UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STARBUCKS CORPORATION

and

Cases 13-CA-322871
13-CA-327142

CHICAGO AND MIDWEST REGIONAL
JOINT BOARD, WORKERS UNITED/SEIU

COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTION AND SUPPORTING BRIEF TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I. INTRODUCTION

Counsel for the General Counsel respectfully excepts to Administrative Law Judge Keltner Locke's decision dismissing the allegation that Respondent violated Section 8(a)(1) by maintaining a facially neutral dress code that restricts employees' Section 7 right to wear union insignia. *See* JD-18-26 (March 25, 2026). ALJ Locke applied *Tesla, Inc*., 371 NLRB No. 131 (2022), *enf. denied*, 86 F.4th 640 (5th Cir. 2023), and found Respondent had demonstrated the requisite "special circumstances" to justify its neutral, nondiscriminatory dress policy. The General Counsel excepts to the ALJ's application of *Tesla* and urges the Board to overrule it.

The Board should return to the standard articulated in *Wal-Mart Stores, Inc*., 368 NLRB No. 146 (2019), which correctly held that employers have the right to maintain neutral, nondiscriminatory employee uniform and appearance rules absent proof of disparate treatment or interference beyond reasonable time, place, or manner limits. The ALJ's approach, bound by *Tesla*, improperly presumes that virtually any employer attempt to regulate employees' attire or appearance is unlawful, misreads the Supreme Court's opinion in *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 798 (1945), and injects uncertainty that invites inconsistent outcomes and

unnecessary litigation, as exemplified by disparate ALJ rulings on Respondent's same policy across different stores. The Board should also overrule *Stericycle*, 372 NLRB No. 113 (2023) and return to a balanced approach in all cases that implicate facially neutral work rules.

II. STATEMENT OF THE CASE

Former General Counsel Jennifer Abruzzo alleged that Respondent's facially neutral nationwide dress code violated Section 8(a)(1) by limiting the display of union insignia. The ALJ applied *Tesla*'s "special circumstances" requirement and considered whether the policy was unlawful notwithstanding the policy's neutrality and nondiscriminatory application. Although the ALJ ultimately dismissed the complaint allegation based on his conclusion that Respondent demonstrated special circumstances justifying its dress code, General Counsel Crystal Carey opposes the ALJ's application of *Tesla* and urges the Board to return to the neutral appearance test established in *Wal-Mart*. The General Counsel further urges the Board to overturn *Stericycle* and return to a balanced, common-sense approach for determining whether facially neutral work rules violate the Act. Counsel for the General Counsel timely files this exception.

III. GENERAL COUNSEL'S EXCEPTION

Exception 1 – The ALJ erred by applying the flawed standard from *Tesla*, which requires an examination into whether "special circumstances" existed to justify Respondent's neutral, nondiscriminatory dress policy. (ALJD pp. 20:31-23:42)

IV. SUMMARY OF ARGUMENT

1. *Tesla* effectively renders virtually every employer dress code presumptively unlawful unless justified by "special circumstances," inverting the Act's balance and disregarding employers' legitimate business interests in discipline, safety, operations, and brand presentation.

2. *Tesla* misapprehends *Republic Aviation* by elevating employee expression to a near-absolute right in the dress/insignia context and failing to conduct the required balance with legitimate employer interests in maintaining orderly operations and business management.

3. The *Tesla* framework invites ambiguity and litigation risk and should be overruled; its inconsistent "special circumstances" application has already produced divergent ALJ outcomes on the same Respondent policy at different locations, undermining predictability and industrial peace.

4. The Board should return to *Wal-Mart* because it strikes the appropriate balance: employers have the right to maintain neutral, nondiscriminatory dress rules absent proof of disparate treatment, while employees retain the right to display insignia subject to reasonable size, placement, and presentation limits. Member Schaumber's dissent in *Stabilus, Inc.,* 355 NLRB 836, 841–45 (2010) and Members Ring and Kaplan's dissent in *Tesla*, 371 NLRB No. 131, slip op. at 20–31, further support restoring *Wal-Mart*'s approach. Applying *Wal-Mart*, the complaint should be dismissed because Respondent's legitimate business justifications for maintaining its dress code outweigh the comparatively minor adverse impact the dress code has on employees' Section 7 rights.

5. The Board should also overturn *Stericycle* in favor of a balanced and common-sense approach for evaluating facially neutral work rules.

