

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

THE ROSE GROUP D/B/A APPLEBEE'S
RESTAURANT

and

Case 05-CA-135360

JEFF ARMSTRONG,
An Individual

**MOTION TO INDEFINITELY ADJOURN PROCEEDINGS TO
PERMIT COMPLIANCE WITH A NON-BOARD ADJUSTMENT**

Pursuant to Section 101.9 of the National Labor Relations Board's Statements of Procedure and Section 10154.5 of the Board's Casehandling Manual, Part One (the Casehandling Manual), counsel for the Acting General Counsel requests an indefinite adjournment of proceedings in the above-captioned case in conjunction with the Charging Party's request to withdraw the charge pursuant to a non-Board adjustment reached by the parties. In support, counsel for the Acting General Counsel states as follows:

1. On December 22, 2015, the Board issued a Decision and Order in this matter, finding that Respondent violated Section 8(a)(1) of the Act by: (1) maintaining a mandatory arbitration program that required employees to waive the right to maintain class or collective actions; and (2) interfering, through the arbitration program, with employees' ability to access the Board and its processes. 363 NLRB No. 75 (2015).

2. In light of the United States Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ____, 138 S.Ct. 1612 (2018), the United States Court of Appeals for the Third Circuit granted a motion to deny enforcement of the Board's Order on the first finding and remand the second finding to the Board.

3. On January 25, 2021, the Board remanded this case to the Division of Judges for the purpose of reopening the record if necessary, and preparing a supplemental decision to address the second finding in light of the intervening Board decision in *Boeing, Co.*, 365 NLRB No. 154 (2017). The Chief Administrative Law Judge assigned the matter to Administrative Law Judge Andrew S. Gollin for further proceedings.

4. On February 25, 2021, Charging Party Jeff Armstrong requested withdrawal of the charge, pursuant to a non-Board adjustment reached between the parties. Under the terms of that adjustment, Armstrong agreed to withdraw the charge, conditioned on Respondent meeting the following obligations within 45 days:

- a. Providing Armstrong with a copy of Respondent's revised mandatory arbitration agreement, which now expressly states that employees are not prevented from filing charges with state or federal administrative agencies, including the National Labor Relations Board; and
- b. Confirming that the revised agreement has been distributed, and is applicable, to all of Respondent's current employees.

5. In accordance with the procedure set forth in Section 10154.5 of the Board's Casehandling Manual, Part One, counsel for the Acting General Counsel hereby moves for an indefinite adjournment of further proceedings in this matter to permit compliance with the terms of the non-Board adjustment reached by the parties.

6. The Administrative Law Judge's granting of this motion would seem to necessitate an indefinite postponement for any submission of briefs.

7. Both Respondent and the Charging Party have confirmed to counsel for the Acting General Counsel that they join in this motion.

8. Also pursuant to Section 10154.5 of the Casehandling Manual, counsel for the Acting General Counsel states his intention to file a subsequent motion, for the purpose of facilitating

withdrawal of the charge and Complaint, upon receipt of satisfactory evidence that the terms of the non-Board adjustment have been effectuated.

Accordingly, counsel for the Acting General Counsel respectfully requests that the Administrative Law Judge grant this Motion to Indefinitely Adjourn Proceedings to Permit Compliance with a Non-Board Adjustment.

Dated at Baltimore, Maryland, this 4th day of March 2021.

Respectfully submitted,

/s/ Andrew Andela

Andrew Andela
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5

CERTIFICATE OF SERVICE

This is to certify that on March 4, 2021, copies of the Motion to Indefinitely Adjourn Proceedings to Permit Compliance with a Non-Board Adjustment were served by e-mail on:

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