

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

**G&E REAL ESTATE MANAGEMENT SERVICES, INC.,
d/b/a NEWMARK GRUBB KNIGHT FRANK**

and

Case 28-CA-178893

PATRICK THURMAN, an Individual

**GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE AND
MOTION TO REMAND CERTAIN ALLEGATION TO THE REGIONAL DIRECTOR**

On September 23, 2016, the Region issued a Complaint and Notice of Hearing (Complaint) in the above matter. The hearing was held on March 21, 2017 before Administrative Law Judge Robert A. Ringler (the ALJ) and on May 10, 2017, the ALJ issued his decision and recommended order.

On December 14, 2017, before the National Labor Relations Board (the Board) considered exceptions filed by the General Counsel and G&E Real Estate Management Services, Inc., d/b/a Newmark Grubb Knight Frank (Respondent) to the ALJ's recommended order, the Board issued a decision in *The Boeing Company (Boeing)*, 365 NLRB No. 154 (2017), establishing a new standard for assessing the lawfulness of rules that do not explicitly prohibit employees' exercise of their rights under the Act. Thereafter, on November 21, 2018, the Board issued an Order remanding the case to the ALJ.

On November 8, 2019, after supplemental briefing by the General Counsel and Respondent, the ALJ issued a supplemental decision and recommended order finding that Respondent violated Section 8(a)(1) of the Act, as alleged in the Complaint, by maintaining several overly broad rules. The ALJ also found several of the alleged rules maintained by Respondent were lawful under *Boeing*. Citing to *Purple Communications, Inc. (Purple*

Communications), 361 NLRB No. 126 (2014), the ALJ found Respondent's Use of Company Information Technology Policy banned the non-business use of information technology equipment, banning employees from using email and IT systems during non-working time, and thus violated Section 8(a)(1) of the Act.

On December 16, 2019, before considering the General Counsel's and Respondent's exceptions to the ALJ's supplemental recommended order, the Board issued a decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino (Rio All-Suites)*, 368 NLRB No. 143 (2019), a decision which overruled its previous holdings in *Purple Communications*. On April 15, 2020, the Board issued a Notice to Show Cause why the complaint allegation involving the maintenance of the Use of Company Information Technology Policy, complaint paragraph 4(a)(9), should not be severed and remanded to the ALJ for further proceedings consistent with the Board's decision in *Rio All-Suites*, including reopening the record if necessary.

Considering the Board's decision in *Rio All-Suites*, the General Counsel does not intend to proceed with complaint paragraph 4(a)(9) regarding Respondent's Use of Company Information Technology Policy.

Accordingly, and pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended (the Board's Rules), Counsel for the General Counsel hereby moves to amend the Complaint which issued on December 13, 2016, to remove paragraph 4(a)(9) of the Complaint and remand that allegation to the Regional Director for further processing.

Dated at Phoenix, Arizona 29th day of April 2020.

Respectfully submitted,

/s/ Néstor Zárate

Néstor Zárate Mancilla

Counsel for the General Counsel

National Labor Relations Board – Region 28

2600 North Central Avenue, Suite 1400

Phoenix, AZ 85004-3099

Telephone: 602-416-4771

Email: nestor.zarate-mancilla@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of **GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE AND MOTION TO REMAND CERTAIN ALLEGATION TO THE REGIONAL DIRECTOR** in *G&E Real Estate Management Services, Inc., d/b/a Newmark Grubb Knight Frank*, Case 28-CA-178893 was served via E-Gov, E-Filing, and by Electronic Mail, on this 29th day of April 2020, on the following:

Via E-Gov, E-Filing:

Roxanne L. Rothschild, Executive Secretary
National Labor Relations Board
Office of the Executive Secretary
1015 Half Street SE – Room 5011
Washington, DC 20570-0001

Via E-mail:

Derek Barella, Attorney at Law
Schiff Hardin, LLP
233 South Wacker Drive
Chicago, IL 60606
dbarella@schiffhardin.com

Nirav Shah
Vice President, Assistant General Counsel
Cantor Fitzgerald
110 East 59th Street, 7th Floor
New York, NY 10022
nirav.shah@cantor.com

Patrick Thurman
7612 East Autumn Leaf Drive
Tucson, AZ 85756-6130
thurmanesq@aol.com



Dawn M. Moore
Administrative Assistant
National Labor Relations Board
Region 28 - Las Vegas Resident Office
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada 89101
Telephone: (702) 820-7466
Facsimile: (702) 388-6248
E-Mail: Dawn.Moore@nrlrb.gov