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October 2, 2018

VIA ELECTRONIC FILING

General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Re: *ZUFFA, LLC d/b/a Ultimate Fighting Championship ("UFC")*
Case 04-CA-219498

Dear Office of Appeals:

Please accept the attached Appeal Form along with a supporting Declaration from the Claimant in this matter, Ms. Leslie Smith.

Pursuant to Section 10122.8 of the NLRB Unfair Labor Practice Case Handling Manual, Ms. Smith hereby requests that Region 4, using the same Investigator initially assigned to this matter, reconsider the dismissal and/or conduct further investigation into this matter based, in part, on the facts and/or evidence set forth in Ms. Smith's supporting Declaration.

Ms. Smith hereby requests an in-person meeting with the Office of Appeals prior to any decision being rendered with respect to this Appeal.

Moreover, with this letter, Ms. Smith hereby requests that NLRB General Counsel Peter B. Robb and Deputy General Counsel John W. Kyle recuse themselves from any involvement with this Appeal. General Counsel Robb and Deputy General Counsel Kyle were directly involved with the decision to dismiss this matter, which occurred only after Region 4 had first issued a merit determination in Ms. Smith's favor. General Counsel Robb and Deputy General Counsel Kyle cannot serve as impartial decision-makers in this appellate process by virtue of having already ruled against Ms. Smith after Region 4 had already issued a preliminary merit determination in Ms. Smith's favor.

Ms. Smith also requests that the NLRB Office of Appeals conduct, as part of its review of this Appeal, a full and impartial investigation into the process utilized by the Division of Advice and/or the General Counsel's Office when one or both of these offices commandeered the matter a mere hours after Region 4 had already issued a merit determination in Ms. Smith's favor.

Ms. Smith reserves the right to add to, amend or supplement this appeal and/or any supporting documentation with additional evidence and/or argument.

Sincerely,

A handwritten signature in black ink, appearing to read "L. K. Middlebrook". The signature is fluid and cursive, with the first letter of the last name being a large, stylized "M".

Lucas K. Middlebrook, Esq.

Cc: Leslie Smith [via e-mail]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date: October 2, 2018

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC")

Case Name(s).

04-CA-219498

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*



(Signature)

Lucas K. Middlebrook, Esq.
Counsel to Leslie Smith, Charging Party

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

* * *

ZUFFA, LLC *d/b/a*,)
Ultimate Fighting Championship (“UFC”))
-and-)
Leslie Smith)
)
)
)
)
_____)

**UNFAIR LABOR PRACTICE
CHARGE AGAINST EMPLOYER**

DECLARATION OF LESLIE SMITH

I, Leslie Smith, declare as follows:

1. On or about September 22, 2018, I received and read the Decision to Dismiss dated September 19, 2018 (“Dismissal Letter”) that the National Labor Relations Board (“NLRB” or “Board”) Division of Advice and General Counsel instructed Region 4 to issue in relation to my unfair labor practice charge against ZUFFA, LLC *d/b/a*, Ultimate Fighting Championship (“UFC”). This Dismissal Letter was issued approximately two (2) months following Region 4’s initial determination that my charge had merit and that a complaint would issue from Region 4, absent settlement, against the UFC.
2. The NLRB Division of Advice and the NLRB General Counsel’s office took control of my Charge *after* Region 4 had already issued a merit determination in my favor. My counsel was asked to attend a meeting with General Counsel Peter Robb, his Deputy General Counsel and multiple NLRB attorneys from the Division of Advice on or about July 26, 2018. I very much wanted to attend that meeting and, through my counsel, specifically requested permission to be present; but was forbidden from attending by direction from

