UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMAZON.COM SERVICES LLC AND ITS AGENT AMAZON LOGISTICS, INC. (COLLECTIVELY "AMAZON"), AS A JOINT EMPLOYER WITH BATTLE TESTED STRATEGIES ("BTS")	**Cases 31-CA-317349 31-CA-319781 31-CA-320596**
and	
TEAMSTERS JOINT COUNCIL 42	
and	
TEAMSTERS LOCAL 396	

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO CHARGING PARTIES' REQUEST FOR SPECIAL PERMISSION TO APPEAL THE ADMINISTRATIVE LAW JUDGE'S ORDER APPROVING GENERAL COUNSEL'S UNILATERAL SETTLEMENT AGREEMENT WITH CHARGED PARTY AMAZON

Pursuant to the National Labor Relations Board's (Board) Rules and Regulations, Counsel for the General Counsel (General Counsel) submits this Opposition to Charging Parties' Request for Special Permission to Appeal the Administrative Law Judge's Order Approving the General Counsel's Defective Unilateral Settlement Agreement with Charged Party Amazon (Special Permission to Appeal). 29 CFR § 102.26.

On May 28, 2026, Charging Parties Teamsters Joint Council 42 and Teamsters Local 396 (collectively, Charging Parties) filed the Special Permission to Appeal, alleging that Administrative Law Judge G. Rebekah Ramirez's (ALJ) order in the above-captioned cases improperly withdrew the Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing (Complaint) against Respondents Amazon.com Services and Amazon Logistics, Inc.

(collectively, Respondent Amazon). Charging Parties also allege that the ALJ improperly approved the unilateral settlement agreement (Settlement) between the General Counsel and Respondent Amazon. For the reasons set forth below, the General Counsel requests that the Board deny Charging Parties' Special Permission to Appeal.

I. Procedural History

On September 30, 2024, and as amended on August 21, 2025 and September 22, 2025, the Acting Regional Director of Region 31 of the Board issued the Complaint alleging that Respondent Amazon was a joint employer with Respondent Battle Tested Strategies (Respondent BTS) (collectively, Respondents), a delivery service partner (DSP), and that Respondents had engaged in unfair labor practices that violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act (Act). On September 22, 2025, the hearing in this matter began before the ALJ, with the ALJ receiving witness testimony and documentary evidence from September 22 to 29, 2025, and from January 21 to 23, 2026.

On April 13, 2026, the General Counsel and Respondent Amazon executed the Settlement; Charging Parties and Respondent BTS declined to be party to the Settlement. That same day, the ALJ heard oral arguments from all parties by videoconference as to whether she should approve the Settlement. On April 20, 2026, Charging Parties filed a Supplemental Brief Opposing the Approval of the General Counsel's Defective Unilateral Settlement Agreement with Charged Party Amazon. On May 18, 2026, the ALJ issued an Order Granting Motion to Approve Informal Settlement Agreement and Withdrawal of Complaint (the Order).

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II. Argument

A. The ALJ Correctly Found the Settlement Satisfies the Board's *Independent Stave* Analysis.

The Settlement satisfies the factors outlined by the Board in *Independent Stave Co.*, 287 NLRB 740, 743 (1987). The Board identified a non-exclusive list of factors to consider in approving settlement agreements, including: (1) whether the charging party, the respondent, and the discriminatee have agreed to be bound; (2) whether the settlement is reasonable in light of the alleged violation, the risks of litigating the issue, and the stage of litigation; (3) whether fraud, coercion, or duress were present; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes. *Id*. at 743. Here, the ALJ correctly reviewed and approved the Settlement after considering the *Independent Stave* factors.

First, the General Counsel and Respondent Amazon agreed to the Settlement. Even though the Charging Parties and Respondent BTS opposed the Settlement, the ALJ correctly determined that, "the Board has observed that although not determinative, the General Counsel's support for the settlement agreement is an important consideration, especially when the General Counsel yields on prosecuting an aspect of the complaint to vindicate other public rights," citing to *McDonald's USA, LLC*, 368 NLRB No. 134, slip op. at 5 (2019). *See Order* at 5. Notably, Respondent Amazon has expressly agreed to undertake the obligations set forth in the Settlement and provide remedies outlined therein, and there are no remedial obligations imposed on Respondent BTS.

