

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

WALLINGFORD'S FAVORITE CHICKEN, LLC
d/b/a POPEYE'S CHICKEN AND BUSCITS

and

KRYSTAL JONES, AN INDIVIDUAL

Case No. 34-CA-084087

**MOTION FOR DEFAULT JUDGMENT AND FOR
ISSUANCE OF BOARD DECISION AND ORDER**

Counsel for the Acting General Counsel hereby moves for Default Judgment on the pleadings and supporting papers and for issuance of a Decision and Order by the National Labor Relations Board (herein called the Board), pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, and in support of said Motion states the following:

1(a) On June 27, 2012, Krystal Jones, an individual, filed the charge in Case No. 34-CA-084087, alleging that Wallingford's Favorite Chicken, LLC d/b/a Popeye's Chicken and Biscuits, herein called Respondent, engaged in unfair labor practices within the meaning of the Act (Exhibit A). A copy of the charge was served upon Respondent by facsimile transmission and regular mail on June 28, 2012 (Exhibit B).

(b) An amended charge in Case No. 34-CA-084087 was filed by Jones on August 30, 2012 (Exhibit C), and a copy was served by certified and regular mail on Respondent on September 4, 2012, concurrently with the Complaint and Notice of Hearing described in paragraph 2 below (Exhibit D).

2. On August 31, 2012, pursuant to the charges filed by Jones as described above in paragraph 1, the Regional Director of Region 34 issued a Complaint and Notice of Hearing (Exhibit E) alleging, inter alia, that Respondent had engaged in certain conduct in violation of Section 8(a)(1) of the Act.

3. On September 4, 2012, a copy of the Complaint and Notice of Hearing was served by certified mail upon Respondent at its business address in Wallingford, Connecticut (Exhibit F).

4. By letter dated September 18, 2012 (Exhibit G), sent by facsimile transmission and electronic mail to Respondent at its business address in Wallingford, Connecticut (Exhibits H and I), Respondent was advised that, if no Answer to the Complaint and Notice of Hearing was received in the Regional office by the close of business September 25, 2012, the Regional office would seek Summary Judgment in the instant case based upon Respondent's failure to respond to all allegations as set forth in the Complaint and Notice of Hearing.

5. On October 1, 2012, at Respondent's request, it was sent by facsimile transmission another copy of the Complaint and Notice of Hearing described above in paragraph 2 (Exhibit J).

6. To date, no Answer to the Complaint, or request for an extension of time to file an Answer, has been filed by Respondent in the above-captioned case.

WHEREFORE, Counsel for the Acting General Counsel respectfully moves:

1. That all allegations of the Complaint that Respondent has failed to answer be deemed to be admitted to be true;

2. That the Board issue a Decision and Order finding that Respondent violated Section 8(a)(1) of the Act, without the taking of evidence in support of the allegations in the Complaint;

3. That the Board order Respondent to reinstate and make whole employees Jones and Sheena Woodall;

4. That the Board grant such further relief as may be appropriate; and

5. That this Motion be ruled upon as expeditiously as possible so that, in the event the Motion is granted, the necessity for a hearing will be eliminated, and the hearing can be canceled.

Dated at Hartford, Connecticut this 3rd day of October, 2012.

Respectfully submitted,

A handwritten signature in black ink that reads "Sheldon A. Smith". The signature is written in a cursive style and is positioned above a horizontal line.

Sheldon A. Smith
Counsel for the Acting General Counsel
Region 34
National Labor Relations Board

Attachments

DO NOT WRITE IN THIS SPACE	
Case 34-CA-084087	Date Filed June 27, 2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Wallingford's Favorite Chicken, LLC d/b/a Popeye's Chicken and Biscuits		b. Tel. No. 203-269-7674
		c. Cell No.
		f. Fax No. 203-674-0120
d. Address (Street, city, state, and ZIP code) 859 North Colony Street Wallingford, CT 06492		g. e-Mail
e. Employer Representative Elizabeth Rosario Miguel Rius		h. Number of workers employed 20
i. Type of Establishment (factory, mine, wholesaler, etc.) Fast-food Restaurant	j. Identify principal product or service Food	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about June 16, 2012, the above-named employer, by its officers, agents and representatives, terminated employees Krystal Jones and Shena Woodall because said employees engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage employees from engaging in such activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Krystal Jones

