>2</sup>;
- Resolved certain disputes or issues related to temporary employees on behalf of MVP with the client company. (*See* Email dated September 12, 2014, attached hereto as Exhibit H (resolving issue of pay with representative of the client company); Email dated September 15, 2014, attached hereto as Exhibit I (resolving payroll issues for employees with representative of client company));
- Recruited and hired temporary employees for assignment to the client company. (*See* Email chain dated October 4, 2014, attached hereto as Exhibit J (explaining that she was recruiting and hiring laborers); Email dated October 3, 2014, attached hereto as Exhibit K (indicating that Ceja had authority to recruit and hire));
- Determined where, when, and the manner in which to recruit and hire laborers. (*See* Email dated September 8, 2014, attached hereto as Exhibit L);
- Worked with supervisors of MVP's client company in order to determine the number of temporary employees needed for assignment. (*See* Emails from September and October 2014, attached hereto as Group Exhibit M (indicating the number of employees needed to be assigned to the client, who would be assigned to the client, and where they would be assigned));
- Assigned temporary employees to their lines and department, and directed their work while on the line. (*See* Group Ex. M);
- Terminated employees' assignments at the client company. (*See* Email dated October 10, 2014, attached hereto as Exhibit N (indicating that employees would be sent home));
- Determined employee hours and processed payroll for employees at the client company. (*See* Email dated October 8, 2014, attached hereto as Exhibit O; *see also* Group Ex. G);
- Supervised employees placed on job assignment at the client. (*See* Email dated September 24, 2014, attached hereto as Exhibit P (stating that Ceja had "control of [her] people" on assignment at the client));
- Drafted, determined, and implemented policies for MVP temporary employees placed on job assignment at the client company. (*See* Email dated September 20, 2014, attached hereto as Exhibit Q); and
- Trained employees on policies, procedures, and their duties. (*See* Email dated September 20, 2014, attached hereto as Exhibit R).

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<sup>2</sup> Documents have been redacted to protect the privacy of confidential business information and confidential information of individuals who are not parties to this suit.

She performed and executed all of these duties in the interest of MVP. Moreover, as an onsite supervisor Ceja was a salaried employee. (A copy of the Payroll Change Form is attached hereto as Exhibit S). Indeed, Ceja considered herself to be a supervisor in charge of all matters at the client company. (See Email dated September 15, 2014, attached hereto as Exhibit T (requesting that an employee remain a part of “my team” for the client); see also News Article dated June 8, 2016, available at <http://chicagoreporter.com/growing-temp-industry-shuts-out-black-workers-exploits-latinos/#> (claiming that in 2014, she was “supervising workers” at a client company of MVP)). Ceja was placed in a position of trust and authority by MVP at this client company. Indeed, Ceja was the representative of and person with highest authority on behalf of MVP at this client company. Ceja supervised workers, performed the functions of a supervisor, and certainly used her independent judgment in doing so.

**B. Ceja Quits Or Abandons Her Position With MVP**

Unfortunately, almost immediately after being placed as an onsite supervisor, MVP began receiving complaints regarding Ceja’s performance. (See Ex. A). MVP’s management personnel worked with Ceja to resolve her performance issues and to aid her in administrative tasks; however, issues continued to arise. (Ex. A). In early October 2014, MVP continued to receive complaints regarding Ceja’s work performance. (See Ex. A; Ex. D). Although various employees with MVP, including her manager William Platt, attempted to assist Ceja in resolving these issues, Ceja continued to make errors pertaining to employee payroll and client orders. (Ex. A). Due to increasing issues with respect to Ceja’s performance, MVP could no longer permit Ceja to work as an onsite supervisor at that particular third-party client company.

Accordingly, on or about October 13, 2014, as a result of Ceja’s poor work performance in her supervisory position, Mr. Platt spoke with Ceja regarding her performance, and offered to

transfer her back to a dispatcher position. (Ex. A). However, Ceja never began work as a dispatcher and instead abandoned her job position. (Ex. A; *see also* Employee Termination Form based on Job Abandonment, attached hereto as Exhibit U; Employee Time Off Form, attached hereto as Exhibit V; Email dated October 16, 2014, attached hereto as Exhibit W (indicating that Ceja had not appeared for work)). After Ceja failed to report for several consecutive days and stopped responding to communications from management personnel, Ceja was deemed to have abandoned her employment with MVP. (Ex. U). Further, in a statement she provided to the Niles Police Department, Ceja admitted that she “quit” her job. (*See* Niles Police Department Statement, attached hereto as Exhibit X (stating that she has since “quit” her job)). Indeed, even when Ceja’s attorney corrected the Police Report in January 2015, he did not modify her statement to the police that she quit her employment. (*See* Letter from Workers’ Law Office, P.C. dated January 22, 2015, attached hereto as Exhibit Y). Given that Ceja quit her employment, without stating any reason that MVP could address, she did not have any expectation of future employment.

