UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

APEX FINTECH SERVICES LLC
d/b/a APEX FINTECH SOLUTIONS

and **Case 12-CA-325317**

JOHN D. RICHARDSON, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S POST-HEARING BRIEF TO THE ADMINISTRATIVE LAW JUDGE

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Statement of the Case

In October 2021, Apex Fintech Services d/b/a Apex Fintech Solutions (Respondent) a financial technical company, hired Charging Party John D. Richardson (Richardson) to work remotely as a data engineer. As part of the onboarding process, Respondent requires all new employees who identify as female to enroll in Respondent's Poker Powher program, and requires that all new male employees tell a woman about the program. Richardson viewed this requirement as discriminatory based on gender and raised his concerns with human resources.

Richardson continued to encounter additional instances of what he perceived to be sexism and racism in Respondent's policies and Slack channels, including discriminatory hiring practices, sexist jokes, etc. Richardson repeatedly brought his concerns to Respondent's attention. When Respondent failed to address Richardson's concerns, he engaged in protected concerted activity and sought assistance from coworkers by posting about his concerns on Respondent's Slack system. Respondent attempted to unlawfully coerce Richardson into ceasing his communications with his coworkers, but Richardson made further social media posts on August 25 and August 30 on LinkedIn, soliciting his coworkers for support. Richardson's coworkers contacted him to voice support for his activity.

On August 30 and 31, 2023, Senior Director of Human Resources, Michael Walters sent Richardson emails threatening Richardson with unspecified reprisal unless he removed derogatory, disparaging, and/or defamatory remarks from his posts without identifying what Respondent was asserting was defamatory. Richardson sought clarification on what Respondent was asking him to remove, but Respondent refused to answer, hoping Richardson would remove posts in their entirety. Richardson refused to remove the protected concerted LinkedIn posts, and Respondent discharged him on September 1, 2023, for making these LinkedIn posts.

On September 7, 2023, Richardson made a LinkedIn post sharing that he was unlawfully discharged after blowing the whistle on internal labor law violations. Richardson noted that "a number of you have continued to talk with me, provide me important information, thank me, or otherwise support me during this time."

On September 8, 2023, Richardson made another LinkedIn post, protesting his discharge and Respondent's policies. On October 17, 2023, Respondent filed a lawsuit against Richardson, alleging his LinkedIn posts were defamatory, and served Richardson with unlawful interrogatories and requests for production, which Richardson had to answer. Respondent voluntarily withdrew its unlawful lawsuit on October 28, 2025.

Respondent, including its subsidiaries and affiliates, maintains an Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation which contains rules that unlawfully restrict Section 7 rights of its employees. Specifically, the Definitions of Proprietary Information section and its Non-Disparagement; Public Profiles section of the Employee Agreement unlawfully restricts employees in their ability to engage in protected concerted activity.

The questions to be decided in the instant matter include the following:

1. Did Respondent violate Section 8(a)(1) of the National Labor Relations Act (the Act) by instructing John D. Richardson not to discuss an employee investigation and threatening Richardson with unspecified reprisals on August 30 and August 31, if he failed to remove social media posts that Respondent asserted were defamatory without identifying what Respondent believed was defamatory?

2. Did Respondent violate Section 8(a)(1) of the Act by discharging John D. Richardson on September 1, 2023, for making LinkedIn posts protesting Respondent's policies?

3. Did Respondent violate Section 8(a)(1) of the Act by filing a civil lawsuit against John D. Richardson alleging that his August 25, August 30, and September 8 LinkedIn posts were defamatory; and issuing Richardson requests for production and interrogatories to prosecute the lawsuit?

4. Did Respondent violate Section 8(a)(1) of the Act by maintaining rules in the Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation which unlawfully restrict employees' Section 7 rights?

The General Counsel contends that the operative facts are not in dispute and that each of the above questions must be answered affirmatively. Accordingly, Counsel for the General Counsel urges that the Administrative Law Judge find that Respondent violated Section 8(a)(1) of the Act as alleged in the Amended Complaint and issue a recommended order that fully remedies those violations.

This brief will set forth the relevant facts of the case. Next, this brief will discuss the relevant case law and explain why Respondent's rules, statements, threats, discharge of Richardson, civil lawsuit, and requests for production and interrogatories violated Section 8(a)(1) of the Act as alleged in the Amended Complaint. The brief will conclude with a discussion of the appropriate remedy.

I. Procedural History

The alleged violations of the Act in this case are based on a charge filed by John D. Richardson, an individual, on September 5, 2023, and served on Respondent on September 7, 2023. (GCX 1(a) and 1(b)).[1][2] The charge as amended on February 27, 2024, alleges, in relevant part, that Respondent unlawfully threatened employees, maintained unlawful work rules, discharged John D. Richardson, filed a lawsuit against Richardson, and issued Richardson requests for production and interrogatories to prosecute the lawsuit. (GCX 1(e)).

On December 29, 2025, the General Counsel's Complaint and Notice of Hearing issued, and was amended on April 15, 2026. (GCX 1(g) and 1(m)). Respondent filed an Answer to the

[1] Citations to Counsel for the General Counsel's exhibits are (GCX exhibit number); citations to Joint Exhibits are (JX exhibit number), and citations to Respondent's exhibits are (RX exhibit number).

[2] Citations to the transcript are (Tr. Page number).

Complaint on January 12, 2026, and an Answer to the Amended Complaint on April 29, 2026. (GCX 1(i) and 1(o)). A hearing on this matter was held on May 5 through May 7, 2026, before Administrative Law Judge Arthur J. Amchan.

II. Statement of Facts

a. Jurisdiction

As admitted, Respondent is a Delaware limited liability company with its principal office and place of business in Dallas, Texas; with employees working at various locations throughout the United States. (GCX 1(o)). At all material times, Respondent has provided clearing, custody, and technology services that support the trading and investment activities of fintech companies, broker-dealers, and financial institutions. *Id*. In conducting its operations, Respondent performed services valued in excess of $50,000 in States other than the State of Texas, and Respondent is an employer engaged in commerce. (GCX 1(o)).

b. Richardson is Required to Sign the Employee Agreement as a Condition of Employment.

John D. Richardson started working for Respondent on November 1, 2021, as a data engineer. (Tr. 62 and Tr. 91). He worked remotely from home in Winter Springs, Florida, but attended at least two in person meetings in Dallas, Texas. (Tr. 63 – 64). Respondent provided Richardson with the Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation (Employment Agreement), before he was hired, and Richardson was required to sign the agreement as a condition of employment. (GCX 2) (Tr. 61-62).

The Employee Agreement remained in effect throughout Richardson's employment, and the "Definitions of Proprietary Information" section and the "Non-Disparagement; Public Profiles" sections continue to be in effect for Respondent's employees and employees of Respondent's subsidiaries and affiliates. (GCX 2 and GCX 90) (Tr. 62, Tr. 234-235). The

"Definitions of Proprietary Information" section of the Employee Agreement prohibits the disclosure of any "manuals," "training materials," "Company's educational process and all materials related thereto;" "The Company's list of past, existing or potential clients, customers, members, partners, stockholders, and investors; and" "Any other information or documents which the Company reasonably regards as being confidential;" asserting that such information is "proprietary." (GCX 2 and GCX 90). Laura Agharkar, Respondent's current Vice President, Global Head of Human Resources testified that in this agreement "members" means employees. (Tr. 215 and Tr. 231-232). Agharkar further asserted that this rule is in effect because the "intellectual property, manuals, training," sets Respondent apart from its competitors. (Tr. 231). The rule in question prohibits disclosing all manuals, training materials, educational process, etc., however, Agharkar admitted that several of Respondent's manuals and agreements do not contain any proprietary information. (GCX 2) (Tr. 235). Respondent asserted no special business justification for the Non-Disparagement; Public Profiles rules, which among other things, prohibit employees from making statements that reflect negatively on Respondent. (GCX 2).[3]

c. Richardson Protests Poker Powher Not Being Offered To Men

Richardson began his onboarding tasks shortly after he was hired. (Tr. 64). One onboarding task required employees who "identify as female" to enroll in the Poker Powher course and for employees who "identify as male" to invite women to join the Poker Powher course.[4] (GCX 4)

[3] Where Agharkar's testimony conflicted with record evidence, the evidence should be credited. For example, Agharkar testified that Respondent does all of its own hiring, operations, background checks, etc. (Tr. 41-42 and Tr. 226-228). But the evidence demonstrates that PEAK6 advertises jobs for numerous entities including Respondent, Poker Power, Zogo, We Insure, etc., share certain benefits, and share addresses. (GCX 86, GCX 87, GCX 88, GCX 89, GCX 94, GCX 95, GCX 96, GCX 97, GCX 98, GCX 99, GCX 100, and GCX 101). Further, Richardson was provided a "Pre-hire consent form for prospective employees of Peak6 Group LLC (And affiliated entities)." (GCX 112). However, Agharkar never mentioned PEAK6 Group LLC or its affiliated entities. (GCX 31 and GCX 32).

[4] Poker Powher is a program that teaches, "women [to play] poker, which gives them the high-value skills they need to compete and succeed in business." (GCX 4). In addition to teaching women to play poker during working hours, Poker Powher helps advance their careers.

(Tr. 64-66). Poker Powher required employees to confirm that they identify as female before allowing them to register for the program. (GCX 93). This task had a due date of November 15, 2021. (GCX 4).

Richardson wanted to participate in Poker Powher, but could not because he did not identify as female. (Tr. 64-67). Richardson emailed human resources about his concerns regarding the Poker Powher policy and Respondent's onboarding task. (Tr. 67) (GCX 5). Richardson asked if he could register for Poker Powher if he did not identify as female, how he could register if he did not identify as female, and asked if there was a comparable program that he could participate in if he was not able to register as a male. (GCX 5). Richardson protested Respondent using gender as a useful label for gauging professional skills. (GCX 5). Human Resources representative Casey Hanson connected Richardson with Brianna Rodgers because, "Brianna leads our DE&I Council here within PEAK6/APEX." (GCX 5). Richardson emailed Hanson and Rodgers, that he wanted to make things as inclusive as possible and that he was checking DE&I stuff on "the Lodge" Respondent's intranet social media and communications platform and he wanted to get involved. (Tr. 98-99) (GCX 5).

Rodgers emailed Richardson on November 4, that she was going to talk to people and get back with him, but Respondent did not take any action to address Richardson's concerns or answer his questions. (GCX 7). Rodgers then contacted Lauren Fay from Poker Powher/Peak6 and Kai Williams from Respondent to "align on messaging that can be sent back to this concerned employee." (GCX 92). At that point, "Legal" got involved and attorney Milt Castro from PEAK6 emailed, "I've advised you all on discriminatory risks before with P[oker] P[owher], but it would help to know what your current position is on these topics" before noting that he is "(moving Legal off)." (GCX 92). Thus, it is apparent that Respondent knew that the Poker Powher program was

discriminatory and had been advised that it was discriminatory well before Richrdson raised the issues. Erin Lydon, from Poker Powher replied to Milt, that Milt had raised the same issues as Richardson, and that this was a bigger discussion for P6 stakeholders as the response to Richardson would set a precedent. (GCX 92). Judi Hart from Peak6 further notes that other entities, such as CapMan, offer poker skills to all employees, regardless of gender, "… because the leaders felt it tied back to the skills for trading but I don't know if any other businesses do that." (GCX 92). Hart confirmed that Respondent could easily offer the Poker Powher program to all employees, and that some of Respondent's sister companies did offer it to all employees, but it was up to the leaders to decide. Hart also understood that Richardson's complaint went beyond Poker Powher, and extended to the Respondent's, "… position on gender specific programs in general." (GCX 92).

Richardson emailed Rodgers on November 5 asking that the onboarding task related to Poker Powher be removed for employees (not just for him), but the task remained (GCX 7) (Tr. 71). On November 11, 2021, Richardson emailed Rodgers again to complain about the Poker Powher onboarding task, and Rodgers replied that Richardson did not need to be concerned with the onboarding task, but again, the task remained. (GCX 7) (Tr. 71). Richardson emailed Rodgers again on November 15, 2021, to advise that he still had the Poker Powher onboarding task, asked if he was permitted to participate in Poker Powher if he did not identify as female, and if not, whether there was a comparable program he could attend. (GCX 5 and GCX 7).

