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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS

BOARD REGION 32

AAA NORTHERN CALIFORNIA, NEVADA & UTAH, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 665,	Case No. 32-CA-321155, 32-CA-322818, 32-CA-322876, 32-CA-323291, 32-CA-331273, 32-CA-336921 **CHARGING PARTY'S MOTION IN LIMINE TO EXCLUDE NOTES AND TESTIMONY RELATED TO MEDIATION AND/OR OBJECTION TO SUCH TESTIMONY**

ERRATUM

Errors of omission in the original Motion are identified below by <u>underlined font</u>.

MOTION IN LIMINE TO EXCLUDE/OBJECTION TO EVIDENCE

Charging Party International Brotherhood of Teamsters Local 665 brings this motion for an order limiting the presentation of evidence in this matter specifically to exclude any and all testimony or evidence of the communications made as part of the November <u>– December</u> 2022 <u>and January 2023</u> mediation between Respondent AAA Northern California, Nevada & Utah and Charging Party Teamsters Local 665 with Federal Mediator Cathy Stevens.

<u>MEMORANDUM OF POINTS AND AUTHORITIES</u>

I. <u>RELEVANT SUBSTANTIVE AND PROCEDURAL FACTS</u>

This case is currently pending before the Administrative Law Judge in trial proceedings pursuant to the Complaint issued by Counsel for the General Counsel based on several unfair labor practice charges filed by Charging Party International Brotherhood Teamsters Local 665 ("Local 665" or "the Union") alleging that Respondent AAA Northern California, Nevada & Utah ("AAA") committed multiple unfair labor practices, including several specifically alleging bad faith in bargaining to and declaring impasse in the parties' first-contract negotiations.

During the course of those negotiations, the parties agreed to mediation through the Federal Mediation and Conciliation Service (FMCS) with Mediator Cathy Stevens serving as the neutral mediator. The parties met in mediation with Ms. Stevens in November – December 2022 and January 2023. Prior to commencing the mediation, the parties signed a Mediation Agreement provided by Ms. Stevens. An unsigned copy of that Mediation Agreement is attached hereto as Exhibit A. (Although the copy attached hereto is unsigned, the Charging Party understands that Respondent does not deny that the parties signed this agreement.)

It is anticipated that AAA intends to introduce testimony and notes from the mediation about the proposals and statements made during the mediation. Admission of such communications, even with a protective order, is prohibited by both the Mediation Agreement signed by the parties, the federal common law mediation privilege, and federal law regarding the admissibility of compromise offers and negotiations. Local 665 therefore requests an order prohibiting the admission of any evidence regarding communications that occurred as part of the November 2022 mediation.

II. THE MEDIATION AGREEMENT PROHIBITS DISCLOSURE OF COMMUNICATIONS MADE DURING THE MEDIATION PROCESS

The parties agreed to the Mediation Agreement as part of the FMCS mediation process. There is no dispute that both parties signed the agreement. This agreement requires the confidentiality of all oral and written communications made during the mediation process. Relevant provisions state:

> "3. To promote frank and productive discussion, the Parties agree that the mediation process is as confidential as allowed by law.
> a. The Parties agree not to disclose to any non-party oral or written communications made during the mediation process, including settlement terms, proposals, offers, or other statements, whether made privately to the Mediator or when all Parties are present.
> …
> f. The obligations imposed by this agreement are in addition to and do not supersede any obligations imposed by applicable state or federal laws regarding mediation confidentiality."

This language is unequivocal that the mediation process, including all oral and written communications made during the mediation process, are to be kept confidential. Testimony of mediation communications would plainly violate this agreement and undermine the confidentiality of the mediation process which is necessary to promote frank and productive discussion.

No language in this agreement allows for AAA to breach its confidentiality obligations. AAA may argue that the phrase “as confidential as allowed by law” allows testimony on the confidential communications but that phrase does not permit disclosure in this case. Nothing in these proceedings legally requires AAA to disclose mediation communications, there is no court order compelling their disclosure nor any other legal requirement of disclosure. AAA is attempting to voluntarily disclose communications in breach of the agreement, not comply with a legal order.

