

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

DFWS, INC. dba THE GUILD SAN JOSE,

Employer,

and

Case 32-RC-248845

UNITED FOOD & COMMERCIAL  
WORKERS UNION, LOCAL 5

Petitioner.

**REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S  
DECISION AFFIRMING THE HEARING OFFICER'S FINDINGS AND  
RECOMMENDATIONS  
AND ORDER TO OPEN AND COUNT DETERMINATIVE CHALLENGED BALLOTS**

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**Request for Review of Regional Director’s  
Decision Affirming the Hearing Officer’s Findings and Recommendations  
And Order to Open and Count Determinative Challenged Ballots**

Pursuant to Sections 102.67(c)(2) of the Board’s Rules and Regulations, DFWS, Inc. dba The Guild San Jose (“The Guild” or the “Company”) hereby submits its Request for Review to the Board in support of reversing the Regional Director’s recent Decision to sustain the challenge by Petitioner, UFCW Local 5 (“Union” or “Petitioner”) to the ballot of **stipulated** “Assistant Store Manager”, Jordan Jimenez,<sup>1</sup> and overrule the challenges to the ballots of “Floor Managers” Richard Takahata, Jose Palacios, and Nicole Gonzales, despite their **obvious** status as “supervisors” pursuant to Section 2(11) of the National Labor Relations Act (“NLRA” or “Act”), or, alternatively, should it be necessary once these issues are resolved, reversing her decision to overrule the Company’s well-taken Objections to the propriety of the representation election conducted on its premises in San Jose, California, on October 18, 2019.<sup>2</sup>

For each and all of the reasons set forth below, the Company respectfully submits that the Board should find and conclude that, in rubber-stamping the **clearly-erroneous** recommendations of the Hearing Officer, the Regional Director: (i) improperly **eviscerated** the parties’ clear, voluntary, explicit and solemn **stipulation** establishing that Assistant Store Manager Jimenez is **eligible** to vote; and (ii) that, despite the entirety of the present record and great weight of the testimony and secondary indicia, failing to find that the Floor Managers, Richard Takahata, Jose

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<sup>1</sup> The Union withdrew its challenge to Jarid Drake as an eligible voter, and thus, the Company does not address why he is properly a part of the voting unit. Additionally, both the Hearing Officer and Regional Director overruled the Unions challenge to the vote of Joanne Mendoza, and accordingly, the Company submits that Mr. Drake and Ms. Mendoza’s ballots should be opened and counted along with the ballot of Mr. Jimenez.

<sup>2</sup> It should be noted by the Board that the Company’s Request for Review does not directly address the Regional Director’s erroneous decision to adopt the Hearing Officer’s recommendation and overrule the Company’s Objections 1-3 to the conduct of the election. However, should there be a final election result contrary to the Company’s interest, the Company respectfully requests that its Objections 1-3 and supporting arguments advanced in its Post Hearing Brief to the Hearing Officer be incorporated into the present Request for Review as if set forth fully herein and be considered by the Board at that time as compelling reasons to overturn the election result and order the conduct of a new election.

Palacios, and Nicole Gonzales, are supervisors pursuant to Section 2(11) of the Act and, accordingly, **ineligible** voters in the present election. Indeed, in an obvious rush to certify the Union, the Regional Director clearly misapplied applicable Board precedent and erroneously chose to ignore both the facts that the Hearing Officer (i) failed to enforce the crystal clear language of the parties' binding and controlling Stipulated Election Agreement regarding Assistant Store Manager Jimenez, and (ii) did not properly consider the demeanor and biases of the witnesses when reviewing the conflicting testimony regarding the clear supervisory status of Floor Managers Richard Takahata, Jose Palacios, and Nicole Gonzales. Although the Regional Director has cited the relevant case law in her Decision, she grossly misapplied it by **failing or refusing** to individually review all of the testimony, secondary indicia, and **stipulations** of the parties before reaching any determination as to whether the "clear preponderance" of the present record demonstrated that the Hearing Officer's recommendations were incorrect.

