UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

AMERICAN AUTOMOBILE ASSOCIATION OF NORTHERN CALIFORNIA, NEVADA & UTAH	**Cases 32-CA-312204** **32-CA-329821** **32-CA-329859** **32-CA-329863** **32-CA-334794**

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 665

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

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I. STATEMENT OF THE CASE[1]

This matter is before Administrative Law Judge Mara-Louise Anzalone upon charges filed by the International Brotherhood of Teamsters Local 665 (the Union), two complaints dated February 27, 2025 (32-CA-334794) and August 28, 2025 (32-CA-312204), and two consolidated complaints dated March 5, 2025 (32-CA-329859, 32-CA-329863) and May 9, 2025 (32-CA-329821, 32-CA-334794) (collectively referred to as Complaint) issued against American Automobile Association of Northern California, Nevada & Utah ("Respondent" or "AAA").[2] The Complaint alleges that Respondent has engaged in unfair labor practices within the meaning of Sections 8(a)(1), (3), (4) and (5) of the National Labor Relations Act, as amended, 29 U.S.C §151 et. seq. (the Act).

Specifically, as alleged in the Complaint, Respondent terminated four longtime bargaining unit insurance sales agents Richard Fajilan, Clinton Ward, Celia Solorio, and Lielonnie Lewis in retaliation for their Union activities. In the same vein, Respondent terminated *three* of the four discriminatees in retaliation for their participation in Board investigations and/or proceedings. Additionally, the Complaint alleges that Respondent unilaterally changed its sales metrics without notice or bargaining with the Union, and Respondent imposed such performance requirements under the threat of disciplinary action. Lastly, the Complaint alleges that Respondent failed and refused to provide necessary and relevant information to the Union on two separate occasions.

In sum, the Complaint alleges and the record reflects that Respondent consistently refuses to comply with its obligations under the Act and continues to engage in a pattern of discriminating

[1] References herein to the official transcript are "Tr." and references to the General Counsel's, Joint, and Respondent's Exhibits are "GC Exh.," "Jt. Exh.," and "R. Exh.," respectively. Reference to transcripts that were incorporated into the record via administrative notice will be referred to by GC Exhibit number in the present case, followed by a citation to the operative transcript.

[2] See generally GC Exh 1(o) (February 27, 2025 Complaint), 1(q) (March 5, 2025 Order Consolidating and Consolidated Complaint), 1(u) (May 9, 2025 Order Consolidating and Complaint), and 1(x) (August 28, 2025 Order Consolidating and Consolidated Complaint).

against employees who engage in union and other protected activities. Counsel for the General Counsel respectfully requests that Your Honor find that Respondent repeatedly violated the Act as alleged, and order Respondent to reinstate and make-whole Richard Fajilan, Clinton Ward, Celia Solorio, and Lielonnie Lewis, rescind its unlawful unilateral change to sales agent minimum production requirements, require production of information that Respondent refused to produce to the Union pursuant to two requests for information, and to order any other relief in order to adequately remedy Respondent's conduct and to hold Respondent to account for its brazen disregard for its most basic obligations as an Employer under the Act.

II. ISSUES PRESENTED

1. Whether Respondent violated Section 8(a)(1) and 8(a)(3) of the Act by terminating Newark Branch bargaining unit employee Richard Fajilan on December 8, 2022 because Fajilan joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities Cpt. ¶ 7 (32-CA-312204).

2. Whether Respondent violated Section 8(a)(1), 8(a)(3), and 8(a)(4) of the Act by terminating Menlo Park Branch bargaining unit employee Clinton Ward on November 3, 2023 because Ward joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because Ward cooperated in a Board investigation in Case 32-CA-322876, about August 2023, which a Consolidated Complaint was thereafter issued against Respondent in Case 32-CA-321155, et al. Cpt. ¶ 7 (32-CA-329863).

3. Whether Respondent violated Section 8(a)(1), 8(a)(3), and 8(a)(4) of the Act by terminating Daly City Branch bargaining unit employee Celia Solorio on November 3, 2023 because Solorio joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because Solorio cooperated in a Board investigation in Case 32-

CA-322876, about August 2023, about which a Consolidated Complaint was thereafter issued against Respondent in Case 32-CA-321155, et al. Cpt. ¶ 9 (32-CA-329863).

4. Whether Respondent violated Section 8(a)(1), 8(a)(3), and 8(a)(4) of the Act by terminating Berkeley Branch bargaining unit employee Lielonnie Lewis on November 7, 2023 because Lewis joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities, and because Lewis was named in unfair labor practice charge in Case 32-CA-292625 and is a named discriminatee in a Consolidated Complaint issued in Case 32-CA-280838, et al. Cpt. ¶ 13, against Respondent. Cpt. ¶ 11 (32-CA-329859).

5. Whether Respondent violated Section 8(a)(1) and 8(a)(5) of the Act by instituting minimum production goals or requirements subjecting Unit employees to discipline, up to and including termination, for failures to meet the minimum production requirements, and did so without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct and/or without first bargaining with the Union to an overall good faith impasse for an initial collective-bargaining agreement. Cpt. ¶¶ 8, 10 (32-CA-312204).

6. Whether Respondent violated Section 8(a)(1) and 8(a)(5) of the Act by failing and refusing to furnish the Union with information the Union requested that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit. Cpt. ¶¶ 7-9 (32-CA-329821 and 32-CA-334794).

III. FACTUAL BACKGROUND

A. Overview of Respondent's Operations and Pertinent Historical Practices

American Automobile Association of Northern California, Nevada, and Utah (AAA or Respondent) is a California membership-based, non-profit corporation that sells insurance policies

and provides additional roadside and vehicular services to its customers.[3] In Northern California, Respondent presently operates out of over 70 Branch offices where Respondent employs bargaining unit insurance agents and non-bargaining unit frontline employees who work in the following regions: Central California, East Bay, Sacramento, Northern California, and Golden Gate. GC. Exh. 77. Branch offices are typically managed by branch managers, branch directors, senior branch directors, and assistant branch managers all of which typically report to Regional Vice Presidents—all of whom are statutory supervisors. GC Exh. 74.

B. Overview of Union Organizing Efforts at Respondent's Branches

In early February 2021, insurance sales agents from Respondent's Northern California Offices (Branches) commenced an organizing campaign seeking Union representation. On March 24, 2021, the Union filed a petition to have a Board-conducted representation election to determine if agents desired union representation. On June 11, 2021, Respondent's insurance agents overwhelmingly selected the Union as their representative, and on June 22, 2021, the Union was certified as the exclusive collective-bargaining representative of Respondent's insurance agents; a corrected Certification of Representative issued on June 29, 2021.[4] GC Exh. 77. There were approximately 478-unit employees in June of 2021. Tr. 251.

3 Respondent only provides insurance products to its members. Therefore, insurance sales agents sell both the requisite memberships that provide access to vehicular roadside assistance, such as towing and DMV services, as well as insurance policies. Customers and members are used interchangeably throughout this brief.

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

C. AAA I and *AAA II*: Relevant Procedural History

Respondent's conduct following the Union's certification in June of 2021 through May 2022 was litigated in a preceding case involving 50 dates of hearing, referred to hereinafter as *AAA I*,[5] before Associate Chief Administrative Law Judge Lisa Ross. Jt. Exh. 4. *AAA I* involved, *inter alia*, terminations of five insurance agents, and numerous unilateral changes made while Respondent was bargaining with the Union for a first contract. Further, Respondent's conduct during first contact bargaining, unlawful declaration of impasse, unilateral changes, and coercive statements to unit employees were litigated in *AAA II* before Associate Chief Administrative Law Judge Mara-Louise Anzalone.[6] Pertinent record evidence in *AAA I* and/or *AAA II* including relevant witness testimony and documentary exhibits, are used as substantive evidence below.[7]

IV. ARGUMENT

A. Respondent Violated Sections 8(a)(3) of the Act by Terminating Longtime Employees Clinton Ward, Celia Solorio, Lielonnie Lewis, and Richard Fajilan.[8]

1. Overview of Applicable Legal Framework

The Complaint alleges that Respondent terminated four known Union supporters in the period after the Union was certified as the employees' exclusive collective-bargaining representative, in violation of 8(a)(3) of the Act. As discussed below, the terminations of employees Richard Fajilan, Clinton Ward, Celia Solorio, and Lielonnie Lewis, are unlawful under the traditional burden-shifting framework set out in *Wright Line,* 251 NLRB 1083 (1980), enfd. 662

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[5] *AAA I* involved the following cases: 32-CA-280838, 32-CA-282213, 32-CA-284409, 20-CA-284659, 20-CA-284664, 32-CA-285247, 32-CA-291041, 32-CA-291138, 32-CA-292625, 32-CA-294216, 32-CA-294816, 32-CA-295908, 32-CA-296162, 32-CA-301979, and 32-CA-317752. After the retirement of Judge Ross and reassignment of AAA-I to ALJ Arthur Amchan, ALJ Amchan issued his decision about March 4, 2026. All parties' exceptions and cross-exceptions in AAA-I have been completed and filed with the Board as of the September 1, 2026 date of the instant brief.

[6] *AAA II* involved the following cases: 32-CA-321155, 32-CA-322818, 32-CA-322876, 32-CA-323291, 32-CA-331273, and 32-CA-336921.

[7] Any references to the *AAA I* or *AAA II* records will be referred to by the Exhibit number in *this* instant AAA III proceeding.

[8] Ward, Solorio, and Lewis' terminations also were unlawful under Section 8(a)(4) of the Act.

F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Trans. Mgmt. Corp.,* 462 U.S. 393 (1983).

Under that framework, the General Counsel must prove by a preponderance of the evidence that an employee's concerted activity was a motivating factor for the employer's decision. The elements required to support such a showing are: (1) the employee engaged in union or protected concerted activity, (2) the employer was aware of that activity, and (3) union animus was a substantial or motivating reason for the employer's action. See, e.g., *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009). The General Counsel may establish the employer's unlawful motivation by proof of direct evidence or by drawing inferences from circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services, LLC*, 343 NLRB 1183, 1184 (2004), enfd. 184 Fed.Appx. 476 (6th Cir. 2006); *West Maui Resort Partners d/b/a Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003). Direct evidence of an anti-union motive in discharge cases is rare, and for that reason, reliance on circumstantial evidence and reasonable inferences derived therefrom is appropriate and often necessary. *Guardian Automotive Trim*, 340 NLRB 475, 482 (2003); *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 229 (D.C. Cir. 1995). Circumstantial evidence of discriminatory motive may include, among other factors, contemporaneous unfair labor practices; statements and actions showing the employer's general and specific animus; the timing of the action in relation to the union or other protected conduct; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. See *Intertape Polymer Corp.*, 372 NLRB 133 (2023), enfd. No. 23-1831, 2024 WL 2764160 (6th Cir. 2024); *Safety System, LLC*, 370 NLRB No. 90, slip op. at 1 (2021). A discriminatory motive

may be inferred when pretext is established, but such an inference is not compelled. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019).

Once the General Counsel makes an initial showing that the employee's protected activity was a motivating factor in the employer's decision, the burden of persuasion shifts to the employer to demonstrate by a preponderance of evidence that it would have taken the same action even in the absence of the protected activity. See *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 26-27 (2018). In meeting its burden, an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have been taken even in the absence of the protected activity. *Rock Valley Trucking Co.*, 350 NLRB 69, 70 fn. 8 (2007) (citations omitted) (citing *W.F. Bolin.*, 311 NLRB 1118, 1119 (1993)). Furthermore, if an employer does not assert any business reason, other than one found to be pretextual by the judge, then the employer has not shown that it would have fired the employee for a lawful, nondiscriminatory reason. *T&J Container Systems, Inc. d/b/a T&J Trucking Co.*, 316 NLRB 771 (1995), citing *Aero Metal Forms, Inc.*, 310 NLRB 397, 399 fn. 14 (1993).

2. Respondent's Work Rules and Sales Tactics: Overview of Pertinent Guidelines and Respondent's Inconsistent Enforcement

Respondent has an Employer Handbook that employees are required to review, acknowledge, and sign off on having reviewed. See e.g., R. Exh. 64-65. The handbook outlines various rules and consequences for employees who do not comply with its terms. Respondent's employee handbook makes clear that coaching, PIPs, and DAFs are corrective, disciplinary actions that could result in termination. GC Exh. 75 p. 18 (Respondent handbook provides that when team member's work performance or behavior falls below company standards, the company may take disciplinary action. Respondent further states that discipline may include but is not limited to coaching, PIP, DAF, suspension, or termination.)(emphasis added).

In addition to the handbook, Respondent has Life Insurance and Property and Casualty (P&C) insurance compensation plans. Respondent's compensation plans are comprehensive documents that outline the agents' entire compensation including rate of renewal commissions, base salary, and compensation for selling other Respondent products. GC Exh. 54 at 5-6. In addition, the compensation plans define ethical responsibilities of agents and Respondent's ownership of insurance products. *Id.* The compensation plans include substantive terms and conditions of employment, and regulate day-to-day obligations of agents. Respondent has cited and relied upon both the compensation plans and employee handbook as bases for the termination and/or discipline of Richard Fajilan, Clinton Ward, Celia Solorio, and Lielonnie Lewis.

In addition to the handbook and compensation plans, Respondent required employees to adhere to its underwriting guidelines.[9] Within the last 10 years, these underwriting guidelines were available electronically via Respondent's Insurance Knowledge Center (IKC). See GC Exh. 97; GC Exh. 98; Tr. 1002-1003. The IKC provides guidelines on certain subject matters wherein agents can click a drop-down button to ascertain the present, operative guideline. There is no way for an agent using IKC to see if and when guidelines were changed on the IKC. See e.g., Tr. 1122-1123. Before the advent of the electronic IKC, Respondent utilized physical three-ring binders and paper copies of underwriting guidelines. Tr. 872-875; Tr. 759. When physical binders were used, agents would receive updates via physical paper copy and were required to supplement their binder with the latest underwriting update. Id. An issue with the electronic IKC, however, is that there is no archive available to show if there was a change to certain underwriting guidelines. Tr. 873. Not only is there no longer any historical documentation of past guidelines that agents strictly adhered to, but agents were not even required to sign off or otherwise acknowledge new guidelines that

[9] Respondent is bound by the California State Automobile Association's (CSAA) underwriting guidelines.

were updated or announced on the IKC. Tr. 1347. For longtime employees like Ward, Solorio and Alfredo Torres, underwriting guidelines changed numerous times over their employment, but Respondent's electronic IKC does not necessarily reflect certain contrary instruction that they once received.[10]

3. Guidance and Other Sales Tactics That Conflict with Respondent's Written Rules

While Respondent attempts to paint a picture of an Employer who stringently adheres to all of its written rules, the record reveals the opposite. In addition to written rules, Respondent's Branch Management communicated various guidance to employees that sometimes conflicted with various written policies and rules in the Handbook and/or Compensation Plans that Respondent now seeks to enforce against Ward, Solorio, Lewis, and Fajilan.

Current Watsonville Insurance Agent Alfredo Torres testified about a new agent sales training conducted by Keith Whitbeck[11] about September 2006 at Respondent's Menlo Park Branch.[12] Tr. 1389, 1395. Whitbeck trained agents to give clients years of driving experience back to their sixteenth birthday and that they should not worry about it because if they do not provide the credit back to age sixteen someone else will. Tr. 1394.[13] On a different occasion about 2017 or 2018, Vice President Rick Lopez convened a meeting in either Merced or Modesto with sales agents. Tr. 1396. During this meeting, Lopez provided his sales philosophy for agents to sell more and not ask so many questions of customers. Id. Lopez stated that "the number one question we need to ask was, is it cash, check, or credit card?" Id.

[10] Alfredo Torres testified that age first licensed is not something that would even be included in the IKC or underwriting guidelines nor was it something that agents would look up. Tr. 1123.

[11] Motion to Amend the Complaint to allege Keith Whitback as a 2(11) supervisor and/or 2(13) agent granted. Tr. 1392.

[12] See GC Exh. 170-176, 180-181, 184 (documents from employee Alfredo Torres' sales training from the early-to-mid 2000s. None of the documented training materials is inconsistent with any General Counsel witness testimony).

[13] Torres understood that "someone else will" referred to both another agent and/or another insurance company. Tr. 1394.

Additionally, Fajilan contacted his Former Branch manager (and current regional Vice President) Tonya Pierce about his observation about practices occurring in the branch that he considered to be reckless and inconsistent with underwriting guidelines including manipulating driving records. Tr. 278-279. Pierce shut down this honest inquiry, instead telling Fajilan that he should be doing what other agents are doing. Tr. 280-281.

4. Respondent Utilizes Biased and Intimidating Investigatory Tactics to Unlawfully Terminate Unit Employees

Respondent utilized a similar investigation process with each of the discriminatees. All of the discriminatees were investigated following a complaint lodged with Respondent's Ethics Hotline—a place for managers or employees to complain about colleagues anonymously or not. Respondent Investigator Chris Jones testified that when he is tasked with investigating an agent pursuant to a hotline report, he requests that Respondent's internal auditing team review at least three months of policies that the agent under investigation wrote—yet Jones could not recall if he uses an audit in every situation. Tr. 1963. Jones also said that he looks for other "related" policy violations when requesting an audit even if there was no such complaint about the "related" issue included in the underlying ethics hotline complaint. Tr. 1804. For example, Jones said that if he receives a complaint about an agent falsifying years' driving experience or age first licensed, he also requests an audit be done to see if there were any instances of annual mileage manipulation. Id. In other words, Jones casts his net wide to make sure that *some* policy violation is revealed during his investigation.

There is also evidence that the scope of Respondent's investigations can depend on the pro-Union or anti-Union views of the employee under investigation. For example, Jones admitted that he conducted no personal interview with Fresno Fig Garden branch agent Patty Rocha, a known anti-union agent who Respondent knew had championed an unsuccessful effort to decertify the

Union. Tr. 1967; GC Exh. 202-206. Jones conceded on the stand that he simply reviewed an audit and talked to Rocha's manager at the Fresno Fig Garden branch who informed the investigators of her perception that Rocha was being targeted by pro-Union employees. Id. Rather than dig deep as Respondent did with the discriminatees in the instant case, Jones seemingly took the manager's work for it that any complaint against Rocha was a petty vendetta and Respondent's investigation stopped in its tracks.

Respondent admits to a cursory review of some of the policies selected for investigation. The record indicates that investigators sometimes, but not always, review recorded phone conversations related to a specific policy. See e.g., GC Exh. 208. However, exclusive reliance upon this tactic fails to account for the myriad of ways in which an agent could obtain information that is properly included in a quote but which are derived from sources outside of the recorded phone conversation: e.g., the information could be included from something the prospective client input themselves online, from an in-person interaction, by email, via an existing customer referral, call center referral, or could be obtained from some other non-recorded communication. Tr. 1273-1277; Tr. 1116-1117. For example, Celia Solorio testified that all of the aforementioned examples are ways in which she receives information that is used when she is quoting insurance policies. Tr. 1273-1277. In addition, record evidence revealed that Investigator Jones did not utilize any neutral outside translation service when reviewing Solorio's calls made in another language, but instead referred the calls to Capitola Branch Manager Chucky DeLuna for translation because Investigator Tito Medeiros told him to.[14] Tr. 1969. In another instance, despite Jones admitting that he does not

[14] DeLuna is hardly a neutral translator and in fact was a named wrongdoer responsible for terminating Capitola branch Union-supporter Yasmin Weston as alleged in *AAA I* 32-CA-280383 et al.

speak Spanish, he listened to recorded calls in Spanish and attempted to listen for "key words" even though Respondent has a translation company that it utilizes. Tr. 1968, 1970.[15]

To the extent that investigators attempt to verify information via comparing policy information with another report such as a Motor Vehicle Report (MVR) prepared by the Department of Motor Vehicles (DMV), the MVR has its own limitations and is not infallible. The MVR shows the date that a license is issued in California, but there may be reasons why MVR information might not paint a full or accurate picture. Tr. 1280. For example, a new license issued date would show up if a driver changed their name, lost their license, or renewed their license. Id. The MVR importantly has no information about licensure in other jurisdictions outside of California—a key component of the instant Complaint as it relates to crediting driving experience obtained outside of California and/or the United States in which proving such experience through documentation was difficult for some customers. See e.g., Tr. 1280; Tr. 763-764.

As for the investigation itself, Respondent intentionally utilizes a "trial by ambush" approach—refusing to inform agents under investigation, or their Union representatives, about the subject matter of the investigation. The subject of the interview is not revealed until after the agent has already sat down and started answering general questions—leaving them totally blindsided and unable to adequately prepare themselves before sitting down for the investigatory interview. Tr. 905, 908-09; 1260-1263; 332-333; 199, 205, 208. Respondent also utilizes a two-part interview process. Tr. 1897, 2927-2928. The first part of the interview is considered the "verbal part" of the interview in which the investigator asks the agent a series of questions, sometimes over 100 questions, about general understandings of Respondent's guidelines and then about specific policy-related questions. After the agent provides their verbal response to each question, Respondent

[15] Jones admitted that, as of at least the day he testified, he no longer uses managers for translation anymore. Tr. 1970

requires the agent to answer the exact questions in writing to ensure "consistency." Tr. 2928. Respondent's process generates more opportunities for inconsistencies that are later used against agents.

Respondent then uses the written answers as a final opportunity to trap employees into providing a different, written explanation as compared to the verbal answer provided earlier in the interview or even the investigator's own notes of the verbal answer. Respondent explicitly told Fajilan, for example, that his attempts to provide additional context or correct a previous statement made during the verbal interview would be treated by Respondent as him changing his answer or as otherwise providing an inconsistent answer. Tr. 213-214, 265.

While Respondent ordinarily concludes the investigatory interview by perfunctorily informing the target employee that they may provide supplemental information to the investigator if they wish, the offer is not particularly meaningful. Because most agents are placed on investigative leave at the conclusion of the interview if they are not already, Respondent has already taken or quickly takes away the target's access to their work computer immediately after the conclusion of the interview—rendering it nearly impossible for the agent to attempt to locate, gather, or look for any information that is relevant to the investigation and that could aid in their defense. Moreover, even when the target does provide Respondent with additional information after the investigatory interview, Respondent generally does not follow up or attempt to verify such information. Tr. 1974-1976. For example, both Ward and Solorio provided supplemental information to Investigator Jones that he did not follow up on and may even have ignored. Solorio provided names of corroborative witnesses who could recall the instruction that she and Ward were being investigated for, but Jones admitted on the stand that he did not follow up with any of the

witnesses or information provided to him, and his Executive Summary Finding Report (ESFR) confirms the same. Tr. 1974, 1976; GC Exh. 138, 193.

Respondent's aforementioned investigatory practices intentionally stack the deck against unit employees and do not constitute meaningful or fair investigations. Respondent's entire system of utilizing secret "ethics" complaints, which then go through a sham investigation where Respondent exercises unfettered discretion as to how deeply or shallowly it digs, is intended to shield Respondent from liability when it engages in unlawful personnel actions.

5. Evidence of Anti-Union Animus Relevant to all Discriminatees

Circumstantial evidence of discriminatory motive may include, among other factors, contemporaneous unfair labor practices; statements and actions showing the employer's general and specific animus; departures from past practices; and disparate treatment of the employee. See *Intertape Polymer Corp.*, 372 NLRB 133 (2023), enfd. No. 23-1831, 2024 WL 2764160 (6th Cir. 2024); *Safety System, LLC*, 370 NLRB No. 90, slip op. at 1 (2021). Motivation is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole. *Intertape Polymer Corp.*, supra. Where the evidence on the record as a whole supports a reasonable inference that protected activity was a motivating factor in a challenged employment action, the General Counsel need not produce separate or additional evidence of particularized animus toward an employee's own protected activity. Id.

Here, the direct and circumstantial evidence of animus in this case is substantial, including the other contemporaneous unfair labor practices, anti-Union statements made by Respondent managers, and Respondent's disparate treatment of Fajilan, Ward, Solorio, and Lewis and departure from past practice.

i. Contemporaneous Unfair Labor Practices that Demonstrate Respondent's Unrelenting Union Animus.

Conduct that exhibits animus but that is not independently alleged or found to violate the Act may nevertheless be used to shed light on the motive for other conduct that is alleged to be unlawful including contemporaneous unfair labor practices by an employer. *Bates Paving & Sealing, Inc.*, 364 NLRB No. 46, slip op. at 3 (2016) (contemporaneous unfair labor practices evidence of animus); *Lucky Cab Co.*, 360 NLRB 271, 274 (2014).

At the time of Fajilan' s investigation and termination in September and October of 2022, the Union had already filed numerous charges against Respondent. The first complaint in *AAA I* (32-CA-280838) was issued on June 6, 2022. Subsequent charges were filed and an order consolidating cases and another notice of hearing were issued on October 3, 2022. The ULPs alleged and already committed at that time were not minor or isolated; they included various unilateral changes and unlawful terminations. In the months preceding Ward, Solorio, and Lewis' investigations and terminations in the fall of 2023, Respondent had unlawfully declared overall impasse, imposed its Last Best Final Offer (LBFO) at all branches, unlawfully made no less than a dozen unilateral changes to various terms and conditions of employment, and made unlawful statements to unit employees including Ward and Solorio as alleged in AAA II 32-CA-321155. The underlying charges in the instant case were filed in July and August of 2023 and initial complaints were issued against Respondent in August 2023 and October of 2023.

The General Counsel submits that the contemporaneous ULPs committed at the time of the underlying adverse actions against Fajilan, Ward, Solorio, and Lewis should be considered as circumstantial evidence of Respondent's discriminatory motivation. See *Intertape Polymer Corp.*, 372 NLRB 133 (2023).

ii Statements that Demonstrate Respondent's Antiunion Animus

A. Alleged 8(a)(1) in *AAA II* (32-CA-321155) Demonstrate Anti-Union Animus

Conduct that exhibits animus but that is not independently alleged or found to violate the Act may nevertheless be used to shed light on the motive for other conduct that is alleged to be unlawful. *Kanawha Stone Co., Inc.*, 334 NLRB 235, 235 fn. 2 (2001) (citing *Meritor Automotive, Inc.*, 328 NLRB 813, 813 n. 4 (1999)) (disavowing judge's suggestion that because there is no evidence establishing an independent violation of Sec. 8(a)(1), there can be no direct evidence of anti-union animus). It is also well-established that unalleged and time-barred coercive statements can be properly considered as evidence of anti-union animus in connection with timely allegations. *DH Long Point Mgt. LLC*, 369 NLRB No. 18, slip op. at 13 n. 37 (2020); *Mammoth Coal Co.*, 354 NLRB No. 83, slip op. at 19 fn. 27 (2009); *Stoody Co.*, 312 NLRB 1175, 1182 (1993).

As alleged and fully litigated in *AAA II* (32-CA-31255), both before and after Respondent unlawfully implemented its LBFO, Respondent made it known to unit agents that the Union, rather than Respondent, was to blame for the devastating and uniformly negative changes to their working conditions. For example, a few days before August 1, 2023, in anticipation of Respondent imposing its LBFO, Assistant Manager Marbella Salas approached Unit employee Clinton Ward in the Menlo Park Branch and said to him that "you guys are not AAA employees anymore. You are Teamsters. Can you believe this?" GC Exh. 60 at Tr. 1196-97.; 32-CA-321155 Cpt. ¶ 7(a). Salas' divisive remark conveyed that a person cannot simultaneously be both a Respondent employee and a Union member and that one instead must choose sides. On August 17, 2023, Ward followed up with Assistant Branch Manager Salas to clarify what she meant by the statement that the agents were not AAA employees but were Teamsters. Id. at Tr. 1196-97. Salas explained to Ward that Salas had been on a video call between Respondent Vice President O'Crowley and all Branch Managers and Assistant Branch Managers when O'Crowley started making a circular

motion with his arms towards himself and said "we are AAA and we are happy" and then he raised his hand in front of him as if he was motioning to someone away from him and said "those are Teamsters." Id. The July 2023 statement by Branch Manager Salas to employees that they were no longer AAA employees but, instead, are Teamsters, whether reflecting her own sentiments or simply parroting those of O'Crowley, reasonably implied that the agents were somehow disloyal to Respondent and may therefore justifiably be treated differently for having selected the Union. See *Harper Collins San Francisco v. NLRB*, 79 F.3d 1324, 1330 (2d Cir. 1996) (citing *Misericordia Hosp. Medical Ctr. v. NLRB*, 623 F.2d 808, 811-12 (2d Cir. 1980) & *NLRB v. Gladding Keystone Corp.*, 435 F.2d 129, 132-33 (2d Cir. 1970)("It is well-settled that statements equating union activity with disloyalty to the employer constitute coercion in violation of Section 8(a)(1) of the Act.").

On August 3, 2023, as alleged and litigated in in *AAA II,* Chief Sales Officer O'Crowley visited the Tracy Branch and told employees they were not getting a milestone gift because they had unionized. 32-CA-321155 Cpt. ¶ 7(b)(i). O'Crowley's statement is a clear violation of Section 8(a)(1), as statements regarding withholding of benefits contingent on employees' non-represented status are unlawful. *Ryder Truck Rentals, Inc.,* 341 NLRB 761, 772 (2004); *Voca Corp*., 329 NLRB 591 (1999); *AMF Bowling Co*., 303 NLRB 167 (1991); *Billion Dollar Oldsmobile-Toyota*, 260 NLRB 745, 754 (1982); *Niagara Wires, Inc*., 240 NLRB 1326, 1328 (1979). Moreover, O'Crowley's embittered instruction to a Unit employee that they were Union now and to call the Union about any questions regarding their working conditions impliedly blamed the Union for such changes and is similarly unlawful in violation of Section 8(a)(1). 32-CA-321155 Cpt. ¶ 7(b)(i); *Grimmway Farms*, 314 NLRB 73, 92 (1994) (employer violated 8(a)(1) by blaming union for employer's failure to provide health insurance), *enfd.in rel.part*, 85 F.3d 637 (9th Cir. 1996);

Spectrum Juvenile Justice Services, 368 NLRB No. 102 (2019) (manager asked about change in break times after union prevailed in election told employee 'you guys voted the union in, so we have to follow the rules. . .no one can take breaks').

Finally, during the second week of August 2023, following the implementation of unlawful unilateral changes as part of Respondent's LBFO or even independently of the LBFO, Unit employee Celia Solorio approached Daly City Assistant Branch Manager Elmer Garcia's cubicle to ask for clarification about some of the new changes that had recently been announced by Respondent. GC Exh 61 at Tr. 1860; 32-CA-321155 Cpt. ¶ 7(c). In response to Solorio's request for clarification, Garcia responded by saying "I am sorry, but this is what you guys asked for." Id. Solorio protested Garcia's response and said that this is not what we asked for, this is a punishment. Id. Garcia shrugged his shoulders but did not dispute or challenge Solorio's contention of a punishment or say anything further. Id. Garcia's response to employee Solorio's request for clarification regarding some recent work changes—saying "I am sorry, but this is what you guys asked for" – impliedly blamed the Union for the recently-announced changes and was thus unlawful.

B. Unalleged Statements that Indicate Respondent's Anti-Union Animus

As referenced above, conduct that exhibits animus but that is not independently alleged or found to violate the Act may nevertheless be used to shed light on the motive for other conduct that is alleged to be unlawful. See e.g., *DH Long Point Mgt. LLC*, 369 NLRB No. 18, slip op. at 13 n. 37 (2020) (relying on testimony regarding a manager's coercive statement as evidence of the employer's union animus even though the testimony was elicited by the charging party and the manager's statement was not alleged in the General Counsel's complaint), enfd. per curiam 858 F. Appx.366 (D.C. Cir. 2021)). In the same vein, it is well established that evidence of events

occurring more than 6 months before the charge may be considered as background to shed light on a respondent's motivation for conduct within the Section 10(b) limitations period. See, e.g., *Compañia Cervecera de Puerto Rico*, 373 NLRB No. 47, slip op. at 12–13 (2024); *CSC Holdings, LLC*, 365 NLRB 665, 678–679 (2017); *Wilmington Fabricators*, 332 NLRB 57 n. 6 (2000); and *Douglas Aircraft Co.*, 307 NLRB 536 n. 2 (1992), enfd. 66 F.3d 336 (9th Cir. 1995).

As such, Counsel for the General Counsel submits that unit-wide animus can and should properly be inferred and considered on the basis of unalleged coercive statements by Vice President of Labor Relations Karen Williams and Chief Financial Officer Clay Creasey.[16] Both of these Respondent high-level managers made explicit statements that demonstrate Respondent's withering disdain for the Union.

First, Vice President of Labor Relations Karen Williams made a statement during a bargaining session on January 27, 2022 that explicitly demonstrated her palpable anti-union animus. GC Exh. 73. At that bargaining session, the Union protested Respondent's then-current wage proposal which sought to eliminate from 40 to 70% of the unit's compensation, a predictably unacceptable proposal. In response to that protest, Williams cavalierly remarked that she had previously proposed a similar wage cut in the past while working for a different employer and the employer in that situation had then gone ahead and imposed the proposed wage cut and the union was subsequently decertified. Id. See also GC Exh. 60 at Tr. 1173-1175. Williams' statement was

[16] As referred to in ALJ Amchan's Administrative Law Judge Decision (ALJD) issued on March 4, 2026 in Cases 32-CA-280838 et al., unit-wide animus can additionally be established through the evidence with respect to Respondent Regional Vice President Tracy Taylor as testified to by former Redding assistant branch manager Pam Felix. ALJD at p. 7. Felix testified that Taylor told the group of assembled managers that "we needed to pull back our support on the agents…and that we weren't to make it obvious." ALJD citing *AAA I* Tr. 2080-81. Felix testified that Scott Linn told her not to compliment sales agents in chats or give them their production goals any longer. Counsel for the General Counsel submits that the palpable animus displayed by high-ranking Respondent official Taylor, a frequent presence at all AAA hearings thus far, should be taken into account in evaluating the terminations of Fajilan, Ward, Solorio, and Lewis in this case.

so inflammatory that the Union had to immediately break and caucus to contain their anger and compose themselves. Id.

Additionally, Chief Financial Officer Creasey stated, in the presence of unit employees on the Union's negotiating committee, that because the employees had voted the Union in, the employees had chosen to tear up their preexisting terms, they were now starting from scratch. GC Exh. 73 at Tr. 2362-63; see also GC Exh. 60 at Tr. 1177, 1181-1182 (Ward testified that Creasey additionally said that you are starting over and promises that were historically made are not applicable anymore.). The Board has recognized that "bargaining from scratch" type comments suggest that a union will be lucky if it can bargain back even the status quo now and further suggest that there is no way that the union will succeed in bargaining something for the employees that is actually better than their pre-union status quo. *Coach & Equipment Sales Corp.*, 228 NLRB 440, 440-441 (1977); see also *Textron, Inc. (Talon Division)*, 199 NLRB 131 (1972).

C. Other Statements as Evidence of Animus

The record established Respondent engaged in a pointed and vigorous anti-Union campaign, immediately making its opposition to unionization clear to all workers. For example, Chief Sales Officer Osh O'Crowley sent an email on February 23, 2021 to all California Branch Team Members informing them that there was a unionization attempt by the Teamsters. GC Exh. 104. Respondent made clear its disapproval of union efforts and characterized unions as misleading and deceptive. While it is true that the General Counsel did not plead this communication as an unlawful 8(a)(1) statement or threat, it nevertheless readily demonstrates how Respondent quickly mounted a full court press to announce its opposition to the union a month before any representation petition was even filed. Even if not pled as an unlawful 8(a)(1) statement, it provides crucial context to all 8(a)(3) allegations here and is circumstantial evidence of Respondent's visceral anti-union animus. *See e.g., Intertape Polymer Corp*., above, slip op. at 6 (2023); *Safety*

System, LLC, 370 NLRB No. 90, slip op. at 1 (2021)(statements and actions showing the employer's general and specific animus evidence of discriminatory motivation).

Animus is additionally evident in the form of an April 2022 email from Respondent Corporate Investigator Tito Medeiros to Union Representative Tom Woods. Woods emailed Medeiros information about an agent who could provide corroboration and was willing to be interviewed in connection with a situation Medeiros was investigating. GC Exh. 67. Medeiros immediately responded and declined Woods' offer stating "with all due respect, until we have a collective bargaining agreement in place, I don't want to start a precedent in discussing these cases with you. I want to continue to operate as I/we always have dealing directly with our employees." Id. Doubling down on Medeiros' utter disregard of the concept of direct dealing and the bargaining obligation which attaches upon certification, Williams then reinforced Medeiros' sentiments, stating, "As Tito notes, we do not have a CBA defining the relationship and procedures, so Tito and Chris have the ability to speak with all Team Members directly." Id. Respondent's aversion to the Union and insistence on continuing to operate as if the Union did not exist, a *year* into the parties bargaining relationship, should be treated as evidence of animus.

Lastly, Vice President Antoinette "AJ" James admitted that during Vice President Meetings in which the Union was discussed, she told Branch Managers that Respondent is going to start holding agents accountable because this is what they wanted. Tr. 2123. These types of statements are often found to be unlawful when made directly to employees, but nevertheless demonstrate Respondent's anti-union animus although said among managers. See *St. John's Community Services*, 355 NLRB 414, 414 (2010) (statement by employer to go "by the book" in the wake of union recognition found to be unlawful threat of reprisal).

B. Credibility Assessments

1. The General Counsel's Witnesses Should Be Credited

The testimony of the General Counsel's witnesses, including Union Representative Woods, Ward, Solorio, Lewis, Fajilan, Torres, Albert "Al" Perencin, and John Larson who are employees with decades of experience working for Respondent, and were subject to a sequestration order, should be credited. Conversely, Respondent's witnesses should be discredited to the extent that there are any testimonial conflicts in the record.

Many aspects of a witness' demeanor, including their expression, physical posture, appearance, manner of speech, and non-verbal communication, may convince the ALJ that the witness is testifying truthfully or falsely. Credibility determinations are also based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences, which may be drawn from the record as a whole. *Hills & Dales General Hospital*, 360 NLRB 611, 617 (2014) (citing *Double D Construction Group*, 339 NLRB 303, 305 (2003)). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 slip op. at 2, fn. 4, 14 (2022), enfd. 2023WL 5380232 (4th Cir. 2023).

The testimony of discriminatees Ward, Solorio, Lewis, and Fajilan should be credited notwithstanding their status as former employees. All testified with candor and sufficient particularity, and their testimony was consistent with fellow witnesses. Their testimony was also consistent with documentary evidence to the extent it exists and was not withheld by Respondent. The General Counsel's witnesses strove sincerely and earnestly to answer all questions posed to them as many of them also had done during their tense investigatory interviews with Respondent investigators. The record contains examples of General Counsel witnesses carefully ensuring that they understood questions and were answering on the basis of personal knowledge, and on

occasion witnesses even corrected and refined their answers of their own volition without prompting. See e.g., Tr. 1414. General Counsel witnesses Fajilan, Ward, Solorio, Torres, and Larson often provided long, narrative answers without any reticence or hesitation—showing their candor and eagerness to provide the court with helpful information. Importantly, much of their testimony revolved around their on-the-ground, lived experience regarding a variety of working conditions with and past practices of Respondent. They provided credible, detailed testimony based upon their decades of experience working for Respondent.

With respect to Faijlan's testimony about Branch Manager Susan Valladares ripping down his and two other agent's Union signs, Fajilan's detailed testimony should be credited over Valladares self-serving and general denials of the same situation.[17] Fajilan testified in painstaking detail about what he remembered about Valladares ripping his two Union signs down from his cubicle: he recalled that the signs were only up for a couple of hours until Valladares ripped them down, that that she was moving faster than normal, that she marched into his cubicle and ripped both of his signs down—making them unusable—all while muttering something under her breath. Tr. 172-173, 176-177. In contrast to Fajilan's description of Valladares' negative visceral reaction to the signs, Valladares initially claimed not to recall if any of the agents in her branch even had Union signs posted at all. Tr. 2611-2613. Her purported inability to recall the existence of such signs on direct examination, as if they would have been no big or memorable deal to her, made it even less credible when she denied taking down any signs. Tr. 2613.

An additional important factor is whether the witness testified in a manner against his or her interest as a current employee. *Portola Packaging*, 361 NLRB 1316, n.2 (2014) (quoting *Gold Standard Enterprises, Inc.*, 234 NLRB 618, 619 (1978), *enfd. denied on other grounds*, 607 F.2d

[17] Valladares became visibly physically agitated including moving her arms and shaking during this line of questioning.

1208 (7th Cir. 1979)); see also *Shop-Rite Supermarket*, 231 NLRB 500, 505, n.22 (1977). Here, the testimony of current Watsonville branch agent Alfredo Torres, who appeared pursuant to subpoena, should be credited. Torres provided helpful testimony based on his personal experience working for Respondent for 21 years. Specifically, Torres testified about his understanding of various underwriting rules, guidelines, and sales strategies of Respondent. This testimony is especially credible given the risk Torres underwent in providing it: he testified in a case in which fellow agents were terminated for violating the same rule that he was testifying about. Torres had absolutely nothing to gain from testifying against his own interest. *Flexsteel Industry,* 316 NLRB 745 (1995), *affd*. 83 F.3d 419 (5th Cir. 1996) (testimony of current employees which is adverse to their employer is "given at considerable risk of economic reprisal, including loss of employment … and for this reason not likely to be false."). For this reason, the testimony of Torres should be credited and his continued employment with Respondent may be properly weighed and considered in resolving credibility conflicts.

In addition, the testimony of a former employee tends to be credible when the former employee has little interest in the outcome of the hearing and has little to gain personally from these proceedings. *Flexsteel Industries*, 316 NLRB at 749 (administrative law judge crediting former employee witness while noting the witness had no reason to lie and nothing to gain by fabricating testimony). Here, former employees Al Perencin and John Larson have absolutely nothing to gain from testifying about rules or practices of Respondent especially when they have not worked for Respondent for decades. Thus, any attempt by Respondent to paint them as disgruntled former employees is misguided and only distracts from the valuable, detailed testimony they provided that was based on years of lived experience working for Respondent. It

is also notable that Respondent chose not to cross examine Perencin or Larson–thus their testimony is uncontradicted and should be easily credited. Tr. 773; Tr. 548.

2. Respondent Witnesses Should be Discredited

In contrast, Respondent's witnesses should be largely discredited. Respondent witnesses' testimony is characterized by generalizations, evasions, defensiveness, and general lack of relevant knowledge. Respondent witnesses were guarded and defensive on cross examination as contrasted with their polished and rehearsed testimony on direct examination. As the Board has held, lack of specific recollection, general denials, and comparative vagueness are insufficient to rebut more detailed positive testimony. *Precoat Metals*, 341 NLRB 1137, 1150 (2004); see also *Laser Tool, Inc.*, 320 NLRB 105, 109 (1995) (general denials by supervisory personnel are unreliable and limited in probative value. . . noting "[t]he essentially bare denial that events occur or that any specific statements were made is not a persuasive or helpful aid to an evaluation of credibility").

For example, Respondent's first witness Daly City Branch Director Greg Chu was impeached on very basic, uncontroversial topics such as whether he provided testimony in an unemployment hearing involving Celia Solorio. Tr. 1742. He certainly did provide testimony, and was suddenly able to recall that fact after being confronted with the playing of a live audio recording of the proceeding. Tr. 1744. In the same vein, Chu provided testimony in this matter that conflicted with prior unemployment hearing testimony on basic factual issues such as whether he was involved in the decision to terminate Celia Solorio or not. Tr. 1745. At the unemployment hearing, Chu stated that he was not involved in the decision to terminate Solorio but Chu then testified herein that he was involved in that decision. Tr. 1746, 1687. He also testified at the unemployment hearing that he could not answer the question of whether Respondent's training included a directive to make sure that agents entered the correct age first licensed, despite stating on direct examination that Respondent's training does. Tr. 1714; Tr. 1747, 1749.

In addition to these obvious deficiencies in Chu's testimony, he similarly had no personal knowledge of any of the policies that Solorio was investigated for: he never reviewed any of the policies at issue in Solorio's investigatory interview, never listened to any of the recorded calls relating to the policies for which Solorio was being investigated, never reviewed any emails Solorio had with customers, and never even spoke to her about any of the policies for which she was ultimately investigated and terminated. Tr. 1751-1753. In sum, Chu had no reason to believe that Solorio was doing anything wrong and Chu never disciplined Solorio for violating any of Respondent's underwriting guidelines, nor did he ever coach her for how she was conducting business. Id.

Moreover, Chu was not aware of anyone who was fired or disciplined, besides Solorio, for how they input age first licensed. Tr. 1758-1759. Chu similarly did not provide credible testimony as to the minimum production issue in this case. He testified on direct examination that agents are not fired for failing to meet sales goals, yet claimed to not recall a situation in which he issued discipline to his agent for not meeting sales goals and claimed to not recognize a DAF that Respondent issued and which stated on its face that Chu himself discussed the discipline with the agent and Vice President Tracy Taylor. Tr. 1760-1762; GC Exh. 146. Given these deficiencies, Chu's testimony is entirely unreliable and should not be given any weight.

Respondent witness Vice President AJ James should also be discredited. James had an obvious and palpable shift in demeanor between direct examination and cross-examination when the General Counsel confronted her with documentation that impeached her previous testimony: James had to be asked multiple times, when answering questions on cross-examination, to speak up, and James otherwise provided evasive answers, claiming not to recall or requiring that the question be repeated for her on several occasions during cross-examination. See e.g., Tr. 2119,

2134-2136, 2049, 2105, 2153-2155, 2129, 2134, 2136, 2138. As for the rest of James' testimony, she was asked about her role as a branch manager and whether she ever disciplined agents for failing to meet production goals, and she initially stated that she did not. Tr. 2130. Then, only one page later in the transcript, James admitted that she had in fact issued discipline for failing to meet sales goals. Tr. 2131; GC Exh. 218. Similarly, James first testified that Respondent did not require one-on-one meetings between Branch Managers and sales agents but was forced to relent and retract when confronted on cross-examination with discipline that James issued to one of her direct report managers for failing to hold these purportedly voluntary sales meetings. Tr. 2132-2134; GC Exh. 154. As with Chu, James' testimony is entirely unreliable and should not be given any weight.

Other Respondent witnesses Paul Mulig, Michelle Faas, Samantha Ramirez, Melissa Humphrey, Terri Crockett, Tracy Taylor, Tito Medeiros, and Chris Jones were no better and often unable to provide meaningful testimony regarding the specific allegations against Ward, Solorio, Lewis, and/or Fajilan, or even basic information regarding the underlying underwriting guidelines or details about the investigations. They often were evasive on cross-examination despite being polished and rehearsed on direct examination or were contradicted by various Respondent business records. They should not be credited.

C. Respondent Unlawfully Terminated Richard Fajilan in Violation of Section 8(a)(3) of the Act (32-CA-312204 Cpt. ¶ 7)

1. Fajilan was an Outspoken Union Supporter at Respondent's Newark Branch.

Richard Fajilan worked for 7 years as a commissioned insurance agent at Respondent's Newark Branch, one of the Branches within Respondent's Golden Gate Region overseen by Vice President Tracy Taylor. Tr. 154-155; GC Exh. 56, 71, 77. Fajilan is licensed to sell property, casualty, and life insurance to Respondent's customers—referred to by AAA as "members." Tr. 155. Like all commissioned insurance sales agents, Fajilan was responsible for selling and servicing insurance

policies and for selling Respondent memberships. Tr. 155-156. At all material times, Fajilan reported to Branch Manager Susan Valladares. Tr. 156. Fajilan had no history of disciplinary action while working for Respondent prior to his termination. Tr. 268.[18]

Fajilan was an active and public Union supporter, and his pro-union sentiments were expressly known to Branch Manager Susan Valladares.[19] Tr. 2621-2622 Fajilan participated in weekly organizing meetings hosted by Union Representative Tom Woods in the months leading up to the election. Tr. 159, 163. These regular Zoom meetings often led to additional conversations between Fajilan and other agents at the Newark Branch—occurring at their cubicles, break room, lunchroom, and/or in passing at the Branch. Tr. 159-160, 162-163.