4a. Address (Street and number, city, state, and ZIP code) 163 Hamden Ave., Apt. F Waterbury, CT 06074	4b. Tel. No. 203-578-7064
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail Orangecounty.E@Yahoo.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Krystal Jones
(signature of representative or person making charge) (Print/type name and title or office, if any)

Tel. No.
Office, if any, Cell No.
Fax No.
e-Mail

Address 163 Hamden Ave., Apt. F, Waterbury, CT 06074 6/25/12
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal purpose of this information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for this information are set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WALLINGFORD'S FAVORITE CHICKEN, LLC
D/B/A POPEYE'S CHICKEN AND BISCUITS

Charged Party

and

KRYSTAL JONES, AN INDIVIDUAL

Charging Party

Case 34-CA-084087

AFFIDAVIT OF SERVICE OF DOCKET LETTER & CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on June 28, 2012, I served the above-entitled document(s) by facsimile and post-paid regular mail upon the following persons, addressed to them at the following addresses:

Elizabeth Rosario
Wallingford's Favorite Chicken, LLC d/b/a
Popeye's Chicken and Biscuits
859 North Colony Street
Wallingford, CT 06492

June 28, 2012

Date

Terri L. Gupton, Designated Agent of NLRB

Name



Signature

MODE = MEMORY TRANSMISSION

START=JUN-28 10:49

END=JUN-28 11:00

FILE NO. =787

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	2	812036790120	004	00:10:19

-REGION 34 -

***** - ***** 8602403564- *****

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

**WALLINGFORD'S FAVORITE CHICKEN, LLC
D/B/A POPEYE'S CHICKEN AND BISCUITS**

Charged Party

and

KRYSTAL JONES, AN INDIVIDUAL

Charging Party

Case 34-CA-084087

AFFIDAVIT OF SERVICE OF DOCKET LETTER & CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on June 28, 2012, I served the above-entitled document(s) by facsimile and post-paid regular mail upon the following persons, addressed to them at the following addresses:

Elizabeth Rosario
Wallingford's Favorite Chicken, LLC d/b/a
Popeye's Chicken and Biscuits
859 North Colony Street
Wallingford, CT 06492

June 28, 2012

Date

Terri L. Gupton, Designated Agent of NLRB

Name



Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
34-CA-084087	8/30/2012

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer WALLINGFORD'S FAVORITE CHICKEN, LLC D/B/A POPEYE'S CHICKEN AND BISCUITS		b. Tel. No. (203)269-7674
d. Address (street, city, state ZIP code) 859 NORTH COLONY STREET, WALLINGFORD, CT 06492		c. Cell No.
e. Employer Representative ELIZABETH ROSARIO MIGUEL RIOS		f. Fax No. (203)679-0120
		g. e-Mail
		h. Dispute Location (City and State) Wallingford, CT
i. Type of Establishment (factory, nursing home, hotel) FAST FOOD RESTAURANT	j. Principal Product or Service FOOD	k. Number of workers at dispute location 20

1. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about June 16, 2012, the above-named employer, by its officers, agents and representatives, terminated employees Krystal Jones and Shena Woodall because said employees engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage employees from engaging in such activities.

Since on or about June 16, 2012, the above-named Employer, by Rosario, informed employees that they were being discharged because they engaged in the conduct described above.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

KRYSTAL JONES

4a. Address (street and number, city, state, and ZIP code)

163 HAMDEN AVE, APT F, WATERBURY, CT 06704-2798

4b. Tel. No.

(203)578-7064

4c. Cell No.

4d. Fax No.