## **II. THE STATE COURT LITIGATION & PROCEEDINGS BEFORE THE BOARD**

In late December 2014, months after Ceja had quit or abandoned her job with MVP, had not applied for or contacted MVP about reemployment, MVP was alerted to a Facebook post made by Ceja, dated December 16, 2014, which stated:

*Si MVP (Most Valuable Personal) les debe hora han sido victimas De abuzo por favor mandenmen un mensaje hay personas interesadas en para las injusticias que acen. Por favor compartan.*

(A copy of the December 16, 2014 Facebook post and English translation are attached hereto as Exhibit Z). In English, Ceja’s Facebook post reads “If any MVP (Most Valuable Personal [sic]) are owed hours, have been victims of abuse, please send me a message. There are people interested in ending the injustices they are doing.” (*Id.*). The following day, in the comments section, Ceja

explained her post by stating, “People sometimes don’t get paid or if they report that they have been sexually abused they don’t care.” (*Id.*). Ceja then “shared” her posts with twenty-nine other unknown individuals. (*Id.*). After consulting with its attorneys, MVP filed suit for defamation against Ceja on January 14, 2015 in the Circuit Court of Lake County, Illinois.

Ceja later filed a Charge of Discrimination, alleging that the state court litigation was baseless and retaliatory under Section 8(1)(1) of the NLRA. On March 24, 2016, the Acting Regional Director of the NLRB, Region 13, served MVP with the NLRB Complaint and Notice of Hearing, acting on behalf of Ceja, the Charging Party, and designated the NLRB Hearing for July 18, 2016. (A copy of the NLRB Complaint is attached hereto as Exhibit AA). Specifically, the NLRB Complaint alleged that:

- (a) The State Court Litigation lacked a reasonable basis and was in retaliation for activity protected by Section 7 of the NLRA;
- (b) The discovery requests issued by MVP to Ceja in the State Court Litigation sought information protected by Section 7 of the NLRA; and
- (c) The State Court Litigation was preempted by the NLRA.

(Ex. AA). On April 7, 2016, MVP filed its Answer and Affirmative Defenses to the NLRB Complaint. (A copy of the Answer and Affirmative Defenses is attached as Exhibit BB).

Accordingly, MVP brings the instant Motion for Summary Judgment on the basis that the NLRB Complaint is insufficient as there is no genuine issue of material fact because, at the time Ceja engaged in the alleged protected concerted activity: (a) she was a “supervisor” as defined by Section 2(11); or (b) she was not an employee of MVP because she quit or abandoned her position. Under both scenarios, Ceja is not afforded any protections under the NLRA, and therefore the Board should grant MVP’s Motion for Summary Judgment.

## LEGAL STANDARD

Rule 102.24(b) of the NLRB Rules sets forth that a party may move for summary judgment prior to a hearing. 29 C.F.R. 102.24(b). The Board must grant motions for summary judgment where there is “no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” *L’Hoist North America of Tennessee, Inc. and United Mine Workers of America, District 17*, 362 NLRB No. 110, \*1 (NLRB 2015).

## ARGUMENT

The NLRB Complaint fails for a preliminary reason: there is no genuine issue as to any material fact that Ceja was not an employee under the NLRA. This is because while Ceja was employed by MVP, she was a supervisor as defined under Section 2(11) of the NLRA, and accordingly is not afforded protection under the NLRA. Additionally, prior to the time of her alleged protected concerted activity, Ceja had quit or abandoned her job with MVP, and therefore cannot be afforded any protection under the NLRA, as she was not an employee under the Act. Accordingly, since Ceja was not an employee as defined by the NLRA, MVP’s Motion for Summary Judgment should be granted.

### **I. CEJA WAS A SUPERVISOR UNDER SECTION 2(11) OF THE NLRA AND IS NOT ENTITLED TO PROTECTION AS AN “EMPLOYEE” UNDER THE NLRA**

Ceja was a supervisor under the NLRA at the time she abandoned her job and thus she was not entitled to the protections of the NLRA. The NLRA specifically excludes supervisors from the definition of “employees” entitled to the protections of Section 7 of the NLRA. *See* 29 U.S.C. § 152(3), (11). Specifically, a supervisor under the NLRA is defined as:

[A]ny individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the

exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11).

Pursuant to this definition, an individual is classified as a “supervisor” if: (1) she holds the authority to engage in any one of the 12 supervisory functions specifically listed in Section 2(11); (2) her “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and (3) her authority is held “in the interest of the employer.” *NLRB v. Kentucky River Comm. Care, Inc.*, 532 U.S. 706, 712-13 (2001); *NLRB v. Dole Fresh Vegetables, Inc.*, 334 F. 3d 478, 485 (6th Cir. 2003) (reiterating that possession of one of the delineated functions is sufficient for a finding of supervisory status, so long as the authority is in the employer’s interest and requires independent judgment). Furthermore, supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. *See* 29 U.S.C. § 152(11); *see also* *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573 (1994). Finally, if the employee is shown to exhibit at least one of the enumerated indicia of supervisory status delineated in Section 2(11), a showing of secondary indicia will support a finding of supervisory status. *See E & L Transport Co. v. NLRB*, 85 F. 3d 1258, 1270 (7th Cir. 1996).