AAA has also proposed a protective order to maintain confidentiality. However, disclosure to the judge in this case is a prohibited disclosure to a non-party in clear violation of paragraph 3(a) of the Agreement. Since the judge is acting as the factfinder in this case disclosure could be prejudicial to the parties. Thus, the judge must be considered as a non-party who is not privileged to review the mediation communications. The confidentiality agreement cannot be reasonably interpreted as allowing the disclosure of confidential information to a neutral factfinder without the consent or waiver of the parties. Such disclosure is exactly the threat to frank and productive discussion that the Mediation Agreement was designed to prevent.

There is no applicable allowance in the Mediation Agreement for AAA to disclose the confidential communications made during mediation and thus the Mediation Agreement bars the admission of mediation communications in this case.

III. <u>THE FEDERAL COMMON LAW MEDIATION PRIVILEGE PROHIBITS DISCLOSURE</u>

In addition, the Federal Rules of Evidence, as applied within the jurisdiction of the Ninth Circuit Court of Appeals, recognize an independent privilege for mediation communications that applies in this case. In the Ninth Circuit a mediation privilege is recognized covering “all communications made in conjunction with a formal mediation.” *Folb v. Motion Picture Indus. Pension & Health Plans*, 16 F. Supp. 2d 1164, 1179–80 (C.D. Cal. 1998), *aff'd*, 216 F.3d 1082 (9th

Cir. 2000) ("*Folb*"). This privilege applies to "all communications made in conjunction with a formal mediation" with a neutral mediator *Id* at 1180.

Here, AAA and Local 665 entered into formal mediation with a neutral mediator, Cathy Stevens, assigned by the FMCS. Thus, the communications made as part of the mediation with Stevens fall under the mediation privilege and must be barred from admission in this proceeding. The mediation privilege was thoroughly justified in *Folb* and serves the important public purpose of encouraging parties to attend mediation and communicate openly and honestly in order to facilitate successful alternative dispute resolution. *Id* at 1172. AAA's testimony regarding mediation communication would be squarely contrary to the purpose of the mediation privilege and inflict exactly the harm the privilege is meant to prevent.

IV. FRE RULE 408 PROHIBITS THE ADMISSION OF EVIDENCE OF COMPROMISE OFFERS AND SETTLEMENT NEGOTIATIONS

FRE Rule 408 prohibits the admission of offers of valuable consideration in compromising or attempting to compromise a claim as well as statements made during compromise negotiations about a claim. This compromise privilege covers settlement negotiations and prevents their admission in order to facilitate open communication and the settlement of disputes. The Board has recognized this privilege as applying in the context of communications endeavoring to settle unfair labor practices. *See, e.g., Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Altemost Construction Co.),* 222 NLRB 1276, footnote 1 (1976).

Here, the mediation of November – December 2022 and January 2023 was in part a negotiation over the terms of a collective bargaining agreement. A common term of such an agreement is the settlement of outstanding unfair labor practice charges levied during the negotiations of the contract. Specifically, it would be inconceivable to reach an agreement on a collective bargaining agreement without also resolving claims that one of the parties had been negotiating in bad faith during the negotiations.

When AAA and Local 665 entered mediation in November 2022, the Union had pending with the NLRB numerous unfair labor practice charges alleging unlawful unilateral changes and other bad faith bargaining that had occurred during the course of negotiations. Such charges were ultimately consolidated in a complaint issued on October 3, 2022, in "AAA I," a case that has now gone to trial in a separate proceeding. (A copy of that Complaint is attached as Exh. B[1].)

The ultimate goal of the November – December 2022 and January 2023 mediation was to reach an agreement by which the parties would agree to a collective bargaining agreement and settle the Union's Section 8(a)(5) claims against AAA. Thus, the mediation was a privileged settlement negotiation of an ongoing claim under FRE Rule 408. Settlement negotiations are privileged in order to encourage open and honest communication and the resolution of disputes. The mediation was part of such settlement negotiations and while it did not result in a settlement, the privilege covers communications made during the mediation.

V. CONCLUSION

AAA's intended disclosure of communications made in the parties' November – December 2022 and January 2023 mediation is clearly barred by every relevant authority and cannot be admitted. AAA agreed in the mediation agreement not to disclose the proposals and communications made during the mediation, the federal common law mediation privilege prohibits the disclosure of communications made in formal mediation, and the Federal Rules of Evidence expressly prohibit introduction of evidence of compromise offers and negotiations to settle disputed claims. Under these authorities AAA's disclosure of mediation communications and proposals' is barred by their agreement and by federal law. Accordingly, the Union requests the ALJ to grant the MOTION IN LIMINE TO EXCLUDE NOTES AND TESTIMONY RELATED TO THE MEDIATION.

