

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

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MUY PIZZA SOUTHEAST, LLC *

*

Respondent *

*

and *

Case No. 15-CA-174267

*

STEVEN GREGORY COLVIN *

*

an Individual *

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* * * * *

Joint Motion and Stipulation of Facts and Exhibits

This is a Joint Motion to Proceed on a Stipulated Record and Stipulation of Facts and Exhibits by the parties in this case, MUY Pizza Southeast, LLC (“Respondent”), Steven Gregory Colvin, an Individual (“Charging Party”), and the General Counsel, through the undersigned Counsel for the General Counsel, submitted for approval by the Administrative Law Judge (“ALJ”) pursuant to Sections 102.35(a)(9) and 102.40 of the Board’s Rules and Regulations. This Joint Motion and Stipulation will effectuate the purposes of the National Labor Relations Act (“Act”) and avoid unnecessary costs and delay.

If this Motion is granted, the parties agree to the following stipulated facts, including exhibits, for this matter:

1. The record in this case consists of this Joint Motion and Stipulation, all pleadings filed to date, Stipulated Exhibits described herein and submitted herewith, the Statement of Issues Presented set forth below, and the statements of positions submitted by the parties.

2. This case is submitted to the ALJ for issuance of findings of facts, conclusions of law, and a recommended Order pursuant to Section 102.45 of the Board's Rules and Regulations and subject to Section 102.46 of the Board's Rules and Regulations.

3. The parties waive a hearing in front of the ALJ.

4. The ALJ shall set a time for the filing of briefs.

5. The stipulation is made without prejudice to any objection that any party may have as to the relevance of any facts stated herein.

I. Stipulation of Facts

1(a) The charge in this proceeding was filed by the Charging Party on April 18, 2016, and a copy was served on Respondent by U.S. Mail on April 18, 2016. A copy of the charge and affidavit of service are attached as Stipulated Exhibit A.

(b) On July 28, 2016, the Regional Director for Region 15 issued a Complaint and Notice of Hearing (Complaint) alleging that Respondent violated the Act. A copy of the Complaint and affidavit of service are attached as Stipulated Exhibit B. On August 10, 2016, Respondent filed its Answer. A copy is attached hereto as Stipulated Exhibit C.

2. At all material times, Respondent has been a Texas limited liability company with operations and a place of business in Gulf Breeze, Florida.

3. Respondent conducts business in a number of locations including Gulf Breeze, Florida, (Respondent's facility) where it engages in the retail sale of pizza and related products.

4. During the previous twelve (12) months, Respondent has, in the course and conduct of its business operations, derived revenues in excess of \$500,000 and has directly

purchased and received at its Gulf Breeze, Florida facility goods and products valued in excess of \$5,000 from suppliers located outside the State of Florida.

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

6. At all material times, Rebecca Anderson held the position of Respondent's Store Manager and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

7. During the fall of 2014 (a more exact date being unknown), the Charging Party went to Respondent's facility in Gulf Breeze, Florida, to apply for a job. There were no openings at the time so the Charging Party left his name and contact information.

8. Around early March of 2015 (a more exact date being unknown), Respondent's Store Manager Anderson called the Charging Party and invited him to apply for a job as a delivery driver. He was instructed to submit an application online. On March 3, 2015, the Charging Party filled out an application at <https://my.peoplematter.at/panhandlepizza/hire> (or was it <https://www.pizzahut.com/career>).

9. As part of the application process, the Charging Party was required to sign an Agreement to Arbitrate, which the Charging Party signed on March 3, 2015 (Stipulated Exhibit D).

10. Since at least March 3, 2015, Respondent has been requiring employees, as a term and condition of employment, to sign the Agreement to Arbitrate.

11. On March 9, 2015, the Charging Party began working for Respondent as a delivery driver.

12. On February 5, 2016, the Charging Party, on behalf of himself and other employees similarly situated, filed a complaint in the United States District Court for the Northern District of Florida (Pensacola Division), asserting that Respondent has been failing to pay employees the minimum wage required by the Fair Labor Standards Act (“FLSA”) (the proceeding is referred to herein as “the FLSA Claim”). The case number of the FLSA Claim was 3:16-CV-00046 and a copy is attached as Stipulated Exhibit E. On March 14, 2016, Respondent filed its answer in the FLSA Claim denying it was violating the FLSA (Stipulated Exhibit F).

13. On April 11, 2016, the attorney for Respondent in the FLSA Claim sent an email to the attorney for the Charging Party in the FLSA Claim (Stipulated Exhibit G). The email contained, as an attachment, a copy of the Agreement to Arbitrate. Respondent’s attorney indicated that it appeared the Agreement to Arbitrate was enforceable in the United States 11th Circuit Court of Appeals and that “it changes things quite a bit.”

14. On April 15, 2016, based on the Agreement to Arbitrate, Respondent and the Charging Party filed a Stipulation of Dismissal Without Prejudice in the FLSA Claim (Stipulated Exhibit H). On April 18, 2016, the FLSA Claim was dismissed by the Court (Stipulated Exhibit I).

15. On April 21, 2016, the Charging Party filed a Statement of Claim with the American Arbitration Association identical to the FLSA Claim (Stipulated Exhibit J). On May 31, 2016, Respondent filed its answer in the proceeding denying it was violating the FLSA (Stipulated Exhibit K). As of the date of this Motion and Stipulation, the AAA arbitration is currently pending.

II. Statement of Issues Presented

1. Whether 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 Section 8(a)(1) of the Act by maintaining and enforcing the terms of the Agreement to Arbitrate that precludes class or collective actions.

2. Whether Respondent committed unfair labor practices that affect commerce within the meaning of Section 2(2), (6) and (7) of the Act.

Respectfully submitted jointly on the 14th day of October, 2016, by:

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