Ceja was previously employed, from approximately September 2014 to October 13, 2014 (the last day she appeared for work), as an onsite supervisor at one of MVP’s third-party client companies. (*See* Ex. A; Ex. B; Ex. C). Hence, even her job description gave her the title of “supervisor.” *See Southern Indiana Gas and Elec. Co. v. NLRB*, 657 F. 2d 878, 886 (7th Cir. 1981) (“The Company’s designation of the position as supervisory, while not itself determinative, is certainly a *significant factor* in ascertaining employee status.” (emphasis added)). Ceja’s daily activities included recruiting and hiring laborers, supervising shifts of laborers, training laborers,

directing laborers, processing payroll, and resolving disputes. (Ex. B; *see also* Ex. D; Ex. E; Ex. F; Grp. Ex. G; Ex. H; Ex. I; Ex. J; Ex. K; Ex. L; Grp. Ex. M; Ex. N; Ex. O; Ex. P; Ex. Q; Ex. R). These functions were performed on a daily basis and required the use of Ceja's independent judgment. (*See* Ex. B). Ceja was frequently required to use her independent judgment to resolve employee grievances, to make determinations regarding the termination of job assignments of laborers at the third-party client company, and to recommend employees for hire. (*Id.*). Furthermore, as the onsite supervisor at the third-party client company, Ceja was the individual in the position of most authority for MVP at that facility. Although Ceja only needs to have performed, or had the authority to effectively recommend, one of the 12 supervisory functions, Ceja performed a number of these functions and, as such, was a supervisor as defined under the NLRA. *See American Diversified Foods, Inc. v. NLRB*, 640 F. 2d 893, 898 (7th Cir. 1981) ("The fact that the work the shift manager supervises is not complex and does not require close attention does not weaken a finding of supervisory status.").

#### **A. Ceja Exercised The Supervisory Functions Outlined In Section 2(11)**

During her time as an onsite supervisor for MVP, Ceja performed a number of supervisory functions. For example, as will be discussed in detail below, Ceja recommended temporary laborers for hire, adjusted grievances, and assigned and terminated temporary laborers, among other supervisory duties. Even simply standing alone, each one of these supervisory functions in itself is enough to classify Ceja as a supervisor under Section 2(11). Accordingly, there is no genuine issue of material fact because Ceja was clearly a supervisor under the NLRA.

##### **1. Ceja Adjusted Grievances**

If an employee is charged with investigating incidents or consults with managers prior to assigning discipline, that employee is deemed a supervisor, even where such consultation was not

required. *ADF International, Inc.*, Case 19-UC-168515, \*41 (2016) (not reported in Board volumes). One of Ceja's duties as an onsite supervisor was to adjust grievances of the temporary employees on job assignment by MVP. (*See* Ex. D; Ex. E; Ex. F; Grp. Ex. G). If these temporary laborers had any issues, Ceja would listen to those concerns, understand the problem, investigate the incident, and resolve the issue by taking corrective steps. (*See* Ex. D; Ex. E; Ex. F; Grp. Ex. G). When any of MVP's temporary workers had a problem at the third-party client company where Ceja was the onsite supervisor, the employees knew to, and consistently would, bring these issues to Ceja's attention. (*See* Ex. D; Ex. E; Ex. F; Grp. Ex. G). This was because MVP's employees understood that it was Ceja's job to reconcile and investigate any issues that arose at the company where she was an onsite supervisor. (*See* Ex. D; Ex. E; Ex. F; Grp. Ex. G). For example, September 20, 2014, Ceja discussed an employment dispute with an employee who was overpaid. (Ex. D). She resolved the issue by having the check re-issued to the employee with the correct pay. (*Id.*). Ceja also resolved other employee grievances, including verifying hours worked, in order to ensure that the employees were properly paid. (Ex. D; Ex. E; Ex. F; Grp. Ex. G). Ceja took the initiative to discuss the grievances these employees had regarding their missing hours. (*Id.*). She listened to the issues from the temporary laborers, used her independent judgment to determine the next steps, and appropriately contacted the right people employed by MVP, in order to resolve the grievances. (*See* Ex. D; Ex. E; Ex. F; Grp. Ex. G). Ceja acted with this authority in the interest of MVP in order to maintain MVP's relationship with those employees for future assignments. (*See id.*).

Moreover, Ceja resolved issues with the client company on behalf of MVP. On September 12, 2014, Ceja resolved an issue that had arisen with respect to holiday pay for employees. (Ex. H). Ceja directly resolved this issue with a representative of the client company (Dan Sims), as was within her authority to do. (*Id.*). Further, Ceja resolved issues and drafted policies for laborers

on assignment at the client company. (*See, e.g.*, Ex. Q). As MVP's employee with the most authority at the client company, Ceja was the most person most equipped to deal with any grievances that arose, and she regularly addressed such issues using her independent judgment and in the interest of MVP, as was required in her position as an onsite supervisor. (*See, e.g.*, Ex. D; Ex. E; Ex. F; Grp. Ex. G; Ex. H; Ex. I; Ex. Q; Ex. R; Ex. T).