In addition to open conversations with his colleagues, Fajilan was often outspoken about his support for the Union during mandatory meetings with Respondent's labor consultants and recalled a specific instance where he bravely challenged Respondent's outside labor consultants' anti-union rhetoric during mandatory meetings in the presence of Respondent Vice President Tonya Pierce—Fajilan's former Branch Manager. Tr. 191, 194-195. The labor consultant, Luis[20], presented to the agents the idea that those who succeed do so on their own merit and cited professional basketball players, such as LeBron James, as an empirical example of successful individuals who achieved success on their own. Tr. 189. Fajilan opposed Luis' characterization and argued that a union allowed the players to be successful after they negotiated strong contracts that prevent team owners from receiving disproportionate earnings compared to the athletes. Id.

[18] Valladares admitted she did not have issues with Fajilan's performance prior to his call with customer Dwight Hargreaves. Tr. 2630.

[19] Valladares admitted on direct examination that she was aware of Fajilan' s Union sentiments and that he mentioned to her that he was pro-Union, and there is no evidence in the record that Fajilan's pro-Union sentiments ever changed. Tr. 2621-2622

[20] Fajilan testified that the labor consultant's name was Luis but did not recall his last name. Tr. 191.

Notably, Fajilan was willing and eager to show his public support for the Union by posting Union signs in his workspace at the Newark Branch—one that was distributed before the June 2021 representation election and one distributed during the course of first contract bargaining. GC Exh. 7-8; GC Exh. 10. About three or four weeks before the June 2021 representation election, on May 25, 2021, Fajilan posted two identical pro-Union 8 ½ by 11-inch signs in his workspace. Tr. 164-165, 170; GC Exh 7-8. The signs depicted a ballot box that said Union YES with a checkbox and the O in Union bearing the Teamsters/AAA logo. GC Exh. 7. Around the same time, Fajilan's colleagues in neighboring cubicles—Elsa Canal[21] and Hector Luna[22]—posted the signs alongside Fajilan and took photos. GC Exh. 9. The signs in Fajilan's cubicle were only posted for a couple of hours on May 25, 2021 until Branch Manager Valladares stormed into his cubicle and tore them down.[23] Tr. 171-172, 179-180. Fajilan recalls Valladares marching into his cubicle and ripping both of his signs down—making them unusable—all while muttering something under her breath. Tr. 172-173, 176-177. Valladares tore down Canal and Luna's Union signs as well. Id.

Fajilan did not let the events of May 25, 2021 deter him from continuing to show support for the Union by posting in his workspace. Sometime in the spring of 2022, during collective bargaining negotiations between the Union and Respondent, Fajilan posted a blue sign that read "AAA Stop Stalling" with Teamsters/AAA logo on the left corner. Tr. 182; GC Exh. 10. This Union sign was a tri-fold style "desk tent" that stood upright on his desk and was visible to those walking

[21] The Union filed a charge regarding Canal's termination in 32-CA-350732 which presently remains under investigation.

[22] The Union filed a charge regarding Luna's termination in 32-CA-333471 in which Complaint was issued about Spring of 2024 and which was voluntarily withdrawn by the Union.

[23] Branch Manager Valladares ripped down the signs in Luna and Canal's workspaces—which both were next to Fajilan's cubicle. Tr. 172-173, 179. Her denials are not credible as discussed, supra, Section IV(B) at p. 22.

into or past his workstation. Tr. 184-185. Fajilan kept the AAA Stop Stalling sign posted on his desk until his termination in the fall of 2022. Tr. 182, 186.

2. Fajilan Shared Information about his Union Activity During a Call with Customer Dwight Hargreaves, and the Aftermath of the Call

i. The August 2022 Call Between Fajilan and Hargreaves

Fajilan recalls a "miserable" conversation that he had with a customer Dwight Hargreaves, on or about August 25, 2022 who called him to cancel policies he had with Respondent after feeling like Hargreaves was treated horribly after dealing with Respondent with a claim. Tr. 256; GC Exh. 14. 00:00:27-1:28; GC Exh. 141 p. 4. Hargreaves alternated between relentless complaining to Fajilan that he was failed by the poor customer service at AAA and that he was going to publicly complain about his experience to his various Silicon Valley connections on LinkedIn. Id. Fajilan apologized and confirmed that the claim was taken care of. Id. at 11:30-12:21. Fajilan said that there was some truth to the complaints that Hargreaves expressed and that he did not want to waste Hargreaves' time convincing him otherwise. Id. at 12:03-21.

Hargreaves questioned Fajilan about why he was not trying to convince Hargreaves to stay with AAA and felt that Fajilan's pragmatic response was "apathetic." Tr. 257; GC Exh. 14 at 12:52. Fajilan later testified, and told Hargreaves in their call, that he did not want to insult him and it seemed like Hargreaves was upset and had already made up his mind. Tr. 257; Id. at 14:14. Hargreaves repeatedly told Fajilan that he seems like a really nice guy and he is irritated at AAA (15:37) but continued to press Fajilan about whether AAA has made it impossible for agents to do their jobs. Id. at 12:54, 19:02. Fajilan ultimately acquiesced to Hargreaves' persistent inquiries and

told him that agents had organized with a labor organization a little over a year and a half ago, and the parties are still working on a collective bargaining agreement, Tr. 258; 19:17-56.[24]

In addition to listening to an irate Hargreaves, Fajilan completed the task at hand and emailed Hargreaves the change of representative form and apologized to Hargreaves if his effort had not been there as Fajilan was facing his own shortcomings. Id. at 22:40; GC Exh. 141 p. 4.

ii. CSAA Policyholder Relations Emails Corporate Investigator Medeiros with a Recap of Hargreaves' Complaint

On September 15, 2022, CSAA Insurance Policyholder Relations Consultant Misty Sims emailed Corporate Investigator Tito Medeiros that she was assigned to Dwight Hargreaves's complaint. GC Exh. 142 p. 1. Sims advised Medeiros that Hargreaves' primary complaint was the lack of follow up from Newark Branch Management. Id. Sims went on to characterize Fajilan and Hargreaves' conversation that Fajilan made comments to the effect of hating his job and that agents feel the same and are trying to start a union. Id. However, Sims made it clear that Hargreaves' primary frustration was that Newark Branch Management (i.e. Valladares) had yet to return his call in two weeks. Id. Sims shared with Medeiros that "Hargreaves was adamant that no action be taken against his agent Richard other than the removal of his policies from Richard's book of business." Id.

iii. Branch Manager Susan Valladares Handling of the Call Between Fajilan and Hargreaves

On September 9, 2022, Branch Manager Valladares filed an ethics hotline report against Fajilan classifying the complaint as "unethical behavior." GC Exh. 143. Valladares reported that "Richard spoke poorly, degraded, and insulted AAA and their management to a member . . . the

[24]GC Exh. 14 at 20:21-24 (Let's put it this way a group of agents have organized and we've actually organized you know with a with a labor union a lot a little over a year and a half ago and you know still working on that collective bargaining agreement [. . .] in some ways I am looking for my next step.)

member reported Richard to the insurance group who then informed Rich Lopez, Vice [P]resident. Rich reached out to Valladares and made her aware of what Richard was saying.". Id.[25]

In addition, on September 21, 2022, Valladares then emailed Investigators Jones and Medeiros a recap of Fajilan's call with Hargreaves after purportedly listening to the recorded call. GC Exh. 141. Valladares told the investigators that "overall can hear that Richard isn't supportive of talking positively about AAA." GC Exh. 141; GC Exh. 237. Further, Valladares noted that Richard was hesitant to answer Hargreaves' question about how he felt about AAA but nevertheless responded that "we've got to a point that the agents have organized/unionized and are in negotiations." Id. Lastly, Valladares provided her unsolicited, and unsupported, opinion that this conversation between Fajilan and Hargreaves purportedly aligned with prior conversations between Valladares and Fajilan but "he was not so blaten (sic) about his feelings towards the company but he made it clear to me that he wasn't going to put in the effort until he sees what happens with the union negotiations." Id.[26]

iv. Valladares Filed a Second Ethics Hotline Report Against Fajilan Regarding Binding Policies Outside of Business Hours

On October 3, 2022, Valladares filed a second ethics hotline complaint against Richard Fajilan. GC Exh. 192. The complaint alleged that Fajilan bound a policy on September 30, 2022 at approximately 11:00pm without collecting downpayment, signatures, or supporting

[25] However, Valladares was aware of Hargreaves situation as early as August 25, 2022 as Fajilan copied her and Assistant Branch Manager Kovacevic on his email to Hargreaves with the representative of record change form and provided both managers' contact information to Hargreaves. GC Exh. 141 p. 4. Valladares additionally knew or should have known about the Hargreaves complaint as CSAA Member Service Team employee Alexa Herbert informed Hargreaves on September 6, 2022 that she had just talked to Valladares and that Valladares was to call Hargreaves back immediately. GC Exh. 142.

[26] The recording of the call makes clear that Fajilan did not say anything to this effect. GC Exh. 14. Valladares' unsolicited opinion to investigators Medeiros and Jones should be considered evidence of animus as Valladares, rather than letting the investigation play out, appeared to leap at the opportunity to provide irrelevant and unsubstantiated information directly to investigators despite already having filed the ethics hotline complaint herself.

documentation. Id. On the stand, however, Valladares was adamant that the policy was bound at 11:59pm and refused to acknowledge that her initial underlying complaint was inconsistent with her recollection.[27] Tr. 2598, 2638-2640.

3. Respondent's Internal Investigation into Fajilan' s Transaction History

On October 12, 2022, Richard Fajilan received a surprising email from Investigator Chris Jones advising Fajilan that his cooperation was needed regarding an internal investigation stemming from an ethics hotline call. Tr. 198-199; GC Exh. 11. Fajilan immediately requested the presence of his *Weingarten* representative at the meeting, and apprised Investigator Jones of Union Representative Woods' availability. Tr. 200-201; GC Exh. 11. Fajilan arranged for Union Representative Joe Matekel to attend the investigatory interview in Woods' absence, and alerted Investigator Jones of this arrangement. Id. A few days later, Fajilan received a subsequent email from Jones requesting Fajilan' s signature on an attached admonishment letter.[28] Tr. 202; GC Exh. 11-12. The admonishment letter generally advised Fajilan that Respondent was requesting his cooperation into an investigation of a confidential matter. Id. Tr. 202; GC Exh. 11-12. Neither the email from Jones nor the admonishment letter provided any specific information as to the basis of the investigation and/or the topic(s) underlying the investigation. Tr. 199; GC. Exh. 12. After learning of the investigation, Fajilan reported to work as usual and was never provided any additional information as to the topic of the investigation. Tr. 205, 208.

On October 24, 2022, Fajilan reported to the Newark Branch conference room with his Union Representative Joe Matekel. Tr. 205. Additionally present in the conference room was investigator Tito Medeiros; Chris Jones appeared remotely via video conference. *Id.* At the start of the

[27] The September 30, 2022 policy Fajilan was asked about during his investigatory interview regarding customer Michael Estacio states that the policy was bound at 10:30pm. GC Exh. 13 question 33.

[28] Fajilan ultimately signed the Admonishment Letter on October 24, 2022. See Tr. 203-204

interview, Jones asked Fajilan standard questions about whether he was trained to do his job. Tr. 207; GC Exh. 13. After the preliminary questions, Jones asked Fajilan about the situation(s) underlying both ethics hotline complaints and as well as transactions that were not encompassed by the ethics hotline complaints. Fajilan was asked about two policies that were bound outside of traditional business hours. GC Exh. 13. As for a policy bound on September 12, 2022 at 10:52 pm, Fajilan explained that he was directed to place the policy into effect via a phone call with the insured and that he bound the policy at this time since it was on his to-do list for the day that he was unable to complete. Id. Fajilan was then asked why he bound a policy on September 30, 2022 at 10:30 pm to which Fajilan explained that he was on PTO traveling during the afternoon, and in the late evening he checked his email and put the policy into place as requested by the insured. Id.

In addition, there was extensive discussion of Respondent's underwriting guidelines as it relates to signatures, discount documentation and down payment collection requirements, as discussed in more detail below, in which Fajilan provided clear responses to the investigators as to his understanding of the rules and various exceptions, and provided helpful context for understanding the specific policies flagged by Jones.[29]

i. Good Student Discount Documentation

The good student discount is an approximate 5% discount available to drivers with a B average or better at an accredited school.[30] Tr. 234. In order to qualify for the discount, insureds were required to provide a copy of a transcript or report card indicating that they were eligible by way

[29] For an overview of Respondent's guidelines for agents, see GC Exh. 97-98 and R. Exh. 2. GC Exh. 97-98 (IKC guidelines) provide that both signatures and discount documentation must be available and submitted to CSAA IG within 30 days of the effective date of policy or endorsement. GC Exh. 98 p. 7. Moreover, R Exh. 2 substantiates the fact that agents have time to provide any missing documentation or signatures and that documentation and signatures are not necessarily required at the time of binding as Valladares suggests. R Exh. 2 p. AAA0011952-53 (signed application uploaded by 30 days from bind, must be available in PAS at time of review), p. AAA0011957 (EFT form uploaded by 30 days from bind, must be available in PAS at time of review).

[30] Good student discount is a recognized discount by the Department of Insurance. See also GC Exh. 97 p. 2 (IPC good student discount eligibility information).

of grade point average and enrollment in an accredited school. Id. Despite supporting documentation being required, policies were regularly bound without the documents on hand. Id. In these situations, Fajilan was permitted to follow up with the insured to obtain the necessary documentation to add to the file. Tr. 235. Fajilan testified that it was common that there was no proper documentation at the time of binding since it often was a parent trying to insure their children that did not have immediate access to a report card or transcript. Tr. 251-252. Fajilan tried to obtain any missing documentation within 30 days of the date that the policy was bound, but sometimes it would be more than that. Id. If there was no documentation to support the discount, the discount would be removed from the policy. Id.

During Fajilan's investigatory interview, he was asked by Jones about situations where policies were missing good student documentation. GC Exh. 13 p. 3; Tr. 254. Fajilan recalls that, as to customer Michael Estacio (GC Exh. 13 questions 32-37), Fajilan had documentation for one of Estacio's three children and was in the process of obtaining the required information for the remaining two children at the time of his investigatory interview—as the policy was bound only 12 days prior. Tr. 254-55.

Fajilan was then asked about another situation where there was missing documentation for a good student discount as it applied to customer Irna Gavrilov. GC Exh. 13 p. 3-4; Tr. 255. Fajilan explained that he did have a photo of the required documentation, but the photo was hard to read and Fajilan requested a better copy from the customer. Id.[31]

[31] Per Fajilan, Valladares conducted internal audits of her branches' policies and provided the agents 30 days to upload any missing documentation before the policies were sent to Respondent's team of internal auditors. Tr. 276. Valladares utilized a spreadsheet of each agent in the branch and would go through files to see if there were any documents missing. Id.

ii. Exceptions to Respondent's Preference to Collect Down Payment

Fajilan testified at hearing, and explained to investigators that, while Respondent's preference is to collect the initial down payment at the time of binding, it was not always required and there are various known and accepted exceptions. Tr. 216. In addition to the common exceptions, Fajilan testified that he made notes for years in Respondent's policy quoting and binding system (PAS) explaining why downpayments were not collected, without Respondent making any issue of it or even questioning him about it.

Fajilan explained that post-dated policies do not require downpayment. Tr. 216. Post-dated policies refer to situations where a policy is bound before its effective date for coverage—for example a policy bound in September with an effective date of November does not require initial downpayment collection. Tr. 216-217. Additionally, policies that enroll in automatic payments (EFT)[32] are not required to have an initial down payment. Tr. 221. The EFT authorization form is required to enroll in automatic payment. Tr. 231. The form can be utilized by the agent immediately. However, there was an opportunity to complete the form during the course of a month—or even after a month. Tr. 233.[33]

Another common example where downpayment collection was not required is if there is a new purchase of a home that is going through escrow, payment was not required until after approximately 30 days after the policy went into effect—sometimes longer when payment is made by the escrow/title company to Respondent.[34] Tr. 216, 218-219. In these situations, Fajilan was

[32] Fajilan testified that he thinks EFT stands for electronic fund transfer. Tr. 221.

[33] Fajilan estimated that there were at least five instances during his employment in which he did not complete the form immediately upon binding a customer's policy but rather he had time to complete the EFT form without issue and without any consequence. Tr. 233-234.

[34] Fajilan testified that title companies often provide physical checks to Fajilan or a payment processing center, which can take weeks. Tr. 219.

able to provide proof of insurance to the escrow company, who in turn provides it to the mortgage company, despite not collecting any payment from the customer on the policy. Tr. 218.

Companion policies additionally do not require downpayment collection. Id. Companion policies refer to situations where an existing customer wanted to add an additional policy. Tr. 216, 219. The newly added policy, for example a renter's insurance policy, can be added to the existing policy, for example an automobile insurance policy, as a companion policy in which no downpayment is required to be collected at the time of binding the new policy. Tr. 219.

Split policy or split accounts refers to situations when insureds no longer wish to be part of the same account. Tr. 220. To separate the accounts, one person stays with the original account and a new account is created in which one of the existing policies is split off the original account and is added to the newly created account. Id. No downpayment is required in split policy situations. Tr. 220. Relatedly, spin-off policies do not require downpayment. Spin-off refers to a situation where there is an existing account with multiple individuals in which one of the individuals gets their own separate policy and are spinning off one policy to the new account without collecting payment. Tr. 221.

However, in addition to the common exceptions, Fajilan testified that in Respondent's policy binding software, on the final payment screen there is a box titled "other" in which agents can add notes to explain why no downpayment was collected or why a smaller amount of the recommended down payment amount was collected. Tr. 222-223. Fajilan for years utilized the "other" box to note situations when no downpayment was collected without any issue during his employment. Tr. 225-226.[35] Importantly, not collecting downpayment has no impact on the overall cost of the policy. Tr. 219.

[35] Fajilan also recalled a situation where he put that the customer gets paid on a future date as the reason why no down payment was collected, again without issue or pushback from Respondent. Tr. 225.

At the conclusion of the investigatory interview question and answers, Fajilan received a copy of the written questions and his answers that he provided verbally for his review and signature. Tr. 213, 265; GC Exh. 13. Upon review, Fajilan sought to add context to one of the written answers but was dissuaded from providing additional information because of the pushback from investigators Jones and Medeiros. Tr. 213-214, 265. Jones and Medeiros emphatically informed Fajilan that both Jones and Medeiros could sign something saying that whatever Fajilan wished to clarify was never actually said during the interview. Tr. 213. Feeling like he did not have a choice, Fajilan declined to provide supplemental information that he thought should have been included in the Q & A document. Tr. 214.[36] Shortly thereafter, on the same day, Fajilan was placed on administrative leave.

4. Branch Manager Valladares Complained to Investigators about Fajilan Allegedly Binding a Policy Without Authorization While He was on Administrative Leave

After Fajilan was placed on administrative leave, Branch Manager Valladares reached out to one of Fajilan' s customers to collect signatures on the policy and collect downpayment. Tr. 2605. Valladares claimed that this individual is the one that led Valladares to make a second report directly to investigators in which Valladares claimed that this customer did not request a policy, and instead was only looking for a quote for a home that he was looking to buy. Tr. 2607. The customer told Valladares that he did not buy the home and did not request the policy. Id. As such, Valladares cancelled the policy as if it never existed.[37] Id. Valladares reached out to Investigator Chris Jones to let him know that she talked to this customer who claimed never to have requested a policy. Tr. 2608. While Fajilan was not asked to provide an explanation for this situation during

[36] Fajilan testified that he believed that whatever he sought to add at the conclusion of the interview was said during the verbal portion of the interview. Tr. 213-214.
[37] This is also referred to as a "flat cancel." Tr. 2607-2608.

the investigatory interview, he denied ever binding a policy without receiving authorization from the insured. Tr. 274. However, as discussed above, he explained that there certainly are times that policies are bound without a signature and he would follow up to collect the signature for the file and policy documents –as Valladares was doing on his behalf. Tr. 274-275. He was trained that he should collect signatures within 30 days of binding. Id.; see also GC Exh. 98 p. 7 (IKC guidelines provide that signatures must be available and submitted to CSAA IG within 30 days of the effective date of policy or endorsement).

Respondent exaggerates the severity of and practical impact of non-payment. First, Fajilan testified that non-payment is common in situations involving the purchase, or attempted purchase, of a new home. Tr. 230. Additionally, as Valladares testified, in situations of non-payment, Respondent could "flat cancel" a policy so that it was as if the policy never existed. Tr. 2607-2608; Tr. 230-231 (Fajilan explaining the same). Moreover, Fajilan testified that policies will lapse for nonpayment and the insured will be billed. Tr. 230. Thus, there is no resultant harm to Respondent warranting an ethics hotline complaint.

5. Respondent Unlawfully Terminated Fajilan in December of 2022

After a month of administrative leave, Fajilan received a call from Branch Manager Valladares. Valladares told Fajilan that his employment with Respondent was terminated. She did not provide any justification or explanation. Tr. 268-270. Respondent mailed a notice of team member separation to Fajilan that similarly provided that the basis of his termination was unspecified "misconduct" without any additional detail. GC Exh. 131. For the reasons stated below, Respondent unlawfully and discriminatorily terminated Richard Fajilan in violation of Section 8(a)(3) and (1).

i. Respondent was Expressly Aware of Fajilan's Union Activities

Fajilan engaged in extensive Union activities and was outspoken about his Union support. Fajilan spoke in support of the Union at captive audience meetings in the presence of Respondent managers, including Fajilan's former Branch Manager Tonya Pierce. Fajilan additionally had Union posters and desk tents posted and visible in his workstation. Fajilan's Union support is also shown by his invocation of his *Weingarten* rights. The fact that Fajilan had a Union representative with him during his investigatory interview was known to branch management and the investigators who were present; it was also included in the ESFR. GC Exh. 192. Additionally, Respondent treats those who invoke their *Weingarten* rights as Union supporters. GC Exh. 70. Most importantly, Branch Manager Susan Valladares testified under oath that she was aware that Fajilan supported the Union. Tr. 2621-22. Additionally, Fajilan disclosed his Union activities during his phone conversation with member Dwight Hargreaves. The record makes clear that Respondent management, from the branch level, to investigators, Regional Vice President, and even CSAA employees were well aware that Fajilan discussed the Union with member Dwight Hargreaves.

ii. Respondent's Anti-Union Animus Manifested Itself by its Shifting Defenses, Inadequate and Pretextual Nature of the Investigation, and Disparate Treatment of Fajilan

With Union activity and knowledge thus established, there is abundant evidence from which to infer animus. The General Counsel may establish Respondent's unlawful motivation by proof of direct evidence or circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services*, *LLC*, 343 NLRB 1183, 1184 (2004), enfd. 184 F.Appx. 476 (6th Cir. 2006). Circumstantial evidence of discriminatory motive may include, among other factors, contemporaneous unfair labor practices; statements and actions showing the employer's general and specific animus; the timing of the action in relation to the union or other protected conduct;

shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Intertape Polymer Corp.*, supra.

First, knowledge and animus are established as early as May of 2021 when Branch Manager Susan Valladares ripped down Fajilan's pro-union signage. Second, animus should be inferred based on the timing of the investigation into Fajilan's underwriting practices. The ethics hotline complaint about the time in which Fajilan bound a policy was within weeks of Fajilan's conversation with Hargreaves and Respondent's dealing with the aftermath of Hargreaves' complaint.

Second, animus should be inferred from the shifting justifications provided to justify Fajilan's termination. For example, investigator Jones initially informed Valladares that the complaint regarding Fajilan's conversation with Hargreaves was not something that Jones would investigate since it did not involve a violation of CSAA underwriting guidelines. Tr. 2621. Jones nevertheless asked Fajilan about his conversation with Hargreaves during his investigatory interview but ultimately concluded in his ESFR that Fajilan's comments did not violate AAA policy. GC Exh. 13; GC Exh. 192. Despite Jones' conclusion, the statement made to Hargreaves was still included in Fajilan's termination summary as "the investigation also substantiated that Richard did share his opinion on the current state of AAA as an organization with a Member." GC Exh. 137. Additionally, Respondent relied on Branch Manager Valladares' representation that she contacted one of Fajilan's customers who claimed that he never requested a policy, only a quote, during a potential home purchase, to justify terminating Fajilan for binding a policy without permission. GC Exh. 137; GC Exh. 192; GC Exh 250. Fajilan was never apprised of this allegation against him, nor was he consequently able to provide any justification or explanation for this

situation. Tr. 192. Fajilan only learned of Respondent's reliance upon the potential home purchase situation as a basis for termination when he applied for unemployment compensation long after he had been fired. Id.