Dated: January 29, 2025

BEESON, TAYER & BODINE, APC

By: */s/ Andrew H. Baker*
ANDREW H. BAKER
Attorneys for Charging Party
TEAMSTERS LOCAL 665

[1] See, *e.g.*, the charges in 32-CA-28038, 28221, 284408, 284409, 284659, 284664, 294816, 296162, and 2991041.

EXHIBIT A

FMCS Case# AAA-NCNU/IBT 665 Mediator name Cathy Stevens

Federal Mediation and Conciliation Service
Mediation Agreement

The undersigned Parties hereby request the assistance of the Federal Mediation and Conciliation Service (FMCS). All references to mediator and mediation also incorporate instructors and training or other neutral services.

1. Non-Party attendees are bound by the following terms as if a Party.

2. The Parties understand that the Mediator has no authority to decide the case and is not acting as an advocate or attorney for any party. The Parties understand that they have a right to representation during mediation.

3. To promote frank and productive discussion, the Parties agree that the mediation process is as confidential as allowed by law.
    a. The Parties agree not to disclose to any non-party oral or written communications made during the mediation process, including settlement terms, proposals, offers, or other statements, whether made privately to the Mediator or when all Parties are present.
    b. The Parties agree that they will not record, save, or otherwise capture any audio, video, files, documents, chat texts, or any other data that the Party would not have access to but for the mediation, unless provided by another Party with knowledge and consent. If recordings, saves, or other captures of data occur unintentionally, the mediator must be notified immediately. Any such recordings, saves, or captures of data may not be shared with anyone and must be immediately and permanently deleted.
    c. Only Parties may attend or have access to any part of the mediation unless all Parties and the mediator agree, or as required by law.
    d. (Virtual Meetings only) The Mediator and all Parties must be provided notice of all attendees before or at the time of attendance. Parties may not provide mediation passwords to non-Parties without consent of the mediator.
    e. The Parties agree that if a Party inadvertently gains access to any confidential discussions involving another Party, the Party with inadvertent access shall immediately disclose the Party's presence and exit from the confidential discussions. Any confidential information inadvertently disclosed may not be used by the Party with inadvertent access, even within the confines of the mediation.
    f. The obligations imposed by this agreement are in addition to and do not supersede any obligations imposed by applicable state or federal laws regarding mediation confidentiality.

4. The Parties agree not to subpoena the Mediator or compel the Mediator to produce any documents provided by a Party in any pending or future administrative or judicial proceeding. The Mediator will not voluntarily testify on behalf of a Party in any pending or future administrative or judicial proceeding.

5. Mediation sessions will not be recorded or transcribed by the Mediator or any of the Parties. In accordance with FMCS policy, the Mediator's notes and records of the mediation content, if any, are routinely destroyed.

6. Evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation proceedings.

FMCS Case# AAA-NCNU/IBT 665 Mediator name Cathy Stevens

7. The Mediator has no authority to compel agreement or other resolution of the dispute and will issue no written recommendations or conclusions. At the request of the Parties, or on the initiative of the Mediator, the Mediator may provide an oral recommendation or opinion to resolve the dispute. In that circumstance, the Parties may jointly decide to implement that recommendation or opinion but neither party is obligated to do so.

8. No party shall be legally bound by anything said or done at the mediation. If an agreement is reached, the agreement shall be reduced to writing and when signed shall be binding upon the Parties to the agreement. If agreement is not reached, the participants will remain bound by the confidentiality provisions of this agreement.

9. FMCS strives to ensure the integrity of all technology used in mediations. All Parties must also ensure the integrity of technology used in mediations. If a Party is aware of any security breach, that Party should inform the mediator immediately. The Mediator will inform all attendees of any known security breach. The Parties agree to hold FMCS harmless from the result of any security breach.

10. The FMCS and its employees will be held harmless of any claim for damages for any act or omission occurring during or in connection with the mediation process, to the extent permitted by applicable law.

11. This agreement shall supersede any other agreements relating to this mediation in the event of contradictory terms.

Anyone with questions or concerns about these terms should contact FMCS's Office of General Counsel at (202) 606-5444 or ogc@fmcs.gov.