For each and all of the above and foregoing reasons, the Company respectfully urges the Board to grant review of this case, and, based upon the **entirety** of the record evidence and appropriate application of the relevant law, find and conclude that: (i) Assistant Store Manager Jimenez **is** clearly an eligible voter, based upon the clear and explicit language of the parties' voluntary, binding Stipulation Election Agreement, whose ballot should be opened, counted, and included in the Final Tally of Ballots; and (ii) the Floor Managers Takahata, Palacios, and Gonzales are clearly "supervisors" within the meaning of Section 2(11) of the NLRA whose ballots should **not** be counted.

#### **I. Statement of the Case**

On October 2, 2019, the Regional Director of Region 32 approved a Stipulated Election Agreement voluntarily entered into by the parties, through their respective counsel, regarding the

terms and conditions of the election, including specifically the eligible voters in the election to be held on October 18, 2019. In particular, the Stipulated Election Agreement, sets forth that the “Assistant Store Manager,” here, Jordan Jimenez, **is an eligible voter** and that the Company’s “Floor Managers,” concerning whose eligibility the parties could not then stipulate, may “vote in the election, but their ballots will be challenged since their eligibility has not been resolved.” Thereafter, on October 18, 2019, an agent of Region 32 conducted an election among the members of the voting unit **stipulated** to by the parties in the Stipulated Election Agreement at the Company’s dispensary located in San Jose, California, following which, the official Tally of Ballots reflected that seven (7) ballots were cast for the Petitioner; four (4) ballots were cast against the Petitioner and six (6) ballots were challenged that were determinative of the outcome. Although the Company believed that the ballots were tallied correctly, it refused to sign the official Tally of Ballots because of glaring improprieties in the Board Agent’s conduct of the election and by the Union’s agents and its own supervisors both during the critical pre-election period and during the election itself to which the Company filed formal Objections on October 25, 2019.

Thereafter, due to the allegations of impropriety by the Board Agent from Region 32 in charge of the election, the case was formally transferred by the Board to Region 20 and, on November 18-19, 2019, a hearing was held by Hearing Officer, Richard McPalmer (“Hearing Officer”), at Region 20 in San Francisco regarding the six (6) Challenged Ballots and the Company’s Objections. On December 12, 2019, the Hearing Officer issued his “Report and Recommendations on Challenges and Objections” in which, among other erroneous recommendations, he sustained the Union’s challenge to the vote of **stipulated** “Assistant Store Manager,” Jordan Jimenez, found that the three “Floor Managers” who voted via **stipulated** Challenged Ballots in the election, Takahata, Palacios and Gonzales were somehow not ineligible

“supervisors” as defined by Section 2(11) of the Act and recommended that the Company’s Objections to the election be overruled. In alleged support of his recommendations, the Hearing Officer ignored the parties’ clear and solemn **stipulation** regarding the eligibility of Assistant Store Manager Jimenez and inexplicably disregarded the credible testimony of the Company’s President, Dana Anderson, and instead chose to rely on the clearly-biased testimony of self-admitted Union adherents, Floor Managers Takahata and Palacios, in finding that they were eligible voters in the election.

Thereafter, on December 26, 2019, the Company filed Exceptions and a Supporting Brief with the Regional Director of Region 20 to the Hearing Officer’s Report and Recommendations on Challenges and Objections, which clearly and overwhelmingly demonstrated that the Hearing Officer’s recommendations regarding the Challenged Ballots of Assistant Store Manager Jimenez and Floor Managers Takahata, Palacios and Gonzales should not be adopted and that the ballot of Assistant Store Manager Jimenez should be opened and counted and that those of the Floor Managers should not be counted and included in the Final Tally of Ballots. However, rather than ignoring the Hearing Officer’s ill-considered recommendations, on January 16, 2019, the Regional Director essentially chose to rubber stamp his recommendations regarding both the challenges to the ballots of Assistant Store Manager Jimenez and the Floor Managers and, if necessary, the Company’s well-taken Objections to the election. In so doing, as is more fully explicated below, the Regional Director erroneously stated that the evidence somehow fell short of meeting the “clear preponderance” standard for reversing credibility findings of a Hearing Officer and provided utterly **no** reasoning for her decision in this regard, including whether she even reviewed the clear record evidence concerning the demeanor of the witnesses, their statements against interest and in light of the record of evidence in this matter.

## I. Argument

### A. The Stipulated Election Agreement Is Controlling And, Thus, Mandates That As An Assistant Store Manager Jordan Jimenez Was Specifically Included In The Voting Unit And Thus Eligible To Vote.

