

No. 18-40246

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF NEVADA,
Plaintiff

v.

CHIPOTLE MEXICAN GRILL, INCORPORATED;
CHIPOTLE SERVICES, L.L.C.,

Petitioners-Appellees

v.

UNITED STATES DEPARTMENT OF LABOR,
Defendant

v.

CARMEN ALVAREZ, and her Counsel,
Respondent-Appellant

On Appeal from the United States District Court
for the Eastern District of Texas,
No. 4:16-cv-731

**MOTION TO WITHDRAW
EMERGENCY MOTION FOR STAY PENDING APPEAL**

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March 23, 2018

CERTIFICATE OF INTERESTED PERSONS

State of Nevada, et al v. LABR, No. 18-40246

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Respondents-Appellants: Carmen Alvarez; Joseph M. Sellers; Justin M. Swartz; Miriam R. Nemeth; Melissa L. Stewart; Glen D. Savits
2. Law Firms In Which Respondent-Appellant Attorneys Are Members: Cohen Milstein Sellers & Toll PLLC; Outten & Golden LLP; Green Savits LLC
3. Petitioners-Appellees: Chipotle Mexican Grill, Inc.; Chipotle Services, L.L.C.
4. Counsel for Respondents-Appellants: Jenner & Block LLP (Matthew S. Hellman, Benjamin M. Eidelson)
5. Counsel for Petitioners-Appellees: Messner Reeves LLP (Kendra N. Beckwith, John K. Shunk); Cantey Hanger LLP (Laura Hilton Hallmon, Brian Carl Newby)

/s/ Matthew S. Hellman
Matthew S. Hellman
Counsel for Respondents-Appellants

Respondents-Appellants, Carmen Alvarez and her Counsel (“Respondents”), move to withdraw their pending Emergency Motion for Stay Pending Appeal (filed Mar. 23, 2018). In support of this motion, Respondents state as follows:

1. In this appeal, Respondents seek review of a March 19, 2018, Order (Dkt. No. 129) holding them in contempt. That order required Respondents to take certain actions by Monday, March 26, 2018. Pursuant to Fed. R. App. P. 8(a)(1), Respondents filed an emergency motion for a stay pending appeal in the district court on March 20, 2018, the day after the Contempt Order issued. Dkt. No. 131. The district court set a briefing schedule that did not conclude until the afternoon of Friday, March 23, one business day before the Contempt Order required compliance. Dkt. No. 132. In light of that schedule, Respondents asked the district court to stay the Contempt Order for seven days from its disposition of their stay motion, in order to protect their opportunity to seek a stay from this Court if necessary. Dkt. No. 133. As of 12:00pm Central Time on Friday, March 23, the district court had not ruled on either of Respondents’ emergency motions.

2. Respondents therefore filed an Emergency Motion for Stay Pending Appeal in this Court at 12:00pm Central Time on Friday, March 23, to ensure that this Court would have a realistic opportunity to address the matter before Monday, March 26. Respondents stated in their motion that, if the district court acted on their pending motions, Respondents would promptly notify this Court.

3. At approximately 1:20pm Central Time on March 23, 2018, the district court granted Respondents' emergency motion for an interim stay of the Contempt Order. *See Ex. A.* Under the district court's new order, the Contempt Order is stayed until seven days after the district court's disposition of Respondents' pending motion for a stay pending appeal. Upon receiving this order, counsel for Respondents promptly notified the Clerk of this Court that the Monday deadline has been lifted and that Respondents' stay motion no longer warrants emergency consideration.

4. Because there is no longer any need to seek relief from this Court at this time, Respondents now move to withdraw their Emergency Motion for Stay Pending Appeal, without prejudice to refiling if the district court ultimately denies Respondents' stay motion before that court.

5. Chipotle has authorized undersigned counsel to represent that it does not oppose Respondents' withdrawal of Respondents' Emergency Motion for Stay Pending Appeal.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that their Emergency Motion for Stay Pending Appeal be withdrawn, without prejudice to refiling if the district court ultimately denies Respondents' pending stay motion before that court.

Dated: March 23, 2018

Respectfully submitted,

/s/ Matthew S. Hellman

Matthew S. Hellman

Counsel of Record

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 444 words; and that this motion complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E), Fed. R. App. P. 32(a)(5), and Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2013, Times New Roman 14-point.

Dated: March 23, 2018

/s/ Matthew S. Hellman
Matthew S. Hellman

CERTIFICATE OF CONFERENCE

I hereby certify that, pursuant to Fifth Circuit Rule 27.4, I contacted counsel for Chipotle, Kendra Beckwith, regarding this motion. Counsel for Chipotle authorized undersigned counsel to represent that it does not oppose Respondents' withdrawal of Respondents' Emergency Motion for Stay Pending Appeal.

Dated: March 23, 2018

/s/ Matthew S. Hellman
Matthew S. Hellman

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that service on opposing counsel will be accomplished by the CM/ECF system.

Dated: March 23, 2018

/s/ Matthew S. Hellman
Matthew S. Hellman

EXHIBIT A

Order Granting Interim Stay

(Dkt. No. 136)

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STATE OF NEVADA, *et al.*,

§

v.

§

Civil Action No. 4:16-CV-00731

§

Judge Mazzant

UNITED STATES DEPARTMENT OF
LABOR, *et al.*,

§
§

MEMORANDUM OPINION AND ORDER

Pending before the Court is the Emergency Motion of Respondents Carmen Alvarez and her Counsel (“Respondents”) for Interim Stay (Dkt. #133). After reviewing the relevant pleadings, the Court finds that the motion should be **GRANTED**.

The Court is currently presiding over a three-week-long civil trial of considerable complexity. Given the demands of that proceeding, the Court lacks adequate time to fully consider the Emergency Motion of Respondents Carmen Alvarez and her Counsel for Stay Pending Appeal (Dkt. #131).

The Court therefore **ORDERS** that the Court’s March 19, 2018 Memorandum Opinion and Order holding Respondents in Contempt (Dkt. #129) is hereby **STAYED** until seven days after the Court’s disposition of the Emergency Motion of Respondents Carmen Alvarez and her Counsel for Stay Pending Appeal (Dkt. #131).

SIGNED this 23rd day of March, 2018.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE