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

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

**and** **Case 12-CA-325317**

**JOHN D. RICHARDSON, an Individual**

# COUNSEL FOR THE GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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## I. STATEMENT OF THE CASE

In October 2021, Apex Fintech Services d/b/a Apex Fintech Solutions (Respondent) a financial technical company, hired Charging Party John D. Richardson (Richardson) to work remotely as a data engineer. Immediately after being hired, Richardson began to encounter policies and practices that he viewed as discriminatory. During onboarding Richardson discovered that Respondent required all new employees who identify as female to enroll in Respondent's Poker Powher program, and that all new male employees tell a woman about the program, but precluded males from enrolling in Poker Powher. Richardson informed human resources that he viewed this policy as discriminatory.

Richardson continued to encounter instances of what he perceived to be sexism and racism in Respondent's policies and Slack channels, including discriminatory hiring practices, sexist jokes, etc., throughout the course of his employment and he repeatedly brought his concerns to Respondent's attention. When Respondent failed to address Richardson's concerns, he engaged in protected concerted activity and sought assistance from coworkers by posting about his concerns on Respondent's Slack system. On August 25 and August 30 Richardson posted protected concerted messages on LinkedIn, soliciting his coworkers for support, and his coworkers supported his protected concerted activities.

On August 30 and 31, 2023, Respondent's Senior Director of Human Resources, Michael Walters, threatened Richardson with unspecified reprisal unless he removed comments that Respondent asserted to be derogatory, disparaging, and/or defamatory remarks from his protected concerted LinkedIn posts without identifying any specific content that Respondent believed to be defamatory. Richardson offered to cooperate and requested that Respondent identify the particular content that Respondent wanted him to remove. Respondent did not tell Richardson which specific

comments it believed to be disparaging and/or defamatory, and Richardson did not remove or amend his posts. Respondent, relying on its Non-Disparagement; Public Profiles policy set forth in its Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation, discharged Richardson on September 1, 2023, for making these LinkedIn posts. On September 8, 2023, Richardson made a third LinkedIn post, which he reposted the same day, sharing that he was unlawfully discharged for protesting Respondent's policies.

On October 17, 2023, Respondent filed a baseless lawsuit against Richardson, alleging that Richardson's LinkedIn posts were defamatory, and subsequently served Richardson with unlawful interrogatories and requests for production, which Richardson had to answer. Respondent voluntarily withdrew its unlawful lawsuit on October 28, 2025.

A hearing on this matter was held on May 5 through May 7, 2026, before Administrative Law Judge Amchan.

ALJ Amchan correctly found that Respondent, by Michael Walters, unlawfully ordered Richardson to cease engaging in protected concerted activity. ALJ Amchan also correctly concluded that Respondent unlawfully discharged Richardson, filed an unlawful objectively baseless lawsuit against Richardson, and served unlawful interrogatories and requests for production on Richardson in furtherance of its baseless lawsuit, in retaliation for Richardson having engaged in protected concerted activity. However, the ALJ failed to address all of Respondent's unlawful conduct in his Conclusions of Law and failed to provide for a complete and appropriate remedy. The ALJ also erred by finding that Respondent violated Section 8(a)(1) of the Act by maintaining overly broad rules and instructing employees to keep investigations confidential, by failing to recommend that the Board overturn *Stericycle* and adopt the test for evaluating rules proposed by the General Counsel, recommend a return to the standard set forth in

*Apogee Retail* for determining whether a rule or instruction requiring that investigations be kept confidential is lawful, and by considering whether the discharge of Richardson was unlawful under *Atlantic Steel*, *Pier Sixty,* and *Play It Again Sports*.

Counsel for the General Counsel respectfully requests that the Board grant General Counsel's Exceptions to the Decision of the Administrative Law Judge, for the reasons discussed in detail below.

## II. QUESTIONS TO BE RESOLVED

The central issues to be resolved are as follows:

1. Did the ALJ err by evaluating the discharge of Richardson using the setting specific tests set forth in *Atlantic Steel*, *Pier Sixty, and Play It Again Sports*, as well as *Wright Line*, rather than relying solely on *Wright Line* and *General Motors*? (Exception 1).

2. Did the ALJ err by failing to recommend that the Board overturn *Stericycle* and return to the standard set forth in *Apogee Retail LLC d/b/a Unique Thrift Store* to evaluate whether a rule or instruction to keep an investigation confidential is lawful and by failing to find that under that standard Respondent's instruction to Richardson to maintain confidentiality of the investigation did not violate the Act. (Exceptions 3, 4, 5).

3. Did the ALJ err by failing to recommend that the Board overturn *Stericycle* and adopt a *Boeing*-based standard for evaluating rules and by failing to find that under that standard Respondent's confidentiality rules are facially lawful? (Exception 2).

4. Did the ALJ err by failing to conclude that on August 30 and 31, 2023, Respondent, by Michael Walters, threatened employees with unspecified reprisals if they did not remove protected concerted social media posts in violation of Section 8(a)(1) of the Act? (Exceptions 7, 8, 9).

5. Did the ALJ err by failing to fully set forth his findings in his Conclusions of Law and by failing to provide for a complete remedy in his remedy section, recommended Order, and Notice to Employees? (Exceptions 6, 10, 11, 12, 13, 14, 15).

6. Did the ALJ err by relying on *Latino Express, Inc*., 359 NLRB No. 44 (2012), instead of *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), as the basis for requiring that Respondent compensate Richardson for any excess tax liability incurred as a result of receiving a lump sum backpay award? (Exceptions 16).

For the reasons set forth below, Counsel for the General Counsel submits that the Questions to be Resolved must be answered affirmatively.