4e. e-Mail

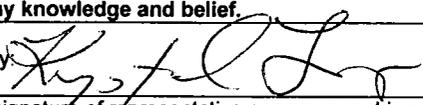
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

(203)578-7064

By 
(signature of representative or person making charge)

KRYSTAL JONES

Office, if any, Cell No.

Address: 163 HAMDEN AVE, APT F,
WATERBURY, CT 06704-2798

Print Name and Title

Date:

8-29-12

Fax No.

e-Mail

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

WALLINGFORD'S FAVORITE CHICKEN, LLC
D/B/A POPEYE'S CHICKEN AND BISCUITS

and

Case 34-CA-084087

KRYSTAL JONES, AN INDIVIDUAL

AFFIDAVIT OF SERVICE OF: **Complaint and Notice of Hearing
and First Amended Charge**
(with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **August 31, 2012**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

ELIZABETH ROSARIO
WALLINGFORD'S FAVORITE CHICKEN, LLC
d/b/a POPEYE'S CHICKEN AND BISCUITS
859 NORTH COLONY STREET
WALLINGFORD, CT 06492

CERTIFIED MAIL

KRYSTAL JONES
163 HAMDEN AVE
APT F
WATERBURY, CT 06704-2798

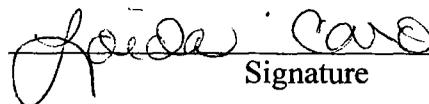
CERTIFIED MAIL

August 31, 2012

Date

Loida Caro, Designated Agent of NLRB

Name


Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

**WALLINGFORD'S FAVORITE CHICKEN,
LLC d/b/a POPEYE'S CHICKEN AND
BUSCUITS**

and

KRYSTAL JONES , AN INDIVIDUAL

Case No. 34-CA-084087

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing, which is based on a charge filed by Krystal Jones, an Individual (Jones), is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, and alleges that Wallingford's Favorite Chicken d/b/a Popeye's Chicken and Biscuits (Respondent) has violated the Act as described below:

1(a) The charge in this proceeding was filed by Jones on June 27, 2012, and a copy was served by facsimile transmission and regular mail on Respondent on June 28, 2012.

(b) The first amended charge in this proceeding was filed by Jones on August 30, 2012, and a copy was served by certified mail on Respondent concurrently with this Complaint and Notice of Hearing.

2. At all material times, Respondent has been engaged in the preparation and retail sale of food, and has a facility located in Wallingford, Connecticut, herein called the Wallingford facility.

3. During the 12-month period ending July 31, 2012, Respondent, in conducting its operations described above in paragraph 2, purchased and received at the Wallingford facility goods valued in excess of \$50,000 directly from points located outside the State of Connecticut.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act:

Miguel Rios	---	Owner/Manager
Elizabeth Rosaio	---	General Manager, Wallingford facility

6. At all material times, Krystal Jones and Sheena Woodall have been employees of Respondent at the Wallingford facility.

7. About June 15, 2012, Jones was informed by Rosario that she was discharged for work related reasons, and shortly thereafter she was told by Rosario that she was not discharged and thereafter continued working for Respondent at the Wallingford facility.

8. About June 15, 2012, Woodall learned through a co-worker that she had been discharged from the Wallingford facility for work-related reasons.

9. About June 16, 2012, Woodall contacted Respondent by telephone to complain about her discharge as well as other matters involving the terms and conditions of Respondent's employees at the Wallingford facility, including Rosario's conduct towards employees at the Wallingford facility.

10. About June 16, 2012, Respondent, through Rosario, by telephone, informed Jones that Woodall and Jones were discharged because of Woodall's complaint described above in paragraph 9.

11. About June 16, 2012, Respondent discharged Jones.

12. About June 16, 2012, Respondent refused to re-employ Woodall.

13. Respondent engaged in the conduct described above in paragraphs 11 and 12 because Respondent mistakenly believed that Jones and Woodall had engaged in protected concerted activities, and to prevent Woodall and Jones from engaging in similar conduct in the future, and to discourage employees from engaging in these activities.