## 2. Ceja Assigned And Terminated Temporary Workers

The Board has defined the "assign" function as "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee." *In re Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2000). Furthermore, assigning an employee to a certain department, certain shift, or certain significant overall tasks, generally falls within this definition. *Id.* As an onsite supervisor, Ceja was responsible for assigning and directing work to MVP's temporary employees at the third-party client company. (*See* Ex. J; Ex. K; Ex. L; Grp. Ex. M; Ex. N; Ex. P; Ex. Q; Ex. R). For example, on September 24, 2014, Mr. Platt told Ceja that that she had "control of [her] people and filling the orders." (Ex. P). Ceja had control of the laborers, including recruiting, hiring, assigning, training, and directing their work. (*See* Ex. J; Ex. K; Ex. L; Grp. Ex. M; Ex. N; Ex. P; Ex. Q; Ex. R).

Furthermore, on November 12, 2014, even Ceja, only about a month after quitting/abandoning her job, told the Niles Police that she "she manage[d] all the temporary workers." (Ex. Y). Clearly, Ceja believed she possessed supervisory authority, and acted with such authority, to manage all of MVP's laborers assigned at the company where she was the onsite supervisor. Likewise, Ceja was recently interviewed for a news article in The Chicago Reporter that described Ceja as "working for a temp agency in spring 2014, *supervising* workers at a big

brick packaging plant.”<sup>3</sup> Again, Ceja described her duties and job responsibilities as “supervising.” Indeed, Ceja believed she was a supervisor while working onsite at MVP’s third-party client company.

Ceja also released employees from assignment. (*See* Ex. N). Ceja had the right and authority to determine who would be placed on job assignment, who would be sent home if they were not needed and/or not performing, and terminate assignments. (*See* Ex. B). For example, on October 10, 2014, Ceja determined that two employees were not needed for the assignment, and decided who to send home. (Ex. N). Ceja acted in the interest of MVP in determining who would be placed on assignment, and whose assignment would be terminated. On other occasions, Ceja was able to receive lists of laborers assigned to her client company, through MVP’s dispatchers. Ceja had the authority, and exercised such, in determining whether to terminate the laborers’ assignments at that client company. *NLRB v. Winnebago Television Corp.*, 75 F. 3d 1208, 1217 (7th Cir. 1996) (finding that an employee exercised independent judgment when he “harnesse[d] his unique knowledge of the employees’ capabilities in assigning tasks and areas of responsibility”). In this same way, Ceja harnessed her knowledge of certain laborers and terminated their assignment at the client company. As such, Ceja exercised both the supervisory functions of assigning and terminating laborers’ assignments as MVP’s onsite supervisor, by using her independent judgment and acting in the interest of MVP.

### 3. Ceja Hired and Recommended Employees For Hire

Under the NLRA, if a person is involved in the hiring process, either through direct participation and input or effective recommendation (a recommendation that leads to a hire a majority of the time), the Board will find that the person has the authority to hire or effectively

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<sup>3</sup> This article is publicly available at <http://chicagoreporter.com/growing-temp-industry-shuts-out-black-workers-exploits-latinos/#>.

hire. *See ADF International, Inc.*, Case 19-UC-168515, \*35-36. Ceja regularly and directly participated in and gave input on recommendation that led to hires. (*See* Ex. J; Ex. K; Ex. L). Ceja directly advertised for laborers, on her own initiative and where she deemed best, when she determined such employees were necessary. (Ex. L). Ceja recruited and hired laborers for assignments to the client company where she supervised. (Ex. J; Ex. K). Ceja also had the authority to hire laborers for assignment to the client company, and the discretion to determine what applicants would fit her needs – duties which she performed, and had the authority to perform. (*Id.*). Ceja hired these laborers for MVP. *NLRB v. Joe B. Foods*, 953 F. 2d 287, 298 (7th Cir. 1992) (finding that dispositive recommendations on employee hiring is an indicia of supervisory status).

Additionally, Ceja submitted resumes on behalf of job applicants to MVP's client company as a recommendation for hire. (*See* Email dated September 16, 2014, attached hereto as Exhibit CC). She would arrange and promote an open exchange between the interviewers and the job applicants. (*Id.*). Ceja even coordinated the interview dates and times on behalf of the parties. (*Id.*). Further, she would keep tabs on those she recommended for hire. (*Id.*). When Ceja recommended someone for hire, she was directly involved in the entire process, from submitting the resume, exchanging the contact information, and coordinating the interview. (*Id.*). Finally, some of those recommended by Ceja were hired by the client company. *Joe B. Foods*, 953 F. 2d at 298; *Winnebago Television Corp.*, 75 F. 3d at 1216. For all of these reasons, Ceja clearly performed hiring functions, as she advertised for, recruited, and hired employees on behalf of MVP to work at the client company. Further, Ceja used her own judgment in recommending employees for hire at the client company where she worked. Accordingly, there is no genuine issue of material fact that Ceja was a supervisor while employed with MVP.