On November 16, 2021, Rodgers sent Richardson a Slack direct message, indicating that his onboarding task was removed, that "Legal" had made revisions to the onboarding task language, and "the Senior Leadership team" was ensuring Poker Powher and other programs were as inclusive as possible. (GCX 10). On January 7, 2022, Rodgers made a public Slack post that the DEI Council made a recommendation to remove Poker Powher related onboarding tasks, and to

promote all employee resource groups (ERGs) not just Poker Powher. (GCX 11) (Tr. 74-75). Despite Rodgers' January 7, 2022, Slack post, Richardson and other males continued to be excluded from the Poker Powher. (Tr. 75-76).

Richardson attended a semi-mandatory "Techs, All Hands deck" virtual meeting on or about July 29, 2022, with approximately 100 coworkers. (GCX 12) (Tr. 76-78). The presentation made it clear that Poker Power was for women, and Richardson recalls the presentation mentioning that Poker Power needed to get more women into the seats where decisions are being made. (GCX 12) (Tr. 76-77). It appears that the only change was to rename Poker Powher to Poker Power, as the program continued to be offered exclusively to women.

Richardson raised his concerns with the Equal Employment Opportunity Commission in 2022, and Richardson was issued a right to sue letter in early 2023. (Tr. 73-74).

Respondent continued to advertise Poker Power exclusively to women. On June 8, 2023, Allison Dietz made a Poker Power Slack post, advertising for "All women+ are welcome to join, especially PEAK6ers and their daughters, moms, nieces, etc.!" and provided a promo code. (GCX 13) (Tr. 78-79). When Richardson clicked the link on the link Dietz provided in GCX 13, it took Richardson to the website a screenshot of which is in evidence as GCX 14, and advertises that Poker Power teaches, "girls and women+ how to play Texas Hold'em and succeed in business, finance, and life …" and again suggests that participants "Spread the word to all the girls and women+ in your life…" (GCX 14) (Tr. 79-80).

d. <u>Richardson Identifies More Gender Discrimination in Terms and Conditions of Employment</u>

During his employment, Richardson viewed numerous Slack channels that were maintained by or utilized for Respondent and its employees. (Tr. 91). Richardson viewed Respondent's Women In Tech Alliance page, which included a Slack post and PowerPoint

presentation by Kathy McClure on October 23, 2020, noting she would be using the presentation at Respondent's "tech all hands" meeting. (GCX 15) (Tr. 80-81). The slideshow explains that Respondent's parent company, PEAK6, is offering a mentor program for women in technology in the PEAK6 family. (GCX 15). The slideshow states that only women in tech positions could be mentees, but "Anyone" could be a mentor "not just folks that identify as women." (Tr. 81) (GCX 15). Richardson used Respondent's intranet "The Lodge" to view Kathy McClure's position within the organization, and determined that she was a manager at Apex with several subordinates and that she reported to Frank Tiemann. (GCX 24) (Tr. 81-85). Respondent continued to offer the Women in Tech Alliance mentorship program exclusively to women into 2021. (GCX 16) (Tr. 89-90). This program was later expanded to allow women who were not in technology to become mentees, but men were still only permitted to act as mentors. (Tr. 92-94) (GCX 17). Men were never permitted to participate as mentees. (Tr. 94-95).

Richardson learned that Respondent was offering other work opportunities based on gender in addition to offering the mentorship exclusively to women. (Tr. 95). Richardson screen captured a Slack post made by the Glow Powher Working Group on February 12, 2021, where a group of employees working on the GLOW summary noted that its goal was to connect "… new employees that identify as female with senior leadership …" and that these new female identifying employees would be given resources, and opportunities to discuss their plans with senior leadership and program mentors. (GCX 18) (Tr. 96). Richardson also screen captured the GLOW Empowered Women Empower Women slide show. (GCX 19) (Tr. 97-98). This slideshow confirms that these work activities are only open to those who identify as female. (GCX 19) (Tr. 97-98).

Richardson also encountered advertisements for a Mix and Mingle on July 28, 2022, with the Women in Tech Alliance. (GCX 20). However, this advertisement stated "Join WITA as we

host a virtual networking opportunity with females across all PEAK6 companies! Come get to know one another!" (GCX 20). Richardson understood he was not permitted to attend this event which took place during working time because it was for "females." (Tr. 98-99).

Richardson saw that Respondent's Women in Tech Alliance created a document to plan additional events in 2023. (GCX 21) (Tr. 99-100). The "Description" column of the document notes that several activities would only be offered to women, including the 2023 WITA Mixers Q2, WITA Coffee Chats, and Grace Hopper Conference. (GCX 21) (Tr. 100-101). Lastly, Richardson took a screenshot of "Possible Event Ideas" for WITA bonding event, where it notes that the audience is "all female in tech across all companies, include interns." (GCX 22).[5]

e. <u>Richardson Discovers Respondent is Considering Race and Gender in Hiring</u>

While looking through the Women in Tech Alliance, Richardson found and took a screenshot of a Slack posting between Chris Cortez, Kathy McClure, Dan Collins, and Sendhil Revuluri where they appear to be discussing how to hire more women. (GCX 23). In this Slack post, Cortez advocates for focusing on specifically recruiting female candidates, Kathy McClure recommends increasing the referral bonus for women candidates and finding more female candidates, and Revuluri recommends requiring a percentage of female candidates. (GCX 23).

Ricardson discovered, and captured, another Slack post from April 15, 2021, where Devin Barnas, supervisor Josh Abrams, and Liam Foley are discussing an intern candidate. (GCX 25 and GCX 26) (Tr. 109-110). Barnas writes "Pro – I like that she is a black woman applicant to help balance our program and class out. (Her Stephanie, Nyah, and +1 are potentials for females in this group, less than half best case)." (GCX 25). However, Barnas also noted that this was a weak candidate from a technical perspective, and intimates that she would not be offered a job under the

[5] This message was posted in 2022, as June 29, 2022, was a Wednesday.

"selection process." (GCX 25). Abrams replies to Barnas "I agree we should have a mix of M[ales] and F[emales]," and notes that the candidate was the "the weakest of the bunch I've talked to," but concludes his recommendation "I am usually the one who says 'Let's not hire to a number', but with our relationship and commitment to GWO, this feels a bit different." (GCX 25). Liam Foley also confirmed that he was ok with proceeding with the candidate despite that "She was the weakest of my interviews …" (GCX 25).

Richardson also viewed a DEI Discussion Slack post that was made by Kati Snyder on November 4, 2020. (GCX 27). In the posting, Snyder states that all CapMan Recruiters are white, and suggests hiring "… at least 2 shared services resources who are black or brown and insert at least one in EVERY single candidates process…" (GCX 27). She also recommends Director and Chief level employees take quarterly bias and anti-racism training, specifically noting that, "The training should be performed by a non-white, non-male person." (GCX 27).

Richardson attended a few DEI Panel meetings. (Tr. 240-241). Richardson recalls attending one DEI panel where Stephen Lach, Chief of Staff to Respondent's Chief Executive Officer stated "If you're hiring for a position, find somebody that doesn't look like everybody else, right?" (GCX 28, page 41). Lach goes on to recommend including interviewers based on their demographics ensuring that they are "outside your group …" (GCX 28, page 41). Human Resources Representative Tobenna Egwu expounded on Lach's statements by stating, "Because when you are a minority and you're interviewing with an all-White panel or all-males, I will tell you that you're already like, okay, game time" (GCX 28, page 42) Egwu further notes that she is guarded when interviewing with white males noting, "I need to say this how a White man would want to hear it." (GCX 28, page 42). While Ms. Rodgers did not make these statements herself, she adopted them stating to Egwu, "I love what you said because it also can empower you to come

to that interview space with a little bit more confidence that you have a fighting chance," the implication being minority candidates do not "have a fighting chance" if they interview with white males (GCX 28, page 42-43).

Richardson attended another DEI Panel meeting that was recorded toward the end of his employment. (JX 2). During the meeting, John Pitullo recounted a story where he hired a "diverse" candidate over an experienced candidate, but it turned out to be a good thing, and Egwu confirmed that DEI was taking a chance on someone you probably wouldn't take a chance on. (JX 2 at 12:23 seconds to 14:02 seconds). During the Panel meeting, one of the panelists discusses "mansplaining" and "whitesplaining" where a man or white person will only listen to suggestions that come from males or white people. (JX 2 at 30:44 seconds to 31:12 seconds). Respondent's CEO William Capuzzi, expounded and encouraged all employees to call out "whitesplaining," which specifically attributes actions to an individual's race. (JX 2 at 39:47 to 41:25 seconds).

Another panelist notes that it is difficult for women to receive mentorship at a senior level because men are in those seats, and a man can have a closed-door meeting with another man, which would not be practical for women. (JX 2 at 38:14 seconds to 38:40 seconds). Towards the end of the meeting, a panelist suggests that Respondent include more women and people of color on the senior leadership team, and suggests that she have the position because "I would check off 2 boxes Bill." (JX 2 at 46:04 seconds to 47:08 seconds).

f. <u>Richardson Discovers Repeated Sexist Jokes in Respondent's Slack Channels</u>

While reviewing Respondent's Slack channels, Richardson found several inappropriate jokes based on race and gender, that were seen, and in several instances supported by Respondent's supervisors. (Tr. 115). Shilpi McGrath posted a joke after Covid saying to avoid "MEN" and follow "WOMEN," specifically attaching a "disclaimer" that she is not encouraging anyone "to

avoid human men!" (GCX 30). Richardson understood that managers Dawn Ficklin and Casey McGovern reacted to the sexist joke by using the "rolling on the floor laughing" emoji. (GCX 30 and GCX 31) (Tr. 115-116). Respondent understands this is an offensive joke invoking gender and classifying "men" as something that should be avoided and women as something to be revered but tries to justify the joke as legitimate acronym that Richardson should deal with. (Tr. 292-293).

Richardson observed another Slack posting from Shilpi McGrath. (Tr. 118-119) (GCX 32). This was a picture of a candle titled "I'm Speaking" and notes that it "SMELLS LIKE MALE FRAGILITY AND RUDE INTERRUPTIONS/CITRUS & ANGELICA." (GCX 32).

Richardson viewed another Slack posting from Shilpi McGrath, which "joked" that men choose higher paying jobs, "like doctor, engineer, lawyer, or CEO" while women choose lower paying jobs, "like female doctor, female engineer, female lawyer, or female CEO." (GCX 33). Courtney Scott replied to the message with another "joke" that stated, "Women Like men, only cheaper," to which Kate Alexander replied, "and better." (GCX 33) (Tr. 120-121).

Richardson viewed yet another Slack post where Laura Rushing reposted a "joke" from "the female lead" stating that "Kanye's announcement is a great reminder that men look at job descriptions and think – 'hey, I'm not remotely qualified, but I think I could do that' Apply for all the jobs women." (GCX 34). Kate Alexander replied to the message noting that her husband, "… asks for EVERYTHING. What he does I was taught is rude." (GCX 34) (Tr. 122-123).

Richardson viewed another Slack post "joke" from Carmen Saenz, who was on the DEI Panel in GCX 28. (GCX 35) (Tr. 124). Saenz "joke" asked, "why are there more men than women in tech? because every time a woman changes jobs, they need to hire at least two men to replace her." (GCX 35). Richardson noted that Chief Technology Officer/Senior Director Platform Engineer, Palak Jain, interacted with the post with "joy." (GCX 35 and GCX 36) (Tr. 124-126).

Respondent confirms in its subpoena definitions to Richardson that Palak Jain is a current or former supervisor of Respondent. (JX 1).