14. By the conduct described above in paragraphs 10, 11, 12 and 13, Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Sections 8(a)(1) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of the Section 2(6) and (7) of the Act.

SPECIAL REMEDIES

As part of the remedy for the unfair labor practices alleged above, the Acting General Counsel seeks an Order requiring that the Notice be read to employees during working time by Respondent. The Acting General Counsel further seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. The Acting General Counsel further seeks an order that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before September 14, 2012 or postmarked on or before September 13, 2012.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. **A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. When an answer is**

filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **November 13, 2012, at 10:00 a.m.** at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410, Hartford, Connecticut, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Hartford, Connecticut, this 31st day of August, 2012.


Jonathan B. Kreisberg, Regional Director
National Labor Relations Board
Region 34

Attachments

PS Form 3877, Oct. 1988 FOR REGISTERED, INSURED, C.O.D., CERTIFIED, RETURN RECEIPT FOR MERCHANDISE, AND EXPRESS MAIL

NAME AND ADDRESS OF SENDER

NATIONAL LABOR RELATIONS BOARD
 REGION 34
 A.A. RIBICOFF FEDERAL BUILDING
 450 MAIN STREET, SUITE 410
 HARTFORD, CONNECTICUT 06103

Indicate type of mail
 Registered Return Receipt For Merchandise
 Insured
 COD Express Mail
 Certified

Check appropriate block for Registered Mail:
 With Postal Insurance
 Without Postal Insurance



Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (if Regs.)	Insured Value	Due Sender if C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Re
1	7006 2760 0003 7599											
2												
3	7884	AFSCME COUNCIL 15 - Jeffrey Matchett 206 W. Johnson Ave 305, Cheshire, CT										
4												
5	7891	United Auto Workers - Carmen Burnham 97 South St., Ste. 122-124, West Hartford, CT										
6												
7	7907	Papepes Chicken - Elizabeth Rosario 259 North Colony St., Wallingford, CT										
8												
9	7914	Krystal Jones 163 Nandan Ave., Apt F. Waterbury, CT										
10												
11	7860	Prof. Elec Contractors - James Bisson 145 Robert Jackson Way, Plainville										
12												
13	7877	IBEW Local 35 - Scott McEnson 208 Murphy Rd., Hartford, CT										
14												
15												

Total number of Places Listed by Sender
 6

Total Number of Places Received at Post Office
 6

POSTMASTER, PER (Name of receiving employee)

The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$2 for Registered Mail, \$500 for COD and \$500 for Insured Mail. Special handling charges apply to Third- and Fourth-Class parcels.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

Exhibit F

[English](#)

[Customer Service](#)

[USPS Mobile](#)

[Register / Sign In](#)



[Search USPS.com or Track Packages](#)

[Quick Tools](#)

[Ship a Package](#)

[Send Mail](#)

[Manage Your Mail](#)

[Shop](#)

[Business Solutions](#)

Track & Confirm

[GET EMAIL UPDATES](#) [PRINT DETAILS](#)

YOUR LABEL NUMBER

70062760000375997907

SERVICE

First-Class Mail®

STATUS OF YOUR ITEM

Delivered

DATE & TIME

September 04, 2012, 10 54 am

LOCATION

WALLINGFORD, CT 06492

FEATURES

Expected Delivery By
September 4, 2012
Certified Mail™

Arrival at Unit

September 04, 2012, 7 53 am

WALLINGFORD, CT 06492

Processed through
USPS Sort Facility

September 03, 2012, 4 32 am

WALLINGFORD, CT 06492

Depart USPS Sort
Facility

September 02, 2012

WALLINGFORD, CT 06492

Processed at USPS
Origin Sort Facility

September 02, 2012, 4 52 am

WALLINGFORD, CT 06492

Acceptance

August 31, 2012, 8 14 pm

HARTFORD, CT 06102

Check on Another Item

What's your label (or receipt) number?