By signature, we acknowledge that we have read, understand and agree to the Agreement to Mediate. The Parties also represent that they have the full authority to bind their respective organization and/or members to this Agreement. This Agreement may be executed in multiple original counterparts, which when taken together, shall constitute one and the same instrument.

Signature	Organization	Date
Signature	Organization	Date
Signature	Organization	Date
Signature	Organization	Date

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

AMERICAN AUTOMOBILE ASSOCIATION OF NORTHERN CALIFORNIA, NEVADA & UTAH

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 665

Cases 32-CA-280838
32-CA-282213
32-CA-284409
20-CA-284659
20-CA-284664
32-CA-285247
32-CA-292625

ORDER FURTHER CONSOLIDATING CASES, AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, **IT IS ORDERED THAT** Case 32-CA-292625, which is based on a charge filed by International Brotherhood of Teamsters Local 665 (Union) against AAA Northern California, Nevada & Utah, whose correct legal name is American Automobile Association of Northern California, Nevada & Utah (Respondent), is hereby consolidated with the previously consolidated Cases 32-CA-280838, 32-CA-282213, 32-CA-284409, 20-CA-284659, 20-CA-284664 and 32-CA-285247.

This Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et. seq. (the Act), and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1.

(a) The original charge in Case 32-CA-280838 was filed by the Union on July 30, 2021, and a copy was served on Respondent by U.S. mail on August 4, 2021.

(b) The first-amended charge in Case 32-CA-280838 was filed by the Union on October 13, 2021, and a copy was served on Respondent by U.S. mail on October 25, 2021.

(c) The original charge in Case 32-CA-282213 was filed by the Union on August 25, 2021, and a copy was served on Respondent by U.S. mail on August 31, 2021.

(d) The first-amended charge in Case 32-CA-282213 was filed by the Union on September 3, 2021, and a copy was served on Respondent by U.S. mail on September 8, 2021.

(e) The original charge in Case 32-CA-284409 was filed by the Union on October 8, 2021, and a copy was served on Respondent by U.S. mail on October 13, 2021.

(f) The original charge in Case 20-CA-284659 was filed by the Union on October 18, 2021, and a copy was served on Respondent by U.S. mail on October 18, 2021.

(g) The first-amended charge in Case 20-CA-284659 was filed by the Union on November 9, 2021, and a copy was served on Respondent by U.S. mail on November 17, 2021.

(h) The original charge in Case 20-CA-284664 was filed by the Union on October 18, 2021, and a copy was served on Respondent by U.S. mail on October 18, 2021.

(i) The first-amended charge in Case 20-CA-284664 was filed by the Union on October 25, 2021, and a copy was served on Respondent by U.S. mail on October 25, 2021.

(j) The original charge in Case 32-CA-285247 was filed by the Union on October 12, 2021, and a copy was served on Respondent by U.S. mail on October 28, 2021.

(k) The original charge in Case 32-CA-292625 was filed by the Union on March 18, 2022, and a copy was served on Respondent by U.S. mail on March 22, 2022.

2.

(a) At all material times, Respondent has been a California corporation, with a principal place of business located at 1277 Treat Boulevard, Walnut Creek, California and approximately 78 Northern and Central California Branches, all the sole facilities involved herein, is a mutual benefit corporation engaged in the business of providing financial and safety service to its members.

(b) In conducting its operations described above in paragraph 2(a) during the 12-month period ending July 30, 2021, Respondent derived gross revenues in excess of $500,000.

(c) In conducting its operations during the 12-month period ending July 30, 2021, Respondent purchased and received at Respondent's California facilities products, goods and materials valued in excess of $5,000 directly from points outside the State of California.

3.

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.

4.

At all material times, the Union has been a labor organization with the meaning of Section 2(5) of the Act.

5.

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Commissioned Insurance Sales Employees employed by Respondent at its 78 Northern and Central California branch offices; excluding all other employees, managers, guards, and supervisors as defined in the Act.

(b) On June 11, 2021, a majority of the employees in the Unit who voted in a representation election conducted in Case 20-RC-274587 selected the Union to be their exclusive collective-bargaining representative.

(d) On June 22, 2021, in Case 20-RC-274587, the Union was certified as the exclusive collective-bargaining representative of the employees in the Unit.