Richardson also saw a Slack post by Kate Alexander, replying to a Harvard Business Review article stating in relevant part, "I'm not sure how we train grown men to empathize ha!" and suggested that women are naturally empathetic, but men are not. (GCX 111) (Tr. 298). Glenn Smith thanked Kate Alexander for providing this prospective. (GCX 111). This asserts that men do not have empathy and need to be taught it. (Tr. 298).

g. <u>Richardson Raises His Concerns to Supervisors and Human Resources</u>

After compiling examples of what he viewed as demonstrating Respondent's sexism and racism, Richardson presented his concerns to his supervisors Tom Warner and Sudha Guttula as well as Human Resources on July 12, 2023. (Tr. 126) (GCX 37). Richardson reported the sexist jokes in the company slack channels noting he is uncomfortable interacting with "… people within the company who are openly supporting sexism," and notes that he would be fired if the roles were reversed. (GCX 37). Richardson notes in his email that, "I have continued to be denied elements of my offer package based solely on my sex and continue to see sexism proliferating within the company. This is a direct result of decisions by upper management." (GCX 37). Richardson then attached several examples of sexism in the Slack channels, including the "Women Like men, only cheaper," and the "I'm speaking" candle. (GCX 37).

Richardson emailed Human Resources and his supervisors the following day, July 13, 2023, to provide more examples of sexism, asked what Respondent thought of the sexist jokes, and attached the "avoid MEN follow WOMEN" Slack post. (GCX 39). Richardson provided a list of names of individuals who interacted with the sexist jokes, and a list of "several managers (currently still employed as managers) who were in the channel at the time," including Dawn

Ficklin and Kathy McClure (GCX 39). Richardson further protested, "All signs are pointing to the sexism in this company originating from a problematic culture within upper management. It has permeated many facets of this company, and is not just limited to the cursory examples I am providing here." (GCX 39). Richardson concluded, "It is already a slam dunk for nearly any male in the company to obtain right-to-sue letters from EEOC given this information." (GCX 39).

Richardson sent a second email to his supervisors and HR team on July 13, 2023, protesting that the June 15, 2023 Poker Power event ensured "no men" attended the event, with a screenshot of the event. (GCX 40). Richardson protested Respondent advocating for all-female panels, women-only social events, and funding that specifically goes to "women's networking and career development, [and] the list goes on." (GCX 40). Richardson also cites to the DEI Panel video, "… where the man on the right admitted to hiring someone over a candidate they knew would be good because the other one (a woman) was the 'diverse' pick. (GCX 40) (JX 2 at 12:23 seconds to 14:02 seconds). Richardson noted that another panelist advocated for "… a number of programs in place for women, and then described what would be civil rights violations." (GCX 40). Richardson also cited to the Slack post, "… where a recruiter talks about giving someone an internship despite a poor interview, simply because they were a woman." (GCX 40) (GCX 25). Richardson further noted, "The use of 'mansplaining' and 'whitesplaining' are also discriminatory and function as a way to turn a professional slight (talking down to someone or reiterating their ideas to take credit) into something more simply based on their sex being male, or race being white." (GCX 40).

Richardson concluded his email asking HR, "Is HR okay with DEI initiatives intending (or effectuating) disparate treatment of employees (or candidates) in regards to training, mentoring, promotion, or hiring based on their protected characteristics as defined in federal civil rights law?" (GCX 40). Respondent's Human Resources representative Kayla Nassiri replied to Richardson

and informed him that they were looking at next steps, but this may take some time. (GCX 41). Richardson noted that Respondent previously tried to placate him when he raised these complaints, and informed Nassiri that Rodgers had told him nearly the same thing 1.5 years ago. (GCX 41).

Nassiri replied to Richardson the following day, asserting that Respondent had retained attorney Naureen Amjad to investigate his complaint. (GCX 41). Respondent mislead Richardson, stating that the attorney was only acting as an investigator, when in reality, Respondent had obtained Naureen Amjad to act as its counsel. (GCX 41). Richardson asked that the meeting be recorded, but Respondent refused, and required and expected Richardson to attend the meeting. (GCX 41). Respondent's counsel, Naureen Amjad, also mislead Richardson to secure his cooperation, asserting in her July18 email that she had, "been retained by your employer to conduct an independent workplace investigation," when in reality she had been retained as legal counsel by Respondent. (GCX 44). In a separate July 18, 2023, email Amjad falsely informed Richardson, "Our sole purpose in conducting this investigation is to serve as impartial fact-finders." (GCX 44).

Richardson was forced to meet with Naureen Amjad and Kevin Borozan, who is from the Masuda, Funai, Eifert & Mitchell law firm on or about July 20, 2023. (Tr. 150). Richardson recalled that Amjad seemed more interested in his actions than the complaints he was raising. (Tr. 150-152). Richardson emailed Amjad the screenshots he had obtained, which confirmed what he had previously informed HR and his supervisors of the issues. (GCX 44). Amjad replied to Richardson that they had all the information they needed at that time, essentially telling him to stop providing examples of Respondent's wrongdoing. (GCX 44). But Richardson replied to Amjad and Borozan with still more examples of sexism in the workplace. (GCX 45). After meeting with Amjad, Richardson tried to register for Poker Power, which still required participants to confirm that they were female. (Tr. 155). Richardson emailed Amjad and Borozan on July 20, at

8:13 p.m., that he was still unable to register for Poker Power unless he identified as a woman. (GCX 46).

Richardson emailed Amjad, Borozan, and his supervisor Tom Warner, on August 1, 2023. (GCX 38). Richardson's August 1 email complained about Carmen Saenz making sexist jokes and Palak Jain thinking that the jokes were funny. (GCX 38). Richardson noted that Saenz made the sexist remark, but still served on the DEI Panel held earlier that day. (GCX 38). Amjad or Borozan replied to Richardson's email, copying his supervisor Tom Warner, chastising him for being "unprofessional." (Tr. 159). Richardson emailed HR representative Kayla Nassiri on August 23, complaining about the attorneys disparaging him to Tom Warner. (GCX 47) (Tr. 159-161).

h. <u>Richardson Engages in Protected Concerted Activity by Soliciting His Coworkers for Assistance on Respondent's Slack</u>

Respondent failed to take any action to remove the sexist jokes from its Slack pages, or to otherwise include all employees in activities regardless of gender, despite Richardson's repeated complaints. (Tr. 161).

On or about August 21, 2023, Richardson made a post to Respondent's data engineering team Slack channel. (Tr. 161-162) (GCX 48). Richardson identified several of the jokes and policies that he had previously protested to his supervisors and Human Resources. (GCX 48). Richardson informed his coworkers in the Slack post that he was sharing this information, "As this has involved people many of you work with regularly, and even people within HR, you deserve to know that they have made objectively offensive and sexist remarks in company slack channels." (GCX 48). Richardson then describes several jokes positing that women are much better employees than men, and specifically identifying Kate Alexander, Palak Jain, and Carmen Saenz as individuals making sexist remarks. (GCX 48). Richardson is not merely griping, but rather, he is inducing his coworkers to take action noting that, "… if you are male in the US and have been

denied a position, promotion, raise, or received a negative performance review, you may have a valid EEOC claim for damages. It is free and easy to file with EEOC online. I also encourage you to get vocal and begin talking about discrimination within the company that you witness. Share what happened with coworkers so we can take an active stance against a creeping culture of sexism within the company." (GCX 48).

Kate Alexander replied to Richardson's Slack post, "Excuse me. I don't remember that conversation. Please share your source or don't use my name." (GCX 49) (Tr. 162). Richardson replied with a screenshot of Alexander's message. (GCX 49) (Tr. 162). Alexander did not dispute that she made the statement after Richardson shared his source. (Tr. 162-163).

Kayla Nassiri also contacted Richardson by Slack direct message on August 21, and asked for his patience while the investigation was ongoing. (GCX 114). Richardson responded that he would continue to vocally raise these concerns until Respondent resolved the problems. (GCX 114). Nassiri also contacted Richardson's supervisor, Warner, and asked Warner to have Richardson stop copying Warner on his correspondence to the attorneys. (GCX 115). Thereafter, Tom Warner contacted Richardson as instructed via a Slack message. (Tr. 163-164). Richardson replied to Warner and informed him that he made the post because conditions were not improving and that his post (in evidence as GCX 48) was protected by the NLRA. (GCX 50). Warner responded by assuring Richardson that he understood, and stated that he supported Richardson if Richardson thought that this was the best/only way to proceed. (GCX 50).

On August 22, 2023, Richardson contacted his coworker, Lavish Mishra, on LinkedIn, to ask for Mishra's support in voicing concerns about discrimination and harassment by Respondent and offered to raise concerns about those issues on behalf of Mishra. (GCX 53) (Tr. 171-172).

In his message, Richardson specifically cited the National Labor Relations Board website and protested Respondent's discriminatory policies and retaliation. (GCX 53).

Richardson received a LinkedIn direct message from a coworker, Robert Burrage, on August 23, 2023, shortly after he made the Slack post that is in evidence as GCX 48. (GCX 59) (Tr. 179-180). Burrage and Richardson exchanged phone numbers and scheduled a call for that evening. (GCX 59). During the call, the two of them spoke for approximately 23 minutes. (GCX 52 and GCX 59) (Tr. 179-180). Richardson and Burrage discussed Richardson's slack post and the issues leading to the post. (Tr. 170-171). Richardson also shared with Burrage that he felt like the investigation was being mishandled. (Tr. 170-171). Richardson told Burrage that he was contemplating making a more public post regarding what was happening at Respondent in an attempt to fix the problem, and Burrage supported Richardson's actions. (Tr.171).

i. <u>Respondent Attempts to Chill Richardson's Protected Concerted Activity</u>

On August 21, 2023, Richardson informed Nassiri by Slack that, "I will be increasingly vocal until the company manages to resolve the problems". (Tr. 172-173) (GCX 114). Nassiri replied by email that day and informed Richardson that Apex's Expectations Policies required, "… all employees to treat each other with mutual respect, refrain from hostile behavior, and fully cooperate in all company investigations. To that end, it is essential that everyone involved in this investigation maintain confidentiality and avoid naming specific employees or discussing details related to the ongoing investigation. This precaution is crucial to protect the privacy and reputation of all parties involved and to ensure that we adhere to our professional standards." (GCX 54).

Richardson responded and asked which of his actions violated Respondent's policies. (GCX 55) (Tr. 174-175). Nassiri replied the following morning, August 22, and said "My email was intended to remind you of the Company's policies. Cooperating in any Company investigation

includes maintaining the investigation's confidentiality; accordingly, any concerns should be raised through the proper channels. You are free to express concerns with HR via email …" (GCX 56). Richardson replied asking if Nassiri was telling him he was not allowed to engage in this conduct, but Nassiri did not respond, leaving Richardson to guess whether or not discussing his situation with coworkers was against the policy Nassiri was citing. (GCX 56) (Tr. 175).

Respondent did not remove the offensive Slack posts referenced by Richardson in his public Slack post seeking assistance from coworkers.[6] (GCX 48) (Tr. 175-176). On August 25, 2023, Richardson made a LinkedIn post, publicly raising the concerns he had previously raised directly to Respondent that was visible by anyone on LinkedIn. (GCX 57) (Tr. 176-177 and Tr. 189-190). Richardson included in his public plea that Respondent should "Explicitly allow employees to engage in speech protected under the NLRA in company comms, including but not limited to discussion of discrimination, harassment, or other working conditions. This should be clearly and unambiguously stated in the employee handbook." (GCX 57). Richardson further noted that he is sharing these complaints under the protection of the National Labor Relations Act. (GCX 57). Richardson believed everything in his post was true and accurate. (Tr. 176).

Richardson knew his coworkers saw his LinkedIn post, because the LinkedIn demographics noted that approximately 39% of the individuals who saw his post were worked for Apex Fintech Solutions, and another 4.7% of the individuals who saw his post worked for PEAK6. (GCX 58) (Tr. 177-178). Richardson also knew his coworkers saw the LinkedIn post, because he sent the LinkedIn post to his coworkers including Robert Burrage (GCX 59), Vitaliy Kochubiy

[6] A "public" Slack post would be visible by employees of Respondent and Respondent's subsidiaries and affiliates, but would not be visible to the general public.

(GCX 61), and Chad Maggard (GCX 62).[7] (Tr. 186). Richardson specifically sent the LinkedIn post to Maggard because someone told Richardson that Maggard might be interested. (Tr. 186-187). Burrage and Richardson discussed Richardson's August 25 LinkedIn post through the LinkedIn direct messages, and Burrage agreed to send Richardson an email sharing Burrage's thoughts on what they discussed. (GCX 60). Burrage sent Richardson an email on August 28, sharing Burrage's concerns with Richardson. (GCX 60) (Tr. 183-184).