Animus should be inferred based on the inadequacy of Respondent's investigation. *Publishers Printing Co.*, 317 NLRB 933, 938 (1995); *Burger King Corp.*, 279 NLRB 227, 239 (1986) (failure to conduct a fair and complete investigation gives rise to an inference of antiunion animus). In addition to the flaws of Respondent's investigatory process above, Respondent did not ever ask Fajilan his side of the story as to one of the major alleged infractions involving binding a policy without authorization. Respondent further did not conduct any follow-up after the interview, nor did they review any files to determine if Fajilan actually had the required documentation as he explained to them that he did.

iii. Animus should be inferred based on Respondent's Past Accepted Practices and Instances of Disparate Treatment

Notwithstanding Fajilan's explanations as to various accepted exceptions to underwriting rules that were previously tolerated by Respondent without issue, Respondent does not have a history of terminating agents for failing to collect downpayments. For example, former Stockton Insurance Agent Angie Matthews received only a PIP in 2019 for failing to collect premium on a "dozen instances involving both auto and Home Owner policies." GC Exh. 135. Additionally, Fresno West Shaw Insurance Agent Mark Weddendorf received a PIP in 2018 for binding a policy without downpayment and without collecting a signature. GC Exh. 152. Additionally, Weddendorf collected a cash payment outside of the branch and did not turn it in to the Branch until the next day. Leaving cash unsecured and collecting cash outside of the Branch are both nominally prohibited by Respondent yet were only worthy of a PIP and not termination.

Moreover, the sudden crackdown on Fajilan is inconsistent with past practice. Per Fajilan, Valladares conducted internal audits of her branches' policies and provided the agents 30 days to upload any missing documentation before the policies were sent to Respondent's team of internal auditors. Tr. 276. Valladares utilized a spreadsheet of each agent in the branch and would go through files to see if there were any documents missing. Id. Fajilan was given no such 30-day correction period for any of the policies on which Respondent ultimately relied for his termination, despite Respondent's underwriting guidelines explicitly providing for such correction period. GC Exh. 97-98. Respondent's IKC guidelines provide that both signatures and discount documentation must be available and submitted to CSAA IG within 30 days of the effective date of policy or endorsement. GC Exh. 98 p. 7; see also R Exh. 2 (for example, Respondent requires signed application uploaded by 30 days from bind, must be available in PAS at time of review, and EFT form uploaded by 30 days from bind, must be available in PAS at time of review).

Similarly, Fajilan testified that he utilized the note box in PAS when explaining situations where he did not collect downpayment and was never disciplined, coached, counseled, or told to stop simply noting it in PAS.

iv. Respondent's Defenses are Pretextual and Respondent Failed to meet its Wright Line Defense

Because Respondent's justifications for terminating Fajilan were pretextual, there was no need to further assess them under *Wright Line's* second step, which is applicable in mixed-motive cases. *K-Air Corporation*, 360 NLRB 143 (2014), citing *United Rentals*, 350 NLRB 951, 952 (2007), *Golden State Foods*, 340 NLRB 382, 385 (2003), and *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). If the evidence as a whole "establishes that the reasons given for the [employer's] action are pretextual— that is, either false or not relied upon—the [employer] fails by definition to show that it would have taken the same action for those

reasons, absent protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis." *Cadillac of Naperville*, 371 NLRB No. 140, slip op. at 2 (2022) (citing *Golden State Foods Corp.*, above); see also *Aliante Casino & Hotel*, 364 NLRB 1186, 1186, 1197 (2016); *Metropolitan Transportation Services, Inc.*, 351NLRB 657, 659 (2007). There is strong evidence of pretext in this case, and the ALJ need not reach Respondent's burden in a *Wright Line* analysis and can conclude definitively solely on the basis of GC's *prima facie* showing that Respondent unlawfully terminated Fajilan.

However, if Respondent's *Wright Line* defense is considered, it failed to meet its burden. Having established Fajilan's Union activities were a motivating factor in Respondent's decision to terminate him, the burden shifts to Respondent to offer a legitimate, nondiscriminatory explanation for its actions. As the Board notes, the Respondent's burden under *Wright Line* is not to identify legitimate grounds for which it could impose discipline, but to persuade that it would have disciplined the employee even absent his or her protected activity. See *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 26-27 (2018). In meeting its burden, an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have been taken even in the absence of protected activity. *Rock Valley Trucking Co.*, 350 NLRB 69, 70 fn. 8 (2007) (citations omitted) (citing *W.F. Bolin.*, 311 NLRB 1118, 1119 (1993)). Furthermore, if an employer does not assert any business reason, other than one found to be pretextual by the judge, then the employer has not shown that it would have fired the employee for a lawful, nondiscriminatory reason. *T&J Container Systems, Inc. d/b/a T&J Trucking Co.*, 316 NLRB 771 (1995), citing *Aero Metal Forms, Inc.*, 310 NLRB 397, 399 fn. 14 (1993).

Here, Respondent has not shown that it would have taken the same action absent Fajilan's protected activities. First, Fajilan's lack of previous disciplinary history, combined with his

compelling testimony that Respondent tolerated for decades the very practices on the basis of which it then investigated and terminated him, readily demonstrate that Respondent terminated him because of his union activities. Second, Fajilan has shown that he, at all times, acted in accordance with accepted practices at the branch. Fajilan testified that it was common for him to not collect downpayment in both recognized situations where it was not required and in other instances. In the other instances, he would always put a note in the file. None of Fajilan's managers confronted him about how he was conducting business. As for the allegation that some of Faijlan's policies were improperly missing supporting documentation, Fajilan credibly testified that it was perfectly acceptable to upload documentation at a time after policies were bound. Fajilan additionally explained that Branch Manager Valladares was or would have been aware of any agent's missing documentation since she conducted her own internal audit of her agent's policies to see if there were missing signatures or documents, so that agents could then correct and timely obtain the necessary information prior to the policies being sent to Respondent's internal auditing team after 30 days.

Lastly, Respondent failed to produce any evidence that it terminated other employees for similar conduct. Respondent did not produce evidence of having investigated, let alone terminated, other agents who were accused of similar underwriting violations as Fajilan.

6. Conclusion

All elements of the *Wright Line* test as to Fajilan are satisfied and the General Counsel has satisfactorily proven that Fajilan's concerted or Union activity was a motivating factor (in whole or in part) for Respondent's adverse action. Respondent failed to prove that it would have taken the same adverse action even in the absence of Section 7 activity. *General Motors*, *LLC,* 369 NLRB No. 127 (2020), overruled on other grounds in *Lion Elastomers, LLC*, 372 NLRB No. 83 (2023).

Since Respondent has not demonstrated that it would have terminated Fajilan in the absence of his Union activities, the violation of 8(a)(3) is established.

C. Respondent Unlawfully Terminated 40-year AAA Veteran Clinton Ward in Violation of Sections 8(a)(3) and (4) of the Act. (32-CA-329863 Cpt. ¶ 7)

Clinton Ward was a dedicated AAA employee for 34 years—starting in October of 1989. GC Exh. 60 at Tr. 1156. Ward held various positions within Respondent, beginning first as a claims examiner before becoming an underwriting inspector. Id. at Tr. 1157-1158. Ward transitioned from the non-licensed examiner and inspector roles and became a licensed commissioned insurance agent in 1999, the position he remained in until his termination in October of 2023. During Ward's 24 years as an insurance agent, he was responsible for selling insurance, servicing members, and selling AAA memberships. Id. at Tr. 1158. Ward was never disciplined for violating any underwriting guidelines or anything policy-related during his employment. Tr. 914.

At all material times, Ward worked out of the Menlo Park, California Branch under the direction of various managers. In August of 2023 until his termination, Ward reported to Stevens Creek Branch Director James Cervantez.[38] and Assistant Branch Manager Marbella Salas. GC Exh. 60 at Tr. 1159, 1161. The Menlo Park Branch is part of Respondent's Golden Gate Region that is under the control/supervision of Vice President Antoinette James—to whom Branch Management reports. Id. at Tr. 1162-63. In addition to the Menlo Park Branch, Ward worked at the Daly City Branch, Mountain View Branch, and Redwood City Branch during his employment.

1. Ward was an Outspoken Union Activist

Ward was an early, strong and passionate Union supporter who showed his support in various capacities throughout the organizing campaign in 2021 through his last day of employment

[38] GC Exh. 60 at Tr. 1159-1160 (Cervantez stepped in to cover management duties until Respondent could find a replacement Branch Manager for the Menlo Park Branch. Previous to Cervantez, Ward reported to Snjezana "Snez" Kovacevic. Before Snez, Ward reported to Rodrick Quintos).

in 2023. Before the representation election in June of 2021, Ward was listed on a letter that the Union sent to Respondent identifying him as one of the agents who was engaged in Union organizing and was an official organizing committee member. GC Exh. 68; Tr. 790-791.

In addition to his position on the organizing committee, Ward was on the Union's bargaining committee where he assisted the Union by providing information to them, and consulting with the Union when discussing and advancing contract proposals. Ward attended nearly all bargaining sessions during contract negotiations from 2021 until 2023. GC Exh. 60 at Tr. 1163-64. It is undisputed that Respondent managers, including Vice President of Labor Relations Karen Williams and Vice President Tracy Taylor, were present during bargaining sessions with Ward.

i. The Union filed an Unfair Labor Practice Charge Based on Ward Reporting Unlawful Threats Made by Assistant Branch Manager Salas.

As alleged and litigated in AAA II (32-CA-321155 Cpt. ¶ 7(a)) after Respondent unlawfully implemented its LBFO, Respondent made it known to unit agents that the Union, rather than Respondent, was to blame for the devastating changes made to their working conditions. A few days before August 1, 2023, in anticipation of Respondent imposing its LBFO, Assistant Manager Marbella Salas approached Unit employee Clinton Ward in the Menlo Park Branch and said to him that "you guys are not AAA employees anymore. You are Teamsters. Can you believe this?" GC Exh. 60.[39] Salas' divisive remarks conveyed that a person cannot simultaneously be both a Respondent employee and a Union member and that one instead must choose sides.

[39] A few days later, Ward followed up with Assistant Manager Salas to clarify what she meant by the statement that the agents were not AAA employees but were Teamsters. GC Exh. 60 at Tr. 1196-97. Salas explained to Ward that she was present, along with other Branch Managers and Assistant Branch Managers, when Vice President O'Crowley started making a circular motion with his arms towards himself and said "we are AAA and we are happy" and then when he raised his hand in front of him as if he was motioning to someone away from him and said "those are Teamsters." Id.

As the recipient of this unlawful statement, Ward reported it to the Union and the Union filed a charge in 32-CA-322876 on July 26, 2023, and a first amended charge on August 9, 2023 alleging, among other things, that Respondent made threatening and coercive statements. A first amended complaint issued in AAA II 32-CA-321155 et al, about October 20, 2023 alleging that Salas' statement was unlawful.

ii. Ward Displayed Pro-Union Insignia in his Workspace, Breakroom, and Ward Attended Union Rallies and Meetings

Ward was unquestionably the most ardent Union supporter at Respondent's Menlo Park Branch. Tr. 1105. In his personal workspace, as soon as one walked into his office, Ward had a Union pin visible next to his AAA nametag on his desk from June 2021 until his termination. Tr. 791-792, 797; GC Exh. 78, 78-A. The Union button was also visible from the doorway to his office if someone was passing by. Tr. 794. Ward also used a Teamsters duffel bag daily, which had been gifted to him during contract negotiations, and set it on the credenza in his office with the logo facing the interior of the office—visible to colleagues and customers. GC Exh. 79; Tr. 800. Ward additionally posted a Teamsters logo inside of his office facing the public street next to his name tag, phone number, and a license plate that read "WARD AAA." Tr. 808-809; GC Exh. 80, 80-A. This Teamsters logo was posted for approximately three years. Id. Ward also posted a desk-tent that stated "AAA Stop Stalling . . . Give Us a Contract" with the Teamsters logo visible in the front left corner. GC Exh. 79. Ward had the desk tent posted from the day it was printed until his last day—approximately two years. Tr. 800. Ward also wore a shirt to work that had both the AAA logo and Teamsters logo about once a week. Tr. 1029-1030; GC Exh. 102.

Intermittently, Ward posted a "Fair Contract NOW!" sign with the "O" in now resembling a Teamsters logo on the back wall of his office facing the interior of his office and the Menlo Park Branch. GC Exh. 97; Tr. 799. Ward posted it sporadically because he used the sign in his vehicle.

Tr. 799. Ward additionally drove a large white van to work a couple times a month, sometime during contract negotiations and drove it until his last day of employment, with a Teamsters "STOP Stalling AAA" sign, with the "O" in now resembling a Teamsters logo, and the fair contract sign, referred to above, posted each time he drove the van. Tr. 806-807; GC Exh. 81. There were additional Union signs on the side of the van that said "ORGANIZE!" with the Teamsters logo at the bottom. Tr. 1002; GC Exh. 90. When parked outside of Ward's office, the signs were visible from the interior of his Menlo Park office. Tr. 1023-1024.

Ward additionally posted Teamsters signs in the office breakroom and would regularly replace the "Teamsters Stronger Together" sign if he noticed they had been removed. GC Exh. 82-82-A; GC Exh. 101, Tr. 810-13, 1025. Ward estimated that he posted the same Teamsters sign in the breakroom 10 times between June of 2021 until his termination in November of 2023. Id. In July of 2022, Ward also posted an image with Teamsters President Sean O'Brien in the breakroom. Tr 1028; GC Exh. 103.

Lastly, Ward showed his support for the Union by attending three Union rallies in San Francisco, Stockton, and in Utah. Tr. 827-828. Respondent was aware of Ward's attendance at least as to the Stockton rally on May 31, 2022 when Ward received contemporaneous text messages with verbatim quotes from the rally from Branch Manager Rodrick Quintos.[40] Tr. 828, 1007-1008; GC Exh. 88. Ward texted Quintos that he should not mock the Teamsters after Quintos texted Ward "man she angry . . . you didn't make me so you ain't gonna break me" in response to a Stockton Insurance Agent and unit employee Angie Matthews speaking at the rally. Tr. 1012; GC Exh. 88. When Ward attended a subsequent Union rally in March of 2022 in Utah. Tr. 1015. After the rally, Branch Manager Quintos texted Ward "WHO ARE WE!?!?!" after he watched the Facebook live

[40] Ward believed that the rally was being live-streamed on Facebook. Tr. 828. The Stockton rally was to protest Respondent closing the Stockton Branch. Tr. 1008.

video of the rally. GC Exh. 99. When Ward returned back to California and went to work the following day, he had a conversation with Quintos in which Quintos told Ward that Quintos' Vice President asked if Ward had taken PTO before attending the rally and wanted Ward to know that his boss was asking where Ward was. Tr. 1016-1017.

2. Respondent's Underwriting Rules Regarding Age First Licensed and Years Driving Experience

At the outset, years driving experience refers to the amount of driving experience that someone has. The experience can be from anywhere in the world and is not limited to California. Tr. 854.[41] Age first licensed, on the other hand, refers to the age that someone first received their license. Tr. 855. Years driving experience is a mandatory rating factor pursuant to Department of Insurance Regulations. GC Exh. 194.

Ward recalls that he was instructed to provide driving experience credit back to a drivers' 16th birthday if the driver was otherwise qualified for the AAA Select Policy by having at least three years of total driving experience, with 18 months of California, United States, or Canadian driving experience. Tr. 875-876, 884. Ward recalls that this instruction was provided to agents in a written interoffice communication (IOL). Tr. 876. At the time, IOLs were distributed to Branch Management who, in turn, provided them to the agents. Id. Ward recalls that the written IOL update was provided simultaneously during a meeting with Ward's-then Branch Manager in the Redwood City District Office.[42] Tr. 880. Ward recalls that he was told that that this new guidance was going to give everyone a fair playing field because some customers could not document their year's driving experience outside of the United States. Tr. 882. Ward testified that this rule was never

[41] Years driving experience is a production of California Proposition 103 requiring mandatory rating factors including: years driving experience, driver safety record, and annual mileage. Tr. 855; Tr. 758. GC Exh. 194 (Administrative notice taken of Prop. 103).

[42] Ward believes that the manager at the time was Al Perencin. Tr. 880, 882.

rescinded during his employment and he consistently provided driving experience credit back to drivers' 16th birthdays given that they otherwise qualified for AAA insurance. Tr. 897.

Former Sales Manager Albert Perencin worked for Respondent for 26 years from 1987-2013.[43] Tr. 756-759. Like Ward, Perencin recalls a change to how Respondent rated policies around the time that Prop. 103 passed and required mandatory rating factors, including years driving experience (YDE). Tr. 761-762. As such, agents had to record how many years the applicant was licensed. Id. At this time, consistent with Ward's recollection, Respondent had a Standard (Select) and a nonstandard (Choice) policy option. Tr. 762-765. The standard/Select option required, initially, three years of driving experience to qualify and generally offered better rates than the nonstandard Choice policy. Perencin recalls that Respondent changed its practice to permit an applicant to utilize foreign driving experience to qualify for the Select option so long as the applicant had at least 18 months of California driving experience in the early 2000s.[44] Tr. 762-765. In other words, foreign driving experience could be coupled with at least 19 months of Canada or United States driving experience so that the applicant would qualify for the AAA Select policy option—whereas before this change, applicants were required to have all three years/36 months of driving experience be in California, United States, or Canada.[45] Id. Initially, Respondent required proof of foreign licensure and required photocopies of the physical license to be included in the file. However, Respondent loosened its requirements and permitted agents to take an applicant's

[43] Respondent had the opportunity to cross-examine Albert Perencin and declined to do so. Tr. 773. As such, his testimony is uncontradicted.

[44] Perencin recalls that this change definitely was in place by the time he was a manager in the Daly City office around 2003. Tr. 763-764. And that this change It was a time where communications were sent as interoffice letters by IOLs and up to a point in time, but then it would be -- they would be sent electronically, so soft copy would be electronic (IOL from UW department). Tr. 769.

[45] Alfredo Torres testified that even the three-year licensing requirement was not always enforced. He provided the example of a husband having a license for more than three years while the wife did not, Respondent allowed for both the husband and wife to qualify together for a select policy even if the wife had zero driving experience at all and did not have a license. Tr 1113-1114, 1135.

representation as to where they had foreign driving experience and for how long and would make a note of their representation in the file. Tr. 763-764.

Moreover, Perencin recalls that Respondent allowed agents to backdate an applicant's age first licensed to sixteen. Tr. 769. He provided the example of a 20-year-old driver who was licensed for 18 months in the United States who represents that he had an additional two or three years of driving experience in a foreign country, wherein agents were allowed to list the applicant's age first licensed as sixteen. Id. Perencin himself would credit applicants with driving experience back to their sixteenth birthday when he conducted underwriting or quality audits during his time as manager at the Daly City Branch. Id.[46]

Alfredo Torres, a 21-year employee out of Respondent's Watsonville Branch, testified that the topic of crediting back to a driver's 16th birthday for AFL purposes came up at various times during his employment, including most notably at a new agent sales training in which agents were told to give clients years of driving experience back to their sixteenth birthday and that they should not worry about it because if they do not provide the credit back to age sixteen someone else will. Tr. 1394.[47] Torres testified that he additionally was able to get foreign-licensed clients without a California driver's license credit back to when they stated that they got their license. Consistent with this directive, Torres testified that Respondent's systems would autofill a customer's age first licensed as 16 the moment the customer's name and date of birth were entered into the system. Tr. 1117-1119, Tr. 1397. Torres testified that this was the case "for always." Tr. 1117-1119; see also GC Exh. 106; Tr. 1125-1126 (Solorio testified that Respondent's systems auto filled a customer's age first licensed as 16).

[46] Perencin testified that he remembers this coming up in situations involving foreign drivers.
[47] Torres understood that "someone else will" referred to both another agent and/or another insurance company. Tr. 1394.

In practice, eligibility questions and an insured's AFL is often resolved at the point when agents run a motor vehicle report (MVR) prior to binding a policy. Tr. 900. The MVR contains useful information about approximate year that a license was issued and is otherwise utilized to verify information collected during the quoting process. Tr. 901. If there was a conflict between information provided to an agent, Ward testified that he would call the customer to verify quote information but otherwise operated under the guideline that if someone qualified for AAA that they were able to get driving experience credit back to their sixteenth birthday. Tr. 904.

3. Respondent Launched an Investigation into Ward's Transaction History Regarding Customer's Age They Were First Licensed

On September 27, 2023, Clinton Ward unexpectedly received an email from Investigator Chris Jones requesting his cooperation regarding an investigation. Tr. 905; GC Exh. 83. Ward was never informed of the issue underlying the complaint nor was he provided any other specific details at this time. Tr. 905. Ward's investigatory interview was set for October 5, 2023 at the Daly City Branch and he coordinated to have Union Representative Woods present as his *Weingarten* Representative. Tr. 906. Between September 27 and October 5, Ward reported to work as usual. Id.

On October 5, 2023, Ward reported to the Daly City Branch for his interview. Tr. 907. Present at the interview was Ward's Union Representative Tom Woods, Corporate Investigator Tito Medeiros, and Investigator Chris Jones who was the sole participant to appear remotely via video conferencing. Id. At the commencement of the investigatory interview, Ward still was yet to be informed of what he was being investigated for. Tr. 908. Ward was eventually told that there was an ethics hotline complaint that was the reason for the investigation. GC Exh. 84.[48]

[48] The Ethics hotline was an anonymous report filed on September 7, 2023 involving prospective customer Madeline Nord who apparently received her license at age 20 but the initial quote listed her age first licensed as 16. GC Exh. 140.

Ward's interview followed Respondent's standard investigatory format as described above in Section IV(A)(4). Ward was asked a series of questions verbally and was required to type out his answers in a Word document at the conclusion of the interview. GC Exh. 84; Tr. 908-909. Investigator Jones' questions eventually revealed that Ward was being investigated regarding his transactions relating to a customer's age first licensed and years driving experience.

Ward answered the questions candidly and consistently—that he was trained to credit back to someone's sixteenth birthday for driving purposes if they had more than three years of driving experience. GC Exh. 84. Ward additionally explained that if he did not ask someone when they first received their license, that would only be because such information would be revealed in the motor vehicle report (MVR) run before binding in any event. Id. As to the specific policy-related questions, Ward provided detailed and consistent responses all reflecting his understanding that he had been trained over decades to input driving experience back to an insured's 16th birthday if they had more than three years of driving experience total. GC Exh. 84. Ward also indicated that he had been trained to presume that age 16 is the year first licensed provided that a MVR has more than three years of experience. Id.[49]

At the conclusion of the interview, Ward reviewed and signed the question-and-answer document (GC Exh. 84) and returned it to Investigator Medeiros. Ward was apprised that Ward could provide Medeiros and/or Jones with material facts within the next 48 hours so as to include those facts in the report. Tr. 917; GC Exh 84 p. 8. Ward was then placed on administrative leave

[49] As to question 54, Ward responded during the interview that he should not have proceeded to provided the customer a quote with only one year of driving experience. GC Exh. 84. However, Ward testified at hearing that he was blindsided and now realized that "I shouldn't have" was not the correct response. Tr. 911. Ward explained that he should have told Investigators Jones and Medeiros that the underwriting guidelines update allowed him to quote drivers with less than 18 months of experience and he historically was permitted to give driving experience back to a driver's 16th birthday. Tr. 910-912.

pending the conclusion of the investigation and asked to surrender his laptop and badge. Tr. 918-919.

On October 6, 2023, Ward sent an email to Investigator Jones with the subject "Amendment to statement of October 5, 2023." GC Exh. 85. In this email, Ward sought to provide further context and noted that he had consulted with a former underwriter who recalled that a basis or justification for the instruction to credit back to age 16 had been to assist Respondent in retaining lucrative multi-car policies. Id. Ward further explained that this former underwriter was available to provide a statement to Respondent as were other insurance agents who recalled this instruction. Id. However, Jones never followed up with Ward nor did he reach out to the underwriter or any other insurance agent in connection with his investigation. GC Exh. 193; Tr. 1974.