## III. STATEMENT OF FACTS

### A. Respondent's Rules

On November 1, 2021, John D. Richardson started working for Respondent from his home in Winter Springs, Florida, as a data engineer. (ALJD 2:11, Tr. 62-64, 91).[1] As a condition of employment, Respondent required Richardson to sign an Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation (Employment Agreement). (ALJD 7:15-8:18, GCX 2, Tr. 61-62). The Employee Agreement remained in effect throughout Richardson's employment, and the "Definitions of Proprietary Information" section and the "Non-Disparagement; Public Profiles" sections continue to be in effect for Respondent's employees and

[1] The following references are used in this document and in the General Counsel's Brief in Support of Exceptions to the Administrative Law Judge's Decision:
(ALJD __:__) = Administrative Law Judge's Decision page and line numbers
(Tr __) = transcript page number
(GCX __ ) = General Counsel's exhibit number
(RX __ ) = Respondent's exhibit number
(JX __ ) = Joint exhibit number

employees of Respondent's subsidiaries and affiliates. (ALJD 7:15-8:18, GCX 2, 90; Tr. 62, 234-235).

### B. Richardson Encounters Perceived Sexism and Racism

One of Richardson's onboarding tasks required employees who "identify as female" to enroll in the Poker Powher course and for employees who "identify as male" to invite women to join the Poker Powher course.[2] (ALJD 2:12-13, GCX 4, Tr. 64-66). Poker Powher required employees to confirm that they identify as female before they were permitted to register. (GCX 93). Richardson emailed human resources during his onboarding and raised concerns about Poker Powher's disparate treatment of employees based on their gender. (ALJD 2:17-20, Tr. 67, GCX 5). Richardson corresponded with Respondent's HR team protesting the Poker Powher policy. (ALJD 2:17-20, GCX 5, 7, 10). On January 7, 2022, HR Representative Brianna Rodgers (Rodgers) made a public Slack post announcing that Respondent's DEI Council made certain recommendations regarding Respondent's Poker Powher policies.[3] (GCX 11, Tr. 74-75). Despite Rodgers' January 7, 2022, Slack post, Respondent continued to exclude Richardson and other males from the Poker Powher program. (Tr. 75-76).

On or about July 29, 2002, Richardson attended a semi-mandatory "Techs, All Hands deck" virtual meeting regarding Poker Powher, with approximately 100 coworkers. (ALJD 2:26, GCX 12, Tr. 76-78). Respondent's presentation confirmed to Richardson that Poker Powher was exclusively for women, and the presentation posited that Poker Powher needed to get more women

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

[3] The recommendations included removing the Poker Powher onboarding task, and inviting new hires to all employee resource groups (ERGs), not just Poker Powher. (GCX 11).

into the seats where decisions are being made. (GCX 12, Tr. 76-77). Respondent continued to advertise Poker Powher exclusively to women. (GCX 13, 14, Tr. 78-80).

Richardson viewed numerous Slack channels that were maintained by or utilized for Respondent and its employees which contained what Richardson perceived as discriminatory jokes, practices, and comments based on sex and race. (ALJD 2:30-33, Tr. 91, GCX 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 30, 31, 32, 33, 34, 35, 36, 111). Richardson also attended Respondent sponsored DEI Panel meetings, where he recalled the presenters and panelists making remarks that he perceived as sexist and racist. (GCX 28, JX 2). The ALJ credited Richardson's recitation of the remarks made at the DEI Panels, and found that Richardson's subsequent characterization of those meetings in LinkedIn posts (discussed below) were not false. (ALJD 4:26-5:26, GCX 28, JX 2). Richardson viewed these DEI Panels as promoting sexism and racism.

After compiling examples of what he viewed as demonstrating Respondent's sexism and racism, Richardson emailed his concerns, with the examples, to his supervisors, Tom Warner and Sudha Guttula, as well as to Human Resources on July 12 and 13, 2023. (ALJD 2:33-3:27, Tr. 126, GCX 37, 39, 40). In response to Richardson's complaint, Respondent hired legal counsel, and required Richardson to meet with its counsel, despite his repeated protests. (GCX 41). Richardson provided Respondent's counsel with examples of policies and comments that he believed demonstrated Respondent's sexism and racism, including Respondent's supervisors and agents complicit acceptance of such conduct. (GCX 38, 44, 45, 46). In response, Respondent's counsel emailed Richardson, and copied Warner, chastising him for being unprofessional. (Tr. 159).

### C. Richardson Protests Perceived Sexism and Racism at Respondent on Slack and LinkedIn, and is Unlawfully Discharged

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

complaints. (Tr. 161). On or about August 21, 2023, Richardson made a Slack post to Respondent's data engineering team Slack channel, identifying several jokes and policies that he had previously protested to his supervisors and Human Resources. (Tr. 161-162, GCX 48). Richardson stated in his post that he was alerting his coworkers to problems he identified at Respondent and advised his coworkers that they may have a cause of action with the EEOC. (GCX 48).

Respondent, by Human Resources representative Kayla Nassiri, responded to Richardson by emailing him, in relevant part:

> Apex expects all employees to treat each other with mutual respect, refrain from hostile behavior, and fully cooperate in all company investigations. To that end, it is essential that everyone involved in this investigation maintain confidentiality and avoid naming specific employees or discussing details related to the ongoing investigation. This precaution is crucial to protect the privacy and reputation of all parties involved and to ensure that we adhere to our professional standards. (ALJD 3:33-43, GCX 54).

Richardson protested Nassiri's accusation that he was not cooperating with the investigation, and Nassiri advised that Richardson needed to raise his concerns through proper channels, like Human Resources. (ALJD 3:45-47, GCX 56). The ALJ found that, "In essence, this message interfered with and coerced Richardson in disseminating his views about Respondent's DEI (Diversity, Equity, and Inclusion) policies elsewhere." (ALJD 4:4-5). ALJ Amchan also noted that Respondent did not have any legitimate concerns that required this investigation be kept confidential. (ALJD 4:5-9).

