

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

TROPICAL WELLNESS CENTER, LLC

and

**Cases 12-CA-167884
12-CA-171371**

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

MOTION TO AMEND INDEX AND DESCRIPTION OF FORMAL PAPERS

Pursuant to Section 102.24 of the Board's Rules and Regulation, Counsel for the General Counsel moves for permission to amend the Index and Description of Formal Papers to add as General Counsel's Exhibit 1(ff) Respondent's Answer to the Amended Consolidated Complaint and Notice of Hearing (the Amended Complaint) that issued on August 23, 2016. [Attached as GCX 1(ff)]. Respondent's Answer to the Amended Complaint was inadvertently excluded from the Index and Description of Formal Papers that were admitted into evidence when the hearing in the above-captioned matter opened on July 10, 2017.

DATED at Miami, Florida this 7th day of September 2018.

Respectfully submitted,

/s/ Marinelly Maldonado

Marinelly Maldonado
Counsel for the General Counsel
National Labor Relations Board
Miami Resident Office, Region 12
51 S.W. 1st Avenue, Suite 1320
Miami, FL 33130
marinelly.maldonado@nrlb.gov

CERTIFICATE OF SERVICE

I hereby certify that the Motion to Amend Index and Description of Formal Papers in Cases 12-CA-167884 and 12-CA-171371 was served as follows on September 7, 2018.

By electronic filing:

Hon. Elizabeth Tafe
Administrative Law Judge
National Labor Relations Board
Division of Judges
1015 Half Street SE
Washington, DC 20570-0001

By electronic mail, regular mail, and certified mail:

Tropical Wellness Center
4700 Dixie Highway, Suite 101
Palm Bay, FL 32905
leescottstein@gmail.com

Lee Stein
19325 Cherry Hills Terrace
Boca Raton, FL 33498
leescottstein@gmail.com

David Mahler
6628 NW 25th Court
Boca Raton, FL 33496
dvdmahler@yahoo.com

By electronic mail:

Ramon Garcia, Grand Lodge Representative
International Association of Machinists and
Aerospace Workers (IAM), AFL-CIO
690 E Lamar Blvd, Suite 580
Arlington, TX 76011

Kevin DiMeco, Organizer
International Association of Machinists and
Aerospace Workers, AFL-CIO
271 Taylor Avenue
Cape Canaveral, FL 32920

/s/ Marinelly Maldonado

Marinelly Maldonado
Counsel for the General Counsel
National Labor Relations Board
Miami Resident Office, Region 12
51 S.W. 1st Avenue
Miami, FL 33130
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Respondent Tropical Wellness Center, LLC (“Respondent”), by its undersigned attorneys, and for its Initial Response (“Response”) to the Amended Consolidated Complaint served by the National Labor Relations Board (“NLRB” or “Board”) on or about August 23, 2016, states as follows:

GENERAL DENIAL

Except as otherwise expressly stated herein, Respondent denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Amended Consolidated Complaint, and Respondent specifically denies that it violated the National Labor Relations Act (“Act”) in any of the manners alleged in the Amended Consolidated Complaint or in any other manner. Averments in the Amended Consolidated Complaint to which no responsive pleading is required shall be deemed as denied. Respondent expressly reserves the right to seek to amend and/or supplement this Response, as may be necessary.

1. The Respondent has not violated the Act, as the Respondent has not interfered with, restrained, or coerced employees, including but not limited those exercising any right or rights protected under the Act.

2. The Respondent has not violated the Act, as it has not discriminated against any employee with respect to their hire, wages, tenure, location, or terms and conditions of employment.

3. The Amended Consolidated Complaint, and the relief which the Complainant seeks through that Amended Consolidated Complaint, are improper and should not be granted, because the Complainant cannot satisfy the requirements of the Act, as interpreted and enforced by the courts.

RESPONSE TO SPECIFIC ALLEGATIONS OF THE PETITION

AND NOW, incorporating the foregoing, Respondent states as follows in specific response to the specific allegations of the Petition:

1a. Respondent admits that a copy of the Charge identified in paragraph 1a was served upon Respondent, and denies the remaining allegations of paragraph 1a.

1b. Respondent admits that a copy of the Amended Charge identified in paragraph 1b was served upon Respondent, and denies the remaining allegations of paragraph 1b.

1c. Respondent admits that a copy of the Second Amended Charge identified in paragraph 1c was served upon Respondent, and denies the remaining allegations of paragraph 1c.

1d. Respondent admits that a copy of the Charge identified in paragraph 1d was served upon Respondent, and denies the remaining allegations of paragraph 1d.

2a. Respondent admits the allegations of paragraph 2a.

2b. Respondent denies the allegations of paragraph 2b.

2c. Respondent admits the allegations of paragraph 2c.

2d. Respondent admits the allegations of paragraph 2d.

3a. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3a, and thus denies.

3b. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3b, and thus denies.

3c. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3c, and thus denies.

3d. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 3d, and thus denies.