(e) At all times since June 11, 2021, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

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

Tim Condon	Chief Executive Officer
Osh O'Crowley	Chief Sales Officer
Daniel Block	Labor Consultant
Tito Medeiros	Director of Investigations
David Craig	Senior Corporate Investigator
Tracy Taylor	Regional Vice President
Jon Berglund	Stockton Branch Manager/ Folsom Branch Manager
Maria Ramos	Stockton Assistant Branch Manager
Ami Poncabare	Walnut Creek Senior Director/ Folsom Interim Branch Manager
Alexandra Trent	Folsom Branch Manager (Former)
Long Tran	Folsom Branch Manager (Former)
Steve Garcia	Folsom Assistant Branch Manager/ Team Leader
Marie Punzal	Folsom Member Experience Generalist
Jane Drymon	Tracy and Turlock Branch Director

Kent Evans	Santa Rosa Branch Manager
Tom O'Roarke	Lakeport Branch Manager
Cathy Chaus	Lakeport Assistant Branch Manager/Team Leader
June Bragg	Folsom Assistant Branch Manager
Antoinette James	Vacaville Senior Branch Director
Michelle Faas	Human Resources Director
Vincent Garcia	Human Resources Generalist

VIOLATIONS FROM CASE 32-CA-285247

7.

(a) On or about April 14, 2021, during a meeting with employees held in Stockton, California, Respondent, acting through labor consultant Daniel Block, made threatening and coercive statements to employees regarding employees that filed and participated in the investigation of an unfair labor practice charge in Board Case 32-CA-275431 filed against Respondent.

(b) On or about May 6, 2021, during a meeting held with employees in Fresno, California, Respondent, acting through labor consultant Daniel Block made threatening and coercive statements to employees regarding employees that filed and participated in the investigation of an unfair labor practice charge in Board Case 32-CA-275431 filed against Respondent.

VIOLATIONS FROM CASE 32-CA-280838

8.

From at least March 4, 2021, and continuing to date, Respondent maintained the following confidentiality policies in its Standards of Conduct, Information Technology Policies, and Code of Conduct in the Team Member Handbook:

(a) Safeguarding Information: One of our most valuable assets is our Company's confidential information, and we protect against unauthorized disclosure or misuse. This information could reveal our technology, strategies and other ideas we have worked hard to create. It could also reveal information that our Members or Team Members have entrusted to us.

(b) [The Company] is legally obligated to protect sensitive information pertaining to Members, insureds, customers, and vendors. Unauthorized disclosure of confidential financial data, other non-public proprietary company information and confidential information regarding business partners, vendors or customers is prohibited, either during or after your employment. Such information and data is referred to as "protectable business information."

(c) What should I protect? Information about: **Our Team Members. Personal data or information about benefits, compensation or performance**. **Our Members. Personal identification, financial information or insurance or loan information.** [emphasis added]

(d) [Employees may not engage in:]

(i) Misappropriation, theft, copying or unauthorized (including unsecured) disclosure of confidential information pertaining to Members, insureds and Team Members, such as mailing addresses, email addresses, telephone, Social Security, driver license, credit card numbers, and insurance or similar policy information.

(ii) Misusing or disclosing trade secrets or confidential information.

(iii) Misconduct, including willful violations of company policy and/or exercise of poor judgment.

(iv) Unauthorized viewing, accessing, disclosing or influencing others to view, access, or disclose information pertaining to you, your family members, or other Team Members concerning their Membership, insurance, travel, employment or any and all other data.

9.

(a) About June 30, 2021, Respondent initiated an investigation of employee Priscilla Gaines-Holladay (Gaines-Holladay) regarding her associate AAA memberships.

(b) About July 13, 2021, Gaines-Holladay requested to be represented by the Union during an investigatory interview by Respondent regarding her associate AAA memberships.

(c) About July 15, 2021, Respondent, by Tito Medeiros, Respondent's Director of Investigations (Medeiros) and Jon Berglund, Branch Manager, conducted an investigatory interview of Gaines-Holladay in the presence of her Union representative Tom Woods.

(d) About July 16, 2021, Gaines-Holladay emailed exculpatory evidence to Medeiros and copied her Union representative Tom Woods.

(e) About July 23, 2021, Respondent terminated employee Gaines-Holladay.

(f) About July 23, 2021, Respondent enforced the confidentiality rules described above in paragraph 8 in response to Union activity by terminating employee Gaines-Holladay.

(g) Respondent engaged in the conduct described above in paragraph 9(a) because Gaines-Holladay assisted the Union and/or engaged in Union activities, and to discourage employees from engaging in these activities.