**B. Ceja Consistently Used Her Independent Judgment In Performing The Supervisory Functions During Her Time As An Onsite Supervisor For MVP**

In examining whether an employee is a supervisor under Section 2(11), the exercise of the supervisory functions must not must “not [be] of a merely routine or clerical nature,” but must involve the use of independent judgment. *In re Oakwood Healthcare, Inc.*, 348 NLRB at 692; *see also* 29 U.S.C. § 152(11). The Board has declared that “professional [] judgments involving the use of independent judgment are supervisory if they involve one of the 12 supervisory functions of Section 2(11).” *Id.* It is indisputable that Ceja exercised independent judgment when carrying out the supervisory functions. (*See* Ex. D; Ex. E; Grp. Ex. G; Ex. H; Ex. I; Ex. J; Ex. K; Ex. L; Grp. Ex. M; Ex. N; Ex. O; Ex. P; Ex. Q; Ex. R; Ex. T).

For example, on a daily basis, Ceja was responsible for supervising each shift of laborers and directing them on the lines. (Ex. B; Grp. Ex. M). This process was done throughout the course of each and every work day, requiring the use of her independent judgment to correctly supervise the laborers and ensure they were completing the work as instructed. Ceja was employed by MVP to represent MVP’s interests and look over MVP’s employees at the third-party client company. MVP specifically assigned Ceja to be the highest ranking person for MVP at the client site, and expressly granted her the authority to use her independent judgment when executing her duties, including recruiting and hiring, resolving disputes, implementing policies, training employees, directing employees on the lines, and supervising the laborers. (*See* Ex. D; Ex. E; Grp. Ex. G; Ex. H; Ex. I; Ex. J; Ex. K; Ex. L; Grp. Ex. M; Ex. N; Ex. O; Ex. P; Ex. Q; Ex. R; Ex. T); *see NLRB v. Ajax Tool Works, Inc.*, 713 F. 2d 1307, 1312 (7th Cir. 1983) (finding it indicative of supervisory status that the employee was the “highest-ranking employee in the plant on the night shift”).

Furthermore, Ceja used her independent judgment while adjusting employee grievances. For example, September 20, 2014, Ceja discussed an employment dispute with an employee who

was overpaid. (Ex. D). She resolved the issue by having the check re-issued to the employee with the correct pay. (*Id.*). Ceja also resolved other employee grievances with respect to verifying hours worked, in order to ensure that they were properly paid. (Ex. D; Ex. E; Ex. F; Grp. Ex. G). Ceja took the initiative to discuss the grievances these employees had regarding their missing hours and resolved these issues in accordance with her independent judgment, as she was authorized to do by MVP. (*See* Ex. D; Ex. E; Ex. F; Grp. Ex. G). These are just limited instances where Ceja exercised her independent judgment while adjusting employee grievances during her employment as an onsite supervisor with MVP. Ceja performed this type of function on a daily basis.

Ceja also exercised independent judgment when making determinations regarding termination of job assignments of laborers at the third-party client company. An example of this occurred on October 10, 2014, when Ceja made the decision to terminate the assignment of two laborers. (Ex. N). Although dispatchers for MVP assigned eighteen laborers to Ceja's site, Ceja made the independent decision using her own judgment that two laborers' assignments would be terminated and that they would be sent home. (*See* Ex. N). Ceja exercised independent judgment in deciding to terminate, or lay off, employees. *See American Diversified Foods, Inc.*, 640 F. 2d at 897 (“[N]othing prevents the shift manager from basing [her] decision, at least in part, on the requirements of a specific job and her opinions of the [] employee's individual capabilities. This is a sufficient exercise of his independent judgment.”). Accordingly, Ceja exercised her independent judgment in determining which of the eighteen laborers to terminate, and made this determination in the best interest of MVP. (*See* Ex. N). For all of these reasons, it is clear that Ceja used her independent judgment when exercising the supervisory functions delineated in Section 2(11) and thus qualifies as a supervisor under the NLRA.

### C. Secondary Indicia Indicate That Ceja Was A Section 2(11) Supervisor

The secondary indicia indisputably demonstrate that Ceja maintained supervisory status while she was an onsite supervisor with one of MVP's third-party client companies. Ceja's position was titled "supervisor" ("onsite supervisor"); she was salaried; on a daily basis she identified with and communicated with management; she was the one with the most authority on behalf of MVP at the third-party client company; and she oversaw the work of a vast number of temporary laborers sent to the third-party client company where she was the supervisor. (See Ex. A; Ex. B; Ex. C; Ex. D; Ex. E; Ex. F; Grp. Ex. G; Ex. H; Ex. I; Ex. J; Ex. K; Ex. L; Grp. Ex. M; Ex. N; Ex. O; Ex. P; Ex. Q; Ex. R; Ex. Ex. T); see also *E & L Transport Co.*, 85 F. 3d at 1270 (finding proof of secondary indicia where the job title contained supervisor, there was a salary, the employee identified with management, and the employee oversaw a work force of sixty-nine drivers); *Billows Elec. Supply of Northfield, Inc.*, 311 NLRB 878, 878 fn. 2 (1993) (noting, by the Board, that if at least one of the primary indicia of supervisory status is demonstrated, secondary indicia can support statutory supervisory status).