Richardson's coworker Rafael Castillo publicly supported Richardson's August 25 LinkedIn post by liking the post on LinkedIn. (GCX 63) (Tr. 187-188). Shortly thereafter, Richardson commented on his August 25 LinkedIn post and thanked those who reached out to him. (GCX 57) (Tr. 188-189).

On August 29, 2023, Rodgers received a promotion to the Head of Culture at Respondent, despite Richardson's repeated complaints regarding Rodgers' shortcomings in the DEI field. (GCX 65 and GCX 113) (Tr. 190-191). On August 30, 2023, Richardson made another public LinkedIn post reiterating the complaints he had been raising since November 2021, specifically identifying supervisor Rodgers as a bad actor. (GCX 64). Richardson disseminated his LinkedIn post to coworkers. (Tr. 191). Richardson sent the LinkedIn message to Rafael Castillo on August 30, 2023, and Richardson thanked him for liking his previous post. (GCX 66) (Tr. 191-192).

j. Respondent Threatens Richardson with Unspecified Reprisal Unless He Removes his Protected Concerted LinkedIn Posts, and Discharges Him When He Refuses

The night of August 30, 2023, Respondent's Senior Director of Human Resources, Michael Walters, emailed Richardson, informing him that the Respondent had become aware of his August

[7] The transcript reflects that General Counsels Exhibit GCX 62 was offered and received into evidence, but the Court Reporter form states General Counsel Exhibit 62 was not provided for processing. A separate motion has been filed to correct the record to include GCX 62. (Tr. 186)

25 and August 30 LinkedIn posts addressing terms and conditions of employment, including ongoing sexism and racism identified by Richardson. (GCX 67) (Tr. 192-193). In his email, and for the first time, Respondent alleged that some of the statements in Richardson's LinkedIn post were "misstatements, as well as derogatory and disparaging remarks" and "defamatory," and demanded he remove "any false, derogatory, disparaging and/or defamatory statements," as soon as possible, but no later than August 31, 2023. (GCX 67). Walters broadly asserted that some of Richardson's statements in his 10+ pages of LinkedIn posts were false, but did not identify any specific statements that Respondent was claiming to be false. (GCX 67). Richardson responded to Walters that evening and asked him to specifically identify the statements that were false, and informed Walters, "Being overly broad is a threat and affront to the free exercise of my rights," referring to the National Labor Relations Act's protections. (GCX 67). Of note, Kayla Nassiri reports to Michael Walters Senior Director, Human Resources, and he is parallel with Tobenna Egwu, Cassie McGovern, and Brianna Rodgers. (GCX 68).

Walters replied the morning of August 31, 2023, refused to provide any explanation, and reiterated that Richardson needed to, "modify your posts to remove the type of remarks described below." (GCX 69). Richardson replied to Walters' email, advising that he was willing to work with Walters if he could point to specific issues, and to let Richardson know so he could assist. (GCX 69) (Tr. 193-194). However, Richardson believed all of the statements in his post were true and accurate and did not make any meaningful changes to his posts. (Tr. 194-197).

Richardson also disseminated his LinkedIn posts to his coworkers to solicit their support, including Chris Lin, Matthew Gourley, Robert Burrage; and Burrage and Lin corresponded with Richardson. (GCX 70, GCX 71, GCX 72) (Tr. 197-200). Burrage specifically notes that he also raised multiple complaints with Respondent, but he was afraid to "get into a public fight with the

company," by liking Richardson's posts. (GCX 72). Clearly, Respondent's actions against Richardson had a chilling effect on its employees.

On September 1, 2023, Respondent emailed Richardson and notified him that his "… employment with [Respondent] has ended effective immediately. (Tr. 204-205) (GCX 73). In the discharge letter, Respondent admits that it terminated Richardson because of his August 25 and August 30 LinkedIn posts. (GCX 73).

Burrage contacted and commiserated with Richardson when he learned that Respondent had terminated Richardson's employment. (GCX 74). Burrage sent Richardson a screenshot of the Slack message Respondent sent to employees which instructed employees to "Please reach out to HR if he tries to contact you." (GCX 74 and GCX 110).

Richardson had other coworkers contact him when they learned what happened. For example, Evan Smelser contacted Richardson on September 7, 2023 to "empathize with you a great deal and commend your bravery in speaking up," and to "… support you in speaking out …" (GCX 75) (Tr. 210-211). Richardson informed both Smelser and Burrage of their rights under the National Labor Relations Act. (GCX 74 and 75). Richardson also continued contacting his coworkers to disseminate his LinkedIn posts corresponding with Eoin O'Hare (GCX 76), and Lavish Mishra (GCX 77) on LinkedIn. (Tr. 209-210).

Richardson asked his direct supervisor, Tom Warner, if Richardson could use him as a positive job reference, and Warner agreed, which suggests that Warner did not believe that Richardson defamed or made maliciously false statements about Respondent. (GCX 78) (Tr. 211).

Richardson still continued to raise his concerns and protest Respondent's workplace policies following his discharge. (Tr. 212). Respondent made a LinkedIn post stating that Respondent's CEO, William Capuzzi, was attending a panel at a "Future Proof Festival." (GCX

79). On or about September 8, 2023, Richardson commented on Respondent's post, protesting Respondent's policies and his discharge. (GCX 79). Richardson's comment was subsequently deleted, so he reposted his comment along with Respondent's "Future Proof Festival" post. (Tr. 213-214) (GCX 80).

k. <u>Respondent Files an Objectively Baseless Defamation Lawsuit Against Richardson, and Serves Richardson with Discovery Requests</u>

Respondent served Richardson with a civil lawsuit sometime in mid to late October 2023, with the lawsuit noting it was e-filed on October 17, 2023 at 2:28 pm. (Tr. 237) (GCX 81). In paragraph 17 of the lawsuit, Respondent specifically identified five statements in Richardson's August 25 post that it asserted were "false, materially misleading, and defamatory," and then lists several opinions Richardson set forth in his LinkedIn post, such as Richardson's assertion that Respondent "has allowed outright hate to proliferate as a demonstration of what they think DEI is." (GCX 81). Respondent's lawsuit then simply opposes Richardsons' opinions, "Apex has not allowed 'outright hate' to 'proliferate' at the company." (GCX 81). Richardson used similar language in his July 12, email to Respondent's supervisors and human resources which Respondent did not dispute until he posted publicly. (GCX 37). Richardson testified that several of the trial exhibits entered into evidence at the hearing were examples, but not an exhaustive list, of Respondent allowing "outright hate to proliferate as a demonstration of what they think DEI is," and of "HR and senior leadership hav[ing] not just allowed, but encouraged my coworkers to openly espouse bigotry." (Tr. 296-298) (GCX 81).

Paragraph 19 of Respondent's lawsuit identified seven statements in Richardson's August 30 post that it asserted were "false, materially misleading, and defamatory," and listed opinions Richardson shared, such as his conclusion that "bigoted speech and civil rights violations" are being rewarded at the company and Respondent is '"…refus[ing] to engage in this dialogue' on

the culture of discrimination." (GCX 81). Respondent then defends its claim by asserting the opposite opinion, "Apex does not reward 'bigoted speech and civil rights violations.'" (GCX 81).

Lastly, paragraph 23 of Respondent's lawsuit identified two statements in Richardson's September 8 posts that it asserted were "false, materially misleading, and defamatory," and states the opposite in its defense (GCX 81). Respondent confirms Richardson's protected concerted activity and its knowledge of said activity in paragraph 30 of the lawsuit confirming that the statements were circulating among employees and multiple employees were contacting Richardson about his statements. (GCX 81). Respondent did not plead actual damages, but rather generally asserts lost profits. (GCX 81). Respondent appears to concede an absence of actual damages in paragraph 40 of the lawsuit where it requests damages in the absence of actual damages. (GCX 81). Respondent does not have evidence of any actual damages, and alleges in paragraph 42 of the pleadings and paragraph 3 of the prayer of relief that damages would be established at trial. (GCX 81). However, Respondent, not Richardson, would have evidence of actual damages, and Respondent could not hope to obtain additional evidence regarding damages at a trial. Respondent also provided no evidence at the instant unfair labor practice hearing that it suffered any actual damages following Richardson's LinkedIn posts.

Respondent prosecuted its lawsuit by serving Richardson with a set of interrogatories and request for production on January 24, 2024, which were later amended and answered by Richardson. (Tr. 237-240) (GCX 82, GCX 83, GCX 84, and GCX 85). The defamation lawsuit was ultimately voluntarily withdrawn by Respondent. (Tr. 282).

III. Argument

Respondent asserted in its opening statement that this case is an *Atlantic Steel Co.,* 245 NLRB 814 (1979), case, and contends that Richardson lost the protections of the Act when he

engaged in misconduct by making his LinkedIn posts. (Tr. 30). However, that is not the case and Respondent's assertion that Richardson's LinkedIn posts are wrongdoing demonstrate Respondent's aversion to Richardson's protected concerted activity. Instead, this is a straightforward *Wright Line*, case, where Richardson did not lose the protections of the Act under *Triple Play Sports Bar & Grille*. *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982); *Triple Play Sports Bar & Grille*, 361 NLRB 308, 308 (2014).[89]

Section 7 of the Act establishes the right "to engage in . . . concerted activities for the purpose of . . . mutual aid or protection," and Section 8(a)(1), in turn, makes it an unfair labor practice "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." 29 U.S.C. §§ 157, 158(a)(1). "To be protected under Section 7 of the Act, employee conduct must be both 'concerted' and engaged in for the purpose of 'mutual aid or protection.'" *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 152 (2014).

To establish unlawful discrimination under Section 8(a)(1) of the National Labor Relations Act, the General Counsel must demonstrate by a preponderance of the evidence that the employee was engaged in protected activity, that the employer had knowledge of that activity, and that the employer's hostility to that activity "contributed to" its decision to take an adverse action against the employee. *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n.7

[8] Likewise, Richardson's actions in calling a supervisor "ratfuck" a do not disqualify Richardson for reinstatement. It is well established that "… the use of the word 'fuck' and its variants, including the term 'motherfucker'" is insufficient to remove otherwise protected activity from the purview of Section 7. *Pier Sixty, LLC.*, 362 NLRB 505, 529 (2015).
[9] *Triple Play Sports Bar & Grille*, 361 NLRB 308, 308 (2014), is controlling in deciding whether Richardson's August 25, 30, and September 8 posts lost the protections of the Act, not *Pier Sixty, LLC.*, 362 NLRB 505, 529 (2015), but even if the posts were analyzed under *Pier Sixty*, Richardson would not have lost the protections of the Act.

(1983); *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

a. Richardson Engaged in Protected Concerted Activity Starting on August 21, 2023, And Did Nothing to Cause Him to Lose the Protections of the Act

On August 21, 2023, Richardson engaged in protected concerted activity by making a Slack post on Respondent's data-engineering-team-internal channel, bringing his coworkers attention to the complaints that he had previously raised directly with Respondent's managers and supervisors. (GCCX 48). Respondent was aware of Richardson's Slack posts, and it knew that he would continue to raise these concerns vocally because he told Respondent that he intended to do so. (GCX 48 and GCX 114). Additionally, at least one of Richardson's coworkers was receptive to his Slack post and contacted Richardson to support his efforts. (GCX 52 and GCX 59).

On August 25, 2023, Richardson engaged in protected concerted activity again by posting a message to his LinkedIn, publicly complaining about issues that he had repeatedly brought to the attention of Respondent's managers and supervisors, and to his coworkers in his Slack post. (GCX 48 and GCX 57). Richardson sent this LinkedIn post, which was visible to anyone who looked, directly to coworkers including Robert Burrage (GCX 59), Vitaliy Kochubiy (GCX 61), and Chad Maggard (GCX 62), and the LinkedIn metrics confirmed that Respondent's employees viewed his post. (GCX 58) (Tr. 177-178 and Tr. 186). Additionally, one of Richardson's coworkers, Rafael Castillo, liked his August 25 LinkedIn post. (GCX 63). No one from Respondent informed Richardson that any of the information in his emails was inaccurate, so he had no reason to believe anything in his LinkedIn post was inaccurate. (Tr. 196).

