

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

PLANET PROGRESS, LLC d/b/a)	
DANDELION COMMUNITY CAFÉ,)	
)	
Respondent,)	Cases 12-CA-265232
)	12-CA-265481
v.)	
)	
CENTRAL FLORIDA INDUSTRIAL)	
WORKERS OF THE WORLD.)	
)	
Charging Party.)	

RESPONDENT PLANET PROGRESS, LLC’S MOTION TO DISMISS

Pursuant to Section 102.24(b) of the Board’s Rules and Regulations Respondent respectfully moves the Board for an order dismissing the General Counsel’s Consolidated Complaint for failure to effectuate service on Respondent.¹

The grounds for this Motion, which the Memorandum that follows set out more fully, that the Consolidated Complaint has not yet been properly served on Respondent under Florida law and/or the Board’s Rules and Regulations.

Respectfully submitted;

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¹ Because Respondent is filing this motion to dismiss for lack of service, it does not believe that filing a substantive Answer to the Consolidated Complaint is necessary. However, out of an abundance of caution, Respondent is also filing an Answer concurrent with this Motion to Dismiss.

and

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. ARGUMENT	2
A. THE CONSOLIDATED COMPLAINT MUST BE DISMISSED BECAUSE IT WAS NOT PROPERLY SERVED ON RESPONDENT.....	2
III. CONCLUSION.....	3

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On or about August 24, 2020, the charge in Case 12-CA-265232 was filed by the Central Florida Industrial Workers of the World (“Union”). On or about August 31, 2020, the Union filed the charge in Case 12-CA-265481.

On November 3, 2020, PLANET PROGRESS, LLC d/b/a DANDELION COMMUNITY CAFÉ (“Respondent”) was dissolved with the Florida Secretary of State, Department of Corporations. At all relevant times, Respondent was a Florida limited liability company. At all relevant times, Respondent’s registered agent has been Willis & Oden PL c/o Jon M. Oden, Esq., 2121 South Hiawasse Road, Suite 116, Orlando, Florida 32835.

On December 10, 2020, Mr. David Cohen, Regional Director for the National Labor Relations Board, Region 12, (“Regional Director”) purported to effect service of the Consolidated Complaint only by emailing the Consolidated Complaint directly to the former CEO of the dissolved Respondent, Mr. Chris Blanc. Respondent’s registered agent has never been served with the Consolidated Complaint.

Because Respondent’s registered agent was never served with the Consolidated Complaint as required under Florida law, Respondent files this Motion to Dismiss, seeking to dismiss the Consolidated Complaint for the reasons set forth more fully below.

II. ARGUMENT

A. THE CONSOLIDATED COMPLAINT MUST BE DISMISSED BECAUSE IT WAS NOT PROPERLY SERVED ON RESPONDENT.

Because the Regional Director did not serve the Consolidated Complaint on Respondent’s registered agent as required under Florida law, the Regional Director’s service of process is ineffective. Under the Federal Rules of Civil Procedure, a plaintiff can serve an entity in the

manner prescribed by state law. *See* Fed. R. Civ. P. 4(e)(1), (h)(1); *RCI Hosp. Holdings, Inc. v. Junkyard Saloon/Bombshell's Tavern LLC*, No. 619CV972ORL37EJK, 2020 WL 1934187, at *2 (M.D. Fla. Apr. 22, 2020). A federal court considering the sufficiency of process does so by looking to the state law governing process. *See Price v. Lakeview Loan Servicing, LLC*, 219CV655FTM29MRM, 2020 WL 1974226, at *3 (M.D. Fla. Apr. 24, 2020).

Section 48.062, Florida Statutes, governs proper service of a limited liability company in Florida. *Id.*; *RCI Hosp. Holdings*, 2020 WL 1934187 at *2; Fla. Stat. § 48.062. To be effective, service on a limited liability company in Florida must be effected on the limited liability company's registered agent. Fla. Stat. § 48.062. Strict compliance with service of process procedures is required under Florida law. *Mead v. HS76 Milton, LLC*, 102 So. 3d 682, 683 (Fla. 1st DCA 2012); *Price*, 2020 WL 1974226, at *3. Section 48.062(1) requires:

Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by the limited liability company under chapter 605. A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

Fla. Stat. § 48.062(1). Additionally, the NLRB's Rules and Regulations and the NLRB Casehandling Manual require service of the Consolidated Complaint and notice of hearing to be conducted by personal service, that is, by registered or certified mail, by leaving a copy at the principal office or place of business of the person required to be served, by email as appropriate, or by any other method of service authorized by law. NLRB Casehandling Manual §10268.4; NLRB Rules and Regulations §§ 102.15, 102.4(a).

Respondent's registered agent at all relevant times, including on December 10, 2020, the date of the attempted ineffective service by email to Mr. Blanc, was the law firm of Willis & Oden PL c/o Jon M. Oden, Esq., with an address of 2121 South Hiawasse Road, Suite 116, Orlando,

Florida 32835. This information is available to everyone, including the Regional Director, in the public records available on the Florida Department of State's Division of Corporations website, www.sunbiz.org. Mr. Blanc was not Respondent's registered agent on December 10 and is not Respondent's registered agent. Further, because the entity was dissolved before the Regional Director attempted service on Mr. Blanc, it did not have any employees or other agents.

Despite access to this publicly available information, the Regional Director failed to serve the Consolidated Complaint on Respondent's registered agent. Instead, the Regional Director ignored federal and Florida law on effecting service on a limited liability company in Florida and simply emailed the Consolidated Complaint to Mr. Blanc. However, this is insufficient to establish proper service on Respondent.

Hence, under federal and Florida law, the Regional Director failed to serve the Consolidated Complaint properly; effective service of the Consolidated Complaint has not occurred.

III. CONCLUSION

Because the Regional Director failed to effect proper service of the Consolidated Complaint pursuant to federal and Florida law, the Consolidated Complaint must be dismissed.

Date: December 24, 2020

Respectfully submitted;

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CERTIFICATE OF SERVICE

I certify that, on December 24, 2020, the Respondent Planet Progress, LLC's Motion to Dismiss was electronically filed through the Board's website, is available for viewing and downloading from the Board's website, and will be sent by means allowed under the Board's Rules and Regulations to these Parties:

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A copy of the foregoing was also sent via email to Petitioner's counsel and the Region at the email addresses above.

/s/ Brooke E. Niedecken
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An Attorney for the Employer