Second, the Settlement is reasonable in light of the alleged violations at issue in the Complaint. Specifically, the Settlement addresses and provides for the only financial remedy at issue by providing a monetary remedy that is equivalent to what the Board may order in the

manner set forth in *Transmarine Navigation Corp*., 170 NLRB 389 (1968). In fact, the Settlement provides a more generous monetary remedy than the standard minimum backpay remedy available under *Transmarine.* This is so because the Settlement provides for 80 hours of pay for each of the impacted employees, whereas the standard minimum backpay remedy under *Transmarine* would be calculated based on the average number of hours that an employee worked, and here, some impacted employees worked varying hours per week, often working significantly less than 40 hours per week by the time of their layoff. Notably, even in the seminal *Independent Stave* case, the Board approved a settlement that provided only 10 percent of the net backpay each employee would have been entitled to receive and the settlement further did not include a notice posting. *See Independent Stave*, 287 NLRB at 740. Here, the Settlement also ensures that more impacted employees will receive the monetary remedy at this time, while employees are easier to locate, and avoids potential issues that would arise through the passage of time before there was an enforced Board order.

The Settlement also effectively addresses almost all of the Complaint allegations under Section 8(a)(1) and (3) under the Act. Further, the Settlement provides for the Notice to Employees (Notice) to be posted at Respondent Amazon's DAX8 facility and to be mailed to former Respondent BTS employees. While the Notice does not identify Respondent Amazon as an "Employer," the absence of the term "Employer" from the signature line does not change the impact, meaning, or effect of the Notice. Contrary to Charging Parties' argument, the posting of the Notice at Respondent Amazon's DAX8 facility will send a clear message to all employees at the facility, whether employed directly by Respondent Amazon or by a DSP, that they have rights under the Act and that Respondent Amazon will not engage in the conduct covered by the Notice to interfere, restrain, or coerce employees in the exercise of those rights. Additionally, while the

Notice does not impose an affirmative obligation to rescind the unilateral changes alleged in the Complaint, this is appropriate because Respondent BTS has ceased operations and the parties do not contend that Respondent BTS has done work for Respondent Amazon since the termination of the DSP contract or that it will do so in the future.

Even though the Settlement does not resolve the Complaint allegation on Respondent Amazon's and Respondent BTS's joint employer status, the Section 8(a)(3) allegation regarding Respondent Amazon delaying start times for Respondent BTS's workers, and the allegations under Section 8(a)(5), the Board has approved settlements that do not resolve all complaint allegations after consideration of the *Independent Stave* factors. *Order* at 6 (*citing Independent Stave*, 287 NLRB at 740 and S*tarbucks Corp.*, 12–CA–295949, 2023 WL 5953883 (unpub. Board order) (June 26, 2023)). *See also Kiss Electric LLC*, 04-CA-164351, 2017 WL 2794211 (unpub. Board order) (June 27, 2017) and *McKenzie-Williamette Medical Center*, 361 NLRB 54 (2014). With respect to the joint employer allegation, even in an enforced Board order, there is no specific remedy associated with a joint employer finding and, as discussed above, Respondent Amazon has expressly agreed to fulfill the obligations provided in the Settlement and there is no obligation imposed on Respondent BTS. As to the Settlement not containing a bargaining obligation or addressing the Section 8(a)(5) allegations, the ALJ correctly determined that the absence of such a bargaining obligation is not a basis to find the Settlement is not reasonable, as the DSP contract between Respondent Amazon and Respondent BTS was terminated almost three years ago and the parties do not contend that the contract termination was unlawful at the time Respondent BTS received the initial notice of contract termination or that Respondent BTS has performed work for Respondents Amazon since that time or would do so in the future. *See Order* at 5.

As the ALJ noted, there are always risks inherent in litigation, and this case is no exception. Thus, in reaching the Settlement, the General Counsel was mindful of such risks here in proving every element of the *prima facie* case as to each Complaint allegation, particularly the Section 8(a)(5) allegations. Furthermore, even though the hearing record has opened and witness testimony has begun, it is reasonable to approve the Settlement because it will avoid several weeks of additional testimony, as well as extensive briefing before the ALJ and potentially before the Board and the courts that may take "several additional years to complete." *See Order* at 6. Thus, the Settlement allows the parties to conserve resources and provide a remedy to the impacted employees now, rather than several years later. Any other current or future cases, irrespective of an enforced Boarder in the instant case, will require their own evidence and thorough investigation before litigation, if appropriate, occurs. Thus, contrary to Charging Parties' assertions, a decision in the instant case would not ensure that any current or future cases have more expeditious investigations or require less resources to litigate. Finally, while Charging Parties object to the non-admissions clause in the Settlement, the Board has frequently approved informal settlement agreements containing non-admissions clauses, even over the objections of charging parties. *See Woodworkers Local 433*, 304 NLRB 1 (1991) and *Arosa Knitting v. NLRB*, 501 F.2d 823 (D.C. Cir. 1974). The Board has also approved non-board settlement agreements with non-admissions clauses over the General Counsel's objections. *See Starbucks Corp.*, 12–CA–295949, *supra*.

