

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

**PURPLE COMMUNICATIONS, INC. and Its
Successor and Joint Employer CSDVRS, LLC
d/b/a ZVRS**

and

**PACIFIC MEDIA WORKERS GUILD,
LOCAL 39521, THE NEWSPAPER GUILD,
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

Cases

**21-CA-149635
28-CA-179794
21-CA-182016
32-CA-185337
21-CA-185343
27-CA-185377
27-CA-186448
28-CA-186509
21-CA-187642
28-CA-192041
27-CA-192084
28-CA-197009
27-CA-197062**

**GENERAL COUNSEL’S RESPONSE TO NOTICE TO SHOW CAUSE
AND MOTION TO FOR COMPLAINT ALLEGATION TO BE SEVERED
AND REMANDED TO REGIONAL DIRECTOR**

On February 20, 2020, the National Labor Relations Board (the Board) issued a Notice to Show Cause why the complaint allegations involving the maintenance of an allegedly unlawful electronic communications policy should not be severed and remanded to the Administrative Law Judge for further proceedings consistent with the Board’s decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (Dec. 16, 2019) (*Rio All-Suites*), in which the Board overruled *Purple Communications, Inc.*, 361 NLRB 1050 (2014) (*Purple Communications I*).

For the reasons set forth below, Counsel for the General Counsel (CGC) respectfully moves for the allegation of the Order Further Consolidating Cases, Third Consolidated

Complaint, and Notice of Hearing in this matter (the Complaint) related to the maintenance of the electronic communications policy to be severed and remanded to the Regional Director in light of *Rio All-Suites* and therefore takes the position that it is unnecessary for that allegation to be severed and remanded to the Administrative Law Judge.

On June 19, 2017, the General Counsel, through the Regional Director for Region 28, issued the Complaint alleging at paragraph 5(a) that Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act through the following conduct:

5. (a) Respondent Purple, since at least October 6, 2014, and Respondents, since about February 14, 2017, have maintained the following overly-broad and discriminatory rules in their employee handbook:

INTERNET, INTRANET, VOICEMAIL AND ELECTRONIC COMMUNICATION POLICY

[...]

Prohibited activities

Employees are strictly prohibited from using the computer, internet, voicemail and email systems, and other Company equipment in connection with any of the following activities:

[...]

2. Engaging in activities on behalf of organizations or persons with no professional or business affiliation with the Company.

[...]

~~5. Sending uninvited email of a personal nature.~~

[...]

9. Distributing or storing chain letter, jokes, solicitations or offers to buy or sell goods, or other non-business material or activities.

Confidential information

~~All employees are expected and required to protect the Company's trade secrets and other confidential information. Company trade secrets or confidential information should never be transmitted or forwarded to outside individuals or companies not authorized to receive the information. ———~~

~~[...]~~

~~The Company also requires its employees to use email in a way that respects the confidential and proprietary information of others. Employees are prohibited from copying or distributing copyrighted material, including, for example, software, database files, documentation, or articles.~~

~~Email is an inappropriate method of communicating certain types of confidential information. Employees should consult their supervisor and the systems administrator before emailing highly sensitive or confidential information.~~

~~[...]~~¹

On August 3, 2018, the Administrative Law Judge issued a decision finding, in part, that Respondents engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act as alleged in Complaint paragraph 5(a), in accordance with the Board's explicit determination regarding the same rule in *Purple Communications, Inc.*, 365 NLRB No. 50 (2017) (*Purple Communications II*), based on an application of the framework established in Board in *Purple Communications I*. ALJD at 10-11.

On December 16, 2019, the Board issued its decision in *Rio All-Suites*, which overruled *Purple Communications I*. The Board held in that case that an employer does not violate the Act by restricting the nonbusiness use of its information technology resources absent proof, with a

¹ Strikethrough text was either withdrawn orally on the record at close of hearing or following the General Counsel's Motion to Withdraw Complaint Allegations dated December 19, 2017.

limited exception in rare cases where an employer's email system furnishes the only reasonable means for employees to communicate with one another. 368 NLRB No. 143 at slip op. at 10. The Board then applied its holding retroactively to all pending cases with similar allegations. *Id.* at slip op. at 11.

In view of the Board's decision in *Rio All-Suites*, CGC no longer intends to pursue the allegation of paragraph 5(a) of the Complaint, to the extent it alleges that the *mere maintenance* of the cited rule was unlawful. CGC therefore respectfully moves to for the Board to sever and remand that allegation to the Regional Director for further action consistent with *Rio All-Suites*.

However, CGC still intends to pursue the allegations of paragraphs 5(b) and 5(ee) of the Complaint, which relate to selective and disparate enforcement of the rule set forth in paragraph 5(a) and directives regarding email use, as those allegations are not affected by the holding of *Rio All-Suites*. The Administrative Law Judge found those allegations to have merit, and no party filed any exceptions. CGC is not requesting that the Board sever and remand those allegations.

Because CGC is moving for the Board to sever and remand the allegation of paragraph 5(a) of the Complaint to the Regional Director for further action consistent with *Rio All-Suites*, it is CGC's position that remand to the Administrative Law Judge is not necessary.

CGC has notified Counsel for both Respondent and the Charging Party of CGC's intent to file this motion. Respondent, through its Counsel, does not object to the motion. As of the filing of this Motion, the Charging Party has not informed the CGC of its position on the motion.

Dated at Phoenix, Arizona this 20th day of March 2020.

Respectfully submitted,

/s/ Fernando Anzaldua

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **GENERAL COUNSEL'S RESPONSE TO NOTICE TO SHOW CAUSE AND MOTION TO FOR COMPLAINT ALLEGATION TO BE SEVERED AND REMANDED TO REGIONAL DIRECTOR** in *Purple Communications, Inc. and Its Successor and Joint Employer CSDVRS, LLC d/b/a ZVRS*, Cases 21-CA-149635, 28-CA-179794, 21-CA-182016, 32-CA-185337, 21-CA-185343, 27-CA-185377, 27-CA-186448, 28-CA-186509, 21-CA-187642, 28-CA-192041, 27-CA-192084, 28-CA-197009, and 27-CA-197062, was served by E-Gov, E-Filing and E-Mail on this 20th day of March 2020 on the following:

Via E-Gov, E-Filing:

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