- NLRB Division of Advice and/or the NLRB General Counsel. My counsel asked NLRB General Counsel Peter Robb, during the July 26, 2018 meeting, why I had not been allowed to attend. The reason provided by General Counsel Robb as to why I was not allowed to attend the July 26 meeting was because claimants can become emotional in such meetings.
3. Upon review of the Dismissal Letter, I immediately recognized numerous factual misstatements and discrepancies that I will address by operation of this declaration.
 4. The first paragraph of the Decision Letter incorrectly states, as fact, that I allegedly “informed the UFC that [I] would not fight unless the UFC gave [me] additional money and added two fights to [my] contract.” This is untrue and not what occurred.
 5. My representative first spoke with UFC Vice President of Talent Relations, Mick Maynard, on the morning of April 20, 2018 to advise him my opponent had failed to make weight, and asked Mr. Maynard whether “it was possible to negotiate an additional two fights” since this was scheduled to be the last bout on my Promotional and Ancillary Rights Agreement with the UFC (“UFC Promotional Agreement”). Mr. Maynard immediately responded by saying: “I hear Leslie wants 100K [to show and] 100K [to win] and that is not going to happen.” My representative said he would inquire with me to determine whether that was truly the case.
 6. My representative followed up on this initial telephone call and connected with UFC Chief Legal Officer, Hunter Campbell as well as Mick Maynard. Mr. Campbell advised my representative the UFC was “not interested” in engaging in negotiations with me. My representative asked if the UFC was “not interested” at this time or ever; to which Mr. Campbell responded: “we are not interested at this time.” My representative then conveyed my position that I was entitled to be compensated my show and win money by operation

of the New Jersey State Athletic Control Board Bout Agreement (“NJSACB Bout Agreement”). Mr. Campbell then advised my representative that the UFC would pay me my show and win money to *not* fight. My representative responded to Mr. Campbell by e-mail.

7. My representative sent an e-mail to the UFC on the morning of April 20, 2018, which plainly stated my desire to fight. This e-mail was provided to Region 4 *prior* to my Charge being commandeered by the NLRB General Counsel / Division of Advice and contradicts any finding that I “would not fight unless the UFC gave [me] additional money and added two fights to [my] contract.” In addition, as is evident by the telephone calls and e-mails between the UFC and my representative, I never demanded to be paid “222%” more than my current contract as is mistakenly referenced in the Dismissal Letter:

From: [REDACTED]
Sent: Friday, April 20, 2018 9:46:15 AM
To: Hunter Campbell
Subject: RE: Leslie Smith

Hi Hunter – Spoke with Leslie and she would like to fight. Would it be possible for her to fight tomorrow and get her show and win bonus for this bout and allow her another bout under her existing Promotional Agreement? Thanks.

Best regards

8. As referenced in paragraph 6 herein, I entered into a NJSACB Bout Agreement, which included the following provision:

The Promoter [UFC] shall compensate the Contestant [Leslie Smith] the total amount listed above in the event the contest fails to materialize if Contestant gets licensed, passes medicals, makes weight, is cleared by the SACB to compete, and remains willing to compete under the terms of this agreement...

9. The terms of the NJSACB Bout Agreement required both fighters to make a weight of one hundred thirty-five (135) pounds with a one (1) pound additional allowance. My opponent

failed to make this weight with the one-pound allowance. I, however, was licensed, passed all my medicals, made weight, was cleared by the New Jersey State Athletic Control Board to compete and remained willing to fight under the terms of the NJSACB Bout Agreement between myself and the UFC. I sought to enforce the terms of the written NJSACB Bout agreement mandating I be compensated the full amount set forth within that agreement. I never “informed the UFC that [I] would not fight” as is misstated in the Dismissal Letter.

10. I had also entered into a Bout Agreement with the UFC (“UFC Bout Agreement”) prior to entry into the NJSACB Bout Agreement. Section 1(d) of the UFC Bout Agreement required that the fight between me and my opponent was to take place with both fighters weighing a “**maximum**” of 135 pounds. My opponent failed to make this weight.
11. Section 3.2 of the UFC Promotional Agreement provides that “ZUFFA shall be deemed to have complied with its obligations to promote any Bout if ZUFFA shall have made an offer to Fighter to promote a Bout in accordance with the provisions hereof and Fighter shall have refused to participate.” I did not refuse to participate in the Bout in accordance with the UFC Bout Agreement terms, because the Bout was specifically agreed to have occurred at a “**maximum**” of 135 pounds. My opponent’s failure to make weight caused the Bout, as set forth in the UFC Bout Agreement, to be cancelled and/or terminated.
12. Section 4 of Schedule A to the UFC Bout Agreement sets forth the UFC’s obligation in the event of a bout postponement, cancellation or termination, which included, among other things, the obligation to reschedule the bout or to terminate the existing UFC Bout Agreement. The UFC failed to comply with these requirements; because in the event of bout cancellation, my UFC Promotional Agreement required the UFC to provide me with one (1) more fight.