Furthermore, Ceja also had duties to track laborers' times in and out, make corrections to mistaken time entries, and give discretion regarding when to excuse late arrival or allow an employee to leave early, clearly making Ceja a supervisor under the NLRA. (Ex. B); see *ADF International, Inc.*, Case 19-UC-168515, \*46-47 (stating that "the presence of secondary indicia further supports and weighs in favor of" finding supervisory status). Ceja ensured that all hours were properly reported, corrected laborers' time entries, and implemented timekeeping policies. (Ex. O; Grp. Ex. G; Ex. Q; Ex. R).

Thus, since Ceja clearly exercised more than one of the supervisory functions outlined in Section 2(11), and maintained multiple secondary indicia of supervisory status, she is a statutory

supervisor under the NLRA. *See E & L Transport Co.*, 85 F. 3d at 1270 (finding that the Board erred in holding that the employee was not a statutory supervisor when he possessed one of the twelve supervisory functions and maintained multiple secondary indicia).

**D. Ceja Acted In The Interest of MVP When She Exercised Supervisory Functions**

Finally, Ceja carried out each one of these supervisory functions and exercised her authority in the interest of MVP. Specifically, Ceja was the highest ranking employee for MVP at the third-party client company -- a fact that has consistently led to a finding of supervisory status. *See American Diversified Foods, Inc.*, 640 F. 2d at 896 (holding that a restaurant's time shift managers were entitled to supervisory status under the NLRA because they were the highest ranking employees present, had sole responsibility for compliance with company rules, and were responsible for cash receipts and resulting records, among other duties); *see also Mid-Continent Refrigerated Service Co.*, 228 NLRB 917, 920 (1977); *Colorflow Decorator Prods., Inc.*, 228 NLRB 408, 410 (1977). As MVP's highest ranking employee at the third-party client company, Ceja was solely responsible for ensuring the temporary laborers were in compliance with all of MVP's and the third-party client company's policies, for taking and entering time of the temporary laborers, and for ensuring the temporary laborers received their checks from the client company, among others. *See American Diversified Foods, Inc.* 640 F. 2d at 897. For example, on September 24, 2014, Mr. Platt stressed that Ceja was in charge of the employees assigned to MVP's client company. (Ex. P). In this email, Mr. Platt told Ceja "you have control of your people and filling the orders," directly granting Ceja direct control over her employees. (*Id.*). Ceja also acted in MVP's interest at the client company, ensuring that the laborers represented MVP in a quality way. Another example occurred on September 20, 2014, when Ceja indicated that she would ensure that MVP's employees were properly trained on a policy she drafted. (Ex. R). In her supervisory

position, Ceja was responsible for communicating with the client company, and their managerial personnel, and ensuring that the temporary laborers understood and followed the company's policies, as well as MVP's. (*See id.*). The company where Ceja was an onsite supervisor even tasked her with developing policies, specifically Ceja was to make a policy on failure to clock in and out, for MVP's temporary laborers who worked at the third-party client company. (*See Ex. Q*). Accordingly, as the highest ranking employee at the client company, Ceja acted in the interest of MVP when carrying out her supervisory role. For all of the many reasons stated above, there is no genuine issue of material fact that Ceja was clearly a supervisor under Section 2(11) of the NLRA and as such is not afforded protections under the Act. Accordingly, MVP's Motion for Summary Judgment must be granted.

## **II. CEJA ABANDONED HER JOB WITH MVP, AND THEREFORE IS NOT AFFORDED PROTECTED UNDER SECTION 7 OF THE NLRA**

At the time that Ceja allegedly engaged in protected concerted activity, all of the evidence clearly demonstrates that Ceja quit or abandoned her job and therefore was not protected under Section 7 of the NLRA because she was not an "employee" at that time. Therefore, MVP could not have violated the NLRA when it filed the State Court Litigation because the Facebook post was not made by an "employee" and thus was not a protected activity.

The NLRA provides protections to "employees" as that term is defined in Section 2(3) of the Act. *See* 29 U.S.C. § 152(3). This classification only extends to employees of an employer and former employees "whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." *Id.* Additionally, employees who are supervisors are excluded from this list. *Id.* Section 7 of the NLRA guarantees certain rights only to employees, including the right to "engage in concerted activities for the purposes of collective bargaining or

other mutual aid or protection.” 29 U.S.C. § 157. The Fourth Circuit, in *Halstead Metal Prods., a Div. of Halstead Industries, Inc. v. NLRB*, explained:

[A]n employer only violates the Act if the individuals against whom he discriminates are employees for purposes of the Act. In other words, unless the workers who protest are employees, their concerted activity is not protected by the Act. . . . It is undisputed that Hazelwood voluntarily resigned on August 16, 1988, because he was dissatisfied with the proposed work schedule. Because Hazelwood actually resigned, he was not protected by the Act from future discrimination, even if the discrimination arose from participation in concerted activities with employees who were protected by the Act.