The parties' Stipulated Election Agreement listed "[a]ll regular full-time and regular part-time Budtenders/Counter-Sales, Lead Budtenders/ **Assistant-Managers**, Reception/ID-Checkers, and Processing/Cultivation Employees" as eligible members of the voting unit. (Emphasis added.) The parties' clear, voluntary, and thus, legally-binding **stipulated agreement** that Mr. Jimenez's position as Assistant Store Manager is part of the eligible voting unit, necessarily must control. Indeed, the Regional Director incorrectly accepted the Hearing Officer's conclusion in disregard without "further discussion" and **patently failed** to consider the most crucial piece of evidence—the parties' voluntary and explicit **stipulation** that, as an "Assistant Store Manager" employee Jordan Jimenez was/is unequivocally an agreed-upon member of the voting unit and, accordingly, an eligible voter in the election. It is a fundamental legal principle that parties may voluntarily contract about anything. The Regional Director's conclusion that "[b]oard law is clear on this point", even if correct, has utterly **no impact** here because the parties' explicit agreement controls.

Furthermore, Board law actually supports a finding that the stipulation controls here. It is a well-established principle of Board law that: "once a union and a company stipulate to the appropriateness of a bargaining unit in a consent-election agreement, that stipulation demands great respect from the NLRB." *See, e.g., NLRB v. J.J. Collins' Sons, Inc.*, 332 F.2d 523, 525 (7th Cir.1964). In such a case, the NLRB is not making an 'independent determination of a proper bargaining unit'; it is 'construing a contract.' *NLRB v. Joclin Mfg. Co.*, 314 F.2d 627, 633 (2d Cir.1963) (Friendly, J.)." *N.L.R.B. v. Lake County Ass'n for Retarded, Inc.* (7th Cir. 1997) 128

F.3d 1181, 1185. The terms of the agreement are clear here: Assistant Store Managers like Mr. Jimenez were **explicitly included** by the parties within the voting unit. Where, as here, the parties agreement is clear, the Hearing Officer and Regional Director are strictly limited when construing the terms of the parties' agreement. However, here, the Hearing Officer exceeded his authority by making an independent determination of whether Assistant Store Manager Jimenez was properly a part of the voting unit and, thus, the Regional Director's decision to accept that obviously incorrect determination should respectfully be reversed by this Board and be opened and counted.

**B. The Regional Director Erred In Failing To Find That The Floor Managers Are Supervisors Pursuant To Section 2(11) of the NLRA Because They Have Crystal Clear Authority To Engage In Several Supervisory Functions And Thus The Challenges To Their Votes Should Be Sustained.**

The Regional Director clearly erred in adopting the Hearing Officers recommendations that Floor Managers Takahata, Palacios, and Gonzales are not statutory supervisors under Section 2(11) of the NLRA. It is well-settled Board law that “[e]mployees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer.’” *N.L.R.B. v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 713 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 579 (1994)). “[A]ctual existence of supervisory authority rather than its exercise is determinative.” *N.L.R.B. v. Gray Line Tours, Inc.*, 461 F.2d 763, 764 (9th Cir. 1972). Simply put, the Regional Director committed clear error in adopting the Hearing Officers incorrect conclusion that the Floor Managers did not “have authority to assign, responsibly direct, or discipline unit employees.” Report and Recommendations on Objections (“RRO”) p. 11. Quite to the contrary, the law is

crystal clear on this point, namely, that the authority to perform any one of these supervisory duties is **independently sufficient** to establish supervisor status under the NLRA. *Kentucky River Cmty. Care, Inc.*, 532 U.S. at 713.

**a. Floor Managers have the authority to and, in fact did, discipline employees.**

At the hearing, the Company's President Dana Anderson, who is the person most knowledgeable about the roles and responsibilities of her employees, testified clearly, consistently and credibly regarding the role of the Floor Managers. Anderson testified **repeatedly**, and with the utmost authority on the subject, that her Floor Managers were given the authority to discipline the Budtenders and front desk employees from the beginning of her employment with The Guild in September 2018. Hearing Transcript, p. 67:22-23; 85:3-18; 86:15-17; 87:23-25 – 88:1-5; 104:15-24; 125:24-25 – 126:1-5. Furthermore, Ms. Anderson testified, that when a situation arises where discipline may be necessary, her expectation as President is that the “[F]loor [M]anager . . . make the decision on how they’re going to handle the situation.” Hearing Transcript, p. 85:17-18. She also credibly testified that, when a Floor Manager issues written discipline to an employee, they may do so on their own without approval from The Company's upper management. Hearing Transcript, p. 104:15-24. Based upon her Testimony in this regard, the Floor Managers clearly possess the authority to exercise their independent judgment in determining when discipline is warranted and are free to discipline employees under their supervision without approval from upper management.