4. Respondent Discriminatorily Terminated Ward for his Protected Union Activities in Violation of Section 8(a)(3) and (4) of the Act.

i. Respondent Undisputedly had Knowledge of Ward's Union Activities

Ward engaged in extensive Union activities and was outspoken about his Union support. Respondent was explicitly on notice of Ward's Union support before the Union was certified by way of a letter sent to former Respondent CEO Tim Condon that identified Ward as one of the Union's organizers in March of 2021. GC Exh. 68. Ward additionally showed his Union support by being a member of the Union's bargaining committee and attending all bargaining sessions—both considered by Respondent to indicate pro-union sentiments. GC Exh. 70. Additionally, Ward's decision to have Union representation during his investigatory interview was a bold showing of support for the Union and was explicitly referenced in the ESFR and thus known to anyone who received or reviewed the ESFR as to Ward. GC Exh. 193; *Southern Mail, Inc.* 345 NLRB 644, 645 n. 7 (2005). Moreover, Ward's former Branch Manager Rodrick Quintos texted Ward during Union rallies that Ward attended and admitted to Ward that Vice President AJ James asked if Ward requested PTO to attend a Union rally in Utah. Lastly, Ward openly displayed his Union support

by regularly wearing Teamsters apparel at work and had Teamsters insignia conspicuously posted in his office from 2021 until he was terminated. There is thus no question that Respondent knew of Ward's Union activities.

ii. Respondent Harbored Anti-Union Animus Towards Ward

Ward's investigation and termination occurred within two months of Ward reporting a coercive statement that resulted in a Board charge and administrative complaint against Respondent. The timing supports the inference that Respondent's investigation and discipline were unlawfully motivated by Ward's protected conduct.

The investigation itself and Respondent's failure to adequately investigate the allegations against Ward supports the inference that its investigation and discipline were discriminatorily motived. *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1996) (failure to adequately investigate the alleged misconduct supports inference of animus); *Clinton Food 4 Less*, 288 NLRB 597, 598 35 (1988) (failure to adequately investigate an employee's alleged misconduct has been found to be an indication of discriminatory intent). In addition to the general inadequacies of Respondent's investigatory practices as a whole, discussed above in Section III(B), Respondent specifically failed in its investigation of Ward. Investigator Jones did not follow up with Ward regarding the supplemental information provided by Ward after the investigatory interview, nor did Jones even attempt to reach out to any pertinent witnesses suggested by Ward. In fact, in Jones' request to Learning and Development Trainer Terri Crockett for documentation to include in his ESFR, he framed his request to find information that could prove that Ward's claim that he received training and/or instruction from Respondent was inconceivable and incorrect. R. Exh. 61 (characterizing Ward and Solorio's explanation as to how they were trained as "questionable").

In addition to discriminatory motive and animus being inferred by issues with the investigation into Ward, there are two more examples of pretext that support the inference that

Respondent harbored anti-union animus towards Ward. First, Respondent has offered conflicting justifications for Ward's termination. In the investigatory interview, Ward was not asked any policy questions regarding his reporting of annual miles in automobile quotes. Ward's ESFR similarly does not find or state that Ward violated any guideline as to how to record annual mileage. However, Respondent's Termination Summary then lists inputting inaccurate mileage as a reason for his termination. GC Exh. 155. Nor can Respondent legitimately rely upon any minor monetary loss as a basis for its termination of Ward. Any minor loss of premium due to a small discount for years driving experience pales in comparison to the huge $4.3 million loss incurred by Respondent due to the conduct of Corporate Event Planner Garret Wun. GC Exh. 134. In contrast to Ward's termination, Wun only received a PIP. Id.

Disparate Treatment of Tiffani Brown and Jessica Estrada Compared to Ward

Animus should also be inferred on the basis of disparate treatment. Respondent did not consistently enforce, let alone discipline or terminate, agents for purported infractions of underwriting guidelines as it related to AFL. Two examples of agents who were investigated for AFL practices but did not have Union representation during their respective investigatory interviews, are Tiffani Brown and Jessica Estrada. Neither were terminated.

Tiffani Brown is an agent out of Respondent's San Ramon/Greenhaven Branch who was investigated for her mileage and AFL practices. Brown waived Union representation during her investigatory interview as indicated on her signed admonishment form (GC Exh. 32). Brown was asked about various instances where records showed conflicting information about customers' AFL or instances in which she failed to ask a customer what age they first received their license. In response to multiple questions as to certain policies, Brown repeatedly answered the

investigator that it was her error or that she was not sure why she did something. GC Exh. 33. Brown only received a DAF. GC Exh. 34.

Jessica Estrada is an agent who works out of Respondent's Manteca Branch. GC Exh. 208. Estrada had two ethics hotline complaints against her inputting of AFL and mileage when quoting policies in order to benefit herself and cheat Respondent. Id.; GC Exh. 209. Estrada was investigated by Corporate Investigator Jones in accordance with Respondent's general investigatory playbook. Estrada waived her right to Union representation as reflected in her admonishment form and as noted in the ESFR. GC Exh. 207. When asked about not properly capturing AFL and annual mileage, Estrada at one point explained that it was "HUMAN MISTAKE." GC Exh. 208. The ESFR prepared by Jones concluded that the allegations against Estrada were not substantiated. However, it is evident that Jones did not adopt the type of scorched earth approach typically utilized against prominent Union supporters. Specifically, there were certain policies that Jones asserted he was unable to review due to incorrect policy numbers, with no indication that Jones used or considered using some alternative method of identifying the relevant policies. Jones also stated that he was unable to review many of Estrada's calls because they were in Spanish, notwithstanding the evidence that Respondent has the ability to use Spanish speaking managers to translate calls into Spanish for non-Spanish speaking investigators. GC Exh. 208 p. 2. Jones noted that instances where there were discrepant AFLs "were not premium bearing and not material to rate, therefore did not discuss with Mrs. Estrada." Id. The contrasting investigation techniques and scopes depending on whether or not the target of the investigation exercised their right to Weingarten representation is quintessential evidence of antiunion animus.

Departure from Past Practice

The evidence in the record readily demonstrates that prior to the events of this case Respondent tolerated and even promoted flexible underwriting standards and inconsistently enforced its underwriting rules. Respondent claims that it does not permit agent falsification of information, yet the General Counsel's credible evidence shows that Respondent instructed its agents to include inaccurate information when quoting and binding policies in various instances. At issue in this case is the instruction provided around the early-to-mid 2000s instructing agents to provide year's driving experience credit back to someone's sixteenth birthday if they otherwise qualified for AAA insurance. AAA also instructed agents that it was permissible for agents to provide a year of driving experience credit to someone who only had a learners permit to drive and did not have a license. Tr. 867; Tr. 1398. This practice was accepted until October of 2022 when Respondent announced that a year of non-licensed permit experience could not count towards years driving experience. GC Exh. 86; Tr. 1399. Respondent explained that this change was to comply with California state regulations. Gc Exh. 86. In addition, it is a statutory mandate that a mature driver discount be offered to drivers who are 55. Tr. 868-869. Respondent, however, allowed agents to provide the mature driver discount to drivers who were 50 or older. Id. This was the accepted practice until October 2022 in which Respondent, by the same underwriting update email, announced that agents were no longer allowed to offer a mature driver discount to anyone who was under 55 years old in order to comply with state regulations—despite the regulation not changing. GC Exh. 86; GC Exh. 196.

Respondent has demonstrated a pattern of instructing agents to use incorrect or misleading information in violation of Respondent work rules and state insurance regulations. Respondent

suddenly departed from this practice of tolerance when it came to Clinton Ward such that Ward's investigation and termination were motivated by Union animus.

4. Respondent similarly violated Section 8(a)(4) when it terminated Clinton Ward.

Under Section 8(a)(4) of the Act, it is unlawful for an employer to take an adverse action against an employee for filing a charge with the National Labor Relations Board or for providing testimony in a Board investigation or proceeding, subpoenaed or not. 29 USC 158(a)(4). *NLRB v. Scrivener*, 405 U.S. 117, 124 (1972). ("the approach to section 8(a)(4) generally has been a liberal one in order to fully effectuate the section's remedial purpose."); *Delta Gas*, 840 F.2d 309 (5th Cir. 1988). Section 8(a)(4) allegations are analyzed under the *Wright Line* framework described above. See, e.g., *Freightway Corp.*, 299 NLRB 531, 532 (1990). Thus, the Board considers whether or not there is direct evidence of discrimination in the form of an admission or statements indicating animus, and also by the timing of the adverse action taken against an employee. *See*, *La Gloria Oil & Gas, supra* at 1124*; Toll Mfg. Co.*, 341 NLRB 832, 833 (2004); *Mid-W. Tel. Serv., Inc. & Wilfredo Placeres, Dustin Porter, Ben Fannin, & Michael Williams*, 358 NLRB 1326, 1343 (2012).

Here, Respondent had knowledge of Ward's extensive Union and protected activities, including that he was involved in reporting an unlawful statement to the National Labor Relations Board in which a charge was filed and complaint issued against Respondent. The chronology of Ward's termination in relation to the underlying administrative proceedings is suspect. Between the filing date of the charge (about August 2023), the filing date of the amended charge (about September 2023), and the August and October 2023 dates of the Complaints, Ward was investigated and ultimately terminated despite never having received any similar discipline during his 30+ year career. The sequence of events thus strongly suggests that Ward's involvement with reporting the 8(a)(1) statement motivated Respondent's investigation and subsequent discipline. See, e.g., *North Carolina Prisoner Legal Services*, 351 NLRB 464, 468 (2007) (timing of

employer's action in relation to protected activity provides reliable evidence of unlawful motivation) (citing *Davey Roofing Inc.*, 341 NLRB 222, 223 (2004)); *Traction Wholesale Center Co. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000) (discriminatory motive revealed by timing between discipline and discovery of employee's protected activities).

D. Respondent Unlawfully Terminated 37-year AAA Veteran Celia Solorio in Violation of Section 8(a)(3) and (4) of the Act

Solorio was a long-time AAA employee who worked for Respondent for nearly 40 years—beginning in 1983. GC Exh. 61 at Tr. Solorio held various positions with Respondent including underwriter and file clerk. Id. Solorio became a commissioned insurance agent in 1997 and continued in this position until her termination in November of 2023. During Solorio's distinguished career as a commissioned insurance agent, she was responsible for selling insurance, AAA memberships, and servicing her customers. Id. Solorio had no history of any disciplinary action during her career. Tr. 1270.

At all material times, Solorio reported to Branch Manager Greg Chu and Assistant Branch Manager Elmer Garcia. GC Exh. 61 at Tr. The Daly City Branch is part of Respondent's Golden Gate Region that is under the control/supervision of Vice President Antoinette "AJ" James—to whom Branch Management reports to. Id. In addition to the Daly City Branch, Solorio worked out of the Redwood City Branch and the San Mateo Branch. Id.

Respondent never disciplined Solorio prior to October 2023. GC Exh. 61 at Tr. 1270. Branch Manager Chu testified that he did not have any issues with Solorio's performance or how she was transacting business pursuant to Respondent's established practices and underwriting guidelines. Tr. 1675. Throughout her employment with Respondent, Solorio received countless Employee of the Month awards and achieved the Circle of Excellence sales performance award, which included trips to exotic places like Paris, France, approximately 20 times. GC Exh 132, 133; Tr. 1285-87.

In the months leading up to her termination, Solorio received another award in which Branch Management thanked her for her successful work ethic. GC Exh. 112.

1. Solorio Engaged in Union Activities at the Daly City Branch

Prior to the Union representation election, Solorio attended a public Union rally in the Civic Center area of San Francisco. Tr. 1214-15. Additionally, Solorio attended and participated in various virtual zoom meetings and Union meetings over Zoom whenever she could. Tr. 1214-15; Tr. 434-435 (Woods). Solorio additionally discussed the Union with coworkers at the Daly City Branch. Tr. 1215-16.

In addition, during the second week of August 2023, following the implementation of unlawful unilateral changes as part of Respondent's LBFO (at issue in 32-CA-321155 et al.) or even independently of the LBFO, Solorio approached Daly City Assistant Branch Manager Elmer Garcia's cubicle to ask for clarification about some of the new significant changes to working conditions that had recently been announced by Respondent. GC Exh. 61 at Tr. 1860. In response to Solorio's request for clarification, Garcia responded by saying "I am sorry, but this is what you guys asked for." Id. Solorio protested Garcia's response and said that this is not what we asked for, this is a punishment. Id. Garcia shrugged his shoulders but did not dispute Solorio's contention or say anything further. Id. As the recipient of this unlawful statement, Solorio reported it to the Union and the Union filed a charge in 32-CA-322876 on July 26, 2023, and a first amended charge on August 9, 2023 alleging, among other things, that Respondent made threatening and coercive statements. A first amended complaint issued about October 20, 2023 alleging that Garcia's statement was unlawful.

2. Respondent Launched an Investigation into Solorio's Transaction History Regarding Customer's Age They Were First Licensed.

On September 27, 2023, Celia Solorio unexpectedly received an email from Investigator Chris Jones requesting her cooperation regarding an investigation. Tr. 1260. Solorio received and signed Respondent's admonishment form. Tr. 1265(due to Respondent's incomplete document production, stipulation received as to Solorio receiving and assigning admonishment and did NOT waive her right to have union representation). Solorio was never informed of the issue underlying the complaint nor was he provided any other specific details at this time. Tr. 1260. Solorio's investigatory interview was set for October 5, 2023 at the Daly City Branch and she coordinated to have Union Representative Woods present as his Weingarten Representative. Tr. 1260. Solorio reported to work as usual between receiving Jones' email and the date of her investigatory interview. Tr. 1261.

On October 5, 2023, Solorio reported to the Daly City Branch for his interview. Tr. 1261-1263. Present at the interview was Solorio's Union Representative Tom Woods, Corporate Investigator Tito Medeiros, and Investigator Chris Jones who was the sole participant to appear remotely via video conferencing. Id. At the commencement of the investigatory interview, Solorio still was yet to be informed of what she was being investigated for. Tr. 1261-1263. Solorio was eventually told that there was an ethics hotline complaint that was the reason for the investigation. GC Exh. 139; Tr. 1264.

Solorio's interview followed Respondent's standard investigatory format as described above in Section II(B). Solorio was asked a series of questions verbally and was required to type out his answers in a Word document at the conclusion of the interview. See GC Exh. 108; Tr. 1266. Investigator Jones' questions eventually revealed that Solorio was being investigated regarding her

transactions relating to a customer's age first licensed and years driving experience and recording annual mileage.

Solorio answered the questions candidly and consistently to the best of her ability given the intimidating environment with Medeiros laughing, shaking his head, and otherwise mocking Solorio over the course of her two-hour interview. Tr. 1265, 1269. Through the questioning Solorio recalled that she had been trained to list a driver's age first licensed as 16. Tr. 1264-1265; GC Exh. 108. Solorio also explained that she also was able to list AFL as 16 if she reviewed the customer's Motor Vehicle Report. GC Exh. 108. Solorio also explained that since she has been an agent she was told to put 16 as a driver's AFL and to make a note for any prior driving experience in another country. Id. During the interview, Solorio referenced Director of Underwriting Valerie Vanderheiden as someone responsible for providing the instruction to her. Id. Importantly, Solorio emphatically denied entering incorrect AFL to help drivers qualify for lower rates and more sales for her and stated that she would never risk her career at AAA to do such a thing. Id.

At the conclusion of the interview, Solorio reviewed and signed the question-and-answer document (GC Exh. 108) and returned it to Investigator Medeiros despite him interrupting Solorio by telling her she needed to hurry up. Tr. 1266-67. Solorio was apprised that she could provide Medeiros and/or Jones with material facts within the next 48 hours so as to include those facts in the report. Tr. 917; GC Exh 84 p. 8. She was then placed on administrative leave pending the conclusion of the investigation and asked by her Branch Manager Greg Chu to surrender her laptop and badge. Tr. 1281. Worried about her customers, Solorio immediately asked Chu who would return her calls. Tr. 1281. Chu told her not to worry about it and requested that she leave through the back door. Id.

On October 7 2023, Solorio sent an email to Investigator Jones with supplemental information. GC Exh. 107. In this email, Solorio sought to provide further context and noted that former underwriter John Larsen and Valerie Vanderheiden implemented the AFL directive. However, Jones never followed up with Ward nor did he reach out to the underwriter or any other insurance agent in connection with his investigation. GC Exh. 138.

3. Respondent Discriminatorily Terminated Solorio for her Protected Union Activities in Violation of Section 8(a)(3) and (4) of the Act.

After a month of administrative leave, Solorio received a call from Branch Manager Chu who told Solorio that her employment with AAA was terminated. Tr. 1283. He did not provide any justification or explanation other than it was for misconduct. Id. Respondent mailed a notice of team member separation to Solorio that similarly provided that the basis of her termination was misconduct specificity. GC Exh. 109. For the reasons stated below, Respondent unlawfully and discriminatorily terminated Celia Solorio in violation of Section 8(a)(3), 8(a)(4), and 8(a)(1).

i. Respondent Knew of Solorio's Union Activities

Solorio engaged in union and protected activities and Respondent had knowledge of the same. Solorio attended union meetings and discussed the Union openly with coworkers. Additionally, Respondent's demonstrated its knowledge of Solorio's Union sentiments when Garica told Solorio "sorry, this is what *you* guys asked for" in response Solorio protesting punitive changes in work rules that Respondent imposed after declaring impasse in bargaining. GC Exh. 61 at Tr. 1860-1861. Garcia singled out Solorio and implied that she was a supporter and that she was to blame since her support led to this outcome. Solorio's union support is also most visibly demonstrated by her invocation of her *Weingarten* rights. The fact that Solorio had a Union Representative with her during her investigatory interview was known to Branch Management and the Investigators who are present, it is also included in the text of the ESFR for all recipients to

GC Exh. 138. Additionally, Respondent admitted that they consider those who invoke their *Weingarten* rights to be union supporters. GC Exh. 70.

ii. Respondent Harbored Anti-Union Animus Towards Solorio as Evidenced by its Inadequate Investigation, and by Disparate Treatment of Other Employees not Terminated for Similar Conduct

With Union activity and knowledge thus established, there is abundant evidence the basis of which animus should be inferred. The General Counsel may establish Respondent's unlawful motivation by proof of direct evidence or circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services*, *LLC*, 343 NLRB 1183, 1184 (2004), enfd. 184 F.App'x. 476 (6th Cir. 2006); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003). (ALJD 16:8-9). Circumstantial evidence of discriminatory motive may include, among other factors, contemporaneous unfair labor practices; statements and actions showing the employer's general and specific animus; the timing of the action in relation to the union or other protected conduct; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Intertape Polymer Corp.*, 372 NLRB 133 (2023)

First, Solorio's investigation and termination occurred within two months of Solorio reporting a coercive statement that resulted in a Board charge and administrative complaint against Respondent. The timing supports the inference that Respondent's investigation and discipline were unlawfully motivated by Solorio's protected conduct.

The investigation itself and Respondent's failure to adequately investigate the allegations against Solorio supports the inference that its investigation and discipline were discriminatorily motived. *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1996); *Clinton Food 4 Less*, 288 NLRB 597, 598 35 (1988). In addition to the general inadequacies of Respondent's investigatory practices as a whole, discussed above in Section IV(A)(4), Respondent specifically failed in its

investigation of Solorio. Investigator Jones did not follow up with Solorio regarding the supplemental information provided by her after the investigatory interview, nor did Jones even attempt to reach out to any pertinent witnesses identified by Solorio. In fact, in Jones' request to Learning and Development Trainer Terri Crockett for documentation to include in his ESFR, he framed his request to find information that could prove that Solorio's claim that she received training and/or instruction from Respondent was inconceivable and incorrect. GC Exh. 61, 63. When Solorio provided potential witnesses by name (Valerie Vanderheiden and John Larsen) who could shed light on the question of whether Respondent instructed agents to quote policies in this way, Jones refused to reach out to either of them.

Additionally, many of the policies at issue during the investigatory interview involved Spanish speaking clients who had prior licensing experience in other countries outside of the United States. Jones admitted that he does not speak Spanish, so any representation as to what occurred during these recorded phone conversations, Jones relied on the unofficial transcription by Branch Manager Chucky DeLuna instead of using one of Respondent's credible translation services. Moreover, Solorio provided various explanations as to why a recorded call that was reviewed during the course of the investigation may not fully encapsulate the universe of communications that occur when dealing with clients. For example, Solorio explicitly told Jones that there was a customer Vernon White with whom she had many conversations with—some on the phone, some over email, and some in the branch. Over the various conversations with White, he informed Solorio that the vehicle he was seeking to insure was going to be a pleasure use vehicle that warranted a reduced estimate of annual mileage. Jones did not attempt to verify any of the plausible explanations provided by Solorio, such as looking for an email between her and White or looking for other phone conversations between the two—he simply stuck with his original

assessment that based on the single phone call he listened to, Solorio must have intentionally manipulated White's annual mileage. Respondent's one-sided and shoddy investigation is additional evidence of animus and discriminatory motivation for terminating Solorio.

Disparate Treatment of Tiffani Brown and Jessica Estrada Compared to Solorio

As explained fully above in Section C(4), Animus should also be inferred on the basis of disparate treatment. Respondent did not consistently enforce, let alone discipline or terminate, agents for purported infractions of underwriting guidelines as it related to AFL. Two examples of agents who were investigated for AFL practices but did not have Union representation during their respective investigatory interviews, are Tiffani Brown and Jessica Estrada. Neither were terminated. Neither Brown nor Estrada ever explained to Investigator Jones that they were instructed to list AFL as 16. Brown's explained that she did not know why she did something or that it was an error. GC Exh. 33. Brown's unpersuasive answers, in the absence of a union representative, landed her a DAF instead of being terminated.

Estrada was accused via an ethics hotline complaint of falsifying AFL and mileage to "benefit herself and cheat Respondent." GC Exh. 208. Similar to Brown, Estrada defended herself by explaining that she must have made mistakes. GC Exh. 208. Jones justified his cursory investigation on the fact that there were incorrect policy numbers listed in the ethics hotline complaint or that he could not review her calls that were in Spanish. These types of minor roadblocks did not stop Jones from investigating Solorio, and it is clear that his excuses and deference to Estrada were not extended to Solorio. Jones also stated that he was unable to review many of Estrada's calls because they were in Spanish, notwithstanding the evidence that Respondent has the ability to use Spanish speaking managers or a professional translation service to translate calls into Spanish for non-Spanish speaking investigators. GC Exh. 208 p. 2. Jones

noted that instances where there were discrepant AFLs "were not premium bearing and not material to rate, therefore did not discuss with Mrs. Estrada. Id. The contrasting investigation techniques and scopes depending on whether or not the target of the investigation exercised their right to *Weingarten* representation is quintessential evidence of antiunion animus.

Respondent's Departure from Past Practice[50]

Solorio admits that she quoted policies listing AFL as 16 for anyone who had three years of driving experience since the day she received this instruction without issue. Further supporting this is the fact that Respondent's PAS system prepopulates or autofill an applicant's age first license as sixteen. Tr. 1125-1126; GC Exh. 106. Therefore, based on Solorio's representation that she has been quoting and binding policies in this manner since the day that she received instruction to credit back to age sixteen, Respondent tolerated this practice for over 15 years but has suddenly decided that this practice was as terminable offense. The sudden crackdown and disavowing of this accepted practice was only after Solorio's union and protected activities—meaning that Respondent was motivated by union animus.

Moreover, as stated above, the evidence in the record readily demonstrates that prior to the events of this case Respondent tolerated and even promoted flexible underwriting standards and inconsistently enforced such standards. Respondent claims that it does not permit agent falsification of information, yet the General Counsel's credible evidence shows that Respondent instructed its agents to include inaccurate information when quoting and binding policies in various instances including providing additional licensing experience for new drivers driving pursuant to

[50] Solorio won her unemployment hearing before the California Employment Development Department on July 5, 2024. GC Exh. 111. While not controlling, state agency decisions provide probative value even if they are not controlling. *Magic Pan*, 242 NLRB No. 137 (1979); *Western Publishing Co.*, 263 NLRB 1110 fn. 1 (1982). There, as here, the fact that Solorio's "good faith errors in judgment" and the fact that Solorio "did not even knowingly violate an employer rule" was relied upon in affirming Solorio's entitlement to unemployment benefits. More importantly, the unemployment Administrative Law Judge held that "it is therefore concluded that the claimant was discharged for reasons other than misconduct connected with the most recent work." GC Exh. 111 p. 4.

a learners permit and for mature drivers—both had to be rescinded to comply with California Department of Insurance regulations. GC Exh. 86. Respondent has demonstrated a pattern of instructing agents to use incorrect or misleading information in violation of Respondent work rules and state insurance regulations. Respondent suddenly departed from this practice of tolerance when it came to Celia Solorio such that Solorio's investigation and termination were motivated by Union animus.