The third *Independent Stave* factor considers whether fraud, coercion, or duress were present. Charging Parties contend that Respondent Amazon is "perpetuating a fraud on the American public" through the DSP model. *See Special Permission to Appeal* at 9-10 fn. 1.

However, none of the parties have asserted that there is evidence of fraud, coercion, or duress by any of the parties with regards to the Settlement.

As to the fourth *Independent Stave* factor, the parties agree that there are no prior or pending unfair labor practice charges or settlement agreements involving Respondent Amazon's DAX8 facility. Furthermore, the Board has approved settlement agreements where the charged party has previously violated the Act while considering the remaining factors under *Independent Stave*, based on the Board's longstanding policy of encouraging resolution of disputes without litigation. *See Metro Mayaguez, Inc.*, 356 NLRB 1204, 1204 (2011) (reversing the ALJ decision and approving a non-board settlement over the General Counsel's objections that the charged party had committed a similar violation under the Act a few years prior); *Starbucks Corp.*, 12–CA–295949, *supra* (finding that the ALJ did not abuse their discretion by approving a non-board settlement after the hearing opened over the General Counsel's objection that the respondent had numerous pending charges and complaints filed across the country).

Notably, the ALJ acknowledged that even though Respondent Amazon's history of violations of the Act at other facilities should not be ignored, the cases cited by Charging Parties are currently pending before the Board and cannot be properly assessed or given weight until a final Board order issues. *See Order* at 7 (taking notice of *Amazon.com Services LLC*, 374 NLRB No. 82 (2026) (a test of certification case involving an Amazon facility in Staten Island, New York); *Amazon.com Services LLC*, 373 NLRB No. 96 (2024) (a default judgment case stemming from an Amazon off–duty access rule found to have violated the terms of an informal settlement agreement which resulted in the Board ordering Amazon to rescind the rule and post a notice at its facilities nationwide); and *Amazon.com Services LLC,* 373 NLRB No. 40 (2024) (a summary judgment case where the Board ordered Amazon to cease and desist from promulgating the same

off–duty access rule involved in the previous case and post a notice at its facility in Campbellsville, Kentucky)). Charging Parties cite no cases to support their argument that ALJ decisions are sufficient to establish recidivism and, contrary to their arguments, pending charges/investigations are not dispositive or even evidence of recidivism. Moreover, even if Respondent Amazon were found to be a recidivist, this is only one factor in a multi-factor analysis and when considering the totality of the factors, particularly the inherent risk of litigation and the remedies that the Settlement provides in this case, the ALJ's approval of the Settlement was appropriate.

Finally, as to the General Counsel's request to withdraw the Complaint before compliance with the Settlement is fully effectuated, while Section 9-500 of the ALJ Bench Book provides for a process where withdrawal of the Complaint does not take place until after compliance, withdrawal of the Complaint prior to compliance is proper because the Settlement provides for reinstatement of the Complaint in the event of non-compliance, similar to the Board's decision in *McDonald's*, 368 NLRB No. 134 (2019). In that case, there was an approval of informal settlements that required that the General Counsel move for withdrawal of the consolidated complaints within ten days after approval, before compliance was effectuated. Charging Parties argue that *McDonald's* is the exception and not the rule because it involved thirty different settlement agreements with multiple parties, and this "unusual complexity" that justified the deviation is not present in the instant case. However, Charging Parties cite no cases showing that the Board has relied on such a technical issue to decline approval of a settlement.

Additionally, Section 101.9(d)(1) of the Board's Rules and Regulations states the following:

> If the settlement occurs after the opening of the hearing and before issuance of the administrative law judge's decision and there is an all-party informal settlement,

> the request for withdrawal of the complaint must be submitted to the administrative law judge for approval. If the all-party settlement is a formal one, final approval must come from the Board. If any party will not join in the settlement agreed to by the other parties, the administrative law judge will give such party an opportunity to state on the record or in writing its reasons for opposing the settlement.

Here, the ALJ provided Charging Parties both an opportunity to state their objection to the Settlement on the record as well as in writing. Thus, nothing in the Rules and Regulations precludes the ALJ from granting withdrawal of the Complaint prior to full compliance with the Settlement. As such, it was appropriate for the ALJ to approve the withdrawal of the Complaint at this point in the case, particularly where the Settlement provides for reinstatement of the Complaint in the event of non-compliance.

