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Corona and Long Beach, CA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PURPLE COMMUNICATIONS, INC.

and

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO

Cases 21-CA-095151  
21-RC-091531  
21-RC-091584

NOTICE TO SHOW CAUSE

On December 11, 2014, the National Labor Relations Board issued a Decision and Order Remanding, adopting a new standard for determining the lawfulness of an employer's rule restricting employee use of a company's email system and remanding the issue of whether the Respondent violated Section 8(a)(1) of the Act by maintaining the Internet, Intranet, Voicemail, and Electronic Communication Policy (the Electronic Communication Policy) to the judge for further appropriate action. *Purple Communications, Inc.*, 361 NLRB 1050 (2014) (*Purple Communications I*). Thereafter, on March 24, 2017, the Board issued a Supplemental Decision and Order affirming the judge's conclusion that the Respondent violated Section 8(a)(1) by maintaining the Electronic Communication Policy. *Purple Communications, Inc.*, 365 NLRB No. 50 (2017) (*Purple Communications II*).

The Respondent filed a petition for review of both decisions in the United States Court of Appeals for the District of Columbia Circuit, and the Charging Party filed a petition for review of *Purple Communications II* in the United States Court of Appeals for the Ninth Circuit. Thereafter, the United States Judicial Panel on Multidistrict Litigation randomly selected the Ninth Circuit as the court to review the case, the D.C. Circuit transferred the Respondent's

petition for review to the Ninth Circuit, and the General Counsel filed a cross-application for enforcement. The Ninth Circuit subsequently consolidated the proceedings.

While the petitions were pending, the Board overruled *Purple Communications I* and announced a new standard that applies retroactively to all pending cases alleging, as here, that an employer unlawfully maintained a rule restricting the use of its email system. *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143, slip op. at 8-9 (2019). Thereafter, on February 27, 2020, the Ninth Circuit granted the General Counsel's motion to remand *Purple Communications I* and *Purple Communications II* to the Board for further proceedings in light of the Board's decision in *Caesars Entertainment*.

In *Caesars Entertainment*, the Board held, in relevant part, that “an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other.*” 368 NLRB No. 143, slip op. at 8 (emphasis added). The parties have not had an opportunity to address whether this exception to the rule of *Caesars Entertainment* applies to the facts of this case. Accordingly, having duly considered the matter,

**NOTICE IS GIVEN** that cause be shown, in writing, filed with the Board in Washington, D.C., on or before July 6, 2020. (with affidavit of service on the parties to this proceeding), why this case should not be remanded to the administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*, including reopening the record if necessary. Any briefs or statements in support of the response shall be filed on the same date.

Dated, Washington, D.C., June 22, 2020.

By direction of the Board<sup>1</sup>:

Roxanne L. Rothschild

Executive Secretary

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<sup>1</sup> Member Emanuel is a member of the panel but did not participate in the decision to issue this notice to show cause.