Nassiri also contacted Richardson on Slack to ask for his patience during the investigation, and Nassiri contacted Richardson's supervisor, Warner, to instruct him to tell Richardson to stop including Warner on Richardson's correspondence with Respondent's counsel. (GCX 114, 115). Warner contacted Richardson as instructed via a Slack message, and Richardson informed Warner

that he made the post because conditions were not improving and that his post was protected by the NLRA. (Tr. 163-164, GCX 50). Richardson contacted coworkers to specifically bring his post to their attention, and coworker Robert Burrage contacted Richardson to voice his support. (GCX 53, 59). Richardson continued to discuss working conditions with Burrage. (GCX 52, 59).

On August 25, 2023, Richardson made an 11-page LinkedIn post protesting Respondent's policies, and described the other material that he perceived as discriminatory and which he had previously complained about to his supervisors and Human Resources. (ALJD 4:11-24, GCX 57). Richardson disseminated his LinkedIn post to his coworkers. (GCX 59, 60, 61, 62, 63). Richardson's coworker Rafael Castillo publicly supported Richardson's post by liking it. (GCX 63).

On August 30, Richardson made a 3-page LinkedIn post, after attending a mandatory virtual meeting on August 29, 2023. (ALJD 6:1-16, GCX 64). This LinkedIn post reiterated the material that he perceived to be discriminatory and that he had previously brought to the attention of his supervisors and human resources. (GCX 64). Richardson disseminated this LinkedIn post to his coworkers as well. (GCX 66). Respondent, by Michael Walters, Senior Director Human Resources, emailed Richardson on the evening of August 30, stating in relevant part:

> We believe your posts contain misstatements, as well as derogatory and disparaging remarks. We ask that you amend your posts accordingly to remove these types of comments and do so as soon as possible, but no later than Aug. 31, 2023…We are not requesting that you take down or delete the posts, but merely that any false, derogatory, disparaging and/or defamatory statements be removed. (ALD 6:18-25, GCX 67)

Richardson emailed Walters and asked Walters to identify the inaccurate statements in his posts, and advised that Walter's overly broad threat violated his free exercise of rights. (ALJD 6:28-32, GCX 67). Walters emailed Richardson again on August 31, 2023, "We do not intend to engage in a back-and-forth with you on this issue. We are not threatening you, but merely

requesting that you modify your posts to remove the types of remarks described below." (GCX 69). Richardson replied, reiterating that he was willing to work with Walters if Walters identified specific issues. (GCX 69). Richardson disseminated his LinkedIn posts to his coworkers. (GCX 70, 71, 72).

Respondent discharged Richardson on September 1, 2023. (ALJD 6:34-35). The discharge letter cited to Richardson's August 25 and 30 LinkedIn posts as a basis for the discharge and stated that Richardson breached the "Employee Agreement Regarding Confidentiality, Non-Competition and Non-Solicitation, specifically, the Non-Disparagement, Public Profiles Clause." (ALJD 6:34-7:4, GCX 73). There is no evidence or contention that Richardson's LinkedIn posts violated Respondent's instruction to maintain the confidentiality of its investigation or that Respondent asserted that Richardson failed to comply with that instruction as a basis for his discharge. Richardson discussed his discharge with his coworkers and continued to disseminate his LinkedIn posts. (GCX 74, 75, 76, 77). Richardson's work performance did not factor into Respondent's decision to termination Richardson, and Richardson's supervisor, Warner, offered to provide a positive job reference. (ALJD 7:6-7, GCX 78).

On or about September 8, 2023 (as admitted in Respondent's defamation lawsuit (GCX 81)), Richardson viewed a LinkedIn post by Respondent about future proofing the company, and he replied by posting a 1-page comment protesting his discharge and Respondent's policies. (GCX 79, Tr. 212-214). Respondent deleted Richardson's LinkedIn comment, so he reposted Respondent's post with his comment on his own LinkedIn page. (GCX 80, Tr. 212-214).

### D. Respondent Files an Unlawful Baseless Defamation Lawsuit against Richardson, and Issues Richardson Interrogatories and Requests for Production

On October 17, 2023, Respondent filed a lawsuit in Seminole County, Florida, alleging that Richardson's August 25 and 30, and September 8 LinkedIn posts were defamatory. (ALJD 8:20-28, GCX 81). Thereafter, Respondent served Richardson with interrogatories and requests for productions, and amended interrogatories and requests for productions, which Richardson was required to answer. (ALJD 8:30-31, GCX 82, 83, 84, 85, Tr. 237-240). Respondent subsequently abandoned its defamation lawsuit. (ALJD 8:31-32).

## IV. ARGUMENT IN SUPPORT OF THE GENERAL COUNSEL'S EXCEPTIONS TO THE ALJ'S DECISION

### A. The ALJ erred by failing to find and conclude that on August 30 and 31, Respondent by Michael Walters, threatened employees with unspecified reprisals if they did not remove their protected concerted social media posts in violation of Section 8(a)(1) of the Act. (Exception 7, 8, and 9)

ALJ Amchan erred by not finding and concluding that on August 30 and 31, "Respondent, by email from Michael Walters, threatened employees with unspecified reprisals unless they removed protected concerted social media posts," as alleged in paragraphs 6(c) and 6(d) of the Amended Complaint and Notice of Hearing. (GCX 1(m)).

As set forth in the Statement of the Case/Finding of Fact section of his decision, ALJ Amchan found that on August 30, Walters demanded that Richardson remove any false, derogatory, disparaging and/or defamatory statements from his post by August 31 and that Respondent did not respond to Richardson's request that Respondent identify the statements he was being ordered to remove. (ALJD 5:9-12, 6:18-32). However, the ALJ failed to find that on August 31, Walters again demanded that Richardson remove any false, derogatory, disparaging and/or defamatory statements and again failed to respond to Richardson's request that Respondent

identify the specific offending statements. Instead, Walters replied to Richardson's request that he identify the particular statements to be removed by stating that he would not get into a back and forth with him. (GCX 69). Based on the record, the Board should grant General Counsel's exceptions and revise the ALJ's Statement of the Case and Findings of Fact to reflect that on both August 30 and again on August 31, Respondent demanded that Richardson remove his protected concerted posts from LinkedIn.