4. Solorio's Termination also Violated Section 8(a)(4)

Under Section 8(a)(4) of the Act, it is unlawful for an employer to take an adverse action against an employee for filing a charge with the National Labor Relations Board or for providing testimony in a Board investigation or proceeding, subpoenaed or not. 29 USC 158(a)(4). *NLRB v. Scrivener*, 405 U.S. 117, 124 (1972). ("the approach to section 8(a)(4) generally has been a liberal one in order to fully effectuate the section's remedial purpose."); *Delta Gas*, 840 F.2d 309 (5th Cir. 1988). Section 8(a)(4) allegations are analyzed under the *Wright Line* framework described above. See, e.g., *Freightway Corp.*, 299 NLRB 531, 532 (1990). Thus, the Board considers whether or not there is direct evidence of discrimination in the form of an admission or statements indicating animus, and also by the timing of the adverse action taken against an employee. See *La Gloria Oil & Gas, supra* at 1124*; Toll Mfg. Co.*, 341 NLRB 832, 833 (2004); *Mid-W. Tel. Serv., Inc. & Wilfredo Placeres, Dustin Porter, Ben Fannin, & Michael Williams*, 358 NLRB 1326, 1343 (2012).

Here, Respondent had knowledge of Solorio's Union sentiments, including that she was involved in reporting an unlawful statement to the National Labor Relations Board in which a charge was filed and complaint issued against Respondent. The chronology of Solorio's termination in relation to the underlying administrative proceedings is suspect. Between the filing date of the charge (about August 2023), the filing date of the amended charge (about September 2023), and the August and October 2023 dates of the Complaints, Solorio was investigated and

ultimately terminated despite never having received any similar discipline during her 40-year career working for Respondent. The sequence of events thus strongly suggests that Ward's involvement with reporting the 8(a)(1) statement motivated Respondent's investigation and subsequent discipline. See, e.g., *North Carolina Prisoner Legal Services*, 351 NLRB 464, 468 (2007) (timing of employer's action in relation to protected activity provides reliable evidence of unlawful motivation) (citing *Davey Roofing Inc.*, 341 NLRB 222, 223 (2004)); *Traction Wholesale Center Co. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000) (discriminatory motive revealed by timing between discipline and discovery of employee's protected activities).

E. Respondent Unlawfully Terminated Lielonnie Lewis in Violation of Sections 8(a)(3) and (4) of the Act.

Lewis began working for Respondent as an Insurance Agent on December 3, 2019 until her termination on November 8, 2023. Tr. 314-15. Lewis worked at Respondent's Berkeley Branch for the entirety of her employment. Tr. 316. However, prior to working for Respondent, Lewis had prior experience as an insurance agent at Farmer's Insurance from January 2011 through approximately June 2018. Tr. 316. At all material times, Lewis' direct supervisor was Branch Manager Paul Mulig. Tr. 318. Mulig was also responsible for Respondent's Pinole, California branch. Tr. 319. The Berkeley Branch Assistant Branch Manager was Dominic Marrujo. Tr. 319.

1. Lewis Engaged in Union Activities

Lewis was an early supporter of the Union and the primary supporter from the Berkeley Branch, and she actively participated in Union Zoom calls; expressed her support for the Union to other agents in the breakroom or in the back of the Berkeley branch; and spoke up at one of Respondent's mandatory meetings about the Union. Tr. 320-22, 324. Lewis always spoke about the Union openly in common spaces and made no attempt to hide these discussions from management. Tr. 355. During one of Respondent's mandatory meetings about the Union, Lewis

questioned the accuracy of statements made by one of the presenters about Union dues, as well as a vague statement by the presenter that the Union was "not as protective" as agents think. Tr. 324-26. Lewis asked the presenter what he meant by, "not as protective as we [agents] think," and the presenter dismissed the question by simply repeating himself, "[T]hey're not as protective as you think." Tr. 326. Lewis also displayed a card in her cubicle with information about *Weingarten* rights, GC Exh. 15. Tr. 327-29.

i. Lewis was named in AAA I Complaint in 32-CA-280838 alleging that Respondent Unlawfully Denied her Effective Weingarten Representation.

The parties stipulated at hearing that Lewis' name appears on the face of a charge filed on March 18, 2022, Case No. 32-CA-292625, which was part of the AAA I Complaint, lead case No. 32-CA-280838, and Lewis' name appears in the Administrative Law Judge's decision in that case. Tr. 312-13. On March 17, 2022, Respondent conducted an investigative interview of Lewis, where Union Business Agent Tom Woods attended the interview with Lewis after she requested a Union representative. An Administrative Law Judge found that Respondent violated the Act by not telling Lewis prior to the outset of the interview the reason for the investigation, and by denying Lewis the opportunity to consult with Woods during the interview, after telling Lewis the investigation was about timekeeping practices. *American Automobile Association of Northern California, Nevada, and Utah*, 32-CA-280838, JD–15–26, p. 3 at 1 – p. 4 at 24.[51]

2. Respondent Launched an Investigation into Lewis' Transaction History Regarding Customer's Age First Licensed and Recording Customer Estimated Mileage

On September 28, 2023 Lewis unexpectedly received an email from Corporate Investigator Chris Jones vaguely informing Lewis that there had been an anonymous call made to the ethics hotline that Respondent wanted to discuss with Lewis. GC Exh. 16; Tr. 331-32. Lewis called Jones

[51] Respondent filed an exception to the ALJ's finding on July 1, 2026.

to get more info, but Jones would not give any detail about what the ethics hotline report was about. Tr. 332-33. Jones told Lewis that signing the admonishment form he attached to his initial email to her (GC Exh. 18) was mandatory. Tr. 333, 335-36.

Lewis' investigatory interview took place at the Berkeley Branch with an unnamed female manager present in the room with Lewis, in addition to Investigator Chris Jones and Union Business Agent Tom Woodsboth of whom attended remotely. Tr. 334. Jones asked Lewis more than 80 questions over a period of two hours and forty-five minutes with no breaks. Tr. 336-37. Per Respondent's investigative protocol, Jones then told Lewis to go back and review her answers and ultimately to initial each page, which she did before being instructed to return to her cubicle. Tr. 337-38. Immediately after the investigative interview, Respondent placed Lewis on administrative leave. Tr. 337. Branch Manager Paul Mulig summoned Lewis to his desk where he informed her she was placed on administrative leave and needed to shut down her computer. Tr. 338-339. Employees on administrative leave while under investigation do not have the ability to access their work computer or other records stored at their branches.

During the investigation, Lewis provided helpful and detailed explanations. Lewis explained that if there was a client who was an older driver, it was consistent with her practice at AAA and previous work experience at a competitor insurance company to assume that the driver was first licensed at age 16. During the interview, Lewis clarified that she was still learning of some underwriting requirements during the interview, such as the requirement that all household drivers need to be rated, and similarly denied that she was trained to ask each and every question in PAS. GC Exh. 17 p.4. Lewis also explained that existing AAA customers' information is already in Respondent's software and she would not need to verbally ask those same questions again during

any recorded telephone conversations with the customer. At the conclusion of the interview, Lewis was placed on administrative leave and was required to surrender her computer and badge. Tr. 337.

3. Respondent Discriminatorily Terminated Lewis for her Protected Union Activities in Violation of Section 8(a)(3) and (4) of the Act

After a month of being on administrative leave, on November 8, 2023, Branch Manager Paul Mulig sent a text message to Lewis to call him at about 12:30 that day. Lewis called him immediately after she saw the text. Tr. 339. Mulig proceeded to terminate Lewis over the phone. Tr. 340. For the reasons stated below, Respondent unlawfully and discriminatorily terminated Lewis in violation of Section 8(a)(3), 8(a)(4) and (1).

i. Respondent had Knowledge of Lewis' Union Activities

Lewis engaged in extensive Union activities and was outspoken about her Union support. Lewis spoke in support of the Union at captive audience meetings in the presence of Respondent managers during the Union's organizing campaign. Lewis additionally had Union insignia posted in her workstation. Lewis' Union support is also shown by her invocation of her *Weingarten* rights on two occasions. Lewis had a Union representative with her during two investigatory interviews with Respondent which was known to branch management and the investigators who were present, and is also included in the text of the ESFR for all recipients to see. See GC Exh. 144. Additionally, Respondent admits that it treats those who invoke their *Weingarten* rights as Union supporters. GC Exh. 70.

ii. Respondent Harbored Anti-Union Animus Towards Lewis as Evidenced by its Inadequate Investigation and by Disparate Treatment of Other Employees not Terminated for Similar Conduct

Inadequate Investigation

Respondent's failure to adequately investigate the allegations against Lewis supports the inference that its investigation and discipline were discriminatorily motived. *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1996); *Clinton Food 4 Less*, 288 NLRB 597, 598 35 (1988).

Aninus should be inferred based upon the general inadequacies of Respondent's investigatory practices as a whole, discussed above in Section IV(B)(4), most notably its refusal to allow any meaningful preparation or opportunity for target employees to defend themselves, both by refusing to inform them of the subjects for which they are being investigated by eliminating any opportunity to provide meaningful supplemental information after interviews given their inability to access their laptops.

Disparate Treatment of Tiffani Brown and Jessica Estrada Compared to Lewis

As explained fully above, animus should also be inferred on the basis of disparate treatment. Respondent did not consistently enforce, let alone discipline or terminate, agents for purported infractions of underwriting guidelines as it related to AFL. Two examples of agents who were investigated for AFL practices but did not have Union representation during their respective investigatory interviews, are Tiffani Brown and Jessica Estrada. Neither were terminated. Neither Brown nor Estrada ever really offered any explanation or justification at all.

Respondent's Departure from Past Practice

Lewis admits that she quoted policies listing AFL as 16 throughout her entire employment at Respondent. Respondent tolerated this practice and only suddenly noticed or cared about it once the Union was on the scene. The suspicious enforcement and sudden intolerance of Lewis' admitted practice only occurred after Lewis' union and protected activities—which indicates that Respondent was motivated by union animus.

Moreover, as stated above, Respondent has demonstrated a pattern of instructing and/or allowing agents to use incorrect or misleading information in violation of Respondent work rules and state insurance regulations. Respondent suddenly departed from its practice when it came to Lewis such that Lewis's investigation and termination can only be described as being motivated by Union animus.

4. Respondent Violated Section 8(a)(4) by Terminating Lewis

Here, Respondent had knowledge of Lewis' Union sentiments, including that she was involved in reporting an unlawful denial of her *Weingarten* rights in 2021 to the National Labor Relations Board, in which a charge was filed and complaint issued against Respondent in which Lewis was referenced by name in the complaint. After Lewis' Union and protected conduct, she was investigated and ultimately terminated despite never having received any similar discipline.

F. Respondent Violated Section 8(a)(5) By Unilaterally Imposing Minimum Production Standards on Agents Without Bargaining with the Union (32-CA-312204 Cpt. ¶ 8)

Respondent has unquestionably been under a duty to bargain since June of 2021. Unsurprisingly, it has refused to do so regarding its minimum production standards for insurance agents. Respondent has attempted to play semantic games to justify its clear & per se violation of Section 8(a)(5): For example, Respondent offered that a production goal is not the same as a requirement. See e.g., GC Exh. 24 p. 3. That is not the case. Respondent's production requirements were very much imposed with the understanding and intention that failing to meet them could subject agents to disciplinary action. The record makes clear that agents were both disciplined and terminated for failing to meet these purportedly innocuous and aspirational "goals" that Respondent swore were not akin to the previously rescinded minimum production standards.

1. Overview of Applicable Legal Framework[52]

It is well established that an employer violates Section 8(a)(5) and (1) of the Act if it changes employees' terms and conditions of employment[53] which are material, substantial and significant without first providing the bargaining representative with notice and the opportunity to bargain about the change or reaching a valid good faith impasse. *NLRB v. Katz*, 369 U.S. 736, 743 (1962); *Southern Florida Hotel & Motel Assn*., 245 NLRB 561, 567-68 (1979), *enfd. in rel. part* 751 F.2d 1571 (11th Cir. 1985)("Work rules, particularly where penalties are prescribed for their violation, are generally covered by the phrase 'other terms and conditions of employment' as set forth in Section 8(d) of the Act and are consequently mandatory subjects of collective bargaining."). Whether a change rises to the level of material, substantial, and significant is determined "'by the extent to which it departs from the existing terms and conditions affecting employees." *Salem Hosp. Corp.*, 360 NLRB 768, 769 (2014) (citing *Southern California Edison Co.*, 284 NLRB 1205, 1205 fn. 1 (1987), enfd. 852 F.2d 572 (9th Cir. 1988)).

[52] To the extent that *Wendt,* 372 NLRB No. 135 (2023) and/or *Tecnocap*, 372 NLRB No. 136, slip op. at 1 (2023) are implicated in this case, the General Counsel intends to urge the Board to overturn both cases and return to the framework set forth in *Raytheon Network Centric Systems*, 365 NLRB No. 161 (2017). However, given that the change to minimum production standards at issue here does not involve a continuation of a discretionary past practice and occurred during first contract bargaining, the 8(a)(5) violation is established even without reference to or reliance upon *Wendt* and/or *Tecnocap*.

[53] The prohibition on unilateral implementation applies to wages, hours, and other terms and conditions of employment where the change imposes a material and substantial impact on such terms. *See Katz*, 369 U.S. at 742-43. Thus, formalizing a prior lack of rules or policies, or more stringently enforcing policies that were not previously or were rarely enforced, will constitute a unilateral change – particularly where a newly certified union is involved and where the changes create, heighten, or imply disciplinary or other consequences for unit employees. *Bryant & Stratton Bus. Inst.*, 321 NLRB 1007, 1022 (1996) (reimplementation of a requirement to make use of the in/out board after a hiatus of 2 years of nonuse and after the Union's certification and the commencement of bargaining between the parties, wherein the Respondent changed from a lax, sporadic request to faculty for its use, to a more stringent requirement of compliance in using the board, without notifying and bargaining with the Union about this change, resulted in the Respondent's violating Section 8(a)(5) and (1) of the Act); *Vanguard Fire & Supply Co., Inc*., 345 NLRB 1016, 1017 (2005) (finding the employer's stricter enforcement of a cell phone policy unlawful because "a change from lax enforcement of a policy to more stringent enforcement is a matter that must be bargained over"), enfd. 468 F.3d 952 (6th Cir. 2006); *In Re Intrepid Museum Found., Inc.,* 335 NLRB 1, 5 (2001) (finding that reissuing and implementing an previously dormant drug testing policy was an unlawful unilateral change); see also *Spectrum Juvenile Justice Services*, 368 NLRB No. 102 (2019) (manager asked about change in break times after union prevailed in election told employee 'you guys voted the union in, so we have to follow the rules. . .no one can take breaks').

It is moreover established that, while bargaining for an initial collective-bargaining agreement, an employer must typically refrain from making material and substantial changes to unit employees' working conditions absent agreement on a contract or overall good faith bargaining impasse. *Bottom Line Enterprises*, 302 NLRB 373 (1991), *enfd. mem. sub. nom*., *Master Window Cleaning v. NLRB*, 15 F.3d 1087 (9th Cir. 1994); *Daily News of Los Angeles*, 315 NLRB 1236 (1994), *affd*. 73 F.3d 406 (D.C. Cir. 1996), *cert. denied* 519 U.S. 1090 (1997) (in general, during contract negotiations, an employer may not implement a change in a particular past practice unless the parties have reached an overall impasse). A unilateral change made during negotiations "must of necessity obstruct bargaining" and "will rarely be justified by any reason of substance." *Katz*, 369 U.S. 736 (1962).

Respondent unlawfully imposed minimum production requirements on represented, bargaining unit insurance agents without bargaining with the Union. The imposition was a material change to the unit's terms and conditions of employment and was explicitly imposed with the understanding that failing to meet the new requirements could subject agents to disciplinary action. The record similarly makes clear that Respondent has failed to meet its burden to show that its unilateral action was somehow warranted and further failed to show that it was consistent with past practice.[54]

54 Respondent cannot rely upon any exceptions to *Bottom Line Enterprises* to justify the imposition of this new rule, as there is no evidence or contention that the Union was avoiding or delaying bargaining, or that any economic exigencies compelled prompt action by Respondent. In general, when negotiations for a first collective-bargaining agreement are taking place, an employer has an obligation to refrain from unilaterally implementing changes to employees' terms and conditions of employment unless and until the parties have reached a first contract or have reached an overall good faith impasse in bargaining for an agreement as a whole. *Bottom Line Enterprises*, 302 NLRB 373 (1991). In *Bottom Line Enterprises*, the Board recognized two exceptions to this general rule. An employer may make unilateral changes to employment terms, while contract negotiations are ongoing and in the absence of an overall impasse, when a union in response to the employer's earnest and diligent efforts to engage in bargaining insists on continually avoiding or delaying bargaining, or when economic exigencies compel prompt action. 320 NLRB at 81-82. Respondent in this case does not allege that either of these exceptions apply and there is no evidence to support the application of either of them in any event.

2. Respondent Eliminated Minimum Production Requirements in February of 2021—Weeks After the Union Filed its Representation Petition.

Minimum production requirements historically were outlined in Respondent's Compensation Plan-which is a document that details various requirements for bonuses and commissions, and provides for various obligations and rules agents must follow. GC Exh. 19-20.

Menlo Park bargaining unit Clinton Ward credibly testified that during his employment, minimum production requirements were "on again and off again" depending on management at the time. Tr. 923. In other words, Respondent's enforcement of its minimum production requirements was inconsistent at best. In January of 2021, Respondent required agents to achieve a specific number of AAA memberships, AAA smart home subscriptions, and imposed a minimum sales goal each month.[55] Tr. 924-25. Failing to meet the enumerated goals could subject agents to discipline—up to and including termination. Tr. 925. For example, Ward's January 2021 production goals were: Sales Premium: $31,300, Membership: 20 , SmartHome Sales: $500 per month. GC Exh. 89; Tr. 924-926. Ward was explicitly on notice that "failure to make immediate and sustained improvement would lead to corrective action up to and including termination." Id.

However, on February 11 and 16, 2021, in the days surrounding the Union's filing of its representation petition, the Vice President of Sales Osh O'Crowley informed the California agents that it intended to eliminate the agent's minimum production requirement. GC Exh. 22-23. The next month, this promise was actualized via a notice of amendment to employees' 2021 compensation plans signed by Respondent's Chief Legal Officer Kamili Moreland. GC Exh. 20 p. 16-17. Officially, as of March 31, 2021, Respondent explicitly removed its minimum production requirements from the 2021 compensation plan. Id. The subsequent 2022 Compensation Plan accordingly had no mention of minimum production requirements. GC Exh. 54 p. 17-29.

[55] Ward testified that his understanding of minimum production requirements is that it is the same as sales goals.

Respondent's business records similarly confirm that agents were not disciplined between the time that the minimum production requirements were rescinded until late-2022 when the Union first learned that bargaining unit employees were disciplined. GC Exh. 157 (2021 sales production discipline included only agent Madonna Uribe who was issued discipline in February 2021); GC Exh. 158 (2022 sales production discipline).

3. Respondent Imposed Minimum Production Requirements Without Bargaining with the Union.

About December of 2022, despite Respondent's statutory duty to refrain from making any unilateral changes, Respondent brought back its minimum production requirements without bargaining or providing notice to the Union. The Union first learned of this change, not from Respondent, but from unit employees expressing concern about being called by managers into one-on-one meetings to discuss performance metrics, and from learning of unit employees receiving Performance Improvement Plans (PIPs) based on failing to meet sales requirements, including Folsom bargaining unit agent Tim Webb. Tr. 462; GC Exh. 24-25. The Union immediately confronted Respondent about this apparent change in practice. Id. In response, Vice President of Legal Relations Karen Williams apprised Union Representative Tom Woods that goals are not a minimum production requirement" Tr. 481; GC Exh. 24. Williams further said that "we use these [goals] to assess where someone is to the anticipated sales we think they are able to make." Id. In other words, Respondent claimed that Webb was disciplined for not meeting production goals while Respondent simultaneously maintained that Respondent did not even have minimum production standards. Id.; Tr 481-482.

In seeking further clarification regarding Webb, Woods asked Williams to clarify the language in the PIP that explicitly stated that "failing to meet and sustain job expectations may result in further corrective action, up to and including termination." GC Exh. 24. Woods asked

Williams if this language was intended to suggest that Webb could be subject to further disciplinary action up to and including termination if he did not improve his sales. Id. at p. 4. Williams evaded this direct question and stated that Respondent expects those who are on a PIP "to understand that they must comply with all other policies & practices" and if Webb could show improvement he "should be fine." Id.

The Union, by Business Representative Woods, investigated the matter further and determined that the imposition of minimum production requirements and issuance of PIPs was not limited to the Folsom Branch at which Webb worked and instead was occurring at various branches across different regions. Tr. 482; GC Exh. 38; GC Exh. 26; GC Exh. 27-28.

i. Respondent Conducted Manager Training and Instructed Management How and When to Discipline Agents Before it Reimposed Minimum Production Requirements.

The year after the Union was certified, and in the midst of contract bargaining, Respondent announced its plan to change course and impose production requirements on represented agents. Respondent management underwent training as to the new requirements and how to enforce them. GC Exh. 37. Specifically, the "sales effectiveness" training outlined to branch management that they were to "recognize" agents in the top 40% of the sales ranking report, "support" the middle 40% of agents, and "manage" agents in the bottom 20%. Id. The directive to "manage" the bottom 20% of agents involved coaching sessions and required weekly documentation of coaching sessions following a template provided by Respondent. Id. Specifically, the training mandated that "[l]ow performing [a]gents who fail to improve their results after 2 months of daily coaching may be eligible for additional training and/or may be subject to the PIP/DAF process. Id. (emphasis added).[56] Respondent's employee handbook makes clear that coaching, PIPs, and DAFs are

[56] PIP is an acronym for Performance Improvement Plan; DAF is an acronym for Disciplinary Action Form.

corrective, disciplinary actions that could result in termination. GC Exh. 75 p. 18 (Respondent handbook provides that when team member's work performance or behavior falls below company standards, the company may take disciplinary action. Respondent further states that discipline may include but is not limited to coaching, PIP, DAF, suspension, or termination.)(emphasis added). In fact, Respondent even disciplined then-Los Gatos Branch Manager TJ Atkins for failing to adhere to the instructions provided in the Sales Effectiveness training by failing to hold one-on-one meetings with underperforming agents. GC Exh. 154; compare with GC Exh. 37.

ii. Minimum Production Requirements Were Not Merely Aspirational Goals: Respondent Threatened Discipline and Actually Disciplined Agents for Failing to Meet Minimum Production Requirements.

After the Tim Webb situation discussed above, the Union confronted Respondent with another situation where it appeared that Respondent terminated another bargaining unit employee for failing to meet production requirements that had been eliminated in 2021. In May of 2023, Woods learned that Respondent terminated San Ramon Branch bargaining unit employee Qudsia Omar for failing to meet her production goals. GC Exh. 24 p. 6; Tr. 571. Woods raised the Omar situation with Williams and Williams informed Woods that since mid-2022 Respondent had been coaching Omar on her performance and that Respondent had "not imposed a minimum production requirement . . . but instead talked to her about improving her sales." GC Exh. 24 p. 6. Williams referenced Omar's 2022 PIP in which she was "advised that she needed to improve her numbers, again, not with a minimum production requirement." Id.; see also Tr. 574; GC Exh. 36 (Omar received PIP in 2022 regarding failing to meet assigned sales goals including sales premium monthly and yearly goals in addition to being required to meet monthly and yearly membership goals).

In addition to Omar, Respondent disciplined and terminated other sales agents for failing to meet sales goals, as discussed below. This is in stark contrast to the absence of disciplinary

action between the time that production requirements were eliminated in the spring of 2021 until the end of 2022 when the unit employees started reporting being disciplined for failing to meet sales goals. GC Exh. 157-159.

