

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

PLANET PROGRESS, LLC d/b/a
DANDELION COMMUNITY CAFÉ

and

Cases 12-CA-265232
12-CA-265481

CENTRAL FLORIDA INDUSTRIAL
WORKERS OF THE WORLD

**GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

I. Introduction

An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) issued on December 10, 2020 in the instant case alleging that Planet Progress d/b/a Dandelion Café (Respondent or Planet Progress) violated Section 8(a)(1) of the National Labor Relations Act. The Complaint was served by email on Respondent's Chief Executive Officer, Christopher Blanc; Respondent's counsel, Brooke Niedecken; and the Charging Party, Kyle Kern, on December 10, 2020 (See attached Affidavit of Service). On December 24, 2020, Planet Progress, filed its Answer to the Complaint with the Regional Director. That same day, Respondent filed a Motion to Dismiss Cases 12-CA-265232 and 12-CA-265481 with the Board.

In its Motion, Respondent argues that service of the of the Complaint on December 10, 2020, was ineffective because it was not served on the Employer's registered agent. As discussed below, the National Labor Relations Act and the Board's Rules and Regulations do not require service of the complaint on Respondent's registered agent.

II. Respondent's Motion to Dismiss the Complaint Should be Denied

Respondent relies on Florida State Statutes and cases, as well as the Federal Rules of Civil Procedure to support its argument that service on its registered agent is necessary to effectuate

valid service on a limited liability company. However, neither the Federal Rules of Civil Procedure nor Florida law are controlling in this matter. *Control Services*, 303 NLRB 481, 481 (1991). Rather, Section 11(4) of the National Labor Relations Act and the Board's Rules and Regulations set forth service requirements for a complaint.

Section 102.4 of the Board's Rules and Regulations, which outlines how complaints must be served, states:

Complaints and compliance specifications (including accompanying notices of hearing, and amendments to either complaints or to compliance specifications), final orders of the Board in unfair labor practice cases and Administrative Law Judges' decisions must be served upon all parties personally, 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.

The Board's Rules and Regulations are devoid of any obligation that the General Counsel serve the Complaint on Respondent's registered agent. Rather, the Rules and Regulations specify several methods of serving complaints, none of which require service on a registered agent. For example, a complaint can be served by emailing the complaint to the party or by leaving a copy of the complaint at the principal office or place of business of the person required to be served.

Section 102.4(e) of the Board's Rules and Regulations states, "If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party satisfies this requirement." Here, Respondent's highest-ranking officer, CEO Christopher Blanc, was personally served the Complaint by email, and Respondent's counsel, Brooke Niedecken, was also served a copy of the Complaint as described in the Affidavit of Service (see attached). As such, the General Counsel properly served the Complaint on Respondent and its representative. Furthermore, even if there were a technical requirement to serve a copy of the Complaint on Respondent's registered agent, failure to do so is not a fatal flaw. In *Control*

Services, Inc., 303 NLRB 481, 481 (1991), the Board held, “when charges have in fact been received, technical defects in the form of service do not affect the validity of service.” In the instant case, Respondent concedes receipt of the Complaint and it filed an Answer in response, and it has not suggested that it was prejudiced in any way by the Complaint not being served on the registered agent.

III. Conclusion

In summary, the Act and the Board’s Rules and Regulations permit service of complaints by the methods used here and there is no requirement that the Complaint be served on Respondent’s registered agent. Thus, service of the Complaint was effective and Counsel for the General Counsel respectfully submits that Respondent’s Motion to Dismiss should be denied in its entirety.

Dated: January 8, 2021

Respectfully submitted,

/s/ Steven Barclay

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, General Counsel’s Opposition to Respondent’s Motion to Dismiss in Cases 12-CA-265232 and 12-CA-265481, has been electronically served on this 8th day of January, 2021, as follows:

By electronic filing at www.nlr.gov to:

National Labor Relations Board
Division of Judges
Hon. Robert A. Giannasi
Chief Administrative Law Judge
Attn: Hon. Christine Dibble
Administrative Law Judge
Division of Judges
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Washington, DC 20570

By electronic mail to:

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