

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

**VILLAGE RED RESTAURANT CORP. D/B/A
WAVERLY RESTAURANT**

And

Case No. 02-CA-162509

MIGUEL ROMERO LARA

An Individual

And

Case No. 02-CA-166015

MIGUEL BOTELLO GONZAGA

An Individual

**GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE
OCTOBER 31, 2016 DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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The General Counsel, by its undersigned Counsel (“General Counsel”), pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations, submits the following exceptions to the Decision and Recommended Order (the “ALJD”) of Administrative Law Judge Steven Davis (the “ALJ”) dated October 31, 2016, in the above-captioned consolidated cases.¹ While the ALJ correctly found that Respondent committed the unfair labor practices alleged in the complaint, General Counsel submits these exceptions for the limited purpose of correcting certain errors and omissions.

Exceptions to Decision

Exception 1. The ALJ erred in omitting from his Conclusions of Law (ALJD, p. 33) that Respondent violated Section 8(a)(1) of the National Labor Relations Act by reducing the hours of work of Garcia, Lara, Delgado, and Gonzaga because they filed a Fair Labor Standards Act lawsuit against the Respondent, as alleged in paragraph 6 of the March 31, 2016 Consolidated Complaint (the “Complaint”). The ALJ erred in omitting this legal conclusion, even though in the body of his decision he correctly concluded, “I cannot find that the Respondent met its burden of proving that it would have reduced the hours of work of Garcia, Lara, Delgado and Gonzaga even in the absence of their concerted action of filing the FLSA lawsuit.” (ALJD, p. 28).

Exception 2. The ALJ erred in omitting the word “constructively” from Conclusions of Law 4 and 5. (ALJD, p. 33). The ALJ correctly found that, in or around September 2015, Respondent constructively discharged Miguel Botello Gonzaga (ALJD, p. 20-21), as alleged in paragraph 7(a) of the Complaint, and after his reinstatement by Respondent, in or around November 2015, Respondent constructively discharged Gonzaga under a Hobson’s choice theory

¹ References to the ALJD will follow the format, “ALJD, p. ___.”

(ALJD, p. 22-23), as alleged in paragraph 7(d) of the Complaint. However, the ALJ erred in inadvertently omitting the word “constructively” from the legal conclusions regarding these two discharges.

Exception 3. The ALJ erred in referencing Respondent’s facility in “Bethpage, New York,” rather than “New York, New York,” in the notice posting portion of his recommended Order. (ALJD, p. 35, 2(d)). This appears to be an inadvertent error, as the ALJ’s Findings of Fact recite that Respondent’s office and place of business are located in New York, New York.

Dated at New York, New York,
November 18, 2016

Respectfully submitted,

_____/s/ Julie R. Ulmet_____
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I served copies of the foregoing **General Counsel's Limited Exceptions to the Decision of the Administrative Law Judge**, via the means set forth below:

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Subscribed and sworn to by me,
This 18th day of November, 2016

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