940 F.2d 66, 70 (4th Cir. 1991).

Indeed, it is clear that former employees lose “their status as NLRA ‘employees’ when they leave work for reasons other than a labor dispute or unfair labor practice.” *Merk v. Jewel Companies, Inc.*, 848 F.2d 761, 765 (7th Cir. 1988); *cf. Choc-Ola Bottlers, Inc. v. NLRB*, 478 F.2d 461, 464-65 (7th Cir. 1973) (explaining that an employee who was discharged for cause was not an “employee” under the NLRA). Further, both the Board and the Seventh Circuit have held that “[e]mployees who quit or abandon their job lose their employee status because they no longer have the requisite expectation of future employment.” *Montgomery Ward & Co., Inc. v. NLRB*, 668 F.2d 291, 299-300 (7th Cir. 1981) (citing *Whiting Corp. v. NLRB*, 200 F.2d 43 (7th Cir. 1952), *John A. Thomas Crane & Trucking Co.*, 224 NLRB 214 (1976), *Roy Lotspeich Publishing Co.*, 204 NLRB 517 (1973) and *Atlantic Coast Fisheries*, 183 NLRB 921 (1970)). Finally, the question of whether an employee quit is answered “by ascertaining the intent of the employee[] as evidenced by [her] entire course of conduct.” *Southern Florida Hotel & Motel Association*, 245 NLRB 561, 605 (1979).

It is indisputable that Ceja quit or abandoned her job with MVP, and as such there is no genuine issue of material fact that Ceja is not an employee under Section 2(3) and therefore is not

afforded protection under the NLRA.<sup>4</sup> Ceja abandoned her job with MVP when she failed to appear for work for five (5) consecutive days and made no attempt to communicate her whereabouts with MVP. Moreover, Ceja had absolutely no reasonable expectation of future employment. Finally, examining Ceja's entire course of conduct, her intent was clear, and as she has readily admitted, she quit or abandoned her position with MVP. Accordingly, the Board should grant MVP's Motion for Summary Judgment.

**A. Ceja Did Not Quit Or Abandon Her Position As The Result Of A Labor Dispute Or Unfair Labor Practice**

There is no genuine issue of material fact that Ceja undoubtedly abandoned her position with MVP, and as such, she was not an employee at the time of her alleged protected concerted activity. *See Halstead Metal Prods., Inc.*, 940 F. 2d at 71. On or about October 13, 2014, Mr. Platt, Ceja's manager, spoke with Ceja regarding her performance as an onsite supervisor. (Ex. A). During this conversation, Ceja admitted to being "overwhelmed" by the responsibilities of an onsite supervisor and that the position was too demanding.<sup>5</sup> (*Id.*). At this time, Mr. Platt offered to transfer Ceja to another position, which she originally accepted. (*Id.*). Ceja did not indicate, at any time, that she had any issues with the transition to this position, nor did she express any other reservations regarding the transfer. (Ex. A).

However, Ceja never appeared at work for this other position and on October 15, 2014, Ceja indicated that someone would be contacting Mr. Platt concerning her hours because she did not feel safe and would not be going to work. (A copy of the email correspondence dated October 15, 2014 is attached hereto as Exhibit DD). Ceja had never previously said anything to MVP that

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<sup>4</sup> Respondent brings to the Board's attention that it has consistently maintained the position that Ceja quit or abandoned her job in October 2014, as asserted in the NLRB position statements, EEOC position statements, and the State Court Litigation.

<sup>5</sup> The demanding nature of the position further indicates that it was a supervisory position.

she did not feel safe, and no one ever contacted MVP to discuss this matter, as indicated by her email. (Ex. A; Ex. DD). Ceja's reason for not reporting to work was not because of a labor dispute or unfair labor practice. Ceja never expressed any reason why being a dispatcher this time was any different than when she was previously a dispatcher on the *exact same* shift a few months earlier. *See Merk*, 848 F.2d at 765 (holding that employees lose their status under the NLRA as such when they abandon for a reason other than an unfair labor practice or labor dispute). Ceja never provided more information and never presented any labor dispute or unfair labor practice, and thus MVP had no opportunity to accommodate Ceja's alleged concerns. Accordingly, on October 15, 2014, Ceja lost any potential status and protection she would have had under the NLRA because she abandoned or quit her job.