V. ARGUMENT

A. The ALJ Erred by Applying *Tesla*'s "Special Circumstances" Requirement to a Facially Neutral, Nondiscriminatory Dress Code

The ALJ erred by presuming that Respondent's facially neutral dress code interferes with employees' exercise of their Section 7 right to display union insignia, thereby requiring Respondent to demonstrate "serious 'special circumstances'" to justify its dress code and avoid

liability under Section 8(a)(1). ALJD pp. 19:15–20. The ALJ applied *Tesla*, which strikes an improper balance of interests by effectively rendering all dress codes presumptively unlawful. In doing so, *Tesla* misconstrues *Republic Aviation* by failing to properly balance employers' interests in maintaining discipline and managing their businesses with employees' Section 7 rights. This framework creates ambiguity and heightens litigation risk, as demonstrated here, where multiple ALJs have arrived at different conclusions with regard to the same dress code. For these reasons, the Board should return to the test articulated in *Wal-Mart*, which properly balances employers' right to maintain facially neutral dress codes with employees' right to wear union insignia. Applying the standard as set forth in *Wal-Mart*, Respondent's dress code does not violate the Act.

1. *Tesla* Strikes an Improper Balance of Interests Under the Act by Effectively Rendering All Dress Codes Presumptively Unlawful

Respondent's dress code includes a rule restricting logos and graphics on employee shirts, permitting only a small manufacturer's logo and "one reasonably sized and placed button or pin that identifies a particular labor organization or a partner's support for that organization." ALJD pp. 4:35–39; 18:21–26. Respondent applies its rule evenhandedly, does not target union insignia, and permits employee expression subject to reasonable limitations concerning Respondent's legitimate business interests in maintaining employees' professional appearance and Respondent's brand cohesion. ALJD pp. 22:37–41. Making Respondent prove "special circumstances" to justify its neutral business limitation required the ALJ to *presume* the illegality of Respondent's dress code. ALJD pp. 22:4–9. That is precisely the structural flaw identified by Members Ring and Kaplan in *Tesla's* dissent: *Tesla* converts neutral rules into suspect restraints, compelling employers to carry a burden of proof that is appropriate only where union insignia are singled out or truly prohibited. *Tesla,* 371 NLRB No. 131, slip op. at 28–29.

Under *Wal-Mart*, such policies are not per se unlawful; rather, they are assessed for neutrality, consistency, and whether they reasonably regulate the size, placement, and presentation of insignia without banning it outright. *Wal-Mart*, 368 NLRB No. 146, slip op. at 2–4.[1] The Board's *Wal-Mart* decision demonstrated an understanding of employers' genuine need to enforce consistent dress and appearance standards, especially when employees interact directly with customers. *Wal-Mart*, 368 NLRB No. 146, slip op. at 3–4. In recognizing these interests, the *Wal-Mart* Board highlighted how uniform policies contribute to professionalism, strengthen brand identity, foster workplace unity, enhance safety, and improve customer service. *Id.* Notably, the ruling struck a thoughtful balance: employees retained their right to display union insignia subject to employers' reasonable limits regarding the insignia's size, placement, and presentation. This approach, drawing from the Supreme Court's observation in *Republic Aviation* that it is the responsibility of the Board to work out "an adjustment between the undisputed right of self-organization . . . and the equally undisputed right of employers to maintain discipline," ensured that organizations could maintain a cohesive public image without infringing upon employees' rights, striking an effective balance between employees' Section 7 rights to expression and their employer's legitimate managerial prerogatives. *Republic Aviation,* 324 U.S. at 797–98; *Wal-Mart*, 368 NLRB No. 146, slip op. at 2.

[1] Having determined that the policies at issue were facially neutral, the *Wal-Mart* Board applied its then-extant decision in *Boeing Co*., 365 NLRB No. 154 (2017) and concluded that prohibitions on union insignia were lawful on the selling floor but unlawful away from the selling floor. 368 NLRB No. 146, slip op. at 1, 3–5. The Board concluded that the employer's legitimate justifications for the policies outweighed the adverse impact on employees' Section 7 rights only as to the former. *Id.* at 4. The Board has since overruled *Boeing* in *Stericycle, Inc*., 372 NLRB No. 113 (2023). As discussed in further detail below, the General Counsel disagrees with *Stericycle*, which introduced a problematic standard for determining the lawfulness of facially neutral workplace policies.

In stark contrast, the *Tesla* ruling significantly restricts employer discretion by establishing a presumption that employees are permitted to display union insignia unless the employer can clearly demonstrate special circumstances that justify limitations. This framework places an exceptionally heavy burden on employers, making it far more challenging to address valid concerns related to customer perception, operational consistency, and workplace discipline. Ultimately, the decision prioritizes symbolic expression, elevating it above employers' legitimate interests in managing their businesses and maintaining essential standards. This inversion departs from the Board's longstanding recognition that employers may promulgate reasonable work rules to ensure discipline, safety, efficiency, and consistent customer-facing presentation. A standard that demands "special circumstances" proof for routine, neutral attire expectations collapses the distinction between a ban on insignia and a reasonable time, place, and manner limit.