A few days later on August 29, 2023, Richardson learned that Rodgers was receiving a promotion to the "New Culture & DEI Program Director," despite Richardson's repeated complaints regarding her shortcomings in DEI. (GCX 113). On August 30, 2023, Richardson

made a second LinkedIn post identifying Rodgers as a bad actor, outlining his complaints about Respondent's working conditions, and soliciting his coworkers for support. (GCX 64). Richardson then shared this LinkedIn post with coworkers, including Chris Lin, Matthew Gourley, and Robert Burrage. (GCX 70, GCX 71, GCX 72) (Tr. 197-200).

Richardson was unlawfully discharged on September 1, 2023, but engaged in additional protected concerted activity after his discharge. After Richardson was discharged, some coworkers contacted him to voice their support for him speaking out about Respondent's employment policies, including Robert Burrage and Evan Smelser. (GCX 74 and GCX 75). Richardson also continued to contact his coworkers including Eoin O'Hare (GCX 76) and Lavish Mishra (GCX 77), to raise his concerns regarding Respondent's policies following his discharge. On September 8, 2023, Richardson viewed a LinkedIn post Respondent had made, and commented on Respondent's post, protesting Respondent's policies and his discharge. (GCX 79). Richardson's comment was subsequently deleted, so he reposted his comment on his own page, along with Respondent's "Future Proof Festival" post so it could not be deleted. (Tr. 213-214) (GCX 80).

The posts were concerted because Richardson explicitly sought to induce group action in opposition to the conduct Richardson deemed to constitute workplace discrimination, the posts were published on a medium Richardson reasonably believed his coworkers would read, his coworkers did in fact read them, some coworkers privately contacted Richardson thanking him for the posts, and at least one coworker publicly showed support by "liking" the message. See, e.g., *North West Rural Electric Cooperative*, 366 NLRB No. 132, slip op. at 14 & n.12 (2018) (finding that Facebook comments about workplace safety were concerted based in part on reasonable inference that some Facebook users who "liked" the comments, participated in the discussion, or followed that particular Facebook page were statutory employees). Furthermore, Richardson's

choice to use a third-party platform to reach coworkers, rather than a company-internal platform, was particularly reasonable here because Respondent had effectively reprimanded him after he posted on a company Slack channel earlier the same month.

Additionally, the concerted posts were for "mutual aid or protection" so as to be protected by Section 7 because they sought, through enlisting the support of coworkers, and potentially members of the public, to remedy what Richardson perceived to be a workplace culture of discrimination on the basis of race and sex. *See Triple Play Sports Bar & Grille*, 361 NLRB 308, 308 (2014) (employees have a statutory right under Section 7 to use social media to communicate with each other and the public to improve their working conditions), *enforced sub nom. Three D, LLC v. NLRB*, 629 F. App'x 33 (2d Cir. 2015) (unpublished). *See e.g.*, *Dearborn Big Boy No. 3, Inc.*, 328 NLRB 705, 710 & n.33 (1999) (protesting workplace discrimination on the basis of race was protected); *see also Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 155-56 (2014) (concerted protests of sexual harassment are protected).

Respondent contends that Richardson's public posts lost the Act's protection under *NLRB v. Electrical Workers 1229 (Jefferson Standard)*, 346 U.S. 464 (1953), because they were maliciously defamatory and disloyal, but that contention lacks merit. Initially, the posts made clear that they were made in the context of a labor dispute concerning perceived discriminatory workplace conditions. *Valley Hospital*, 351 NLRB 1250, 1253 (2025). Next, the posts did not disparage Respondent's products or services, were not made at a "critical time" in the initiation of the company's business, and were not so disparaging that they could be seen as "reasonably calculated to harm the company's reputation and reduce its income." *Id.* at 1252 (quoting *Jefferson Standard*, 346 U.S. at 471). Rather, they were intended to induce group action concerning Richardson's discrimination concerns. *See id.* ("The Board is careful . . . 'to distinguish between

disparagement of an employer's product and the airing of what may be highly sensitive issues.'" (quoting *Professional Porter & Window Cleaning Co.*, 263 NLRB 139, 139 (1982), *aff'd mem.*, 742 F.2d 1438 (2d Cir. 1983)). And, as explained above, Respondent has failed to substantiate its allegations of malicious defamation.

Accordingly, Richardson engaged in protected concerted activity by making, and disseminating, posts on Slack and LinkedIn on August 21, 25, 30, and September 8. Further, Respondent was aware of his protected concerted activity, and he did not lose the protections of the Act.

b. <u>Respondent by Kayla Nassiri Unlawfully Instructs Richardson Not to Discuss The Investigation</u>

Employees have a Section 7 right to discuss working conditions and discipline with others. *Inova Health System*, 360 NLRB 1223, 1228 (2014), citing *Westside Community Mental Health Center*, 327 NLRB 661, 666 (1999). "It is well-established Board law that 'an employer violates Section 8(a)(1) of the Act if its conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights.'" *Corporate Interiors, Inc.*, 340 NLRB 732, 732 (2003), quoting *Frontier Hotel & Casino*, 323 NLRB 815, 816 (1997); see also *American Freightways Co.*, 124 NLRB 146, 147 (1959).

The intent or motive of the employer is not relevant to this analysis, and "does not turn on whether the coercion succeeded or failed." *American Freightways Co.*, 124 NLRB at 147 (1959); see also *EF International Language Schools, Inc.*, 363 NLRB No. 20, slip op. at 11 (2015); *Corporate Interiors, Inc.*, 340 NLRB at 732; *Frontier Hotel & Casino*, 323 NLRB at 816. The standard of inquiry is an objective one, examining the effect of the employer's actions on a reasonable employee. *Rocky Mountain Eye Center, P.C.*, 363 NLRB No, 34, slip op. at 7 (2015);

EF International Language Schools, Inc., supra; *Miller Electric Pump*, 334 NLRB 824, 825 (2001).

On August 21, 2023, in response to Richardson's protected concerted Slack post, Nassiri messaged Richardson on Slack, asking for his "patience" while the investigation was ongoing. (GCX 114). Richardson replied noting that it had been nearly 2 years since the issues arose, and stated that he would continue to raise these problems. (GCX 114). This was Nassiri's first attempt to silence Richardson. When Richardson refused to agree to Respondent's demands, Nassiri sent Richardson an email, "… remind[ing] you about Apex's Expectations Policies," which requires "all employees to treat each other with mutual respect, refrain from hostile behavior, and fully cooperate in all company investigations. To that end, it is essential that everyone involved in this investigation maintain confidentiality and avoid naming specific employees or details related to the ongoing investigation. This precaution is crucial to protect the privacy and reputation of all parties involved and to ensure we adhere to our professional standards."[10] (GCX 54).

Richardson responded and asked what constituted not cooperating with a company investigation. (GCX 55). Nassiri replied to Richardson the following morning, August 22, making it clear that, "Cooperating in any Company investigation includes maintaining the investigation's confidentiality; accordingly, any concerns should be raised through the proper channels. You are free to express your concerns to HR via email, …" (GCX 56). However, "Moving forward, we expect you to refrain from posting details relating to the ongoing investigation and naming specific employees in Company messaging channels, as well as discussing details related to the ongoing investigation with anyone outside of HR or your leadership team." (GCX 56). Of note, Nassiri

[10] Respondent provided no evidence at the hearing that Respondent maintained a rule requiring employees not discuss investigations or open investigations, and as such, it appears that this instruction was promulgated in response to, and in an attempt to chill, Richardson's protected concerted activities.

informed Richardson that he could contact his leadership team, but the day prior, unbeknownst to Richardson, Nassiri contacted Richardson's supervisor, Tom Warner, to have him ask Richardson to stop, or otherwise limit, his communications with Warner. (GCX 56 and GCX 115). Warner contacted Richardson on Slack as instructed by Nassiri, but had to admit that Richardson's actions were protected under the NLRA. (GCX 50). Richardson emailed Nassiri one final time to ask if she was telling him this was prohibited, but Nassiri did not respond. (GCX 56).

In *Hyundai American Shipping, Inc*., 357 NLRB 860, 860, (2011), the employer, a shipping company, maintained a policy that required employees to bring complaints to their immediate supervisor or Human Resources. The ALJ determined that the language "... restricts employees from complaining about any work related matters, including wages, hours, or working conditions, to fellow employees or to interested third parties ..." Id at 863. The ALJ found, and the Board affirmed, that mandating employees to raise issues with their supervisor or otherwise prohibiting them from bringing it to other supervisors, chilled Section 7 rights in violation of Section 8(a)(1) of the Act. Id 861-862. Nassiri's statements to Richardson not to raise issues with anyone other than HR and the Leadership team, while instructing Richardson's leadership team to tell Richardson not to contact them, is a clear violation of the Act as outlined in *Hyundai. Id.*

The law has vacillated regarding the legality of rules prohibiting employees from discussing ongoing workplace investigations over the past 10 years. In Banner Estrella Medical Center, 362 NLRB 1108, 1109 (2015), the Board held that employees "have a Section 7 right to discuss discipline or ongoing disciplinary investigations" and "an employer may restrict those discussions only where the employer shows that it has a legitimate and substantial business justification that outweighs employees' Section 7 rights."

In *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144, slip op. at 1 (2019, the Board overruled *Banner Estrella Medical Center* and holding, under *Boeing Co.*, 365 NLRB No. 154 (2017), "investigative confidentiality rules are lawful . . . where by their terms the rules apply for the duration of any investigation." The Board in *Stericycle, Inc.*, 372 NLRB No. 113, (2023), overruled *Apogee Retail* and implemented a standard whereby a rule which limits employees' facially protected discussions of a workplace disciplinary investigation is presumptively unlawful, and that presumption can only overcome if the employer advances a legitimate and substantial business interest which cannot be more narrowly tailored.

Under *Banner Estrella*, factors to be considered included, "'witnesses need[ed] protection, evidence [was] in danger of being destroyed, testimony [was] in danger of being fabricated, and there [was] a need to prevent a cover up," *Stericycle, Inc.*, 372 NLRB No. 113, slip op. at 30 (2023).

These factors are at play in this case as the data was not in danger of being destroyed, no testimony was needed for the investigation because the document speaks for itself, and no one needed protection as Richardson worked remotely and demonstrated no risk to others. Further, Respondent's asserted business justification for maintaining confidentiality, namely "to protect the privacy and reputation of all parties involved and to ensure that we adhere to our professional standards," are less compelling.

Accordingly, Respondent's instruction from Nassiri to Richardson to maintain confidentiality, violation Section 8(a)(1) of the Act, regardless of whether or not it was limited to the duration of the investigation, which it was not.

c. Michael Walters Unlawfully Threatens Richardson With Unspecified Reprisal Unless He Stops, and then Unlawfully Discharged Him

On August 30, 2023, at approximately 9:00 p.m., after Richardson had made his August 25 and August 30 LinkedIn posts, Respondent's Senior Director Human Resources emailed Richardson demanding that "false, derogatory, disparaging and/or defamatory statements be removed," by no later than the following day August 31, 2023. (GCX 67). Walters' email provided Richardson with a short deadline to respond, contained vague assertion that Richardson's posts contained inaccuracies without identifying what they were, and made a veiled threat that something would happen if Richardson did not comply. (GCX 67). Richardson promptly replied that night, seeking clarification on what Respondent was claiming was inaccurate. (GCX 67). However, Walters replied on August 31, 2023, refusing to clarify and reiterating his demand that Richardson remove the inaccurate information. (GCX 69). Each of these emails constitutes a threat of unspecified reprisal if Richardson did not remove his protected concerted LinkedIn posts. As was explained in the above section, Employees have a Section 7 right to discuss discipline, and working conditions with coworkers, and an Employer violates the Act "… if its conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights.'" *Inova Health System*, 360 NLRB 1223, 1228 (2014); *Corporate Interiors, Inc.*, 340 NLRB 732, 732 (2003), quoting *Frontier Hotel & Casino*, 323 NLRB 815, 816 (1997); see also *American Freightways Co.*, 124 NLRB 146, 147 (1959).