In the Analysis section of his decision, ALJ Amchan correctly found Walters' statement of August 30 to be unlawful, "Respondent by [omitted] Michael Walters Violated Section 8(a)(1) by ordering John Richardson to cease engaging in protected concerted activity." (ALJD 10:35-36). ALJ Amchan's analysis properly held "Walters' non-specific demand that Richardson remove statements from LinkedIn, interfered with Richardson's free exercise of his Section 7 rights," and, "Therefore, Respondent, by [omitted] Walters violated Section 8(a)(1) of the Act." (ALJD 10:38-45). The ALJ did not address the August 31 demand in his analysis, but the August 31 demand is virtually identical to the August 30 demand, and the August 31 demand interfered with Richardson's free exercise of his Section 7 right in the same way as did the August 30 demand. Accordingly, the ALJ erred by failing to find that on August 31, Respondent violated Section 8(a)(1) of the Act when Walters demanded that Richardson remove his protected concerted LinkedIn posts.

Furthermore, the ALJ failed to address the complaint allegations that on August 30 and 31, Respondent, by Walters, violated Section 8(a)(1) of the Act by threatening employees with unspecified reprisal if they failed to remove their protected concerted posts. Employees have a Section 7 right to discuss discipline, and working conditions with coworkers, and an Employer violates the Act "… if its conduct may reasonably be said to have a tendency to interfere with the

free exercise of employee rights.'" *Inova Health System*, 360 NLRB 1223, 1228 (2014); *Corporate Interiors, Inc.*, 340 NLRB 732, 732 (2003), quoting *Frontier Hotel & Casino*, 323 NLRB 815, 816 (1997); see also *American Freightways Co.*, 124 NLRB 146, 147 (1959). The Board therefore considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act. See *American Tissue Corp.*, 336 NLRB 435, 441-442 (2001).

Here, Walters demanded on August 30 and again on August 31, that Richardson remove false or defamatory statements from his social media posts, provided him a short deadline for complying with the demand, and refused to identify which statements it viewed as false, derogatory, disparaging and/or defamatory. When Walters' demands that Richardson remove at least portions of his posts are considered in context with the short deadline and refusal to identify the statements to be removed, it is apparent that the demands conveyed an unspoken "or else" there would be consequences. It is also apparent that by refusing to identify the offensive statements, Respondent was seeking to coerce Richardson into removing his posts in their entirety. (GCX 67, 69, 73)

ALJ Amchan erred by failing to find and conclude that on August 30 and August 31, Respondent, through Walters, unlawfully threatened employees with unspecified reprisals if they did not remove protected concerted social media posts. Counsel for the General Counsel respectfully requests that the Board grant General Counsel's Exceptions 7, 8 and 9, and modify the ALJ's recommended remedy, order, and Notice to Employees accordingly.

**B. The ALJ erred by failing to set forth in his Conclusions of Law his finding that Respondent's defamation lawsuit was unlawful, by failing to include in his Conclusions of Law and Recommended Order his finding that Respondent's request for production and interrogatories were unlawful, and his failure to provide recommended remedies for those violations. (Exceptions 6, 10, 11, 12).**

In his analysis, the ALJ includes a heading titled "Respondent violated the Act by filing a lawsuit against John Richardson and by engaging in pre-trial discovery." (ALJD 11:2-3). In that subsection, the ALJ held that Respondent's lawsuit, "… lacks a reasonable basis in law or fact; and was commenced with a retaliatory motive." (ALJD 11:8-12). He went on to state that, "… Respondent's discovery requests would have the likely consequence of discouraging any employee from engaging in concerted activity to change its policies with regard to the perceived discrimination/alleged hostile workplace created by its DEI policies." (ALJD 11:5-8). The Order section of the ALJ's decision includes a provision requiring that Respondent cease and desist from "filing baseless lawsuits against employees for engaging in protected concerted activity," and the Notice Posting reflects his finding that the lawsuit was baseless. (ALJD 12:36-37; 15). However, the Conclusions of Law section of the decision fails to address or mention the ALJ's finding that the lawsuit was unlawful, the requests for production, or the interrogatories and his recommended Order fails to mention or address the interrogatories and requests for production. The ALJ also inadvertently failed to recommend an appropriate remedy for his findings that Respondent violated the Act by filing the baseless lawsuit and serving interrogatories and requests for production.

These mistakes are obvious oversights and Counsel for the General Counsel respectfully requests that the Board modify the ALJ's Conclusions of Law to reflect his finding that Respondent violated Section 8(a)(1) of the Act by filing a baseless lawsuit against Richardson because he engaged in protected concerted activity and that the interrogatories and requests for production were unlawful because they were served in furtherance of an unlawful lawsuit. (ALJD 11:39-42).

The ALJ's recommended Order should be modified to include a provision requiring that Respondent cease and desist from serving interrogatories and requests for production on employees in connection with baseless lawsuits. Finally, the Notice to Employees should be modified as appropriate.

Counsel for the General Counsel respectfully requests that the Board grant General Counsel's Exceptions 6, 10, 11, and 12, and modify the ALJ's recommended remedy, order, and Notice to Employees accordingly.

**C. The ALJ erred by relying on *Latino Express Inc.*, instead of *AdvoServ of New Jersey, Inc.*, as the basis for requiring Respondent to compensate Richardson for excess tax liability (Exception 16).**

The ALJ erred by citing *Latino Express Inc*., 359 NLRB 518 (2012) to support his directive that, "Respondent shall file a report with the Regional Director allocating backpay to the appropriate calendar quarters. Respondent shall also compensate John Richardson for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1-year." (ALJD 12:18-21). Rather, the ALJ should have cited *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), and *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014) for the proposition that Respondent must make Richardson whole for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1-year. Accordingly, Counsel for the General Counsel respectfully requests that the Board grant General Counsel's Exception 16, and modify the ALJ's recommended remedy, order, and Notice to Employees accordingly.