On the other hand, the testimony of Floor Managers, Takahata and Palacios, that they did not write up other employees, was clearly-biased, untrustworthy and blatantly contradicted by neutral fact witnesses. RRO p. 15. Indeed, such an inference is logically implausible, legally insufficient, and should not have been adopted by the Regional Director. In reality, whether Messrs. Palacios and Takahata chose to actually exercise their authority to discipline employees

is **not** determinative of the inquiry because the “actual **existence** of supervisory authority rather than its exercise is determinative.” *Gray Line Tours, Inc.*, 461 F.2d at 764 (emphasis added). At most, Messrs. Palacios and Takahata’s insubordinate refusal to carry out this important aspect of their delegated authority demonstrates their poor performance as supervisors, but **not** that they did not possess the authority to exercise independent judgment as set forth in Section 2(11) NLRA.

In fact, the record definitively establishes, that at least one Floor Manager, Ms. Gonzales, issued disciplinary written warnings. Yesenia Contreras, one of the Company’s front desk receptionists and a neutral fact witness, testified that Ms. Gonzales wrote her up for failing to notify a Floor Manager that she was going to be late. Ms. Contreras knew that Ms. Gonzales was responsible for issuing the write up because it was Ms. Gonzales’s signature and handwriting on the notice. Hearing Transcript, p. 227:11-13. Moreover, the Regional Director erred in failing to reverse the Hearing Officers conclusion that the fact that Bennett Schatz (Store Manager) was the person who physically handed the written warning to Ms. Contreras somehow “suggests a more limited role for the Floor Managers.” RRO p. 15. Indeed, Mr. Schatz’s role here was purely to serve as a messenger—he may have handed Ms. Contreras the written disciplinary form, but the decision to issue the discipline came from Ms. Gonzales in her role as a supervisor. Accordingly, for this reason alone, the Regional Director erred in finding that Floor Managers are supervisor within the meaning of Section 2(11) of NLRA and therefore ineligible voters.

**b. Floor Managers have the authority to assign work to the employees whom they supervise.**

Ms. Anderson also testified clearly, consistently, and truthfully that she delegated the authority to “assign people to do particular jobs,” “offer lunch breaks and schedule changes,”

“cover shift spots, [] transition a budtender from the sales floor to the front reception” and tell Budtenders and receptionists “where to go and what to do” to her Floor Managers. Hearing Transcript, p. 71:21-22; 73:14-15; 92:2-4; 154:10-13. Moreover, Assistant Inventory Manager, a natural fact witness, Jarid Drake, also corroborated Ms. Anderson’s testimony in this regard, that when he needs help, he has to ask a Floor Manager to send a Budtender to help him. Hearing Transcript, p. 183: 8-9.

The Regional Director also committed clear error by failing to reverse the Hearing Officer inexplicably dismissed the credible testimony of Ms. Anderson and, instead, choosing to rely on the testimony of the very individuals who stood to gain from being designated as non-supervisors—the Floor Managers themselves. And in this regard, the incredible testimony of Messrs. Palacios and Takahata’s testimony that they somehow “relied on volunteers” to accomplish tasks is facetious, at best, and manifestly **not** illustrative of the actual authority delegated to them by Ms. Anderson. Rather, as Ms. Anderson testified, her expectation, delegated to the Floor Managers was that they “offer break time, cover shift spots, and transition a budtender from the sales floor to the front reception” if necessary, all **without** seeking approval from her or anyone else in upper management. Hearing Transcript, p. 92:2-14. That Mr. Palacios and Mr. Takahata allegedly **chose** to rely on “volunteers” instead of exercising their delegated authority is at most a managerial style choice, but **not** a limitation on the supervisory authority delegated to them by the Company.