A. Menlo Park Agent Clinton Ward was Subject to Meetings to Discuss his Minimum Production Goals and was Impliedly Threatened with Discipline for Failing to Meet his Goals.

Menlo Park bargaining unit sales agent Clinton Ward testified about his experience being subject to weekly meetings and coaching sessions to improve his production. After production requirements were eliminated in 2021, Ward was first called into a meeting with then-Branch Manager Rodrick Quintos in April 2022. Tr. 929-932; GC Exh. 91. Initially, Ward did not know what the purpose of the meeting was. Tr. 931. After the meeting began, Ward's Branch Manager Quintos told Ward that his boss was requiring him to have one-on-one meetings to discuss production. Tr. 931. Ward testified that this April 2022 meeting discussed the same metrics that were in force before Respondent eliminated the production requirements in 2021 including sales premium, membership sales, daily quotes, and daily telephone calls. Tr. 930; see also GC Exh. 89 (2021 discussion of minimum production requirements with Ward before they were eliminated in February/March of 2021). The same day, Ward sent a follow-up email to Branch Manager Quintos protesting what he perceived as a change in practice, and also asked him what the consequence of failing to produce calls, quotes, etc. would be. GC Exh. 91.[57]

Ward was subject to additional one-one-one meetings with the Acting Branch Manager James Cervantez in October of 2022. Tr. 932; GC Exh. 93. Ward recalls this first meeting with

[57] See GC Exh. 220 (VP AJ James Branch visit recap to Quintos stating that "this is not about minimum production. It is about productivity); GC Exh. 92A (Quintos shared internal email from VP AJ James with Ward. Email demanded weekly documented discussions with your agents who have missed their sales target 2 out of 3 months). Only in Respondent's mind is there is meaningful distinction between production and productivity.

Acting Branch Manager Cervantez discussing various production goals that Ward was to hit including a minimum sales premium amount, minimum number of quotes, membership sales, and making more outbound calls. GC Exh. 93 (email providing that Star Metrics are sales premium, total quotes, and total AAA membership sales (membership acquisition quota or "MAQ"). Ward testified that the numbers next to Star Metrics are not visible if you print or screenshot the email. Tr. 934. Ward challenged Acting Branch Manager Cervantez requiring certain daily / monthly sales requirements since the exact requirement was eliminated in 2021. Tr. 937. In response, Cervantez maintained that these were not minimum production requirements, they were office goals, and that *the employee handbook lists the consequences*. Tr. 937 (emphasis added); see also GC Exh. 75 p. 18 (Respondent handbook provides that work performance below company standard could subject agents to discipline including coaching, PIP, DAF, suspension, or termination).

Ward met with Cervantez again in December of 2022. Tr. 940. Cervantez again told Ward that he was not meeting expectations and that the handbook details the consequences for failing to meet these minimum requirements. Tr. 940. Ward asked bluntly why these requirements conflict with the 2021 elimination of any of the similar requirements— in which Cervantez refused to answer. Id.; see also GC Exh. 94 (recap of December 2022 meeting recapping STAR report metrics, activities, and progress wherein Cervantez stated that " a core objective of your role is to achieve your annual individual sales premium goal" . . . "to recap and be clear, your role has goals (sales premium and MAQ) and a primary focus is to sell insurance and other core products and services of AAA). Ward and Cervantez discussed, again, what the consequences of failing to meet the goals outlined to him during the meeting would be, and Cervantez told Ward that the handbook outlines the consequences of failing to meet these requirements. Tr. 940-41.

B. Respondent's Business Records Show that Respondent Did Not Discipline Agents for Production Goals From Spring of 2021 until Fall of 2022 as Alleged in the Complaint.

Respondent's contention that sales goals are not the same as minimum production requirements fails. The record is replete with examples, using Respondent's own documents, that agents were placed on PIPs or received DAFs for failing to meet minimum production and/or sales goals—notwithstanding various instances of coaching that Respondent itself defines as disciplinary in nature per its handbook. GC Exh. 75 p. 18 (handbook); GC Exh. 91-93 (Ward coaching emails); GC Exhn. 27 (Juggie De La Cruz coaching); GC Exh. 28 (Corina Molina coaching); GC Exh. 230 (Lielonnie Lewis coaching). The following chart summarizes record evidence regarding PIPs, DAFs, or terminations issued to unit employees regarding failing to meet their sales goals and/or minimum production requirements at a time that Respondent maintained that they did now have any minimum production requirements:

Name[58]	Month	Year	Discipline Type
Madonna Uribe	February	2021	DAF
Tina Schafer	February	2022	PIP
Tim Webb	November	2022	PIP
Qudsia Omar	November	2022	PIP
Robert Hansen	January	2023	PIP
Patrick Wolfe	February	2024	PIP
Marquez Califro	April	2024	PIP
Elsa Canal	May	2024	FINAL WARNING
David Hyunh	August	2024	PIP

[58] GC Exh. 157 (M. Uribe PIP); GC Exh. 158 (p.1-2 T. Schafer, p.3-4 T. Webb, p.5-14 Q. Omar); GC Exh. 159 (p. 1-2 R. Hansen), GC Exh. 165 (P. Wolfe); GC Exh. 29, 162-163 (M. Califro); GC Exh. 161 (E. Canal final warning); GC Exh. 167 (D. Hyunh); GC Exh. 160 (E. Canal Termination Summary); GC Exh. 164 (J. Cruz Termination Summary).

Marquez Califro[59]	August	2024	FINAL WARNING
Elsa Canal	August	2024	TERMINATION
John Simon Dela Cruz	August	2025	TERMINATION

Respondent's claim that it has consistently disciplined employees for failing to meet minimum production standards before, during, and after the Union is demonstrably untrue.[60] As shown above, there was at least a year after the March 2021 rescission of the minimum production requirements in which no written discipline was issued.

4. Analysis[61]

Respondent was required to bargain with the Union before it imposed minimum production standards and/or sales goals. The imposed minimum production requirements constituted material and substantial changes in the employees' working conditions, were enforced with the implicit threat of discipline, and were a mandatory subject of bargaining. *Alfred M. Lewis, Inc. v. NLRB*, 587 F.2d 403 (9th Cir. 1978); *Mining Specialists, Inc.*, 335 NLRB 1275, 1283 (2001) (Sales quotas

[59] See also Tr. 575; GC Exh. 39 (Woods testified that M. Califro was terminated for not meeting annual sales goals during period in which he was on approved baby bonding leave and that Respondent did not adjust his sales goals to align with his period of approved leave).

[60] Respondent's position statement submitted to the Region contains various inaccuracies. GC Exh. 200. First, Respondent claims that Respondent's practice is to coach towards improving sales effectiveness, and failing to improve after coaching can subject an agent to written discipline such as a PIP. Respondent claims that it has been Respondent's practice to coach and utilize PIPs for at least 16 years. Id. When asked for further documentation about its self-proclaimed 16-year consistent enforcement of sales performance discipline between March of 2021 and December of 2022 (GC Exh. 198) Respondent provided a spreadsheet, with no underlying documentation, attempting to demonstrate that it did have a consistent practice of disciplining agents for sales performance. GC Exh. 197. However, Respondent's submission is misleading. The underlying documents demonstrate that there were three instances (T. Shafer p. 15, Q. Omar p. 59, and T. Webb p. 65) during the requested time period in which Respondent disciplined agents for failing to meet sales goals—all three disciplines occurred after Respondent eliminated its minimum production requirements. GC Exh. 201. See also GC Exh. 233 (additional Respondent position statement admitting that a sales organization has sales goals, and falling below performance goals can subject an agent to coaching to improve sales effectiveness and then a PIP if there has been no improvement).

[61] The issue of minimum production standards has been fully litigated in this case with respect to both P&C insurance agents and life insurance agents. To the extent that Complaint ¶ 8(a), can be read as limited to P&C agents given its specific reference to Section D(1) in the P&C Compensation Plan, the General Counsel nevertheless urges Your Honor to find a violation with respect to the entire bargaining unit of sales agents—P&C agents and Life Insurance Agents--based on the record as a whole. The allegation was fully litigated, involves the same section of the Act, and the record evidence includes both P&C and Life Insurance Agents. *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

and incentive compensation tied to employee production are undisputedly mandatory subjects of bargaining); *Ferguson Enterprises, Inc.*, 349 NLRB 617, 618 (2007) (where a unilateral change is accompanied by the threat or imposition of discipline, the Board will find a violation without regard to whether the change is otherwise material, substantial, or significant); *see also King Soopers, Inc.*, 340 NLRB 628 (2003); *United States Postal Service*, 341 NLRB 684, 687 (2004); *Flambeau Airmold Corp.*, 334 NLRB 165, 165-166 (2001) (citing *NLRB v. Katz*, 369 U.S. 736 (1962)).

The record makes clear that minimum production requirements were eliminated mid-February 2021-March 2021 and did not exist in the months before the Union's certification in June of 2021. Therefore, the status quo as it existed upon the Union's certification in June of 2021 did not include minimum production requirements for sales agents. As such, if Respondent wanted to implement new requirements or change the status quo in any way once the Union was certified, it was required to bargain before doing so. It is undisputed that Respondent did not bargain with the Union. Tr. 462, 481; GC Ex. 24.

In sum, there are no available justifications that excuse Respondent from bargaining with the Union about minimum production requirements, and Respondent has failed to satisfy any of the criteria that could even conceivably entitle it to act unilaterally. As of the time of the changes, the parties remained in first contract bargaining. Respondent had yet to declare overall impasse or even mini-impasse on any subjects. Indeed, it is undisputed that Respondent did not even provide the Union notice and opportunity to bargain, foreclosing any argument that it satisfied the narrow, strict and extraordinary circumstances that allow for changes during first contract negotiations.[62] As such, Respondent violated Section 8(a)(5) of the Act.

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[62] *Bottom Line Enterprises*, 302 NLRB at 374, citing *NLRB v. Katz*, *supra*; *NLRB v. Auto Fast Freight*, 793 F.2d 1126, 1129 (9th Cir. 1986), enfd. 272 NLRB 561 (1984); *Winn-Dixie Stores*, 243 NLRB 972, 974, n.9 (1979); *Taft*

5. Conclusion

Respondent's unilateral imposition of minimum production requirements was unlawful because it was a material alteration to the Unit employees' conditions of employment and because Respondent failed to demonstrate past practices consistent with the changes. Even assuming *arguendo* that the burden falls onto the Counsel for the General Counsel to demonstrate past practices that were altered by the implementation, the record amply demonstrates that there were in fact changes to Respondent's pre-Union practices.

6. Evidentiary Sanctions are Warranted for Respondent's Failure to Produce Documents

The Administrative Law Judge was well within her discretion to impose evidentiary sanctions against Respondent for its defiant refusal to produce subpoenaed documents for in-camera inspection pursuant to the ALJ's Order. As a general matter, a party has an obligation "to begin a good faith effort to gather responsive documents" upon service of a subpoena. *McAllister Towing & Trans. Co., Inc.*, 341 NLRB 394, 396-397 (2004), enfd. 156 F.Appx. 386 (2d Cir. 2005). A party who "ignores a subpoena pending a ruling on a petition to revoke does so at his or her own peril." *McAllister Towing*, 341 NLRB at 397. In the instant matter, Respondent not only failed to initiate a search of the disputed documents upon receipt of the subpoena, but it also simply outright refused to do so. Respondent later, despite an order to search and produce responsive documents, grounded its failure and refusal to produce documents to Counsel for General Counsel in the incapability of its technology capacity to search.

Broadcasting Co., 163 NLRB 475, 478 (1967), enfd. sub nom. *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968); *M & M Contractors*, 262 NLRB 1472 (1982) ("However, when, as here, the parties are engaged in negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain; it encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole. The Board has recognized two limited exceptions to this general rule: '[w]hen a union, in response to an employer's diligent and earnest efforts to engage in bargaining, insists on continually avoiding or delaying bargaining,' and when economic exigencies compel prompt action. Such extenuating circumstances are not, however, present in this case.")

The Board's authority to impose a variety of sanctions to deal with a party's noncompliance with a subpoena includes "permitting the party seeking production to use secondary evidence, precluding the noncomplying party from rebutting that evidence or cross-examining witnesses about it, and drawing adverse inferences against the noncomplying party." *Shamrock Foods*, 366 NLRB No. 117, slip op. at 1, n.1 (2018) (citing *McAllister Towing*, 341 NLRB at 396-397). The Board's authority to impose such sanctions flows from its "inherent 'interest [in] maintaining the integrity of the process.'" *McAllister Towing*, 341 NLRB at 396 (citing *NLRB v. C. H. Sprague & Son, Co.*, 428 F.2d 938, 942 (1st Cir. 1970); *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 834 (D.C. Cir. 1998)).

Adverse inferences should be drawn here. An adverse inference is based on the principle that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." See *Sparks Restaurant*, 366 NLRB No. 97, slip op. at 10-11 (2018) (citing *Auto Workers v. NLRB*, 459 F.2d 1329, 1335-1336 (D.C. Cir. 1972) (respondent's failure to produce subpoenaed records warranted adverse inference that the records would not have supported respondent's position); see also *Shamrock Foods*, 366 NLRB No. 117, slip op. at 15, n.29 (adverse inference was warranted that subpoenaed documents would have corroborated testimony of employee witnesses that floor captains were supervisors because of respondent's "contumacious failure" to timely produce responsive documents to the request, either on September 8, as required by the subpoena, or during the hearing itself on September 9). Consequently, it is appropriate to draw an adverse inference that the subpoenaed documents which Respondent failed to produce would not have supported Respondent's position and would have corroborated the testimony of the General Counsel's witnesses.

An adverse inference should be drawn unless there is a valid reason not to do so. *Metro-West Ambulance Service, Inc.*, 360 NLRB 1029, 1030 n.13 (2014). In *Metro-West Ambulance Service*, for example, the Board disagreed with the judge's finding that it was unnecessary to draw an adverse inference, where the hearing transcript showed that on the last day of the hearing, the respondent indicated to Counsel for the General Counsel that there were additional responsive documents, but they were not "easily available" and would take more than a few days to produce them. Id. In *Metro-West Ambulance Service*, although the General Counsel did not ask that the record be left open, the Respondent did not explain or otherwise address its failure to produce the responsive documents. Id.

The ALJ appropriately issued evidentiary sanctions against Respondent for its explicit refusal to comply with the order to produce subpoenaed documents and thus should reaffirm Your Honor's ruling as to permitting secondary evidence and precluding Respondent from using documents it failed to produce. However, the General Counsel respectfully requests that Your Honor draw adverse inferences against Respondent. Respondent had months to gather documents responsive to the General Counsel's subpoena duces tecum, including addition time after the record had already opened compile responsive documents specifically regarding Subpoena Requests 8-11. For these reasons, Your Honor should draw the adverse inferences as requested by the General Counsel.

G. Respondent Violated Section 8(a)(5) When it Failed and Refused to Provide Information to the Union. (32-CA-329821 Cpt. ¶ 7; 32-CA-334794 Cpt. ¶ 8)

Respondent has disregarded its most basic obligation under the Act to timely provide relevant information to the Union upon request. As discussed below, the Union sought relevant documents necessary to represent the bargaining unit including for the purpose of policing Respondent's recently-imposed LBFO, as well as information necessary to investigate a pending grievance on

behalf of a unit employee. Respondent had no legitimate basis to withhold this information from the Union.

1. Overview of Legal Standard.

An employer is obligated upon request to furnish the union with information that is potentially relevant and that would be useful to the union in discharging its statutory responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Sheraton Hotel*, 289 NLRB 463 (1988). The test for relevance is a liberal "discovery-type standard." *Acme, supra* at 437. Since there is a broad discovery-like standard to measure relevance, even potential or probable relevance is sufficient to give rise to an employer's obligation to provide requested information. *U.S. Postal Service*, 332 NLRB 635 at 636 (2000). An employer has various duties in this regard, which include: duty to timely provide relevant requested information, *Woodland Clinic*, 331 NLRB 735 (2001). a duty to adequately explain why information will not be furnished, *Regency Service Carts,* 345 NLRB 671, 673 (2005); *Spurlino Materials, LLC*, 355 NLRB No. 77 (2010), and a duty to timely inform the union that the information does not exist. *U.S. Postal Service,* 332 NLRB 635 (2000).

2. The Union's August 28, 2023 Request for Information Pertaining to Respondent's Internal Investigations into Allegations of Fraud and Ethical Standards as defined by the Parties' Imposed LBFO. (32-CA-329821 Cpt. ¶ 7)

On August 28, 2023, Union representative Woods emailed Corporate Investigator Tito Medeiros, and copied VP of Labor Relations Karen Williams,[63] with the subject of the email "Request for Information." GC Exh. 40; Tr. 595. The Union requested the following information: 60 days' worth of investigations for fraud including Ethics complaint report number, classification of employee under investigation, description of fraud complaint, description of investigatory steps

[63] The Union also copied Union representative Tony Delorio, Union representative Joe Matekel, and Union representative Ralph Miranda on the RFI email to Respondent.

taken, factual determinations made, and any discipline that resulted from the investigation. GC Exh. 40.

The Union explained to Respondent that its request was premised on policing the terms of the LBFO requiring Respondent to hold all employees to the same ethical standards. GC Exh. 40; Tr. 595; see also GC Exh. 54 p. 22-23 (pertinent LBFO language that provides that "[n]o agent will be held to a higher ethical standard than other employees."). In this instance, the Union explained to Respondent that fraud was the most common investigation they were aware of, and that the requested aggregate information would help the Union understand whether Respondent was treating all employees similarly.

On August 28, 2023, VP of Legal Williams responded to Union Representative Woods advising the Union that the information requested was not available to or exceeded what corporate investigator Medeiros had available to him. GC Exh. 41 p. 2; Tr. 602. Williams also advised the Union that Medeiros was out of the office and would not be able to provide the requested information within 10 days but would work on responding upon his return. GC Exh. 40; GC Exh. 41. On September 13, 2023, Respondent by Medeiros provided the Union with a responsive Excel spreadsheet by email. GC Exh. 41; GC Exh. 44; GC Exh. 44(a)-(b); Tr. 601. The information provided, however, did not include the information that the Union requested, such as basic information about the nature of the fraud complaint, report number, and the outcome of the investigation into the complaint.[64] Id.; Tr. 602. Nor did the spreadsheets provide enough information for the Union to determine whether or not Respondent was treating all employees fairly and equally. On September 14, 2023, Woods responded to Medeiros' September 13, 2023

[64] The Spreadsheet Respondent initially provided only included information about two instances of fraud complaints. The remaining information included 13 cases of agent non-fraud misconduct and 1 case involving a conflict of interest. GC Exh. 44; 44(a)-(b).

email contesting the completeness of information provided. Woods explained to Medeiros the facially obvious defects of the production, including that Medeiros provided an incorrect list of unrelated investigations relating to misconduct and conflict of interest, but also that Woods himself was aware of specific reports made by a bargaining unit employee that squarely fell into the requested information about fraud that should have been included with Respondent's production. GC Exh. 42 p. 1; Tr. 603-605.

On September 18, 2023, the Employer by Medeiros provided a supplemental responsive Excel spreadsheet by email. GC Exh. 43; GC Exh. 45; Tr. 605. The spreadsheet contained additional information such as the name and position description of the individual being investigated and a summary about the general nature of the complaint. GC Exh. 45. However, Respondent still failed to produce executive summary finding reports (ESFR) to the Union. GC Exh. 43; Tr. 622. The ESFR reports are produced at the conclusion of an investigation and include factual summaries of the information revealed during the investigation and, importantly, are the main document that Respondent relies upon in making disciplinary decisions. Tr. 622. The Union is aware of the existence of these reports because Medeiros describes the report and how it is created at the beginning of investigatory interviews that Woods has been present for. Tr. 622, 623-624. An explanation as to the ESFR is also found in the admonishment form Respondent utilizes during its investigations. Tr. 624; see e.g., GC Exh. 12, 18, 83. Medeiros asserted to Woods that the Employer was not going to produce investigative reports on the basis of them being protected from disclosure by the attorney-client privilege. GC Exh. 43; Tr. 625.

Woods was physically present at the Daly City Branch conference room for the investigatory interviews of Clinton Ward and Celia Solorio on October 5, 2023, discussed above, and Woods took the opportunity to ask Investigator Medeiros if he was an attorney. Tr. 627-629.

Medeiros confirmed that he is, in fact, not an attorney and questioned Woods for even asking this question. Tr. 629. Woods explained his confusion about the ESFRs being withheld on the basis of attorney-client privilege. Tr. 629-630. Medeiros claimed to Woods that Medeiros did not know what RFI email Woods was referring to. and, after Woods sent him a copy of the email to review, then said that he did not send this email to Woods. Id. Medeiros grew angry, stated to Woods that he was not going to answer any more of Woods' questions, and walked out of the conference room. Tr. 630.

3. Respondent Unlawfully Refused to Provide Information Requested on August 28, 2023 in Violation of Sections 8(a)(5) and (1) of the Act.

An employer's duty to bargain includes the duty to provide the union with requested information that is relevant and necessary to contract administration, grievance adjustment, or other representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956); *Postal Service*, 332 NLRB 635, 635 (2000). If applicable, the Board uses a balancing test regarding a union's need for the information versus an employer's legitimate and substantial confidentiality interest when determining whether there is a duty to supply the information. *Allen Storage & Moving Co*., 342 NLRB 501, 501-04 (2004); *American Baptist Homes of the West d/b/a Piedmont Gardens., 362 NLRB 1135 (2015) enfd.* 858 F.3d 612 (D.C. Cir. 2017).

Here, the requested information is relevant to the Union's evaluation of disparate treatment and is made pursuant to the compensation plan ethical standards provision which provides that Respondent will not hold employees to any higher ethical standard. The need for this information is twofold: monitoring compliance and effectively policing the collective-bargaining agreement and/or enforcing provisions of a collective-bargaining agreement. Both are well-established as functions of employee's exclusive bargaining representative that necessitates an employer's need

to furnish requested information relevant to those topics. *American Signature, Inc*., 334 NRB 880, 885 (2001).

The burden is on Respondent to establish that the requested relevant information is confidential or privileged. *Lasher Service Corporation*, 332 NLRB 834 (2000). Respondent cannot avoid its obligation to furnish information merely by asserting that it has a confidentiality interest. Rather, the employer has an affirmative obligation to seek an accommodation that meets the needs of both parties. See *National Steel Corporation*, 335 NLRB 747 (2001); *GTE California, Inc*., 324 NLRB 424 (1997). Here, Respondent failed to meet its burden to establish that the requested information was privileged, and similarly failed to seek any accommodation of its purported confidentiality interests, instead just flatly refusing to produce any of the information in violation of Section 8(a)(5) and (1) of the Act.

First, the Employer's asserted defense of attorney-client privilege is disingenuous. Investigator Medeiros is not and has never been an attorney, which Respondent admits in its various answers to complaint. See GC Exh. 1. Medeiros himself admitted that he was not an attorney when confronted by Union Representative Woods. Tr. Second, even assuming *arguendo* that Respondent had a colorable claim that the Executive Summary Finding Reports (ESFR) were somehow privileged, attorney-client privilege applies to *communications* and not to facts. See *Sunland Construction Co.*, 311 NLRB 685, 699-700 (1993)(citing *Upjohn Co. v. U.S.,* 449 U.S. 396, 397 (1981)). ESFRs, as the title suggests, are summary of factual findings revealed during the course of the investigation. Facts are not privileged nor are summaries of facts. *Sunland Construction*, supra.

Moreover, ESFRs were produced freely pursuant to the General Counsel's subpoena in this matter. Based on a commonsense review of those ESFRs, they cannot be withheld pursuant to a

tenuous claim of attorney-client privilege. The ESFRs are sent to human resources employees and regional vice presidents—none of whom are counsel nor have they claimed to be. It is true that the ESFRs are also sent to the legal department, but this fact alone does not render the ESFRs privileged.

In any event, if Respondent truly had any legitimate claim that the ESFRs are privileged or confidential, redactions or some other accommodation could appropriately protect Respondent's hypothetical confidentiality interest while simultaneously providing the Union with information to which it is statutorily entitled. However, Respondent made zero effort to reach any accommodation with the Union. Respondent unlawfully withheld the ESFRs from the Union in violation of Section 8(a)(5) and (1).