Find

LEGAL

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- [Terms of Use](#) ›
- [FOIA](#) ›
- [No FEAR Act EEO Data](#) ›

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United States Government
NATIONAL LABOR RELATIONS BOARD
Region 34
280 Trumbull Street, 21st Floor
Hartford, CT 06103-3503

Telephone (860) 240-3004
Facsimile (860) 240-3564
www.nlrb.gov

September 18, 2012

Via Facsimile Transmission

Ms. Elizabeth Rosario
Wallingford's Favorite Chicken, LLC
d/b/a Popeye' Chicken and Biscuits
859 North Colony Street
Wallingford, CT 06492

Re: **Popeye' Chicken and Biscuits**
Case 34-CA-084087

Dear Ms. Rosario:

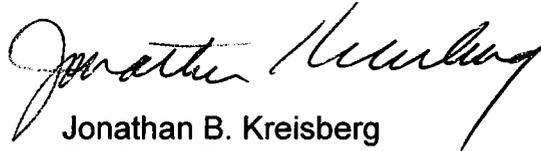
Please be advised that this office has not yet received Respondent's Answer to the Complaint and Notice of Hearing which issued in the above-captioned matter on August 31, 2012. As set forth in the concluding paragraphs of the Complaint, Respondent is required by Section 102.20 of the Board's Rules and Regulations to file an Answer to the Complaint. Section 102.20 specifically provides:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be true and shall be so found by the Board unless good cause to the contrary is shown.

Please be advised that any information Respondent provided to this office prior to the issuance of the Complaint on August 31, 2012, including but not limited to letters, statements, affidavits and oral communications, and any prior Answers, does not satisfy the requirement of an Answer under Section 102.20.

Accordingly, if no Answer is received which satisfies the requirements of Section 102.20 by close of business **September 25, 2012**, this office will seek summary judgment in the instant case based upon Respondent's failure to respond to all of the allegations set forth in the Complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonathan B. Kreisberg". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jonathan B. Kreisberg
Regional Director

JBK:lc

MODE = MEMORY TRANSMISSION

START=SEP-18 10:48

END=SEP-18 10:50

FILE NO.= 222

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	5	812036790120	002/002	00:01'22"

-REGION 34

***** -KJTT

- ***** -

- *****



United States Government
NATIONAL LABOR RELATIONS BOARD

Region 34
280 Trumbull Street, 21st Floor
Hartford, CT 06103-3503

Telephone (860) 240-3004
Facsimile (860) 240-3564
www.nlrb.gov

September 18, 2012

Via Facsimile Transmission

Ms. Elizabeth Rosario
Wallingford's Favorite Chicken, LLC
d/b/a Popeye' Chicken and Biscuits
859 North Colony Street
Wallingford, CT 06492

Re: **Popeye' Chicken and Biscuits**
Case 34-CA-084087

Dear Ms. Rosario:

Please be advised that this office has not yet received Respondent's Answer to the Complaint and Notice of Hearing which issued in the above-captioned matter on August 31, 2012. As set forth in the concluding paragraphs of the Complaint, Respondent is required by Section 102.20 of the Board's Rules and Regulations to file an Answer to the Complaint. Section 102.20 specifically provides:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be true and shall be so found by the Board unless good cause to the contrary is shown.

Please be advised that any information Respondent provided to this office prior to the issuance of the Complaint on August 31, 2012, including but not limited to letters, statements, affidavits and oral communications, and any prior Answers, does not satisfy the requirement of an Answer under Section 102.20.

Caro, Loida

From: Caro, Loida
Sent: Tuesday, September 18, 2012 11:02 AM
To: 'miguel popeyes@gmail.com'
Subject: Popeye's Chicken & Biscuits, Case 34-CA-084087
Attachments: Answer deadline ltr..pdf

Attached is an Answer deadline letter.