**B. Ceja Did Not Have A Reasonable Expectation Of Future Employment With MVP**

For five (5) consecutive days, from October 15 to October 20, 2014, Ceja did not report to work, did not inform any of MVP's personnel that she would not be at work, and was not performing any job duties or other functions for MVP. (*See* Ex. U; Ex. V; Ex. W; Ex. DD). Furthermore, there was no contact from any person on Ceja's behalf to any agent of MVP regarding Ceja's absences, despite Ceja's statement to Mr. Platt that someone would be contacting him on Ceja's behalf regarding her hours. (*See* Ex. DD). Nevertheless, and in an effort to determine the status of Ceja's job and her desire to continue working for MVP, on October 16, 17, and 18, 2014, Mr. Platt attempted to contact Ceja via different methods of communication. (Ex. A; Ex. U). Ceja did not answer, or otherwise respond to, any of these communications. (*Id.*). Accordingly, on October 20, 2014, Ceja was deemed by MVP to have abandoned her job after she was absent from work for five (5) consecutive days and refused to engage in talks with MVP regarding this absenteeism. (*Id.*).

After not reporting to work, and not responding to communications by MVP regarding such absenteeism, Ceja never reapplied for a position with MVP. *Cf. NLRB v. Mt. Desert Island Hosp.*, 695 F. 2d 634, 638 (1st Cir. 1982). Even more, after quitting or abandoning her position with MVP, Ceja did not have an intention of returning and therefore had no “reasonable expectation of employment within a reasonable time in the future.” *See Halstead Metal Prods., Inc.*, 940 F. 2d at 71 (determining whether an employee quit by examining the basis of the conduct and whether it was intended only to protest or to quit by resignation). Indeed, Ceja had no reasonable expectation of employment with MVP after being absent for five (5) consecutive days, not communicating with MVP about her whereabouts, and not responding to any of MVP’s communications. (*See Ex. A; Ex. U; Ex. V; Ex. W*). Here, all of the facts and evidence indisputably show that Ceja was not protesting, either on behalf of herself or others, or engaged in a concerted protected activity when she abandoned or quit her job. Ceja solely informed MVP that she had a problem attending work, without providing further information either allowing MVP to remedy the issue or offer alternative placement, and without organizing, protesting, or engaging in any other activity protected under the NLRA. (*See Ex. DD*). MVP followed up with Ceja to determine whether she would be reporting to work and attempted to ascertain her reason for not showing up at MVP’s facility. (*See Ex. A; Ex. U*). Ceja made the decision not to respond to any of MVP’s communications. (*See id.*). Thus, Ceja’s actions cumulatively point to the undeniable fact that she quit or abandoned her job, as indicated by her entire course of conduct, and therefore had no reasonable expectation of future employment with MVP, as she completely cut ties with MVP after remaining absent from work.

Accordingly, after Ceja did not report for work for several consecutive days, and did not communicate with MVP regarding such absenteeism, Ceja quit or abandoned her employment

with MVP. Since Ceja quit or abandoned her job, she cannot possibly be deemed an “employee,” and is not afforded the protections of the NLRA, thus MVP’s Motion for Summary Judgment must be granted.

**C. Ceja’s Course of Conduct Indicates That She Quit Her Employment with MVP**

Finally, examining Ceja’s entire course of conduct makes it clear that she intended to quit (or abandon) her job, as even Ceja herself admitted that she had quit her job with MVP. *See Southern Florida Hotel & Motel Association*, 245 NLRB at 605. On November 12, 2014, Ceja made statements to the Niles Police Department, less than a month after quitting her job on October 20, 2014 (Ex. Y). In the Police Report Ceja stated she “quit her job.” (Ex. Y). Furthermore, even after submitting a declaration through her attorney, Christopher Williams, only a couple months after speaking with the police, and where she corrected many of the statements she made in the Police Report, Ceja declined to amend her categorization that she “quit her job.” (Ex. Z). Ceja made these amendments on January 22, 2015, an approximate month after engaging in the alleged protected concerted activity. (Ex. Z). Accordingly, Ceja’s decision not to amend her statement that she “quit her job” affirms her own belief and recollection of the events that she did indeed quit her job, as was her intent. Therefore, since even Ceja herself admitted that she quit her job with MVP, and followed through with that intent, there is no genuine issue of material fact that Ceja was not an employee at the time she engaged in an alleged concerted activity.

All of this evidence points to the truth: Ceja quit or abandoned her position with MVP prior to engaging in any alleged protected concerted activity and was not an employee of MVP at that time. Accordingly, since there is no genuine issue of material fact that Ceja quit or abandoned her position with MVP, prior to engaging in any alleged protected activity, Ceja is not afforded protection under the NLRA and the Board should grant MVP’s Motion for Summary Judgment.

**Conclusion**

MVP's Motion for Summary Judgment should be granted because there is no genuine issue of material fact. Specifically, there is no genuine issue of material fact that while Ceja was employed by MVP, she was a supervisor as defined under Section 2(11) of the NLRA, and accordingly is not afforded protection under such. Moreover, the facts undeniably demonstrate that Ceja quit or abandoned her job with MVP, before the time of her alleged protected concerted activity, and therefore was not afforded any protection under the NLRA. As such, MVP's Motion for Summary Judgment should be granted.

Respectfully Submitted,

PERSONNEL STAFFING GROUP, LLC  
d/b/a/ MOST VALUABLE PERSONNEL,

A handwritten signature in black ink, appearing to be a stylized 'A' followed by a wavy line.

By: \_\_\_\_\_

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