Respondent, through Walters, was unlawfully attempting to coerce Richardson into removing the protected concerted LinkedIn posts he made on August 25 and August 30. If Respondent truly believed that Richardson included maliciously false or defamatory statements in his posts, and had Respondent simply desired that the maliciously false and defamatory statements be removed, it would have identified those statements. By refusing to identify the maliciously

false or defamatory statements and setting a short deadline for complying with its demands, and implying that there would be reprisals if he failed to comply with the directive, Respondent reveals that it intended to compel Richardson to delete both posts in their entirety without regard to the truth or falsity of any Richardson's complaints regarding sexism and racism.(Tr. 197) (GCX 69). Richardson did not make any meaningful changes to his LinkedIn post because he believed everything in his posts was accurate. (Tr. 197).

On September 1, 2023, Richardson received an email from Respondent's HR email address with Walters on copy advising that Richardson's employment was ended effective immediately. (GCX 73). The Termination Letter attached to the email states that Richardson's employment was terminated because his public LinkedIn posts made on August 25 and August 30 contained false statements which Richardson refused to retract, but Respondent still failed to identify what it asserted were the false statements. (GCX 73). Respondent's assertion that Richardson classifying Poker Power as sexist is defamatory or false is without merit because Respondent apparently had been previously counseled by "Milt" on the discriminatory risks of Poker Powher. (GCX 92).

As discussed above, Richardson engaged in protected concerted activity when he posted on Slack and LinkedIn about sexism, racism, and Respondent's employment policies, and sought support from his coworkers and the public, as well as seeking to induce his coworkers to action. Respondent was aware of Richardson's protected concerted activity and that activity motivated Respondent's discharge of Richardson. Richardson's posts contained no maliciously false statements or other content that caused his posts to lose protection of the Act. See *Triple Play Sports Bar & Grille*, 361 NLRB 308, 308 (2014). Accordingly, Counsel for the General Counsel has met the burden under *Wright Line* and established a *prima facie* case of discrimination which Respondent cannot rebut because it discharged Richardson because of the protected concerted

posts he made on Slack and LinkedIn. 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

d. <u>Respondent Violated Section 8(a)(1) by Filing, Maintaining, and Prosecuting the Defamation Lawsuit Against Richardson Because the Lawsuit Was Objectively Baseless, Retaliatory, and Preempted by Federal Law</u>

On or about October 17, 2023, Respondent filed and subsequently served Richardson with a civil lawsuit, alleging that Richardson's protected concerted activity was defamatory. (GCX 81).

In *Bill Johnson's Restaurants, Inc. v. NLRB*,[11] the Supreme Court held that the Board may enjoin as an unfair labor practice the filing and prosecution of a lawsuit if the lawsuit: (1) lacks a reasonable basis in law or fact; and (2) was commenced with a retaliatory motive.[12] In *BE & K Construction Co. v. NLRB*,[13] the Supreme Court clarified that an unsuccessful retaliatory lawsuit could not serve as the basis for imposing unfair-labor-practice liability, absent a finding that the suit was also objectively baseless.[14] When an employer files and maintains an objectively baseless and retaliatory lawsuit, it thereby violates Section 8(a)(1).[15]

i. A. The Lawsuit Was Objectively Baseless.

A lawsuit is objectively baseless if "no reasonable litigant could realistically expect success on the merits."[16] Where a lawsuit is terminated at the complaint stage, the General Counsel's burden is to prove that the respondent did not have and could not reasonably have believed it could acquire through discovery or other means evidence needed to prove the essential elements of its

[11] 461 U.S. 731 (1983).
[12] *Id.* at 743-44, 748-49.
[13] 536 U.S. 516 (2002).
[14] *See id.* at 531-37; *BE & K Construction Co.*, 351 NLRB 451, 456-57 (2007), *on remand from* 536 U.S. 516.
[15] *See, e.g.*, *Ashford TRS Nickel, LLC*, 366 NLRB No. 6, slip op. at 2, 6-7 (2018) (objectively baseless and retaliatory claims in employer's completed lawsuit attacking union's Section 7-protected consumer boycott violated Section 8(a)(1)).
[16] *BE & K*, 351 NLRB at 457 (quoting *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60 (1993)).

causes of action.[17] The Board's inquiry need not be limited to the bare pleadings, provided it refrains from making credibility determinations or drawing inferences from disputed facts so as to usurp the fact-finding role of the jury or judge.[18]

Respondent's defamation lawsuit against Richardson was objectively baseless under the foregoing standard. In *Linn v. Plant Guard Workers Local 114*,[19] the Supreme Court held that defamation lawsuits emanating from labor disputes—and involving the malicious publication of defamatory statements that might injure a person's reputation—are of peripheral concern to national labor policy because such speech "does not in and of itself constitute an unfair labor practice."[20] To avoid possible interference with national labor policy, however, a plaintiff pursuing a state-law defamation claim predicated on a statement made during a labor dispute must prove, in addition to any other state-law elements, (1) that the allegedly defamatory statement asserts a fact or implies an assertion of objective fact; (2) that the factual assertion is false; (3) that the speaker published the challenged statement with actual malice; and (4) that the plaintiff was injured thereby.[21] Actual malice is established where there is "clear and convincing proof" that the defendant acted with knowledge of the statement's falsity or with reckless disregard for the truth.[22] Additionally, a plaintiff that alleges harm to its reputation must prove actual loss due to reputational harm.[23]

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[17] *See Milum Textile Services Co.*, 357 NLRB 2047, 2052-53 (2011).
[18] *Bill Johnson's*, 461 U.S. at 744-46.
[19] 383 U.S. 53 (1966).
[20] *Id.* at 61-65; *Beverly Health & Rehabilitation Services*, 336 NLRB 332, 333 (2001).
[21] *Linn*, 383 U.S. at 64-66; *Steam Press Holdings, Inc. v. Haw. Teamsters and Allied Workers Union, Local 996*, 302 F.3d 998, 1004 (9th Cir. 2002).
[22] *Beverly Health & Rehabilitation Services*, 331 NLRB 960, 963 (2000) (quoting *Dunn v. Air Line Pilots Assn.*, 193 F.3d 1185, 1192 (11th Cir. 1999)); *see also Linn*, 383 U.S. at 65.
[23] *See Linn*, 383 U.S. at 65; *Intercity Maint. Co. v. Local 254, SEIU*, 241 F.3d 82, 89-90 (1st Cir. 2001) (plaintiff alleging defamation in labor dispute "could not rest on the common law presumption of damages" and failed to show "evidence of actual loss due to reputational harm and consequent lost profits").

Under the standard set forth in *Linn* and its progeny, the Respondent has the burden to establish that the comments were maliciously untrue, i.e., were made with knowledge of their falsity or with reckless disregard for their truth or falsity. E.g., *Springfield Library & Museum*, 238 NLRB 1673, 1673 (1979). The Respondent cannot meet this burden.

Here, Respondent could not reasonably have expected to succeed in proving the elements required under *Linn*. Respondent has identified no evidence that Richardson publicized any malicious falsehood, and it had no reason to believe it would uncover the necessary evidence in discovery. Most of the statements Respondent has alleged to be defamatory are general accusations that Respondent has permitted, encouraged, or rewarded hate, bigotry, or discrimination. Richardson's posts themselves reveal the factual basis for these statements, and so they cannot be shown to have been false, much less maliciously so.[24] In that regard, the posts describe specific practices and statements that Richardson encountered during his employment with Respondent ostensibly evincing bias or aversion toward White men or men in general, and Respondent has offered no evidence that those specific descriptions were false. In fact, Respondent has not even challenged the truth of most of these specific factual assertions.[25] Further, the characterization of such occurrences as reflecting "hate" or "bigotry" is at most rhetorical hyperbole indicative of Richardson's disdain for them.[26] There is also no evidence that, at the time Richardson made the posts, Respondent had taken any corrective action for at least the vast majority of specific

[24] *See Valley Hospital Medical Center*, 351 NLRB 1250, 1253 (2007) (statements based on employee's own experiences and communications with others were not maliciously false), *enforced*, 358 F. App'x 783 (9th Cir. 2009) (unpublished).

[25] Those factual statements Respondent does claim are false are discussed below.

[26] *See Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974) ("[T]o use loose language or undefined slogans that are part of the conventional give-and-take in our economic and political controversies—like 'unfair' or 'fascist'—is not to falsify facts." (quoting *Cafeteria Employees Local 302 v. Angelos*, 320 U.S. 293, 295 (1943))); *DHL Express, Inc.*, 355 NLRB 680, 692 (2010) (accusation that labor consultant stole employees' money in his former role as union organizer was, rather than a statement of fact, a "colorful and hyperbolic reference" to his failure to adequately represent the employees' interests).

occurrences reported by Richardson, and in some circumstances Respondent appeared to explicitly condone the conduct at issue. Further, Richardson cited specific examples of individuals who made some of the statements he complained of being placed on panels or promoted, including the promotion of a Human Resources representative to Director of Culture for Respondent's parent company. Accordingly, there is clearly a factual basis for Richardson's statements that Respondent permitted and even encouraged or rewarded discriminatory conduct.[27]

Respondent also alleges as defamatory several of the statements about specific occurrences Richardson complained of but for which Respondent cannot show were false, much less maliciously so.

First, Respondent challenges Richardson's assertion that, during the DEI panel discussion mentioned above, an HR representative went on a "tirade" in a recorded meeting about White men making them feel "uncomfortable, defensive, and guarded, simply for existing and doing their jobs or even being part of a discussion with them." However, a transcript of the panel discussion demonstrates a factual basis for the Richardson's assertion. As shown in the transcript, Egwu indicated that she felt more guarded and on defense when interviewing for a job with an interview panel comprised solely of White men. (GCX 28, pages 41 and 42). Richardson's characterization of the remarks at most uses "loose, figurative, or hyperbolic language" that cannot be viewed as a factual misstatement.[28]

Second, Respondent challenges Richardson's statements concerning the promotion of Brianna Rodgers on the same DEI panel to Director of Culture for Respondent's parent company. Richardson asserted that Rodgers "went on a racist/sexist rant in a company-wide recorded meeting that included senior leadership." In that regard, the transcript of the above-mentioned DEI

[27] *See Valley Hospital Medical Center*, 351 NLRB at 1253.
[28] *DHL Express*, 355 NLRB at 692 (quoting *Joliff v. NLRB*, 513 F.3d 600, 610 (6th Cir. 2008)).

panel discussion again establishes a factual basis for the statement. Specifically, that discussion included a paragraph-long speech in which Rodgers, the then-future Director echoed the sentiments of Egwu, the HR representative who had just recounted feeling guarded when interviewing for a job with interview panels composed entirely of White men. (GCX 28, pages 41-43). Although Respondent's characterization Rodgers' remarks may be "hyperbolic and reflect bias," that does not render the statements maliciously false in the context of an "identified, emotional labor dispute."[29]

Third, Respondent challenges Richardson's contention that Stephen Lach, Respondent's Chief of Staff to the CEO "recommended hiring discrimination to the company." Richardson based this contention on Lach stating, in the transcribed DEI panel discussion, "If you're hiring for a position, find somebody that doesn't look like everyone else, right?" (GCX 28, page 41). Lach followed up on that statement by recommending diversity in interview panels, and Respondent contends that the quoted remark was recommending the same thing. However, in context, Laches' remarks are ambiguous, and Richardson reasonably interpreted the quoted remark as recommending offering a job to someone based on demographic characteristics. Thus, even assuming that was not Laches' intended meaning, Respondent could not have reasonably expected to establish that Richardson made his statement with malice.[30]

Fourth, Respondent challenges Richardson's contentions that Respondent has remained silent or refused to engage in dialogue concerning what Richardson sees as Respondent's culture of discrimination. But these contentions are factually supported because, in context, a reasonable reader would understand that Richardson was referring to the Respondent's failure to (1) demonstrate opposition to the specific occurrences recounted by Richardson and (2) speak on these

[29] *Valley Hospital*, 351 NLRB at 1253.
[30] *See Valley Hospital Medical Center*, 351 NLRB at 1252-53.

issues to Richardson's satisfaction.[31] Indeed, Richardson effectively acknowledged in that same post that Respondent had launched an investigation in response to his then-recent complaint to HR, but noted that this resulted in him being interviewed and later reprimanded for sharing his concerns on a company Slack channel and that the company still had not removed offensive material in the month since his official report. Thus, Respondent could not show that Richardson made any maliciously false statements in the LinkedIn posts.