4. Respondent admits that the individuals listed in this paragraph have at times been "supervisors" for some purposes within the meaning of Section 2(11) of the Act, and denies the remaining allegations of paragraph 4.

5a. Respondent denies the allegations of paragraph 5a.

5b. Respondent denies the allegations of paragraph 5b.

5c. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5c, and thus denies.

6a. Respondent denies the allegations in Paragraph 6a. Respondent avers affirmatively that no deductions were made, but deny that there was a valid collective-bargaining agreement that required said deductions.

6b. Respondent denies the allegations in Paragraph 6b. Respondent avers affirmatively that no deductions were made, but denies the remainder of the paragraph

6c. Respondent denies the allegations of paragraph 6c.

6d. Paragraph 6d contains conclusions of law, to which no response is required. To the extent a response is deemed required, Respondent denies.

6e. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6e, and thus denies.

7a. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7a, and thus denies.

7b. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7b, and thus denies.

7c. Respondent denies the allegations of paragraph 7c.

8a. Respondent admits that Travis Beaver, Greg Dombal, Joanne James, Alice Kwolek, Teresa Lee, Trinity Phillips and Heather Strobel were terminated on or about March 4, 2016 and denies the remaining allegations of paragraph 8a.

8b. Respondent denies the allegations of paragraph 8b.

8c. Respondent denies the allegations of paragraph 8c.

8d. Paragraph 8d contains conclusions of law, to which no response is required. To the extent a response is deemed required, Respondent denies.

8e. Respondent denies the allegations of paragraph 8e.

9. Respondent denies the allegations of paragraph 9, and that it has engaged in any unfair labor practices whatsoever or interfered with, restrained, or coerced employees in the exercise of their rights.

10. Respondent denies the allegations of paragraph 9, and that it has engaged in any unfair labor practices whatsoever or discriminated against employees in the exercise of their rights.

11. Respondent denies that it has engaged in any unfair labor practices whatsoever, and denies the remaining allegations of paragraph 11.

12. Respondent denies that it has engaged in unfair labor practices whatsoever, and denies the remaining allegations of paragraph 12.

13. Paragraph 13 contains conclusions of law, to which no response is required. To the extent a response is deemed required, Respondent denies.

DEFENSES

Without assuming any burden of proof, persuasion or production not otherwise legally assigned to it as to any element of the claims alleged in the Amended Consolidated Complaint, Respondent asserts the following defenses:

1. The allegations of the Amended Consolidated Complaint do not support recovery under the Act because some or all of them fail to state a claim.

2. Some or all of the claims asserted in the Amended Consolidated Complaint are barred by the six month statute of limitations set forth in §10(b) of the NLRA.

3. Some or all of the allegations in the Amended Consolidated Complaint fall outside the scope of the underlying charges.

4. The Complainants have not satisfied the administrative pre-requisites to bringing some or all of the alleged actions.

5. Respondent did not unlawfully discourage its employees from engaging in protected concerted activities.

6. Respondent did not interfere with, restrain, or coerce employees in the exercise of their rights under the National Labor Relations Act.

7. Respondent did not treat employees who engaged in protected activity any differently than employees who did not engage in protected activity.

8. Any actions taken by Respondent, despite the presence of any valid contract, which existence Respondent hereby denies, was legally and ethically necessary in light of the employees own actions and/or omissions.

9. Respondent's decision to terminate the employment of the listed employees was based upon the need to mitigate violations of state law committed by the acts or or omissions of the affected employees, creating exigent circumstances upon which Respondent was legally required to act.

10. The International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter "IAM") failed to conduct a valid election in accordance with the applicable NLRB statutes and procedures.

11. Respondent does not now have, nor has it been shown that the IAM has ever executed a contract between IAM and Respondent.

12. Respondent denies all allegations not expressly admitted.

Respondent reserves the right to raise any additional defenses not asserted herein of which they may become aware through investigation, as may be appropriate at a later time.

Respectfully Submitted,

JAMES L. WEINTRAUB, P.A.
Counsel for Tropical Wellness Center
470 Hardwood Place
Boca Raton, Florida 33431
(561) 452-1233 (Office)
(800) 878-7872 (Facsimile)

By /s/ James L. Weintraub
James L. Weintraub, Esq.
FBN: 0795046

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CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Answer was electronically served on September 15, 2016 and sent overnight mail to the following parties:

Kevin DiMeco, Organizer
International Association of Machinists and Aerospace Workers, AFL-CIO
271 Taylor Avenue
Cape Canaveral, FL 32920-3098

Ramon Garcia, Grand Lodge Representative
International Association of Machinists and Aerospace Workers, AFL-CIO
690 E. Lamar Blvd
Suite 580
Arlington, TX 76011-1711

Margaret J. Diaz, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd
Suite 530
Tampa FL 33602-5824

JAMES L. WEINTRAUB, P.A.
Counsel for Tropical Wellness Center
470 Hardwood Place
Boca Raton, Florida 33431
(561) 452-1233 (Office)
(800) 878-7872 (Facsimile)

By /s/ James L. Weintraub
James L. Weintraub, Esq.
FBN: 0795046