MODE = MEMORY TRANSMISSION

START=OCT-01 15:24

END=OCT-01 15:35

FILE NO.=389

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-REGION 34 -

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United States Government
NATIONAL LABOR RELATIONS BOARD
 Region 34
 A.A. Ribicoff Federal Building
 450 Main Street, Suite 410
 Hartford, CT 06103
 Telephone No. (860)240-3522
 Fax No. (860)240-3564

FAX TRANSMITTAL

DATE: Oct. 1, 2012

TO: Elizabeth Masario

FROM: Sheldon Smith

RE: 34-CA-084087 (Pepe's)

REMARKS (IF ANY)

NOTICE

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Smith, Sheldon A.

From: Smith, Sheldon A.
Sent: Monday, October 01, 2012 3:12 PM
To: Craig, Terri A.
Cc: Kreisberg, Jonathan B.
Subject: Popeye's trial

Terri,

I just got a call from Elizabeth Rosario, the manager at Popeye's. She claimed that she was out of the store on vacation and on leave for the entire month of September and therefore could not file an answer to the Complaint. The Complaint was delivered to the store while Rosario was away but, according to her, store personnel apparently lost the document and she has never seen it. She said that the only document she has is the Region's September 18 reminder letter regarding filing an answer. Rosario would like to know if she can now file an answer, although she admits that she does not know what she is doing.

I told her that the Region was preparing to file a motion for summary judgment because the Employer did not respond to the Complaint, but I would get back to her to let her know if she has any other options. Please let me know what I should tell her.

Thanks,
Sheldon

Sheldon A. Smith
Field Attorney, Region 34
National Labor Relations Board
450 Main Street
Hartford, CT 06103
860.240.3539 (p)
860.240.3564 (f)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

WALLINGFORD'S FAVORITE CHICKEN,
LLC d/b/a POPEYE'S CHICKEN AND
BUSCITS

and

KRYSTAL JONES, AN INDIVIDUAL

Case No. 34-CA-084087

**MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT
AND FOR ISSUANCE OF BOARD DECISION AND ORDER**

I. FACTS

Having failed to file an Answer to Complaint in the above-captioned matter, Respondent was provided written notice of Counsel for the Acting General Counsel's intention to file the instant motion in the absence of an Answer being filed no later than September 25, 2012 (Exhibit G). In spite of having perfected service of the underlying charges and Complaint as well as providing Respondent with additional time to file its Answer, to date no Answer has been filed. In accord with long-standing Board precedent, Counsel for the Acting General Counsel files this Motion for Default Judgment. Malik Roofing Corp., 338 NLRB 930 (2003).

The essential facts and supporting exhibits are described in the Motion for Default Judgment. Respondent has a business address in Wallingford, Connecticut, where it accepted service of the initial charge, amended charge, Complaint and Notice of Hearing and the September 18, 2012 warning letter. In this regard, the envelope containing the initial Charge was sent by regular mail to Respondent's Wallingford,

Connecticut business address and was never returned to the Regional Office (Exhibits A and B). Similarly, the envelope containing the Amended Charge and Complaint was sent by regular mail to Respondent's Wallingford, Connecticut business address and was never returned to the Regional Office. (Exhibits C and D). Additionally, the Amended Charge and Complaint were sent by certified mail (label # 70062760000375997907) and the Postal Service's on-line "Track and Confirm" system establishes delivery was perfected on September 4, 2012 at 10:54 a.m. (Exhibit F). The September 18, 2012 warning letter was sent by facsimile transmission and to an electronic mail account that Respondent used during the investigation to provide responses to the charged allegations (Exhibits G, H and I). This letter advised Respondent of its obligation to file an Answer to the Complaint. At Respondent's request, on October 1, 2012, it was faxed (at the same fax number as the September 18, 2012 letter was sent) an additional copy of the Complaint (Exhibit J). To date, Respondent has failed to file an Answer to the Complaint.

II. **ARGUMENT**

This is a classic case of a respondent who has exhibited intentional non-compliance with its obligations to file a timely Answer to Complaint under Section 102.20 of the Board's Rules and Regulations. Unfortunately for Respondent, the evidence clearly establishes that it actually received the original charge, amended charge, Complaint and September 18, 2012 warning letter, as shown by, among other things, the failure of the Postal Service to return the envelopes containing the original charge and amended charge and Complaint that were served by regular mail. On this basis alone, the Board may find that Respondent was legally served with the Complaint,

and that it has failed to file an Answer to the Complaint in accordance with Section 102.20 of the Board's Rules and Regulations. Lite Flight, Inc., 285 NLRB 649, 650 (1987).

As detailed above, the evidence further establishes that the amended charge and Complaint were served on Respondent by certified mail on September 4, 2012. The September 18, 2012 warning letter, as provided for in Section 10280.3 of the Board's Unfair Labor Practice Case-handling Manual, was properly faxed and then emailed to Respondent's last known electronic mail account that it used during the investigation to respond to the charged allegations. Based on the above, service of the above-described documents was perfected in accordance with the Board's Rules and Regulations, Section 102.14 and 102.112. Moreover, Respondent has failed to advance any good cause for its failure to file a timely Answer.

The pleadings in this case are factually and legally sufficient for the Board to order traditional remedies for the alleged unlawful discharge of Krystal Jones (Jones) and the refusal to re-employ Sheena Woodall (Woodall). In this regard, the Complaint clearly sets forth Counsel for the Acting General Counsel's theory that the adverse employment actions taken against Jones and Woodall were because Respondent mistakenly believed that they were engaged in protected concerted activities (Exhibit E, paragraph 13). Taking adverse action against an employee based in employer belief that the employee engaged in protected concerted activities is unlawful even if the belief was mistaken and the employee did not in fact engage in such activity. Metropolitan Orthopedic Associates, P.C., 237 NLRB 427 fn.3 (1978). Further, the Complaint expressly advances the additional theory that Respondent's unlawful actions were a

preemptive strike to pre-empt Jones and Woodall from engaging in future protected concerted activities (Exhibit E, paragraph 13). The Board has recognized that irrespective of whether employees' activities were initially concerted, launching a "preemptive strike" in order to prevent an employee from speaking with co-workers about working conditions is unlawful. Parexel International LLC, 356 NLRB 1034 (2011). Accordingly, the Complaint is grounded in well-established Board precedent. Given the circumstances, however, Counsel for the Acting General Counsel is not seeking the special remedies sought in the Complaint. See Animal Care Clinic, 353 NLRB No. 128 fn. 2 (2009) (case not reported in Board's bound volumes).

III. CONCLUSION

Based upon the foregoing, it is clear that Respondent was legally served with a copy of the Complaint and has failed to file an Answer. Accordingly, it is respectfully requested that the Motion for Default Judgment be granted and that the Board issue a Decision and Order requiring Respondent, inter alia, to reinstate and make Krystal Jones and Sheena Woodall whole for all lost wages, and to post an appropriate Notice.

Dated at Hartford, Connecticut this 3rd day of October, 2012.

Respectfully submitted,



Sheldon A. Smith
Counsel for the Acting General Counsel
National Labor Relations Board
Region 34

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

WALLINGFORD'S FAVORITE CHICKEN d/b/a
POPEYE'S CHICKEN AND BUSCUITS

and

KRYSTAL JONES , AN INDIVIDUAL

Case No. 34-CA-084087

AFFIDAVIT OF SERVICE OF: Motion for Default Judgment and for Issuance of Board Decision and Order and Memorandum in Support of Motion for Default Judgment and for Issuance of Board Decision and Order

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **October 3, 2012**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

ELIZABETH ROSARIO
WALLINGFORD'S FAVORITE CHICKEN,
LLC D/B/A POPEYE'S CHICKEN AND
BISCUITS
859 NORTH COLONY STREET
WALLINGFORD, CT 06492

KRYSTAL JONES
163 HAMDEN AVE
APT F
WATERBURY, CT 06704-2798

October 3, 2012

Date

Loida Caro, Designated Agent of NLRB

Name


Signature