**D. The ALJ erred by applying the site-specific tests set forth in *Atlantic Steel Company*, 245 NLRB 814 and *Triple Play Sports Bar & Grill,* 361 NLRB 308 (2014) to the conduct at issue rather than solely relying on *Wright Line*, 251 NLRB 1083 (1980). (Exception 1).**

As explained in the Analysis section of his decision, ALJ Amchan evaluated Richardson's discharge under *Wright Line* and *General Motors*, as well as *Atlantic Steel Company*. (9:30-36). He began his analysis by finding that there was no question that Richardson engaged in protected concerted activity, that Respondent was aware of that activity, and that Respondent discharged him because of that activity. (ALJD 9:1-28). ALJ Amchan then noted that there was a question about whether the discharge should be evaluated under *Wright Line* and *General Motors,* or *Atlantic Steel*, but stated that he would reach the same conclusion under either standard, or *Pier Sixty LLC*, 362 NLRB 505 (2015). (ALJD 9:30-36). ALJ Amchan used the setting specific test set forth in *Atlantic Steel Company*, to find that the social media posts made by Richardson did not lose the protection of the Act. (ALJD 10:4-19). In that regard, ALJ Amchan concluded that Respondent failed to prove that any of Richardson's statements were factually incorrect or otherwise justified his termination. (ALJD 10:30-33). The ALJ went on to state that pursuant to the *Wright Line/General Motors* or *Atlantic Steel* analysis, Respondent failed to rebut General Counsel's initial showing of discrimination. (ALJD 10:11-19). Finally, the ALJ found that Respondent did not "prove that Richardson said anything that was established to be factually incorrect and that it cannot justify his discharge on the basis of his qualitative characterization of what Respondent's agents said or wrote or his opinion about their remarks." (ALJD 10:30-33).

Following the issuance of the ALJ's decision in this case, the Board issued its decision in *Lion Elastomers LLC (Lion Elastomers III)*, 375 NLRB No. 41 (2026). In *Lion Elastomers III*, the Board recognized that its decision in *Lion Elastomers (Lion Elastomers II)*, 372 NLRB No. 83

(2023), was vacated by the United States Court of Appeals for the Fifth Circuit. *Lion Elastomers, LLC, v. NLRB*, 108 F.4th 252, 262 (5th Cir. 2024). The Board explained that its decision in *Lion Elastomers II* did not survive vacatur, and its decision in *General Motors LLC,* 369 NLRB No. 127 (2020) remains extant law. Accordingly, pursuant to the Board's decision in *General Motors*, the ALJ should not have evaluated whether Respondent's discharge violated the Act under the tests outlined in *Atlantic Steel*, *Pier Sixty,* or any other setting specific test. However, as discussed above, the ALJ also applied the totality of the circumstances test set forth in *Wright Line* and *General Motors* and correctly concluded that Respondent violated Section 8(a)(1) of the Act by discharging Richardson because he made protected concerted social media posts on LinkedIn.

Counsel for the General Counsel respectfully requests that the Board grant General Counsel's Exceptions 1 and modify his analysis accordingly.

**E. The ALJ erred by failing to explicitly require that Respondent make Richardson whole for attorneys fees, court costs, and other fees he incurred in defending the baseless lawsuit and responding to the requests for production and interrogatories (Exception 13, 14, 15).**

The ALJ found that Respondent violated the Act by unlawfully filing a lawsuit against John Richardson because he engaged in protected concerted activity and by serving Richardson with interrogatories and requests for production. (ALJD 11:2-13). The ALJ's recommended Order and Notice to Employees include provisions requiring that Respondent cease and desist from filing baseless lawsuits against employees and provide assurances that it will not file such suits against employees. (ALJD 12; 15). However, the ALJ failed to address the baseless lawsuit in the Remedy section of his decision, and he did not include any provisions addressing the unlawful interrogatories and requests for production. Furthermore, while the Remedy section, recommended Order, and Notice to Employees require that Respondent offer Richardson reinstatement and

compensate him for direct foreseeable pecuniary harms,[4] the ALJ failed to explicitly require that Respondent reimburse Richardson for attorneys fees, court costs, and other reasonable fees Richardson incurred in defending the unlawful defamation lawsuit and answering the unlawful interrogatories and requests for production. (ALJD 12:1-16). The Board's standard remedy for situations involving the filing and prosecution of unlawful lawsuits includes reimbursement for the cost incurred in defending against the unlawful lawsuit, plus interest. See *Bill Johnson's Restaurants, Inc.*, 461 U.S. 731, 747 (1983), (the Supreme Court held that the Board may order an employer to reimburse employees for attorneys fees and other expenses when the employer wrongfully sued the employee). See also *Petrchem Insulation, Inc.*, 330 NLRB 47 (1999); and *BE & K Construction Co.*, 351 NLRB 451, (2007).

Counsel for the General Counsel respectfully requests that the Board grant General Counsel's exceptions 13, 14, and 15, and that the Board modify the ALJ's recommended remedy, Order, and Notice to Employees as appropriate to require that Respondent make Richardson whole for the costs incurred in defending against the unlawful lawsuit and responding to the unlawful interrogatories and requests for production.

### F. Under the Proposed New Standard, the Investigative-Confidentiality Directive Here Was Lawful, as Was Respondent's Confidentiality Agreement. (Exceptions 2, 3, 4, and 5)

Applying the *Boeing*-based standard to the rules and confidentiality directive here, the Board should find they are all lawful. (ALJD 3:33-43; GCX 2). Neither the rules nor the confidentiality directive explicitly ban Section 7 conduct, so all are facially neutral. And to the extent any of them were applied against Richardson's Section 7 activity here, that does not render

[4] The General Counsel disagrees with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), *vacated in part*, 102 F.4th 727 (5th Cir. 2024), and will be urging the Board to reconsider the policy in a future, appropriate case.

the rules or directive unlawful. *See AT&T Mobility, LLC*, 370 NLRB No. 121 (2021). Also, as further explained below, either employees would not reasonably read the rules or directive as affecting their Section 7 rights, or Respondent's rights and legal obligations served by the rules or directive outweigh their impact on Section 7 activity.