Furthermore, Ms. Anderson testified credibly and truthfully that her Floor Managers also had the authority to grant overtime to both the Budtenders and receptionists who they supervised, without approval from anyone in upper management. Hearing Transcript, p. 115:19-25 – 116:1-22. Mr. Palacios’s incredulous testimony that he “needed approval” from upper management to

grant overtime to Budtenders is not only unreliable due to his blatant bias but again establishes that his managerial style is nothing more than his preference for how to carry out his supervisory duties. Hearing Transcript, p. 341:5-25 – 342:1-10. Indeed, Mr. Palacios did **not** testify that either Ms. Anderson, or anyone in upper management at the Company, told him he needed approval in order to grant overtime or that he could be disciplined if he did not first seek approval for overtime. As with his refusal to carry out his supervisory duty of disciplining other employees, Mr. Palacios’s testimony established nothing more than his unwillingness to perform his duties as expected. Accordingly, it was clearly erroneous for the Regional Director to fail to ignore the Hearing Officer’s recommendation that Floor Managers Takahata, Palacios, and Gonzales were somehow not supervisors according to Section 2(11) of the NRLA based solely on the bias testimony of two self-admitted Union adherents.

**c. Secondary Indicia Demonstrates Unequivocally that the Floor Managers Are Statutory Supervisors.**

Although the above review of Ms. Anderson’s testimony clearly demonstrates that the Floor Managers were statutory supervisors pursuant to Section 2(11), the Board is also encouraged to consider the following secondary indicia of supervisory status, ignored by the Regional Director. *National Labor Relations Board v. Missouri Red Quarries, Inc.* (8th Cir. 2017) 853 F.3d 920, 928.

First, “[w]arranted or not, employees perceived [the Floor Managers] to possess some extra degree of supervisory authority.” *Id.* at 929. Indeed, Mr. Drake credibly testified that he understood that the Floor Managers were his “**supervisors.**” Hearing Transcript, p. 164:17-22. And, Ms. Contreras, another neutral witness, clearly corroborated Mr. Drake’s testimony in this regard because the Floor Managers could, and did, discipline her for being late to work. Hearing Transcript, p. 225:7-17.

Second, the real-world implications of the Floor Managers' authority also militate in favor of a finding that they are supervisors. In particular, Ms. Anderson testified that there must always be at least one Floor Manager, sometimes up to two, **on site at all times**. Hearing Transcript, 94:15-19. Because the marijuana business is a highly regulated, "all cash business", Ms. Anderson credibly testified that she and the Company rely on its Floor Managers to ensure that the cashbox reconciles at the end of each shift. Hearing Transcript, pp. 44:2-3; 124:8-18; 125:1-21. It is crystal clear, therefore, that, if the Floor Managers were not supervisors, the Company would be leaving the retail floor of a highly regulated all cash business without a management representative to oversee critical financial transactions and it is completely unreasonable to conclude otherwise. *See Missouri Red Quarries, Inc.*, 853 F.3d at 928 ("That is, if Johnston was not a supervisor, then the quarry was left without an on-site supervisor for many weeks at a time. It is not 'a reasonable conclusion' to think Missouri Red would run its quarry—which is spread across 400 acres and operates around the clock—'without on-site supervision.'"). Accordingly, if the Regional Director had properly considered all reasonable inferences and inherent probabilities set forth on the present record, she would have reached the only possible conclusion, namely, that the Floor Managers are supervisors pursuant to section 2(11) of the NRLA. *Northridge Knitting Mills*, 223 NLRB 230, 235 (1976) ("[T]he ultimate choice between conflicting testimony ... rests on the weight of the evidence, established or admitted facts, **inherent probabilities, reasonable inferences drawn from the record**, and, in sum, all of the other variant factors which the trier of fact must consider in resolving credibility.")

- d. The Regional Director Incorrectly Refused To Evaluate The Totality of the Record Evidence In Blindly Accepting The Hearing Officer's Recommendations.**

Finally, the Company respectfully urges the Board to find that the Regional Director made a clear error in accepting the Hearing Officer's recommendation that the Floor Managers Richard Takahata, Jose Palacios, and Nicole Gonzales are somehow not supervisors pursuant to Section 2(11) of the NLRA. Although she correctly cited the case law holding that a Hearing Officer's credibility finding should be reversed when the clear preponderance of the evidence establishes that they are incorrect, she failed to weigh, or even consider, any of the overwhelming evidence posited by the Company. In particular, the Regional Director, failed to consider the clear bias of Floor Managers Takahata and Palacios who were responsible for the entire Union election campaign; the logical, straightforward and credible testimony of Ms. Anderson, the **very** individual who delegated the supervisory authority of the Floor Managers to assign, direct, and control employees in their work, grant overtime, and discipline them, and in the process exercise their own independent judgment; and other numerous facts that directly contravene the Floor Managers' contrived testimony.