III. The Board Should Overturn *Hospital Metropolitano* and Restore *UPMC*

Just as a rejection of the reasonable settlement here would contravene the Board policy favoring voluntary resolution of cases, so too has the Board's recent wholesale proscription against consent orders. The Board should overturn *Metro Health, Inc. d/b/a Hospital Metropolitano Rio Piedras,* 373 NLRB No. 89 (2024), and return to the standard announced in *UPMC and its Subsidiary, UPMC Presbyterian Shadyside*, 365 NLRB 1418 (2017), which permitted approval of a respondent-proffered consent order over the objection of the charging party and the General Counsel if it meets the four-factor test established under *Independent Stave*. That standard is consistent with the Board's broad remedial and adjudicatory authority under Section 10(c), supports the Act's policy favoring voluntary resolution and prompt relief, and avoids the problems precipitated by the Board's categorical prohibition in *Hospital Metropolitano* and its prior "full-remedy" standard under *Postal Service*, 364 NLRB 1704 (2016).

Until the Board's abrupt reversal of course in *Hospital Metropolitano*, the Board had utilized the consent order to resolve unfair labor practice allegations for over 50 years. In

General Electric, the Board approved an order incorporating settlement terms that a respondent had proposed over the objections of both the General Counsel and the charging party, noting that the consent order provided a full remedy for the allegations in the complaint. *Electrical Workers IUE Local 201 (General Electric Co.)*, 188 NLRB 855, 855 (1971). The Board's decision demonstrated the deference it would grant to voluntary resolutions that advanced the Act's purposes. In *Independent Stave Co*., the Board articulated a flexible reasonableness test, considering factors such as the parties' agreement, the risks and costs of litigation, the strength of the case, and the adequacy of relief to effectuate the Act. 287 NLRB 740 (1987). Although *Independent Stave* itself involved non-Board settlement agreements between the respondent and charging parties to which the General Counsel alone objected, the Board subsequently applied this flexible framework in cases involving consent orders. *See, e.g., Copper State Rubber*, 301 NLRB 138 (1991), and *Food Lion, Inc.*, 304 NLRB 602 (1991). However, in *Postal Service*, 364 NLRB at 1704, 1706, the Board enacted a "full-remedy" approach, disfavoring settlements that did not replicate litigation outcomes. In *UPMC*, the Board overruled *Postal Service*, restored its application of the flexible *Independent Stave* standard to consent orders, and permitted Board acceptance of consent orders over the General Counsel's objection when reasonable and in the public interest. 365 NLRB at 1418.

As recognized in *UPMC*, the Board—not the General Counsel or charging party—bears the adjudicatory duty to make final determinations as to whether proposed resolution terms are reasonable. 365 NLRB at 1422. Section 10(c) vests the Board with broad remedial authority to "issue . . . such order . . . as will effectuate the policies of this Act," including making adjudicatory determinations about appropriate remedies in the public interest. *Independent Stave*'s multifactor reasonableness standard supports that mandate by inquiring as to whether the

proposed consent order, in light of case strength, litigation risk, cost, and the scope and immediacy of relief, will effectuate the Act. That inquiry is inherently adjudicatory and remedial, not prosecutorial.

Both *UPMC* and *International Stave* rejected the "full-remedy" requirement as impractical and unrealistic, holding that, "[b]y operating on a rigid requirement that the settlement must mirror a full remedy, we would be ignoring the realities of litigation." *See* 287 NLRB at 742–43; 365 NLRB at 1421–22. A full and complete remedy is not required in measuring the adequacy of a settlement's relief under the *Independent Stave* reasonableness analysis. *See* 287 NLRB at 743. Instead, *Independent Stave* recognizes the value of settlements as compromises. The hallmark of a reasonable compromise is that parties "voluntarily forego[] the opportunity to have [claims] adjudicated on the merits in return for meeting the other party on some acceptable middle ground." *Id.* at 743. Board approval of consent orders that meet the framework under *Independent Stave* fosters prompt resolution of issues between parties while eliminating the inherent risk of taking a case to litigation. Even a remedy that does not fully compensate a charging party vindicates employee rights sooner, and thus more effectively, than a remedy only obtained after years of hearings and appeals.

For the above reasons, the per se prohibition on consent orders dictated by *Hospital Metropolitano* fails to effectuate the purposes and policies of the Act by foreclosing resolution of disputes in cases where the respondent has demonstrated a willingness to voluntarily settle a case, regardless of whether its proposal provides a full remedy, so long as it is reasonable and serves the public interest. Accordingly, the General Counsel respectfully requests that the Board overturn *Hospital Metropolitano* and restore *UPMC*.

IV. Conclusion

For the foregoing reasons, the General Counsel respectfully requests that the Board deny Charging Parties' Special Permission to Appeal and affirm the ALJ's Order.

Dated: June 3, 2026

Respectfully submitted,

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