### 1. Confidentiality Directives That Apply During the Course of an Investigation Should Be Lawful.

The Board should overturn *Stericycle*'s holding as it applies to investigative-confidentiality rules, 372 NLRB No. 113, slip op. at 11 & n.22, and reinstate the standard applied under *Boeing* to these types of rules and oral directives. *See Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144, slip op. at 2-3 (2020) (rules); *Watco Transloading, LLC*, 369 NLRB No. 93, slip op. at 8 n.24 (2020) (oral directives). In *Apogee*, the Board overturned *Banner Estrella Medical Center*, 362 NLRB 1108 (2015), *enforcement denied on other grounds*, 851 F.3d 35 (D.C. Cir. 2017), and held that investigative confidentiality rules that apply only for the duration of the investigation are categorically lawful. Applying *Boeing*, the Board held that the impact of such confidentiality rules on potential Section 7 activity was "comparatively slight," since the rules only apply to employees actively involved in an ongoing investigation, and do not forbid discussing discipline or the events giving rise to discipline. *Apogee*, 368 NLRB No. 144, slip op. at 8.[5] Requiring investigative confidentiality during the investigation only limits employees from discussing information learned from, or provided during, an investigation, a comparatively small constraint. *Apogee*, 368 NLRB No. 144, slip op. at 8. In contrast, employers have multiple substantial and compelling business justifications for such rules, including combatting misconduct

[5] Where a rule applies to nonparticipants in an investigation or bans discussion of disciplinary matters generally or the events leading up to an investigation not learned or provided in the course of the investigation, the rule is not covered by *Apogee*. *Id.*; *accord Nestle USA, Inc.*, 370 NLRB No. 53, slip op. at 1, 13 (2020).

and crime through prompt and unfettered investigations, protecting employees from retaliation and invasion of privacy, protecting employees' reputation, and guaranteeing the integrity of the investigation. *Id.*, slip op. at 5, 9. Balancing those significant employer interests against the comparatively slight potential impact on Section 7 activity, the Board in *Apogee* found that investigative confidentiality rules applying to open investigations are normally lawful.

However, where such rules are not limited on their face to the duration of an investigation, the Board applying *Boeing* held that employees would reasonably read the rule as continuing even after the investigation has closed, where an employer's legitimate interests are possibly—but not always—significantly reduced. *Id.*, slip op. at 9. In such cases the Board found it would have to closely analyze the specific reasons for the rule applying beyond the close of the investigation to properly balance the rights at issue. *Id*. In *Watco Transloading*, the Board applied *Apogee* to oral investigative-confidentiality directives, but held that where such instructions are specific to a single investigation, it is appropriate to assess the surrounding circumstances to determine whether employees reasonably would understand the directive as being limited to the duration of the investigation. *Watco*, 369 NLRB No. 93, slip op. at 9 n.25; *accord Alcoa Corp.*, 370 NLRB No. 107, slip op. at 2-3 (2021).

The Board should return to this *Apogee* standard when evaluating employer investigative confidentiality rules for the same reasons it should return to a *Boeing*-based standard for work rules generally. Indeed, those reasons are particularly compelling in the case of investigative-confidentiality rules and directives. An employer's interests in properly investigating misconduct, crime, discrimination, harassment, and other wrongdoing at work are some of the most legitimate and substantial interests an employer can have. *Stericycle*, 372 NLRB No. 113, slip op. at 31 (Kaplan, dissenting). Regardless of the limited impact of an investigative-confidentiality rule on

Section 7 activity, it is essential that an employer be able to assure employees that their reports will be kept strictly confidential, and to quiet fears that truthful disclosures may lead to retaliation. *Id.* (citing *Apogee*, 368 NLRB No. 144, slip op. at 4). In fact, employees may have a more substantial interest than the employer has in prompt and confidential investigations of situations like discrimination and harassment, especially when regular coworkers or supervisors are involved. *Id*.

When the Board overturned *Apogee* in *Stericycle*, it did so merely because *Apogee* was the progeny of *Boeing*, without regard to the unique circumstances surrounding investigative confidentiality rules and without dealing with the problems of the prior *Banner Estrella* standard. Specifically, before an investigative confidentiality directive could be given under *Banner Estrella*, the employer had to make an individualized, case-by-case showing that "witnesses need[ed] protection, evidence [was] in danger of being destroyed, testimony [was] in danger of being fabricated, and there [was] a need to prevent a cover up" or other "comparably serious threats" to the integrity of the investigation. *Apogee*, 368 NLRB No. 144, slip op. at 4 (quoting *Banner Estrella*, 362 NLRB at 1109) (citation modified). This standard essentially forbade standing investigative confidentiality rules, despite the fact the Board and other investigative agencies depend on such rules themselves. *See id.*, slip op. at 5 & n.8. Returning to *Apogee* would again give employers the "certainty beforehand" that an investigative confidentiality rule limited to open investigations will be deemed lawful and that they can proceed with a prompt confidential investigation of serious wrongdoing, removing the "fear of later evaluations labeling its conduct an unfair labor practice." *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 678-79 (1981) (observing that management must have some degree of certainty beforehand as to when it may proceed to reach a decision without fear of it being labeled a ULP).