In situations where either a Hearing Officer or Administrative Law Judge make erroneous credibility resolution or failed to resolve important testimonial conflicts, the Board itself may independently analyze conflicting testimony to make its own findings on key issues. *Helweg & Farmer Transp. Co., Inc. & Chauffeurs, Teamsters & Helpers, Local Union No. 492, Affiliated with Int'l Bhd. of Teamsters, Afl-Cio* (Feb. 27, 2004) 2004 WL 404417. Here, the testimony of the Company's President, Ms. Anderson, and Assistant Inventory Manager Drake clearly conflicted with the testimony of Floor Managers Takahata and Palacios. Thus, it was clearly erroneous for the Regional Director to fail to find that the Hearing Officer did not properly consider the demeanor of witnesses, the reliability of their testimony, their clear biases, and consistency of testimony between neutral and non-neutral witnesses and basic common sense in

determining which of the conflicting accounts to believe. Indeed, the Regional Director should have found that the Hearing Officer erred in failing to consider all these elements and finding that Ms. Anderson's clearly, consistent and credible testimony made her the most reliable witness regarding the actual authority delegated by her and the Company to the Floor Managers because she was the person with the power to perform that task, and her testimony that the Floor Managers had clear authority to discipline was directly supported by the neutral witness Yesenia Contreras who testified pursuant to subpoena that Floor Manager Gonzales "wrote her up" for failing to notify a Floor Manager she was going to be late. See, e.g., *W.T. Grant*, 214 NLRB 698 (1974) (Board rejected ALJ's credibility resolutions after finding the discredited testimony of an employer witness had been corroborated by witnesses presented by the General Counsel and the Charging Party.)

On the other hand, the testimony of Floor Managers Takahata and Palacios was evasive, illogical, and clearly contrived and did not refute credible testimony from neutral witnesses that directly conflicted with their account. See, e.g. *In Re Sonic Auto.* (Feb. 28, 2003) 2003 WL 935310 ("It seems to me that Scarboro's clear bias renders his testimony suspect. Coupled with its other shortcomings, I am unable to credit him."). In one particularly illustrative example, Takahata and Palacios argued that they weren't supervisors because they didn't delegate tasks they merely asked for volunteers. Anyone who has ever managed people at a workplace would find this description laughable. While a boss wishing to curry favor with employees may choose to "ask" employees whether there is a certain task for which they prefer to be responsible for, ultimately, all tasks must be completed, and, if there are no volunteers someone must be assigned to complete the task. The decision, as discussed above, the Floor Managers alleged "decision to ask for volunteers" is merely one possible managerial style, but not the mark of someone without power, and further

demonstrates their delegated authority to not only select who completes these tasks, but to choose their own method for assigning. Here, it is clear that the evidence preponderates in favor of the Company's position that the Floor Managers are supervisors, yet, the Regional Director failed to consider the entirety of the records evidence in this regard.

#### **IV. Conclusion**

For all of these reasons, the Company respectfully requests that the Board grant review in this case and, based upon the entirety of the record evidence and appropriate application of the relevant law, find and conclude that: (i) Assistant Store Manager Jimenez is clearly an eligible voter, whose ballot should be opened, counted, and included in the Final Tally of Ballots; and (ii) the Floor Managers Takahata, Palacios, and Gonzales are clearly "supervisors," within the meaning of Section 2(11) of the NLRA, whose ballots should not be counted.<sup>3</sup>

Dated: January 30, 2020

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<sup>3</sup> Or, as set forth more fully in Footnote 2 on p. 2 of the present Request for Review, the Company respectfully urges the Board to consider each and all of the Objections 1-3 and supporting arguments advanced in its Post Hearing Brief to the Hearing Officer and find and conclude that the Regional Director's decision to adopt the Hearing Officer's recommendations and overrule the Objections is clearly erroneous.