13. The Dismissal Letter incorrectly states that my “contract expired by its terms and the parties failed to reach an understanding on a new agreement.” This is false. My existing UFC Promotional Agreement required the UFC to provide me with one (1) more fight, which should have occurred on April 21. However, because my opponent failed to make weight and the scheduled bout was cancelled, my UFC Promotional Agreement never “expired by its terms” as is misstated in the Dismissal Letter.
14. In the first full paragraph on page two (2) of the Dismissal Letter, it states the “UFC arguably could have terminated Smith’s fight contract in 2017 after she refused to accept a bout against an opponent, but it instead extended her contract twice.” The Dismissal Letter is unclear as to which opponent is being referenced in this paragraph. If, however, the reference is to the UFC’s proposed bout between me and Tonya Evinger on or around September 2017, I did not initially refuse to accept this Bout. I have researched this issue since provision of my affidavit in this matter and uncovered the relevant facts. My representative at the time advised the UFC I would consider acceptance of this Bout under certain conditions. The UFC effectively abandoned discussions related to the potential Evinger bout when it refused to discuss my request(s), and instead advised my representative that it would look for a replacement fighter to match against Tonya Evinger.
15. In addition, I did not launch Project Spearhead until February 2018. I had previously been involved with the Professional Fighters Association (“PFA”), which was another union organizing campaign, which began in August 2016. However, I publicly severed all involvement with PFA on or around November 2016 after an unfortunate leak of information by others involved with PFA. Therefore, during 2017, I was not involved in any active union organizing campaign with respect to the UFC.

16. I provided a confidential witness affidavit to Region 4 of the NLRB dated May 8, 2018. That affidavit described a situation in 2016, which the Division of Advice chose to ignore in its Dismissal Letter, when I was expressly told to avoid unionization if I wanted to continue fighting in the UFC:

The Cyborg fight was May 2016. There was a media day that occurred during that fight week. At that media day, I spoke about fighter issues. The interview was with MMA fighting. I spoke about how a fighters' association would benefit fighters. The interview was broadcast on several media outlets, including on YouTube. After that fight, Brian Stann of the UFC, a UFC-employed commentator, approached me on a fighters' bus. He said to me words to the effect that I already said my peace and can be proud of that, but that if I wanted to stay with this company, you shouldn't talk any more about unionizing.

17. The Dismissal Letter also makes no mention that, at the time of my release, I was ranked ninth (9th) in the world in the UFC female bantamweight division, or that I had won three (3) of my last four (4) fights with the only loss coming at a weight above the bantamweight division to current female featherweight champion Cris Cyborg. The Dismissal Letter also fails to address the fact that, at the time of my release, the UFC female bantamweight division had significantly fewer fighters than other weight divisions within the UFC. The fact the UFC cut its number nine ranked fighter who had won three out of her last four fights in a division where it had fewer fighters than most divisions further supports that I was retaliated against based on my engagement in protected activity.
18. The UFC, in an attempt to justify its release of me for nondiscriminatory reasons, provided a list of fighters to Region 4 of the NLRB to show that it had treated other fighters similarly in the past. The UFC separated these alleged comparators into two categories: 1) fighters that were not resigned despite success; and 2) fighters paid show and win money not to fight.