Applying *Apogee* here, the Board should find that Respondent's email directing Richardson to "maintain confidentiality and avoid naming specific employees or discussing details related to the ongoing investigation" squarely falls within the sorts of investigative-confidentiality rules and directives found lawful in *Apogee*. Indeed, Respondent specifically emphasized one of the compelling interests for such rules recognized by the Board by noting the need to protect "the privacy and reputation of all parties involved." Such interest would clearly be directly compromised if Richardson disclosed details or names he had provided during the investigation, and Respondent was justified in asking him to refrain from doing so even if, viewed objectively, it could potentially limit Richardson's Section 7 activity.[6] Importantly, the directive here on its face stated that it applied specifically to the "ongoing investigation," which an employee would reasonably understand to mean the directive would end once the investigation was no longer ongoing. For instance, in *Securitas Security Services USA*, 369 NLRB No. 57, slip op. at 1-2 (2020), the Board held that a similar email to employees banning talking about an investigation "during the time of the investigation" clearly would not be read to extend after the investigation was concluded. Such a reading is further supported here by the surrounding context of the directive, since Respondent previously asked Richardson for his patience while the investigation was ongoing, implying that Richardson could act once the investigation was over. Accordingly, the investigative-confidentiality directive would not reasonably be understood to extend past the termination of the investigation and would be lawful under *Apogee*.

[6] While not necessarily relevant to the objectively reasonable-employee standard, the limited impact of the directive on Section 7 activity is highlighted here by the fact that it apparently did not prevent Richardson from continuing his protected-concerted posting naming names online.

### 2. Respondent's Confidentiality Agreement Was Lawful.

The mere maintenance of the rules included in the Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation would be lawful under the proposed *Boeing*-based standard. As noted above, the agreement that Richardson had to sign defined proprietary and confidential as:

> The subject matter of the Company's patents, design patents, copyrights, trade secrets, trademarks, service marks, trade names, trade dress, manuals, operating instructions, training materials, business and marketing plans and other industrial property, . . . [the] Company's list of past, existing or potential clients, customers, members, partners, stockholders and investors, and [a]ny other information or documents which the Company reasonably regards as being confidential. (GCX 2)

The ALJ, applying *Stericycle*, found two aspects of this rule unlawfully overbroad: the fact that it classified as proprietary both "manuals . . . [and] training materials," and the catch-all provision including anything else Respondent "reasonably regards as being confidential."

Under the first step of the proposed *Boeing*-based analysis, the Board must determine whether either aspect of the confidentiality agreement infringes on employees' Section 7 rights. Regarding Respondent's manuals and training materials, the Board held under *Boeing* that confidentiality rules encompassing information about wages or employee terms and conditions of employment are unlawfully overbroad. *See, e.g.*, *Lowe's Home Center*, 368 NLRB No. 133, slip op. at 1 n.1 (2019) (salary information). For instance, in *Newmark Grubb Knight Frank*, 369 NLRB No. 121 (2020), the Board found a footer at the bottom of every page of the employee handbook that stated "Confidential—For Internal Use Only" was unlawful since employees would reasonably interpret the footer "to prohibit sharing the employee handbook or its terms and conditions with outside parties, such as unions." *Id.*, slip op. at 4. However, in *Shamrock Foods Co.*, 369 NLRB No. 140 (2020), the Board applying *Boeing* agreed that a confidentiality policy that included "[c]ompany manuals and policies" was lawful because the context of the rule showed

it was not referring to employee handbooks or employment policies, but to proprietary information protected by patents or trade secrets. *Id.*, slip op. at 5-6.

Similarly to the rule in *Shamrock*, the instant confidentiality rule's reference to manuals and training, when read in context, would reasonably be understood not to refer to an employment handbook or policies, but to Respondent's proprietary business methods and the training thereon. Like the rule in *Shamrock*, the reference here to manuals is embedded in a list of Respondent's other intellectual property. *Cf. MediaOne of Greater Florida, Inc.*, 340 NLRB 277, 279 (2003) (finding nondisclosure rule lawful notwithstanding that it included "employee information" because rule addressed disclosure of "proprietary information, including information assets and intellectual property," and "employee information" listed as example of "intellectual property"). Wages and employment policies are not generally considered intellectual property. Additionally, like in *Shamrock*, Respondent was set on protecting the unique business processes set out in its manuals and training materials, not on forbidding discussion of employee handbooks. (Tr. 231:5-21). Employees, reading the rule as it applies to the everydayness of their job, would understand that purpose, both from the context of the rule and from their own time at the company learning those processes. *See LA Specialty Produce Co.*, 368 NLRB No. 93, slip op. at 2. Accordingly, objectively reasonable employees would not read this aspect of the confidentiality rule to apply to employee handbooks or employment policies, and thus the rule would not impact potential Section 7 activity.

The confidentiality agreement's catch-all provision classifying as "proprietary" anything Respondent "reasonably regards as being confidential" likewise has no impact on potential Section 7 activity when read as a whole and from the perspective of an objectively reasonable employee. The rule is surrounded by many examples of objectively confidential information, but nothing

related to terms and conditions of employment. The only aspect of the policy that might reasonably relate to employees, other than the manuals and training discussed above, is the use of the term "members" when discussing Respondent's classified lists. Although Respondent did not typically call its employees "members," at least one Respondent executive testified they interpreted the term as referring to employees, indicating that it was at least *a* reasonable interpretation of the rule, if not necessarily the most reasonable. (Tr. 231-32).

But even if the term "members" is read to refer to employees, the Board under both *Boeing* and beforehand held that employers are well within their rights to keep confidential their own records and lists of employee information. *See Shamrock Foods*, 369 NLRB No. 140, slip op. at 7 (finding rule against disclosing employee addresses and personal information lawful because it referred to information contained in employer's confidential or private files); *LA Specialty*, 368 NLRB No. 93, slip op. at 3 (rule referring to "client/vendor lists" lawfully banned use of employer's own proprietary information, not employee appeals to third parties); *Macy's, Inc.*, 365 NLRB No. 116, slip op. at 4 (2017) (holding employees have no right to information "improperly obtained from their employer's private or confidential records").