2. *Tesla* Misconstrues *Republic Aviation* by Failing to Balance Employer Interests in Discipline and Business Management with Employee Rights

Republic Aviation requires a balance—not a categorical presumption—in assessing rules that might affect Section 7 activity. *See* 324 U.S. at 798 ("Opportunity to organize and proper discipline are both essential elements in a balanced society."). *Tesla* overreads *Republic Aviation* as endorsing a near-automatic invalidation of neutral appearance policies absent "special circumstances." But *Republic Aviation* does not mandate a universal presumption against neutral dress codes; rather, it calls for context-specific balancing of operational realities with employee rights. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 23–27 (Members Ring and Kaplan, dissenting). Similarly, Member Schaumber's dissent in *Stabilus,* a case in which the majority concluded that an employer violated the Act by enforcing its facially neutral uniform policy to prohibit employees from wearing pro-union T-shirts, correctly observed that the Act does not prohibit employers from maintaining reasonable standards of appearance, particularly where policies do

not single out union insignia and leave open ample channels of expression. 355 NLRB at 842–43. *Wal-Mart* faithfully effectuated this balance by permitting employers to maintain neutral rules that guide how insignia may be displayed (such as size or placement constraints) while prohibiting bans that target union expression. By contrast, *Tesla* collapses the balancing inquiry into a one-way ratchet that subordinates legitimate managerial interests from the very outset.

3. ***Tesla's* Framework Creates Ambiguity and Heightens Litigation Risk, as Demonstrated by Inconsistent ALJ Outcomes on the Same Policy**

The Board's jurisprudence should be administrable and predictable. *Tesla*'s "special circumstances" requirement lacks clear contours for neutral attire rules, leaving employers uncertain about what evidentiary showings suffice and encouraging disparate adjudications. The instant decision illustrates this problem: the ALJ's ruling diverges from other recent ALJ outcomes evaluating the same dress code in different stores, despite materially indistinguishable facts.[2] Such inconsistency burdens parties with duplicative litigation, chills lawful policy-making, and undermines uniform national labor policy. As a result, employers find themselves uncertain about whether concerns like safety, customer engagement, equipment safeguarding, or

[2] This same dress code has been at issue several times at other locations with contradictory results. In JD-12-24, Case 12-CA-308848 et al, issued by ALJ Amchan on February 29, 2024, the rule was found to be lawful at a single store in Florida because Starbucks established "special circumstances" under a *Tesla* analysis. In JD (SF)-17-24, Case 28-CA-289622 et al, issued by ALJ Laws on June 7, 2024, the dress code was found to be facially unlawful nation-wide (at all corporate-owned U.S. stores). In JD (NY)-16-24, Case 29-CA-308059, issued by ALJ Silverstein on June 5, 2024, the dress code was found to be facially unlawful at a New York store. *See also* JD (NY)-11-24, Case 29-CA-305960 issued on May 10, 2024 by ALJ Silverstein with identical analysis at another New York store. In JD-52-24, Cases 10-CA-291616, et al, issued by ALJ Sorg-Graves on August 28, 2024, the dress code was found to be facially unlawful at a Tennessee store. Each of these cases is currently pending at the Board on exceptions.

maintaining a unified visual appearance will meet the Board's criteria.[3] Employees are also impacted by not knowing whether certain insignia are permissible from location to location.

Restoring *Wal-Mart* would realign national labor policy with an objective, straightforward framework: neutral, nondiscriminatory dress codes that reasonably regulate size, placement, and presentation of insignia are lawful; targeted bans or discriminatory enforcement are not.

4. The Board Should Return to *Wal-Mart* Because it Properly Balances Employers' Right to Maintain Neutral Dress Codes With Employees' Right to Wear Insignia

In contrast to *Tesla*, *Wal-Mart* empowered employers to confidently maintain necessary workplace policies that reflected legitimate business interests. *Wal-Mart* recognized that employees enjoy a protected right to display union insignia but that employers may adopt neutral limits to ensure professional appearance and consistent branding, so long as they do not prohibit insignia or discriminate. This balanced approach protects genuine employee rights while respecting employers' lawful authority to manage workplace appearance, discipline, branding and operations. It offers clear guidance: policies addressing the size of pins or patches, their placement to avoid safety hazards or obscuring logos, and standards of presentation that preserve a professional look are permissible if applied neutrally. That equilibrium, echoed by Member Schaumber's *Stabilus* dissent and the *Tesla* dissent of Members Ring and Kaplan, respects

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[3] This uncertainty appears in similar contexts, including the Board's application of the "special circumstances" test in cases where retail enterprises seek to enforce dress codes to maintain an established public image via appearance rules for its employees. *See, e.g., Home Depot USA, Inc*., 373 NLRB No. 25 (2024) (employer's restriction of employees' display of "BLM" and "Black Lives Matter" markings on work aprons unlawful because employer failed to demonstrate special circumstances), *enf. denied*, 158 F.4th 910 (8th Cir. 2025) (finding, contrary to the Board, that special circumstances justified prohibition). The General Counsel disagrees with the Board's decision in *Home Depot* and will urge the Board to overturn it in an appropriate case.