19. The fighters listed in the UFC's first category were: Sarah Kaufman, Gergard Mousasi, Kyoji Horiguchi, Ryan Bader, Lorenz Larkin, Yair Rodriguez, Tim Johnson, Anthony Birchak, Taylor Lapilus, Erik Perez, Rick Story, Rashid Magomedov, and Ben Henderson. In response, I distinguished each of these alleged comparators in detail with Region 4, but there was no mention of this evidence in the Dismissal Letter.
20. The fighters listed in the UFC's second category were: Ben Nguyen, Ian McCall, Charles Rosa, Walter Harris and Paul Felder. In response, I distinguished each of these alleged comparators in detail with Region 4, but there was no mention of this evidence in the Dismissal Letter.
21. The Dismissal Letter also points to a discretionary allotment paid to me by the UFC in the amount of \$500 "just prior to the scheduled April 21 fight..." as evidence of an alleged unlawful motive on behalf of the UFC.
22. I wrote to a Senior Director of Event Management & Operations by e-mail dated April 17, 2018, in which I requested to be compensated for per diem each day I was required to travel on behalf of the UFC. In addition, I requested to be reimbursed for the costs of checked luggage I incurred when required to travel for the UFC from San Francisco, CA to Atlantic City, NJ. It was and is my position that the UFC was legally required to compensate me for these expenses by operation of California Labor Law since I was and am a resident of the state of California.
23. On April 19, 2018, UFC Chief Legal Officer and Executive Vice President, Hunter Campbell became involved in my request and wrote me an e-mail in which he advised it was the UFC's "unequivocal position" that its "per diem policy...is being performed in full compliance with the letter and spirit of both the Promotional Agreement and Bout

Agreement...” In addition, Mr. Campbell advised me in that e-mail that the UFC would be issuing me a “discretionary bonus in the form of a wire payment for an additional \$500.” Mr. Campbell concluded his correspondence by advising me to “focus[] [my] attention on the fight ...instead of concerning [myself] with luggage and per diem matters.”

24. The Division of Advice and/or General Counsel relied upon the exchange set forth in paragraphs 21-23 herein as evidence of the UFC’s non-discriminatory motive. However, it was and is my position that California Labor Law entitled me to be fully reimbursed for all travel costs incurred when required to travel for the UFC by operation of California Labor Law. My employment with the UFC was terminated one day following this exchange and provision of the discretionary bonus.
25. The Dismissal Letter also references, as alleged evidence of the UFC’s non-discriminatory motive, that my Project Spearhead mouthguard had been approved for use in my April 21 bout. The Decision to Dismiss mistakenly states that the mouthguard would “have been visible for a national television audience...” I was not scheduled by the UFC to fight on the national television broadcast of the April 21 fight card in Atlantic City, NJ. Instead, as was routinely the case throughout my employment with the UFC, the UFC had chosen to only broadcast my fight on its streaming media service, which is referred to as UFC Fight Pass. The electronic flyer for my bout that I was asked, by the UFC, to post to my social media account(s), demonstrates the fight would not have been televised nationally. Instead, my fight would have only been able to be streamed electronically “Live and Exclusive on UFC Fight Pass”:



26. The Dismissal Letter also states that my negotiations with the UFC “broke down over the public manner in which Smith conducted negotiations with demands asking for up to a 222% increase over her then-current contract.” The Dismissal Letter provides no specifics in reference to these alleged “public” demands for a 222% increase to my compensation. My recollection is that a member of the media had reported what they interpreted as a contract demand from me. However, following the report, the UFC inquired with me and/or my representative as to the veracity of the claim. I, and/or my representative, clarified to the UFC that the report was not accurate. I was never seeking one hundred thousand (\$100,000.00) to show and one hundred thousand (\$100,000.00) to win.
27. On or about September 30, 2018, the Interim Vice-President of Project Spearhead, Kajan Johnson, announced he was no longer fighting in the UFC. As of the date of this Declaration, the UFC has purged two (2) of the three (3) Interim Board Members of Project Spearhead from its roster less than nine (9) months after the union organizing drive was launched.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 2018.

A handwritten signature in black ink, appearing to read 'Leslie Smith', written over a horizontal line.

Leslie Smith