(h) Respondent engaged in the conduct described above in paragraphs 9(e) and/or 9(f) because Gaines-Holladay engaged in the protected activity of seeking the Union's assistance in responding to Respondent's investigation as described above in paragraph 9(d).

(i) As an alternative to the theory set forth in paragraph 9(h), Respondent engaged in the conduct described above in paragraphs 9(e) and/or 9(f) because Gaines-Holladay assisted the Union and/or engaged in Union activities, and to discourage employees from engaging in these activities.

10.

(a) The subject set forth above in paragraphs 9(e) and 9(f) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(b) Respondent engaged in the conduct described above in paragraphs 9(e) and 9(f) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct and/or without first bargaining with the Union to an overall good-faith impasse for an initial collective-bargaining agreement.

VIOLATIONS FROM CASE 32-CA-280838, 32-CA-282213, 32-CA-284409, 20-CA-284659, AND 20-CA-284664 AS NOTED BELOW

11.

(a) About July 9, 2021, Respondent implemented a new rule denying “counter” work to Unit employees who are tardy to work. (Case 32-CA-280838)

(b) About July 9, 2021, Respondent implemented a new rule referring walk-in customers to any available employee if the Unit employee assigned to “counter duty” did not assist the customer within 3 minutes of the customer’s arrival. (Case 32-CA-280838)

(c) About July 20, 2021, Respondent eliminated at the Tracy and Turlock facilities Unit employees’ ability to work from home. (Case 32-CA-280838)

(d) About late August or early September 2021, Respondent eliminated Unit employees’ eligibility for the Circle of Excellence bonus. (Case 32-CA-282213)

(e) About late July or early August 2021, Respondent changed the allocation of incoming calls in Respondent’s phone system and began transferring a substantially increased volume of non-revenue generating service calls to Unit employees. (Case 32-CA-282213)

(f) About Summer or Fall 2021, Respondent failed to restore Unit employees' access to productivity information, which had been restored to similarly situated non-represented employees, and denied Unit employees' requests for such information. (Case 32-CA-282213)

(g) About July 9, 2021, Respondent implemented a new rule prohibiting Unit employees from being even one minute late to work. (Case 32-CA-284409)

(h) About September 2021, Respondent implemented a new policy at its Santa Rosa and Lakeport facilities that eliminated Unit employees' ability to work from home. (Case 20-CA-284659)

(i) About September 2021, Respondent implemented a new policy that Unit employees would have to work during branch hours from 9:00 a.m. to 6:00 p.m. and eliminated Unit employees' ability to work flexible schedules or schedules that deviated from those branch hours. (Case 20-CA-284659)

(j) About August 30, 2021 and September 7, 2021, Respondent implemented a new policy that only one Unit employee and one "frontline" non-Unit employee are permitted to take paid time off (PTO) at the same time, that all PTO requests would have to be made with 48 hours advance notice, and that any PTO requests made within 48 hours would be deemed unscheduled PTO, the accumulation of which could lead to discipline. (Case 20-CA-284664)

(k) About September 30, 2021, Respondent announced a new policy that a walk-in customer needing or seeking new primary or associate AAA memberships would no longer be directed to speak with Unit employees unless they were seeking a quote. (Case 20-CA-284664)

(l) About August 2021, Respondent reduced Unit employees' ability to obtain support from "frontline" non-Unit employees with customer service requests. (Case 20-CA-284664)

12.

(a) Respondent engaged in the conduct described above in paragraph 11 because employees chose to be represented by the Union and/or engaged in Union activities, and to discourage employees from engaging in these activities.

(b) The subjects set forth above in paragraph 11 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 11 without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct and/or without first bargaining with the Union to an overall good-faith impasse for an initial collective-bargaining agreement.

<u>WEINGARTEN VIOLATION FROM CASE 32-CA-292625</u>

13.

(a) About March 17, 2022, at Respondent's Branch in Berkeley, California, Respondent's employee Lielonnie Lewis requested to be represented by the Union during an interview by Respondent.

(b) Respondent's employee Lielonnie Lewis had reasonable cause to believe that the interview described above in paragraph 13(a) would result in disciplinary action being taken against her.

(c) Before beginning the interview described above in paragraph 13(a), Respondent did not notify employee Lielonnie Lewis or the Union what allegations it was investigating during the interview.