Republic Aviation's mandate to balance interests rather than impose a per se presumption against neutral rules.

5. Application to Respondent's Policy

Applying the *Wal-Mart* dress code standard urged here, Respondent's policy is facially neutral and uniformly applied. It does not single out union insignia, nor does it impose an outright ban. It reasonably regulates appearance to maintain a consistent brand image and professional environment while leaving open ample avenues for insignia display consistent with size, placement, and presentation standards. Thus, under *Wal-Mart*, the policy is lawful without resort to consideration of whether special circumstances justify it.

B. In an Appropriate Case, the Board Should Also Overturn *Stericycle* in Favor of a Balanced and Common-Sense Approach

The broader philosophy underlying *Tesla* mirrors the same flaws present in *Stericycle*: the Board has increasingly presumed unlawful interference whenever employer policies interact with potential Section 7 activity, while discounting legitimate business justifications.

The Board is tasked with faithfully interpreting the Act by ensuring its enforcement remains within the parameters established by Congress. In this regard, the Board must strike a careful balance to safeguard employer and employee rights and interests simultaneously, without creating unnecessary conflict between them. When evaluating facially neutral work rules, the Board should endeavor to preserve employees' rights to engage in Section 7 activities by prohibiting workplace policies that will genuinely coerce employees while empowering employers to maintain order, adhere to legal requirements, and foster productive environments.

In *Stericycle*, the Board held that when analyzing work rules, the General Counsel must prove that an employer's rule has a reasonable tendency to chill employees from exercising their Section 7 rights. 372 NLRB No. 113, slip op. at 2, 9–10. If an employee, who is understood to be

economically dependent on the employer and who contemplates Section 7 activity, could reasonably interpret the rule to be coercive, the General Counsel has carried their burden and the rule is presumptively unlawful even if there is also a reasonable non-coercive interpretation. *Id*. Although the employer's intent in creating the rule is immaterial, it may rebut the presumption of illegality by proving the rule advances legitimate and substantial business interests that the employer is unable to advance with a more narrowly tailored rule. *Id*., slip op. at 2, 10.

Instead of striking the proper balance, *Stericycle* encourages the reading of common workplace rules in a vacuum by adopting an excessively broad interpretation of Section 7 at the expense of congressional intent. Congress never intended for the Act to prevent employers from upholding safe and harassment-free workplaces or penalize companies for doing so. *See Republic Aviation*, 324 U.S. at 797 ("The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time."). By stretching the scope of Section 7 beyond its intended boundaries—and common sense—the ruling undermines the ability of employers to establish essential policies that protect employees' safety and maintain a respectful environment.

Indeed, *Stericycle* fails to recognize employers' statutory and legal duties under federal and state laws to maintain safe environments, investigate allegations of harassment, uphold respectful workplace standards and safeguard confidential and proprietary information. *See Stericycle*, 372 NLRB No. 113, slip op. at 32 (Member Kaplan, dissenting). The *Stericycle* framework thereby creates a dilemma by forcing employers to either comply with various legal and regulatory requirements or risk having every workplace policy challenged as potentially violative of the Act, leaving employers unable to enforce essential workplace rules without facing legal uncertainty and litigation. The *Stericycle* framework has made it increasingly

difficult for employers to draft workplace policies with certainty, as nearly any rule may now be subject to challenge. This climate of regulatory uncertainty makes employers hesitant to uphold essential workplace standards for fear of having to litigate whether those standards could withstand Section 7 scrutiny under the broadest possible interpretation. Such uncertainty discourages investment while encouraging litigation and falls particularly hard on small businesses that may lack the resources to secure labor counsel.

For these reasons, the General Counsel urges the Board, in an appropriate case, to also overturn *Stericycle* in favor of a more balanced approach that effectuates congressional intent and promotes industrial peace.

VI. CONCLUSION

The ALJ erred by applying *Tesla*'s "special circumstances" requirement to a neutral, nondiscriminatory dress policy. The Board should sustain this Exception, reject the ALJ's reliance on *Tesla,* reaffirm and apply the clear and balanced framework from *Wal-Mart*, and accordingly find that Respondent's dress code is lawful on its face and as applied. Doing so will align Board law with *Republic Aviation*'s balancing, reduce litigation uncertainty, and promote uniform national labor policy. In addition, the Board should overturn *Stericycle* in an appropriate case.

SIGNED at Indianapolis, Indiana, this 17th day of June, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Counsel for the General Counsel's Exception and Supporting Brief to the Administrative Law Judge's Decision has been filed electronically with the Board through the Board's E-Filing System this 17th day of June, 2026. Copies of said filing are being served upon the following persons by electronic mail:

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