

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CALIFORNIA COMMERCE CLUB, INC.

and

Case 21-CA-149699

WILLIAM J. SAUK

ORDER DENYING MOTIONS

On June 19, 2020, the National Labor Relations Board issued a Supplemental Decision and Order in this proceeding, finding that the Respondent did not violate Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining a clause in an arbitration agreement providing that “arbitration shall be conducted on a confidential basis and there shall be no disclosure of evidence or award/decision beyond the arbitration proceeding.”¹ On July 17, 2020, the Charging Party filed a Motion for Reconsideration.² The Charging Party has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board’s Rules and Regulations.³ Accordingly, the Charging Party’s motion is denied.

¹ 369 NLRB No. 106 (2020).

² In addition, on July 30, 2020, the Charging Party filed a letter calling the Board’s attention to recent case authority pursuant to *Reliant Energy*, 339 NLRB 66 (2003).

³ The Charging Party contends that the arbitration agreement is unlawful on the basis that it (i) restricts employees’ right to strike or engage in other concerted activities, (ii) restricts actions arising under state law because the Federal Arbitration Act (FAA) is not applicable to those cases, (iii) is contrary to federal statutes other than the Act, and (iv) is not subject to the FAA because it does not affect commerce within the meaning of the Commerce Clause.

Having duly considered these contentions, we find that they do not warrant reconsideration because they are outside the scope of the General Counsel’s theory of the case. At no point in this proceeding has the General Counsel argued that a violation must or should be found on any of these bases. It is well settled that a charging party cannot enlarge upon or change the General Counsel’s theory of a case. See, e.g., *FAA Concord H, Inc. d/b/a Concord Honda*, 367 NLRB No. 104, slip op. at 1 fn. 3 (2019) (rejecting similar arguments made by

In addition, on July 24, 2020, Alfonso Valadez filed a Motion to Intervene in this proceeding. We deny that motion as untimely.⁴

Dated, Washington, D.C., July 31, 2020.

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL)

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charging party); see also *Kimtruss Corp.*, 305 NLRB 710 (1991). We also find these additional theories to be without merit for the reasons stated in *FAA Concord H, Inc.*, supra.

⁴ This case was first submitted to Administrative Law Judge Amita Baman Tracy on a stipulated record in October 2015, Judge Tracy issued her decision on January 6, 2016, and the Board issued an initial Decision and Order on June 16, 2016. Following a 2018 remand from the United States Court of Appeals for the District of Columbia Circuit, the Board issued a Supplemental Decision and Order on June 19, 2020. During this course of events, at no time did Valadez seek to intervene. Accordingly, his motion is untimely. See *Boeing Co.*, 366 NLRB No. 128, slip op. at 2 (2018) (“No provision is made in the Board’s rules for intervention . . . after the Board has issued its decision.”).