(d) About March 17, 2022, after Respondent informed employee Lielonnie Lewis and Union Representative Tom Woods the substance of the allegations that were being investigated during the interview, Respondent, acting through Human Resources Director Michelle Faas and Human Resources Generalist Vincent Garcia, denied the request by employee Lielonnie Lewis and Union Representative Tom Woods to privately discuss the allegations under investigation before continuing the interview.

(e) About March 17, 2022, Respondent, by Michelle Faas and Vincent Garcia, continued the interview described above in paragraph 13(a) with its employee Lielonnie Lewis, even though Respondent, by the conduct described above in paragraph 13(d), effectively denied the employee's request for Union representation during the interview described above in paragraph 13(a).

14.

By the conduct described above in paragraphs 7, 8(c), 9(f), and 13(e), 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 Section 8(a)(1) of the Act.

15.

By the conduct described above in paragraphs 9(g), 9(h), 9(i), and 12(a), Respondent has been discriminating in regard to the hire or tenure or terms or condition of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

16.

By the conduct described above in paragraphs 10(b) and 12(c), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

17.

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

REMEDIES

As part of the remedy for the unfair labor practices alleged above in paragraphs 14, 15, and 17, the General Counsel seeks an Order requiring that Respondent physically post and electronically distribute the Notice to Employees at all of Respondent's facilities in California; and requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative to read the Notice to the employees and an Explanation of Rights in English on worktime in the presence of a Board agent and Union representatives. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and agents identified above in paragraphs 6 and Union representatives.

As part of the remedy for the unfair labor practices alleged above in paragraphs 10(b), 12(c), and 16, the General Counsel seeks an order requiring Respondent to restore its work rules, policies and past practices as it existed on June 11, 2021. The General Counsel further seeks such other relief as may be appropriate to remedy the unfair labor practices alleged.

As part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 10(b), 12(c), and 16, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

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 Amended Consolidated Complaint. The answer must be E-filed and received **by this office on or before October 17, 2022**. Respondent must serve a copy of the answer on each of the other parties. The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, 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. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within 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, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amended Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on January 18, 2023, at 9:00 a.m. in a location or manner (Zoom video conference) to be determined at a later time, 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 Amended Consolidated 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 Oakland, California this 3rd day of October 2022.

Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Attachments

Form NLRB-4338
(2-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases: 32-CA-280838
32-CA-282213
32-CA-284409
20-CA-284659
20-CA-284664
32-CA-285247
32-CA-292625

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown *and* the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds thereafter must be set forth in *detail;*

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request;

and

(5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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AAA Northern California, Nevada & Utah
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Walnut Creek, CA 94597

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Beeson Tayer & Bodine
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Oakland, CA 94607-3865

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative**. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

AMERICAN AUTOMOBILE ASSOCIATION OF NORTHERN CALIFORNIA, NEVADA & UTAH **and** **INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 665**	**Cases 32-CA-280838** **32-CA-282213** **32-CA-284409** **20-CA-284659** **20-CA-284664** **32-CA-285247** **32-CA-292625** **Date: October 3, 2022**

AFFIDAVIT OF SERVICE OF ORDER FURTHER CONSOLIDATING CASES, AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

Tim Condon, President & CEO
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Ron Dellums Federal Building
1301 Clay Street, Suite 1550-S
Oakland, CA 94612
E-FILE

October 3, 2022	Ida Lam, Designated Agent of NLRB
Date	Name
	/s/ Ida Lam

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is Beeson, Tayer & Bodine, 492 Ninth Street, Suite 350, Oakland, California 94607. On January 29, 2025, I served the following document(s):

CHARGING PARTY'S MOTION IN LIMINE TO EXCLUDE NOTES AND TESTIMONY RELATED TO MEDIATION AND/OR OBJECTION TO SUCH TESTIMONY

☒ **By Electronic Service** to the parties in this action, at the electronic notification address(es) below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Thomas J. Posey — Email: tposey@seyfarth.com
Jennifer Mora — Email: jmora@seyfarth.com
John Ayers-Mann — Email: Jayers-mann@seyfarth.com
Seyfarth Shaw LLP

Amanda Brunt — Email: Amanda.brunt@nlrb.gov
Leigh Davenport — Email: Leigh.davenport@nlrb.gov
NLRB Region 32

I declare under penalty of perjury that the foregoing is true and correct. Executed in Concord, California, on January 29, 2025.

Tanya S. Gatt