Where employees would understand that the information protected by an employer policy is "information collected by the [employer] and stored in its databases" and that the policy "does not restrict their ability to share generally known contact information with each other or with a third party," such a policy would not reasonably be read to interfere with Section 7 rights. *Interstate Management Co. LLC*, 369 NLRB No. 84, slip op. at 4 (2020). For instance, in *Argos USA LLC*, 369 NLRB No. 26 (2020), the Board held that a rule forbidding the disclosure of "confidential [c]ompany information" that included the employer's "employee information" would reasonably be read as referring to the employer's confidential information, not wages and terms and conditions

of employment. *Id.*, slip op. at 2-3. Similarly, in *Medic Ambulance Service, Inc.*, 370 NLRB No. 65 (2021), the Board applying *Boeing* held that a rule prohibiting disclosure of "confidential or proprietary information regarding the company or your coworkers" would be reasonably read as not referring to sharing terms and conditions of employment because nothing else in the rule indicated that was the kind of information to which it was referring. *Id.*, slip op. at 2-3. *See also Motor City Pawn Brokers Inc.*, 369 NLRB No. 132, slip op. at 4-5 (2020) (finding lawful two rules prohibiting the disclosure of confidential or proprietary information of the company, its customers, and its employees); *Newmark Grubb*, 369 NLRB No. 121, slip op. at 3-4 (finding lawful rule about "[c]onfidential information of or regarding the [c]ompany or its clients, business partners or staff"). Because the term "members" here refers to Respondent's own confidential lists, even if the term were understood to be referring to employees it would reasonably be read as referring to Respondent's own proprietary and confidential files and information, not to employee discussions about organizing or terms and conditions of employment.

Absent any other reference to wages or working conditions in the confidentiality agreement, Respondent's rule including anything else it "reasonably regards as being confidential" would not be read as covering potential Section 7 activity. The rule is itself limited only to things that can be "reasonably" regarded as confidential, which by definition puts it within the "objectively reasonable" standard incorporated in the proposed *Boeing*-based test. Indeed, under *Boeing* the Board has held lawful similarly broad confidentiality rules that do not mention employee information. *See, e.g.*, *National Indemnity Co.*, 368 NLRB No. 96, slip op. at 1-3 (2019) ("all non-public information"). Accordingly, this broad catch-all provision of the confidentiality agreement has no potential impact on Section 7.

Since neither aspect of the confidentiality agreement affects potential Section 7 activity, it is unnecessary to proceed to the balancing step of the proposed test, as there is nothing to balance Respondent's legitimate and substantial interests against. Accordingly, the confidentiality agreement is lawful under the *Boeing*-type test to which the Board should return.

### G. The ALJ erred by failing to find that Respondent violated the Act by unlawfully applying its facially lawful "Non-Disparagement: Public Profiles" rule to prohibit employees from engaging in protected concerted activity. (Exception 5).

As discussed, Respondent's "Non-Disparagement: Public Profiles" rule is facially lawful. However, Respondent discriminatorily applied the rule to prohibit Richardson from engaging in protected concerted activity. (ALJD 9:3-8). The ALJ correctly found Richardson's LinkedIn posts constituted protected concerted activity because his posts sought to enlist his coworkers support in protesting what he perceived to be discrimination against males, notified his coworkers of potential EEOC claims they may have, and sought to inform the public of his labor dispute. The ALJ also correctly concluded that Respondent violated Section 8(a)(1) of the Act by discharging Richardson because of his protected concerted activity. (ALJD 9:6-18). Respondent relied on its "Non-Disparagement :Public Profiles" rule as the basis for discharging him, stating in the discharge notice, as follows "Such statements publicly made by you as well as your unwillingness to retract them constitute a willful and continuing breach of your Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation -- specifically, the *Non-Disparagement; Public Profiles* clause. Accordingly you are terminated effective immediately." (GCX 73).

The Board has long held that "applying a rule or policy to restrict the exercise of Section 7 rights is an unfair labor practice." *AT&T Mobility, LLC*, 370 NLRB No. 121, slip op. at 2 (2021). Here, Respondent unlawfully applied its facially lawful Non-Disparagement: Public Profiles rule to prohibit

employees from engaging in protected concerted activity by relying on it as the basis to demand that Richardson remove his protected concerted posts from LinkedIn and as the basis for its discharge of Richardson.

Counsel for the General Counsel respectfully requests that the Board grant General Counsel exception 5, and amend the ALJ's findings of fact, conclusions of law, remedy, and Order as appropriate.

## V. CONCLUSION

For the foregoing reasons, the General Counsel respectfully urges the Board to grant the General Counsel's Exceptions in their entirety and modify the ALJ's findings, conclusions of law, and recommended Order, and Notice to Employees (attached hereto) to include complete remedies for all Respondent's violations of Section 8(a)(1) of the Act, as described above.

Dated: October 5, 2026

Respectfully submitted,

**/s/ Steven Barclay**

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# ATTACHMENT

# NOTICE TO EMPLOYEES

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

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

**THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:**

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

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

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

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

**WE WILL NOT** file or maintain an objectively baseless lawsuit against you, or serve you with interrogatories or requests for production in connection with such a lawsuit, because you engage in concerted activities for the purpose of mutual aid or protection of employees.

**WE WILL NOT** apply the rules and policies in our Employee Agreement Regarding Confidentiality, Non-Competition, and Non-Solicitation against you to prohibit you from engaging in protected concerted activity.

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

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

**WE WILL,** within 14 days from the date of the Board's order, offer John Richardson immediate and full reinstatement to his former job without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

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

**WE WILL** compensate John Richardson for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 12, within 21 days of the date

the amount of backpay is fixed, either by agreement or Boad order, a report allocating his backpay award to the appropriate calendar year(s) and a copy of his corresponding W-2 form reflecting the backpay award.

**WE HAVE** withdrawn the lawsuit we filed against John Richardson in Case No.: 2023CA003786 in the Circuit Court of the Eighteenth Judicial Circuit in and for Seminole County, Florida, and **WE WILL** reimburse John Richardson for attorneys fees and costs he incurred in defending and responding to this lawsuit, plus interest.

**APEX FINTECH SERVICES LLC**

_____
(Employer)

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

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

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

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

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

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

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Counsel for the General Counsel's Brief in Support of Exceptions to the Decision of the Administrative Law Judge, was served on October 5, 2026, as follows:

**By electronic filing:**

National Labor Relations Board
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