Respondent also could not have reasonably expected to obtain evidence sufficient to establish malice through discovery. As explained above, the specific factual bases for Richardson's posts were apparent in the posts themselves and the transcript of the DEI panel discussion. (GCX 28). Thus, there was no "necessary evidence . . . not within the possession or control of the" Respondent that Respondent needed discovery to acquire.[32]

Moreover, Respondent has failed to come forward with any evidence of actual harm. To prove actual harm, Respondent must show, for example, that a customer ceased doing business with it specifically because of Richardson's posts.[33] However, Respondent has only generally alleged in its complaint that it suffered lost profits, and it has neither identified any customers whose business it lost nor provided any evidence of causation. Furthermore, Respondent could not have relied on the discovery process to uncover such evidence because "a reasonable plaintiff would be in possession of evidence of the actual damages" prior to filing a defamation claim.[34]

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[31] *Cf. Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 14 (1970) (reference in newspaper article to "blackmail" was, rather than a charge that an individual had committed a criminal offense, "no more than rhetorical hyperbole, a vigorous epithet used by those who considered [the individual's] negotiating position extremely unreasonable"); *Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868, 883 (9th Cir. 2002) (statements claiming employer's president was incompetent and lacked people skills were protected opinions).

[32] *Milum Textile Services*, 357 NLRB at 2053.

[33] *Cf. Intercity Maint. Co.*, 241 F.3d at 86, 90 (although plaintiff presented evidence of pecuniary loss from losing clients, it failed to show how the loss resulted from the union's maliciously false statements).

[34] *Milum Textile Services*, 357 NLRB at 2053.

Accordingly, Respondent could not have reasonably expected success in its lawsuit.[35] Respondent's decision to voluntarily withdraw its lawsuit is further evidence that it was objectively baseless. (Tr. 282).

ii. The Lawsuit Retaliated Against the Charging Party for Protected Activity.

Evidence that a party filed a lawsuit with a retaliatory motive includes, among other things, a lawsuit's targeting of protected conduct.[36] Here, Respondent's lawsuit was "retaliatory on its face" because it targeted concerted activity protected by Section 7,[37] namely, Richardson's LinkedIn posts. As was explained above, Richardson's Slack and LinkedIn posts constituted protected concerted activity, and he did not lose the protections of the Act.

Thus, the fact that the lawsuit targeted protected conduct establishes its retaliatory motive.[38] Accordingly, Respondent's lawsuit was both objectively baseless and retaliatory such that its filing and maintenance violated Section 8(a)(1).[39]

iii. The Employer's Filing and Maintenance of Its Lawsuit Also Violated Section 8(a)(1) Because the Lawsuit Was Preempted and Interfered with Section 7 Rights.

The Board may enjoin as an unfair labor practice the filing and prosecution of a lawsuit if the suit is preempted.[40] In *Brown v. Hotel & Restaurant Employees Local 54*,[41] the Supreme Court held that a state law regulating conduct that is "actually" protected by the Act is preempted, not as a matter of the Board's primary jurisdiction, but as a matter of substantive right under the

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[35] *See Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 6 (defamation claim was objectively baseless where plaintiff failed to plead facts that, if proven, would have established actual malice). Moreover, the lawsuit would nonetheless be objectively baseless to the extent it sought an overbroad remedy, i.e., to enjoin the Charging Party from publicizing false, disparaging remarks against the Employer regardless of whether the Charging Party acted with malice. *See Milum Textile Services*, 357 NLRB at 2051.
[36] *See Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 6-7, 14.
[37] *Id.*, slip op. at 6.
[38] *See Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 6. The fact that the Employer sought an overbroad remedy enjoining the Charging Party from publicizing false, disparaging statements against it regardless of whether he acted with malice further shows the Employer's retaliatory motive.
[39] *See id.*
[40] *See Bill Johnson's*, 461 U.S. at 737 n.5.
[41] 468 U.S. 491 (1984).

Supremacy Clause.[42] Unlike conduct that is merely "arguably" protected by Section 7, and which might not be preempted if it is only a peripheral concern of the Act or is, at heart, a local concern, "actual" preemption under *Brown* is absolute and admits of no exception.[43] A lawsuit that is preempted violates Section 8(a)(1) if it tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.[44]

Here, Respondent's defamation lawsuit targeted activity that is actually protected by Section 7, as explained above. Thus, the lawsuit is preempted.[45] And, because the lawsuit targeted protected conduct, the lawsuit had a tendency to interfere with protected conduct.[46] Accordingly, its filing, maintenance, and prosecution, violated Section 8(a)(1).

e. <u>Respondent Discovery Request were Unlawful</u>

Finally, where, as here, the maintenance of a lawsuit violates the Act, the proffer and enforcement of the discovery requests in furtherance of that lawsuit are part of the unlawful conduct.[47] For that reason, the discovery requests, including the request for production and amended request for production, and interrogatories and amended interrogatories, Respondent proffered in furtherance of its unlawful defamation claims are unlawful in their entirety.

f. <u>Respondent, Including All Subsidiaries and Affiliates, Maintained Rules Which Unlawfully Restrict Employees Section 7 Rights</u>

Respondent, including its subsidiaries and affiliates, maintains the "Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation." (GCX 2) (TR. 234-235). The

[42] *Id.* at 501-02.
[43] *Id.* at 502-03.
[44] *Webco Industries*, 337 NLRB 361, 363 (2001).
[45] *See, e.g.*, *Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 4-6 (employer's tortious-interference allegations that were based on and targeted a union's consumer boycott were preempted).
[46] *See id.*, slip op. at 6.
[47] *See Pain Relief Centers, P.A.*, 371 NLRB No. 143, slip op. at 2 (2022) (discovery requests founded on preempted claims were themselves preempted). It is therefore unnecessary to consider whether some of the employer's discovery requests would also violate Section 8(a)(1) under the framework in *Guess?, Inc*., 339 NLRB 432 (2003).

Employee Agreement, including its "Definitions of Proprietary Information" and its "Non-Disparagement; Public Profiles" sections remain in effect for Respondent's employees, and employees of Respondent's subsidiaries and affiliates. (GCX 2) (TR. 234-235).

An employer violates Section 8(a)(1) of the Act when it maintains rules or policies that would reasonably chill employees' exercise of their Section 7 rights. *See, e.g.*, *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998) enfd. mem., 203 F.3d 552 (D.C. Cir. 1999). In *Stericycle, Inc.*, the Board outlined the applicable legal standard for assessing whether work rules are unlawful under the National Labor Relations Act. 372 NLRB No. 113 (2023).

In deciding *Stericycle, Inc.*, the Board built on and revised its earlier test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). *Id.,* slip op. at 2. As in *Lutheran Heritage*, the standard in *Stericycle* requires that the General Counsel prove that the challenged rule "has a reasonable tendency to interfere with, restrain, or coerce employees who contemplate engaging in protected activity." *Id.,* slip op. at 8. Specifically, if an employee could reasonably interpret a rule to restrict or prohibit Section 7 activity, then "the rule is presumptively unlawful." *Id*., slip op. at 9. That is so "even if the rule could also reasonably be interpreted not to restrict Section 7 rights" and "even if the employer did not intend for its rule to restrict Section 7 rights." *Id*., slip op. at 9-10. The framework is an objective standard, viewing challenged rules from the perspective of a reasonable employee who is economically dependent on their employer and may interpret work rules to prohibit Section 7 activity due to being "anxious to avoid discharge or discipline" and from the perspective of "a layperson rather than as a lawyer." *Stericycle,* slip op. at 9-10. Once the General Counsel establishes a presumption that the rule is unlawful, an employer may only rebut this presumption by demonstrating that (1) the rule advances a legitimate and

substantial business interest *and* (2) the employer is unable to advance that interest with a more narrowly tailored rule. *Id.,* slip op at 10.[48]

i. Respondent's Definition of, and Restrictions Using, Proprietary Information is Unlawful

Respondent's Employee Agreement contains a "Definition of Proprietary Information" section under a Confidentiality heading, which states in relevant part, follows:

> As used herein, the term "Proprietary Information" means any and all information regarding, related to or belonging to the Company, its businesses, business relationships and financial affairs, whether oral or written, and whether or not labeled or identified as confidential or proprietary that is confidential or proprietary in nature, including without limitation:
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> …
>
> (iii) The subject matter of the Company's .... manuals .... training materials;
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> …
>
> (vi) Company's educational process and all materials related thereto;
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> …
>
> (vii) The Company's list of past, existing ..... members, partners, stockholders, and investors; and;
>
> (viii) Any other information or documents which the Company reasonably regards as being confidential. (GCX 2).

A reasonable employee reading rules (iii) and (iv) would interpret the rules to prohibit them from sharing the "Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation," several of the PowerPoint presentations discussing how Respondent was offering its programs, training concerning discipline or remedial training, compensation training, harassment

[48] The General Counsel disagrees with *Stericycle* and will urge the Board to overturn it in favor of an approach to employer work rules and handbook policies that is more aligned with congressional intent and conducive to maintaining peaceful and orderly workplaces.

training, trainings that were only available to women, and other documents that would permit employees to discuss wages, hours, and terms and conditions of employment.

A reasonable employee reading Respondent's rule (vii) prohibiting sharing "The Company's list of past, existing ..... members, partners, stockholders, and investors" would interpret this rule to prohibit the sharing the names, contact information, or other information about employees and other key-stakeholders, including partners and stockholders. A reasonable employee, as did Laura Agharkar Respondent's Vice President/Global Head of Human Resources, would interpret members in this rule to include employees, this prohibiting employees from sharing any information relating to coworkers. This rule prohibiting sharing information regarding "partners, stockholders, and investors," also prohibits an employee from seeking assistance from "partners, stockholders, and investors," or asking others to petition them for changes in working conditions.

In *G&E Real Estate Management Service, Inc., d/b/a Newmark Grubb Knight*, 369 NLRB No. 121, slip op. at 4 (2020), the Board held that an employer violated the Act by maintaining a footer stating "Confidential – For Internal Use Only" on each page of its Employee Handbook violated the Act. The Board reasoned that, "Employees would reasonably interpret the footer to prohibit sharing the employee handbook or its terms and conditions with outside parties, such as unions." *Newmark Grubb Knight Frank,* slip op. at 4.

Rule (iii) is analogous because it identifies manuals and other training materials as confidential which would include the Employee Agreement, whereas the footer in *Newmark Grubb Knight Frank*, classified the handbook as confidential. *Id*.

In *Apollo Health, Inc.* JD-53-17, the employer maintained a rule "… which prohibited employes from disclosing confidential information, defined in part as […] educational and training

materials" and "employee data or lists." The ALJ found that this rule, and the prohibition on sharing "educational materials" and "employee data or lists" was unlawful. See 2017 WL 3953407.[49]

The rule in *Apollo Health* prohibiting disclosure of "educational and training materials" is analogous to Respondent's rules (iii) and (vi) classifying Respondent's "training materials" and "Company's educational process and all materials related thereto," as proprietary and prohibiting its disclosure.

Respondent's rule (vii) classifying "The Company's list of past, existing ..... members, partners, stockholders, and investors" as confidential and restricting its disclosure is analogous to the "*Apollo Health* rule prohibiting sharing "employee data or lists. This is because a reasonable employee would understand the reference to "members" to mean employees.

Lastly, Respondent's prohibition on sharing, "Any other information or documents which the Company reasonably regards as being confidential," unlawfully restricts an employees right to share *ANY* information as an employee would have no idea what Respondent would regard as confidential. A reasonable employee reading, and wanting to comply with, this rule would have no idea what information Respondent might reasonably regard as being confidential, and the only way to comply with this rule is to treat all information as proprietary or confidential.