4. The Union's January 3, 2024 Request for Information Pertaining to Unit Employee Carmen Vasquez and Investigations Conducted by Corporate Investigator Theodore "Ted" Chang (32-CA-334794 Cpt. ¶ 8).

On January 3, 2024, the Union, by Representative Woods, requested information regarding the pending grievance, alleging that Woodland Branch agent Carmen Vasquez was disciplined without just cause, via letter transmitted to Employer Representatives Karen Williams, Branch Manager Michael McBride, and Labor Relations Teressa Bellazain by email.[65] GC Exh. 50, 46. The Union requested the following information:

> 1. The disciplinary file of Carmen Vasquez
>
> 2. Any records of prior reports of bullying made by Carmen and the investigations that followed as a result of those reports.
>
> 3. List of witnesses the Company interviewed in its investigation that resulted in the 12/19/2023 warning letter issued to Carmen Vasquez and supplied to the Union on 12/29/2023.

[65] Vasquez' discipline was alleged to be in violation of Sections 8(a)(3) and 8(a)(4) of the Act in AAA II 32-CA-321155 et al.

4. **Copies of any written statements provided to the Company by any witnesses to the November 17, 2023, interaction on which the warning letter is based.**

5. Copies of any notes of investigatory interviews taken by Company investigators in connection with the Company's investigation of the November 17, 2023, incident.

6. List of other employee investigations, besides this one, conducted for the Company by Theodore Chang.[66]

GC Exh. 55.

Vice President Williams responded via email on January 3, 2024 and provided the following information to the Union: ethics hotline report, the Admonishment Letter signed by Vasquez, and the Factual Summary of the investigation. Tr. 633-636; GC Exh. 46; see also GC Exh. 51-53. As to request for information 6, Williams told the Union that the Employer does not deem the request to be relevant, but Williams welcomed the Union to explain its relevance in order for her to reconsider the Union's request. GC Exh. 46.

Union Representative Woods replied to Williams by email on January 4, 2024. The Union modified its request for information 6 as follows: Copies of any complaints of bullying and/or threatening behavior made by any bargaining unit employee over the past three years; For any such complaints the Company investigated, the name(s) of the person(s) who conducted the investigation and the department to which such persons were assigned at the time of the investigation, and a summary of the results of the investigation; and For any such complaints that the Company did not investigate, an explanation as to why the complaint was not investigated. GC Exh. 47. The Union explained that the requested information was relevant to a grievance related to agent Carmen Vasquez and to investigate its suspicion that that Respondent has not been even handed in its handling of similar employee complaints. Id.

[66] Complaint allegation related to the Union's January 3, 2024 narrowing the RFI to other investigations by this investigator for this category of offense.

On January 10, 2024, Woods emailed Williams asking that she provide the requested information. GC Exh. 55. On January 12, 2024, Williams advised Woods that the Union had voluntarily waived its right to further pursue the Vasquez discipline grievance based on timeliness. GC Exh. 48. The email did not provide any of the requested information. Id. On January 16, 2024, Union Representative Woods advised Williams that the information not yet provided prevented the Union from meeting to discuss the grievance. Woods requested that Williams provide the requested information. GC Exh. 49. On January 25, 2024, Union Representative Woods emailed Williams asking her to provide the requested information. GC Exh. 49; Tr. 642. Williams has never responded nor has she provided the Union with the requested information.

5. Respondent Unlawfully Refused to Provide Information to the Union in Violation of Sections 8(a)(5) and (1) of the Act.

The only stated reason for withholding the requested information from the Union was that there was no longer a pending grievance.[67] GC Exh. 49; Tr. 461, 644-645. This defense fails as a matter of law. A pending grievance is not required in order for an employer to have an obligation to provide requested information. See *United Tech. Corp.*, 274 NLRB 504 (1985)("an actual grievance need not be pending nor must the requested information clearly dispose of the grievance… it is sufficient if the requested information is potentially relevant to grievance or whether a grievance should be filed at all.); *Postal Service*, 303 NLRB 502, 508 (information request valid even if underlying grievance would be time-barred.). Additionally, the Board and its

[67] Procedural timeliness is a matter reserved for an arbitrator, and the Board is prohibited from considering the merits of the underlying grievance including procedural issues. *Midwest Division / SEIU*, 373 NLRB No. 36 (2024)(the judge should have ended her inquiry after correctly determining that the requested information was presumptively relevant…. She exceeded her authority by improperly deciding the procedural timeliness issue); *Wilkes-Barre Hospital*, 371 NLRB No. 55, slip op. at 12 (2022) (information request valid even though procedural defects have to be decided by the arbitrator); *Postal Service*, 303 NLRB 502, 508 (information request valid even if underlying grievance would be time-barred. Grievance timeliness is reserved for the arbitrator); *Southeastern Brush*, 306 NLRB 884 fn. 1 (1992): the Board does not consider the merits of, or potential defenses to a grievance when passing on an information request allegation.

ALJs are prohibited from considering potential defenses to a grievance when passing on an information request allegation. *Southeastern Brush*, 306 NLRB 884 fn. 1 (1992). Even assuming arguendo that Respondent's untimeliness argument to Woods had merit, procedural defenses to the underlying grievance are entirely irrelevant to assessing the merits of an 8(a)(5) request for information allegation. See *Research Medical Center*, 373 NLRB No. 36, slip op. at 3 (2024); and *Wilkes-Barre General Hospital*, 371 NLRB No. 55, slip op. at 12 (2022) (However, in evaluating whether an employer unlawfully refused to provide requested information to a union regarding a contractual grievance, the procedural validity and substantive merit of the grievance are irrelevant; such contractual issues are for an arbitrator to decide and are irrelevant to whether the employer's refusal to provide the information violated Section 8(a)(5) of the Act.). A union request for information from an employer implicates a statutory right and not a contractual one. *Safeway*, 236 NLRB 1126 n. 1 (1978) (the union has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievances have merit and whether they should be pursued at all).

Therefore, the threshold question is whether the requested information was presumptively relevant, and if it is not presumptively relevant, the question becomes whether the Union sufficiently explained to the employer why the requested information was relevant and necessary to performing its statutory duties as exclusive bargaining representative.

Here, the requested information was presumptively relevant as it related to grievance processing relating to bargaining unit employee Carmen Vasquez. The Union explained the relevance to Respondent that it needed the requested information to evaluate claims of disparate treatment and to conduct its own investigation into the allegations. These purposes are well-established under Board law, and the Union was entitled to information in furtherance of fulfilling

its responsibilities as bargaining representative. See *American Signature, Inc*., 334 NRB 880, 885 (2001). The Employer had the duty to propose an accommodation, such as redactions, if it truly had any legitimate confidentiality interests to protect. *National Steel Corporation*, 335 NLRB 747 (2001); *GTE California, Inc*., 324 NLRB 424 (1997). Respondent did not. Respondent, instead, unlawfully opted to withhold the information entirely in violation of Section 8(a)(5) and (1) of the Act.

I. Respondent's Affirmative Defenses are Frivolous (32-CA-312204 Ans. ¶¶ 3-5; 32-CA-329859 and 32-CA-329863 Ans ¶ 3-5; 32-CA-329821 and 32-CA-334794 ¶¶ 3-5)

Respondent's Answers raise a litany of constitutional arguments amongst their affirmative defenses. See GC Exh. 1[68]. If these arguments are not developed in Respondent's post-hearing brief, they have been forfeited and should be summarily rejected on that basis.[69] Even if the arguments are adequately raised and preserved, Respondent's affirmative defenses arguments fail. Because the other affirmative defenses likewise lack merit,[70] the affirmative defenses should be rejected in totality.

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[68] GC Exh. 1(s) (March 13, 2025 answer to Complaint 32-CA-334794); GC Exh. 1(t) (Respondent's March 19, 2025 Answer to Consolidated Complaint 32-CA- 329859 and 32-CA-329863); GC Exh. 1(w) (Respondent's May 23, 2025 Answer to Consolidated Complaint 32-CA-329821 and 32-CA-334794); 1(bb) (Respondent's September 11, 2025 Answer to Complaint 32-CA-312204)

[69] A respondent "fail[s] to meet its burden" to establish affirmative defenses—including those "based on alleged violations of its rights under the U.S. Constitution"—if it neglects to "present evidence or argument regarding those defenses" at the hearing or in its post-hearing brief. *Starbucks Corp.*, Case 18-CA-299560, JD-23-23 slip op. at 2 n.2 (Apr. 6, 2023); *accord Trader Joe's East Inc.*, Case 01-CA-296847, JD-70-24 slip op. at 65 n.160 (Nov. 8, 2024); *Starbucks Corp.*, Case 29-CA-309779, JD(NY)-21-24 slip op. at n.3 (Sept. 18, 2024); *Starbucks Corp.*, Case 13-CA-316407, JD-37-24 slip op. at 2 n.2 (June 14, 2024); *Starbucks Corp.*, Case 14-CA-306625, JD-24-24 slip op. at 18 n.7 (Apr. 25, 2024); *Starbucks Corp.*, Case 27-CA-294617, JD(SF)-04-24 slip op. at 2 n.1 (Feb. 6, 2024); *Starbucks Corp.*, Case 19-CA-295708, JD-02-24 slip op. at 26 n.33 (Jan. 4, 2024); *Starbucks Corp.*, Case 19-CA-296765, JD(SF)-37-23 slip op. at 43 (Nov. 27, 2023); *Starbucks Corp.*, Case 20-CA-298282, JD(SF)-18-23 slip op. at 2 n.2 (July 31, 2023); *Starbucks Corp.*, Case 22-CA-305726, JD(NY)-14-23 slip op. at 15 n.6 (July 14, 2023).

[70] Most of the remainder of Respondent's affirmative defenses (i.e., nos. 1, 2, 8, 9, 11, and 15) either constitute mere denials or raise questions of fact or law to be decided on the merits. Affirmative defenses 6 and 7 fail because unlawful statements or conduct are not protected by either Section 8(c) or the First Amendment. See, e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969); *NLRB v. Marine World USA*, 611 F.2d 1274, 1276 (9th Cir. 1980). Finally, Respondent's defense 14 is so vague and unspecified as to lack merit on that basis alone.

1. Affirmative Defense – Major Questions Doctrine (32-CA-312204 Ans. ¶ 3; 32-CA-329859; 32-CA-329863 ¶ 3; 32-CA-329821; 32-CA-334794 ¶ 3).

Contrary to Respondent's third affirmative defense, neither the major-questions doctrine nor "associated principles of non-delegation" apply. In *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 157 (2023), the Board explained that to trigger the major-questions doctrine, "'an enormous and transformative expansion in . . . regulatory authority'—in addition to economic and political significance—is required." *Id.* slip op. at 2 (quoting *Mayes v. Biden*, 67 F.4th 921, 934-35 (9th Cir.), *vacated as moot and appeal dismissed*, 89 F.4th 1186 (9th Cir. 2023)). As in *Cemex* itself, "[t]hat kind of transformation is not present here." *Id.* The unfair-labor-practice complaint in this case alleges that Respondent violated the Act by engaging in conduct that has long been recognized as unlawful, and the remedies sought by the complaint are fully in line with the Board's "broad discretionary" remedial power. *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 216 (1964).[71] Furthermore, Respondent does not dispute the Board's jurisdiction over this matter, so there is no claim that this case expands—enormously or otherwise—application of the Act to previously unregulated entities.

In addition, the nondelegation doctrine only possibly becomes relevant when Congress delegates legislative authority to another branch. *See J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). Respondent cannot demonstrate how Congress has delegated any legislative power here. By speaking directly to both the conduct that constitutes an unfair labor practice in Section 8 and the Board's remedial authority in Section 10, the NLRA fully supplies whatever "intelligible principle[s]" Respondent might claim are missing. *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (plurality opinion).

[71] Thus, Respondent's Affirmative Defenses 12 and 13 regarding the remedies sought, also fail.

2. Affirmative Defense Four – Article II and Insulation from Removal Power (32-CA-312204 Ans. ¶ 4; 32-CA-329859; 32-CA-329863 ¶ 4; 32-CA-329821; 32-CA-334794 ¶ 4).

Respondent's fourth affirmative defense claims that the removal protections Congress granted to Board members and administrative law judges are unconstitutional. This affirmative defense fails because "there is no evidence that the Respondent suffered any harm from the Board members' and administrative law judges' removal protections." *Commonwealth Flats Dev. Corp.*, 373 NLRB No. 142, slip op. at 1 n.1 (2024); *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 n.4 (2023) (citing *Collins v. Yellen*, 141 S. Ct. 1761, 1787 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), *rev'd per curiam on other grounds*, 598 U.S. 623 (2023)); *YAPP USA Auto. Sys., Inc. v. NLRB*, --- F. Supp. 3d ----, No. 24-12173, 2024 WL 4119058, at *9-10 (E.D. Mich. Sept. 9, 2024) (applying causal-harm standard to reject constitutional challenge to removal protections enjoyed by Board members and administrative law judges), *injunction pending appeal denied*, No. 24-1754, 2024 WL 4489598 (6th Cir. Oct. 13, 2024), *emergency application for writ of injunction denied*, No. 24A348, 2024 WL 4508993 (U.S. Oct. 15, 2024) (Kavanaugh, J., in chambers).

Because Respondent cannot make—and indeed, has not even tried to make—the required showing of harm, Respondent's removal-restrictions arguments should be rejected on that basis alone. *Cortes v. NLRB*, No. 1:23-cv-02954, 2024 WL 1555877, at *7 (D.D.C. Apr. 10, 2024) (declining to address the constitutionality of Board members' removal protections because "the Court could 'dispose of the case' on the harm requirement" (quoting *Bond v. United States*, 572 U.S. 844, 855 (2014))), *appeal docketed*, No. 24-5152 (D.C. Cir. June 10, 2024). Although a Board majority addressed the merits of Board members' removal protections in *SJT Holdings*, supra at 1, contested questions concerning the scope of the President's constitutional powers should be left to the courts to decide, as then-Member Kaplan correctly urged in that case. *Id.* at 2 n.5.

3. Affirmative Defense Five – Separation of Powers (32-CA-312204 Ans. ¶ 5; 32-CA-329859; 32-CA-329863 ¶ 5; 32-CA-329821; 32-CA-334794 ¶ 5).

Equally unavailing is Respondent's fifth affirmative defense, which alleges that "the NLRB unconstitutionally exercises legislative, executive and judicial powers in the same administrative proceedings." But this argument ignores that by congressional design "[t]he NLRA creates a stark division of labor between the General Counsel and the Board," *Exela Enter. Sols. v. NLRB*, 32 F.4th 436, 444 (5th Cir. 2022), that runs "along a prosecutorial versus adjudicatory line." *NLRB v. United Food & Com. Workers Union, Loc. 23*, 484 U.S. 112, 124 (1987). The General Counsel carries out the functions assigned to that position under Section 3(d) of the Act "independent of the Board's supervision and review," *Id.* at 118, so Respondent's structural challenge is inapt. *See NLRB v. FLRA*, 613 F.3d 275, 281 n.* (D.C. Cir. 2010) (observing that "the statutory separation mandated by § 3(d) is unique" among federal agencies).[72] Thus, the Board has rejected the argument that "the agency wields a structurally unconstitutional combination of prosecutorial and adjudicatory functions." *Jones Lang Lasalle Americas, Inc.*, 373 NLRB No. 37, slip op. at 1 n.1 (2024) (citing *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1047 (5th Cir. 2023)), *petition for review filed*, No. 24-1079 (D.C. Cir. Apr. 3, 2024); *accord Amazon.com Services LLC*, Case 29-CA-261755, slip op. at 1 n.2 (2024).

J. Remedies

In addition to the Board's standard remedies to Respondent's unfair labor practices and as articulated in the operative Complaint, Counsel for the General Counsel requests a public reading of the notice by a management official or by a Board agent in the presence of that management official; and in the presence of a Union official.

[72] Respondent's closely related defense no 10 likewise fails for the same reasons.

Notice Reading: The Board has long recognized that public notice readings are necessary to effectuate the policies of the Act when a respondent's unlawful conduct is "sufficiently serious and widespread" that employees need reassurance that their rights "will be respected in the future." *Evenflow Transportation, Inc.*, 361 NLRB slip op. at 1 (citing *Whitesell Corp.*, 357 NLRB 1119, 1123-24 (2011)). In some such circumstances, a notice reading "is warranted in order to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices." *Evenflow Transportation, Inc.*, 361 NLRB slip op. at 1 (quoting *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed. Appx. 32 (2d Cir. 2008)). Public notice readings are necessary to effectuate the policies of the Act when an employer's unlawful conduct is "sufficiently serious and widespread" that employees need to be reassured that their rights "will be respected in the future." *Evenflow Transportation, Inc.*, 361 NLRB No. 160, slip op. at 1 (Dec. 16, 2014) (quoting and citing to *Carey Salt Co.*, 360 NLRB No. 38, slip op. at 2 (Feb. 6, 2014), & *Whitesell Corp.*, 357 NLRB 1119, 1124 (2011)). The Board has also found that a notice reading "is warranted in order to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices." *Evenflow Transportation, Inc.*, 361 NLRB slip op. at 1 (quoting *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), *enforced mem.*, 273 F. App'x 32 (2d Cir. 2008)).

Here, Respondent's violation regarding minimum production was committed across 70+ branches and impacted every employee in the Unit. Requiring a responsible Respondent representative to personally notify employees that their working conditions will be restored to the status quo, and that it will bargain in good faith with the Union, will be far more likely to undo the effects of the violations than a notice posting alone. To the extent that Respondent's violations, including the 8(a)(4) violation, have impacted employees' willingness to support the Union or

participate in the Board's proceedings, a public notice reading will help to erase the lingering effects and is therefore in the public interest.

Mar-Jac Extension: The General Counsel also seeks a remedy pursuant to *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962). In this regard, to ensure that employees are accorded the services of their selected bargaining agent, the Board protects the newly certified union from attack for a period of one year following certification. *See, e.g.*, *Mar-Jac Poultry Co.*, 136 NLRB 785, 785–786 (1962). The Board may extend that protection, however, construing the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with a union. *See Id.*; *see also Burnett Construction Co.,* 149 NLRB 1419, 1421 (1964), *enf'd*, 350 F.2d 57 (10th Cir. 1965). The Board recognizes that such a remedy is warranted where an employer's refusal to bargain with a newly certified union during part or all of the year immediately following certification deprives the union of the opportunity to bargain during the time of the union's greatest strength. *Northwest Graphics, Inc.*, 342 NLRB 1288, 1289 (2004), *enf'd,* 156 Fed.Appx. 331 (D.C. Cir. 2005) (citing *Van Dorn Plastic Machinery Co.*, 300 NLRB 278 (1990), *enf'd*, 939 F.2d 402 (6th Cir. 1991)).

The factors which the Board considers in determining the length that the certification year should be extended include the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations. *Metta Electric*, 338 NLRB 1059, 1065 (2003) (granting 12-month extension), *enf'd in rel. part,* 360 F.3d 904, 912-913 (8th Cir. 2004); see also *Wells Fargo Armored Services Corp.,* 322 NLRB 616, 617 (1996); *Northwest Graphics*, 342 NLRB 1288, 1289-90 (2004).

In *Northwest Graphics,* the Board imposed a *Mar-Jac* remedy by extending the certification year for 12 months. *Id.* In considering the extension, the Board examined the employer's conduct within the first six months of the certification, and Respondent's repeated unfair labor practices committed within the first year of bargaining. The Board concluded the employer's conduct deprived the union of a full opportunity to bargain when it was at its greatest strength. *Id.* at 1289.

Respondent's actions reflect a clear disregard for the Union's role as the Unit's bargaining representative and have deprived employees of their elected representative for several years. And because Respondent's bad faith bargaining extends through and taints the entirety of the initial certification year, a one-year extension from the beginning of good faith bargaining is warranted. Compare, e.g., *Glomac Plastics, Inc.*, 234 NLRB 1309, 1309 n.4 (in light of bad faith bargaining finding, ordering one-year extension of certification year despite the ALJ opining that the bad faith began about 9 ½ weeks into the first certification year).

Respondent's repeated unfair labor practice violations have signaled to employees that electing the Union results in nothing but futility, punishment, and regret. Respondent should not be permitted to benefit from its wrongful refusal to bargain with the employees' selected representative. By extending the certification period by one year following the commencement of good faith bargaining, the Union will be afforded the full opportunity to bargain and reestablish credibility and morale among the Unit. Therefore, a one-year *Mar-Jac* extension is appropriate.

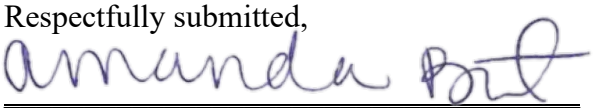
VI. CONCLUSION

For the reasons set forth above, and based on the record evidence considered as a whole, Counsel for the Acting General Counsel respectfully requests that Your Honor find that Respondent violated Sections 8(a)(1), (3), (4), and (5) of the Act as alleged in the Complaint. Respondent must be held accountable and required to abide by its obligations under the Act, which

ensures that employees' Section 7 right to have freedom of choice on the issue of union representation, free of coercion by any party, is protected by this Agency. Accordingly, Counsel for the General Counsel respectfully requests that Your Honor make the appropriate findings of fact and conclusions of law, and order Respondent to cease and desist from such conduct and appropriately remedy its unfair labor practices.

DATED AT Oakland, California, this 1st day of September, 2026.

Respectfully submitted,



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Appendix A-Proposed Notice

(To be printed and posted on official Board notice form)

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.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail and refuse to bargain in good faith with International Brotherhood of Teamsters Local 665 (Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

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

WE WILL NOT fail and refuse to meet and bargain in good faith with your Union about any proposed changes in Unit employees' wages, hours and working conditions before putting such changes into effect, and **WE WILL NOT** make changes to Unit employees' wages, hours and working conditions without first bargaining with the Union to a first collective-bargaining agreement or reaching an overall good faith impasse.

WE WILL NOT change the wages, hours or working conditions of unit employees, including imposing minimum production standards without first reaching agreement of good faith impasse on a first collective-bargaining agreement with the Union, and if an agreement is reached, **WE WILL** promptly embody it in writing.

WE WILL NOT unreasonably delay and/or refuse to furnish the Union with requested non-privileged information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL offer Richard Fajilan immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Richard Fajilan for the wages and other benefits he lost because we fired him, with interest.

WE WILL compensate Richard Fajilan for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** promptly file with the Regional Director for Region 32, a report allocating the backpay award to the appropriate calendar years.

WE WILL remove from our files all references to the termination of Richard Fajilan and **WE WILL** notify him in writing that this has been done and that the termination will not be used against him in any way.

WE WILL offer Clinton Ward immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Clinton Ward for the wages and other benefits he lost because we fired him, with interest.

WE WILL compensate Clinton Ward for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** promptly file with the Regional Director for Region 32, a report allocating the backpay award to the appropriate calendar years.

WE WILL remove from our files all references to the termination of Clinton Ward and **WE WILL** notify him in writing that this has been done and that the termination will not be used against him in any way.

WE WILL offer Celia Solorio immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Celia Solorio for the wages and other benefits she lost because we fired her, with interest.

WE WILL compensate Celia Solorio for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** promptly file with the Regional Director for Region 32, a report allocating the backpay award to the appropriate calendar years.

WE WILL remove from our files all references to the termination of Celia Solorio and **WE WILL** notify her in writing that this has been done and that the termination will not be used against her in any way.

WE WILL offer Lielonnie Lewis immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Lielonnie Lewis for the wages and other benefits she lost because we fired her, with interest.

WE WILL compensate Lielonnie Lewis for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** promptly file with the Regional Director for Region 32, a report allocating the backpay award to the appropriate calendar years.

WE WILL remove from our files all references to the termination of Lielonnie Lewis and **WE WILL** notify her in writing that this has been done and that the termination will not be used against him in any way.

WE WILL make Unit employees whole for any wages, leave, and other benefits you lost because of the changes to terms and conditions of employment that we made without bargaining with the Union and in retaliation for your Union activities.

WE WILL, upon the Union's request, rescind the changes we made to minimum production standards.

WE WILL, before implementing any changes in Unit employees' wages, hours or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective bargaining representative of the Unit employees.

WE WILL provide the Union with the information it requested on September 14, 2023 and on January 12, 2024.

_____
(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). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

, **Telephone:**

Hours of Operation:

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.