In *Flex Frac Logistics, LLC*, 358 NLRB 1131 (2012), enfd. 746 F.3d 205 (5th Cir. 2014), the Board found the employers rule prohibiting disclosure of "personnel information and documents" to persons "outside the organization" unlawful. The Board in *Flex Frac Logistics, LLC*, citing *Hyundai America Shipping Agency Inc*, 357 NLRB No. 80, slip op at 12 (2011) and *IRIS U.S.A., Inc.* 336 NLRB 1013, 1013 fn. 1, 1015, 1018 (2001) for the prospect that similar

[49] The Board adopted the findings and conclusions of Administrative Law Judge in the absence of exceptions.

confidentiality and nondisclosure rules prohibiting disclosing "personnel information and documents" was unlawful. *Flex Frac Logistics, LLC* at 1131.

The confidentiality rules at issue here are similarly broad and they preclude employees from disclosing manuals, training materials, education processes and materials related thereto, all of which are likely to include provisions, rules, and policies affecting employees' terms and conditions of employment. The rule also requires that employees keep the names of members (or employees) confidential which would preclude employees from effectively discussing organizing with a union.

Respondent's policies do not contain any language carving out exceptions for activities protected by Section 7 of the Act or assuring that employees are free to engage in protected concerted activity despite the rule, thus creating ambiguity in the rules. Any ambiguity in the rule must be construed against the employer who promulgated and drafted it. *Norris I O'Bannon,* 307 NLRB 1236, 1245 (1992).

Accordingly, Respondent's "Definitions of Proprietary Information" as described above has a reasonable tendency to chill employees Section 7 activities. Further, Respondent is unable to show that 1) the rule(s) advance a legitimate and substantial business interest *and* (2) the employer is unable to advance that interest with a more narrowly tailored rule. *Stericycle,* slip op. at 9-10.

Agharkar testified that the rules in question encompass materials that are not proprietary or confidential. Agharkar testified vaguely of Respondent's "secret sauce" that distinguishes then from competitors, but did not testify that those secrets were kept in Respondent's manuals, training materials, educational processes or materials related thereto. Respondent also offered no business justification for classifying past and existing, "members, partners, stockholders, and investors" as

proprietary or confidential. Respondent cannot establish that it has a legitimate business justification for rules (vii) or (viii) and is unable to establish that it could not advance its legitimate business justification for rules (iii) and (vi) with a more narrowly tailored rule. Accordingly, the aforementioned rules are unlawful under the test set forth by the Board in *Stericycle.*[50]

ii. ***Respondent's Non-Disparagement; Public Profiles Rules Unlawfully Restrict Section 7 Rights***

Respondent also maintains a rule in its "Non-Disparagement; Public Profiles" section which states, in relevant part, as follows:

> Employee acknowledges and agrees that the professional reputation of the Company is an important asset that should not be impaired by Employee, either during or after employment ceases or terminates for any reason. Employee therefore agrees to not, either directly or indirectly, make any oral or written statement to any third party or person that disparages, ... or reflects negatively on the Company, the Company's business or operations, or the Company's partners, officers, employees, or management. Employee further agrees not to act in a manner that denigrates, demeans, or reflects negatively on the Company, its owners, employees or management, the Company's business, operations, ... or the Company's financial condition.....

This rule prohibits employees from speaking negatively about Respondent's "business or operations," as well as Respondent's "partners, officers, employees, or management," as well as Respondent including, "its owners, employees or management," and "financial condition" to any person or third party. This rule, on its face, prohibited Richardson from making comments which even reflect negatively on Respondent, even though the comments were true and accurate.

Although vacated by the Supreme Court, the Board's decision in *Costco Wholesale Corp,* 358 NLRB 1100, 1100 (2012) is instructive. In that case, the Board overturned the ALJ and held that the following rule violated the Act, "Employees should be aware that statements posted

[50] The Definitions of Proprietary Information rules would also be unlawful if analyzed under *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) as an employee would reasonably construe these rules to prohibit them from engaging in protected concerted activity as described above,

electronically (such as [to]online message boards or discussion groups) that damage the Company, defame any individual or damage any person's reputation, or violate the policies outlined in the Costco Employee Agreement, may be subject to discipline, up to and including termination of employment." 358 NLRB 1100, 1100 (2012). The Board reasoned that:

> However, by its terms, the broad prohibition against making statements that 'damage the Company, defame any individual or damage any person's reputation' clearly encompasses concerted communications protesting the Respondent's treatment of its employees. Indeed, there is nothing in the rule that even arguably suggests that protected communications are excluded from the broad parameters of the rule. In these circumstances, employees would reasonably conclude that the rule requires them to refrain from engaging in certain protected communications (i.e., those that are critical of the Respondent or its agents). See *Southern Maryland Hospital*, 293 NLRB 1209, 1222 (1989), enfd. in relevant part 916 F.2d 932, 940 (4th Cir. 1990) (rule prohibiting "derogatory attacks on . . . hospital representative[s]" found unlawful); *Claremont Resort & Spa*, 344 NLRB 832 (2005) (rule prohibiting "negative conversations about associates and/or managers" found unlawful); *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 348 (2000), enfd. 297 F.3d 468 (6th Cir. 2002) (rule that prohibited "[m]aking false or misleading work-related statements concerning the company, the facility or fellow associates" found unlawful)." 358 NLRB 1100, 1101 (2014).

Respondent offered no legitimate and substantial business interest for this rule, other than that stated in the rule, which his to protect Respondent's reputation, which is not unique to Respondent.

Accordingly, Counsel for the General Counsel respectfully requests that the ALJ find that the Definitions of Proprietary Information section and Non-Disparagement; Public Profiles section of Respondent's Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation Agreement is overboard in violation of Section 8(a)(1) and are unlawful under *Stericycle,* and Respondent is unable to meet its burden that the rules Respondent cannot achieve its legitimate and substantial business interest with a more narrowly tailored rule.

IV. Conclusion

Accordingly, Counsel for the General Counsel respectfully submits that the Administrative Law Judge should find that Respondent violated Sections 8(a)(1) of the Act in all respects alleged in the Amended Complaint. Counsel for the General Counsel seeks a Board Order requiring that Respondent cease and desist from engaging in unlawful conduct, post a Notice to employees in English and other languages if the Regional Director determines it is appropriate to do so, text the Notice to employees employed by Respondent, or employed by Respondent's subsidiaries and affiliates that are subject to the rules identified in paragraph 4 of the Amended Complaint and Notice of Hearing, since April 26, 2023, and mail the Notice to the last known address of any employees who were employed by Respondent at any time after April 26, 2023, or employed by Respondent's subsidiaries and affiliates that are subject to the rules identified in paragraph 4 of the Amended Complaint and Notice of Hearing, including employees who are no longer employed by Respondent. Furthermore, the General Counsel seeks an Order requiring Respondent reinstate John D. Richardson to his former job or, if that job no longer exists, to a substantially equivalent position with the unreduced wage rate; make John D. Richardson whole by paying backpay and money he was not paid when his wage rate was unlawfully reduced, in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). General Counsel further seeks an Order requiring Respondent to compensate John D. Richardson for all direct or foreseeable pecuniary harms suffered as a result of the Respondent's unfair labor practice *Thryv, Inc.*, 372 NLRB No. 22 (N.L.R.B. December 13, 2022).

Counsel for the General Counsel seeks a Board Order requiring Respondent, and Respondent's subsidiaries and affiliates that are subject to the rules identified in paragraph 4 of

the Amended Complaint and Notice of Hearing, to rescind, or lawfully revise, the unlawful rules in its Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation, and to disseminate the lawful agreement to all employees who were subject to the unlawful Employee Agreement.

Counsel for the General Counsel also requests that the Administrative Law Judge order any other relief deemed just and proper to effectuate the purposes of the Act.

Dated: July 8, 2026.

Respectfully submitted,

/s/ Steven Barclay

Steven Barclay, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 12
Email: steven.barclay@nlrb.gov

ATTACHMENT

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

YOU HAVE THE RIGHT to discuss your wages, hours of work, and other terms and conditions of employment with coworkers and other persons and **WE WILL NOT** require you to keep such matters confidential or do anything else to interfere with your exercise of that right.

WE WILL NOT threaten you with reprisals for engaging in concerted activities about terms and conditions of employment for employees' mutual aid or protection.

WE WILL NOT direct you to remove protected concerted social media messages or state that such messages are false, derogatory, disparaging, or defamatory.

WE WILL NOT require you to keep ongoing investigations of employee conduct confidential without making it clear that confidentiality is not required after the investigation is completed.

WE WILL NOT require you to keep an ongoing investigation of employee conduct confidential during the investigation unless our business justification for confidentiality to maintain the integrity of the investigation outweighs employees' right to communicate about the investigation for their mutual aid or protection.

WE WILL NOT discharge you or otherwise discriminate against you because you exercise your right to communicate with coworkers about terms and conditions of employment.

WE WILL NOT file, maintain, or pursue a lawsuit against you because you engage in concerted activities for the purpose of mutual aid or protection of employees, or because the lawsuit was objectively baseless.

WE WILL NOT coercively interrogate you about the protected concerted activities of yourself or other employees by serving you with interrogatories or requests for production in connection with an objectively baseless lawsuit.

WE WILL NOT maintain or enforce any rule, policy, or agreement prohibiting employees from making any statement that disparages or reflects negatively on our company, our company's business, operations, partners, officers, employees, or management, or prohibiting employees from acting in a manner that denigrates, demeans, or reflects negatively on our company, its owners, employees or management, business, or operations.

WE WILL NOT maintain or enforce any rule, policy, or agreement defining the following information as confidential information or prohibiting the disclosure of the following information:

- Any or all information regarding, relating to, or belonging to our company, its businesses,
- or business relationships.
- The subject matter of our company's manuals and/or training materials.
- Our company's educational processes and all materials related thereto.
- Our company's lists of past or existing members and/or partners.
- Any other information or documents which our company reasonably regards as being
- confidential.

WE WILL NOT in any like or related manner interfere with, coerce, or restrain you in the exercise of your rights protected under Section 7 of the National Labor Relations Act.

WE WILL, within 14 days of the approval of this Settlement Agreement, remove from our files any references to the discharge of John Richardson, and **WE WILL,** within 3 days thereafter, notify him in writing that this has been done, and that the discharge will not be used against him in any way.

WE WILL, within 14 days of the approval of this Settlement Agreement, offer John Richardson immediate and full reinstatement to his former job without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL make whole John Richardson for the wages and other benefits lost and direct and foreseeable pecuniary losses suffered because we discharged him on September 1, 2023, plus interest, and **WE WILL** also make him whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days of the approval of this Settlement Agreement, compensate John Richardson for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL,** within 21 days of the approval of this Settlement Agreement, file with the Regional Director for Region 12 a report allocating his backpay award to the appropriate calendar year(s) and a copy of his corresponding W-2 form reflecting the backpay award.

WE HAVE withdrawn the lawsuit we filed against John Richardson in Case No.: 2023CA003786; and **WE WILL** reimburse John Richardson for attorneys fees he has incurred in defending this lawsuit.

WE WILL revise all versions of our Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation to which employees in the United States and its territories have been parties and that have been in effect at any time since March 7, 2023, so those agreements are consistent with the above provisions of this Notice, and **WE WILL** mail copies of the revised agreements to all affected current and former employees, including our employees and the employees of our subsidiaries and affiliates, who have been subject to such agreements.

APEX FINTECH SERVICES LLC

_____
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Callers who are deaf or hard of hearing who wish to speak to an NLRB representative should send an email to relay.service@nlrb.gov. An NLRB representative will email the requestor with instructions on how to schedule a relay service call.

National Labor Relations Board, Region 12
201 E Kennedy Blvd Ste 530
Tampa, FL 33602-5824

Telephone: (813) 228-2641
Hours of Operation: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Counsel for the General Counsel's Post-Hearing Brief to the Administrative Law Judge, was served on July 8, 2026, as follows:

By electronic filing:

National Labor Relations Board
Hon. Arthur J. Amchan
Division of Judges
1015 Half Street SE
Washington, D.C. 20570-0001

By electronic mail to:

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/s/ Steven Barclay
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